



Neutral citation number: [2024] UKFTT 859 (GRC)

Case Reference: FT/D/2024/0421

**First-tier Tribunal  
(General Regulatory Chamber)  
Transport**

**Heard by Cloud Video Platform  
Heard on: 24<sup>th</sup> September 2024  
Decision given on: 25 September 2024**

**Before**

**JUDGE MOAN**

**Between**

**MOHAMMED NAWAZ**

Appellant

**And**

**Driver and Vehicle Standards Agency**

Respondent

**Representation:**

For the Appellant: Did not attend but had notice of the hearing.  
For the Respondent: Ms Jackson.

**Decision:** The appeal is dismissed and the decision of the Registrar to refuse a further trainee licence is confirmed.

**REASONS**

**Decision under appeal and background**

1. On 18<sup>th</sup> March 2024 the Appellant applied for a third trainee licence. On 23<sup>rd</sup> April 2024 the Respondent refused the Appellant's application for a further trainee licence under section 129 of the Road Traffic Act 1988.

### **Appellant's written grounds of appeal**

2. In his notice of appeal dated 5<sup>th</sup> May 2024 the Appellant said that that the refusal was unfair because of the unavailability of Part 3 driving tests and his inability secure a date for a test before the end of his licence period. Just before his test date, he fell ill which impeded his ability to prepare for the test. He confirmed that he had a test booked for the end of June.
3. The Appellant supplied a copy of his GP notes. These revealed a history of physical issues and an ongoing problem with asthma and bronchiectasis. The summary showed that he consulted his GP up to April 2021 and a course of medication was prescribed for two weeks from 13<sup>th</sup> March 2024 due to likely infection as well as his repeat asthma medication.
4. The Appellant claimed that he suffered from anxiety. This was not apparent from the GP notes and there was no indication from the notes how this had impacted him.
5. There was a short note from Tim Palfreyman stating that the Appellant had missed training sessions due to ill health. He had a test booked for 22<sup>nd</sup> March 2023 but missed a training session a week before due to ill health. He had experienced difficulties getting a test date.

### **Respondent's response to the appeal**

6. Two licences under Section 129 of the Act were granted to the Appellant for the purpose of enabling him to gain practical experience to undergo the examination of his ability to give instruction in the driving of motor cars and were valid from 30<sup>th</sup> March 2023 to 29<sup>th</sup> March 2024.
7. On 18<sup>th</sup> March 2024, the Appellant applied for a third licence. After considering the representations made by the Appellant, the Respondent refused the Appellant's application. He had already enjoyed the benefit of two trainee licences for a period of twelve months. He provided evidence of prescription medication, but this did not

detail the condition or how it impacted upon him. It appeared that he had suffered health conditions for a number of years., so he would have been aware of this before starting the qualification process.

8. The purpose of the provisions governing the issue of licences is to afford applicants the opportunity of giving instruction to members of the public whilst endeavouring to achieve registration. The system of issuing licences is not and must not be allowed to become an alternative to the system of registration.
9. The licence granted to applicants is not to enable the instructor to teach for however long it takes to pass the examinations, but to allow up to six months' experience of instruction. This provides a very reasonable period in which to reach the qualifying standard in the examination and in particular, to obtain any necessary practical experience in tuition. The Appellant has already had two trainee licences which cover a period of 12 months. Moreover, by virtue of the Appellant having applied for a third licence before the expiry date of the second, that licence has remained in force to the present time and will allow him to continue to give paid instruction until determination of the appeal.
10. Since passing his driving ability test the Appellant has yet to take the instructional ability test and cancelled two more such tests booked for 29<sup>th</sup> November 2023 and 22<sup>nd</sup> March 2024. Despite ample time and opportunity, the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor.
11. The refusal of a third licence does not bar the Appellant from attempting the instructional ability test of the Register examinations. He does not need to hold a licence for that purpose, nor is it essential for him to give professional tuition under licence in order to obtain further training. The Appellant could attend a training course, or study and practice with an Approved Driving Instructor or give tuition on his own (provided that he does not receive payment of any kind for this). These

alternatives are used by some trainees who acquire registration without obtaining any licences at all.

12. The Appellant had a test booked for 24<sup>th</sup> June 2024. The printout showed that he had a test booked on 29<sup>th</sup> November 2023 and 22<sup>nd</sup> March 2024 both of which were cancelled by the Appellant.

### **Procedural matters relating to the determination of the appeal**

13. The Tribunal considered the bundle (24 pages) prepared by the Respondent.
14. The hearing date and time was notified to both parties to the appeal on 18<sup>th</sup> June 2024. The CVP joining instructions were sent to parties on 20<sup>th</sup> September 2024. There was no indication that the hearing date was not convenient or that the Appellant could not attend.
15. Miss Jackson attended the CVP hearing. The clerk to the Tribunal had contacted the Appellant by telephone when he did not join the link and was told by him that he would not be attending as he had suffered a bereavement. No further details were given.
16. I was not satisfied with that explanation. Had the Appellant been impacted by a bereavement, he should have contacted the Tribunal immediately if he could not attend. He would have been required to provide evidence. He had not asked for an adjournment.
17. I was satisfied that the Appellant knew of the appeal hearing but not satisfied of the reasons why he did not attend and the circumstances of the Tribunal becoming aware of the same. When considering the inherent weaknesses in his appeal, he would be expected to provide a strong case for an adjournment, had one been sought. I concluded that it was in the interests of justice and in the public interest to hear the appeal in his absence based on the evidence provided.

### **Evidence and submissions at the appeal hearing**

18. Ms Jackson confirmed that the Appellant had failed his Part 3 test on 24<sup>th</sup> June 2024; and that he had not made a further booking to take the test as at the time of the appeal hearing. He had to complete his Part 3 by January 2025 and with the delay in getting tests, the Appellant was running out of time to secure a booking in time. She invited me to dismiss the appeal.

### **The Legal Framework**

19. Part V of the Road Traffic Act 1988 makes detail provision about the provision of driving instruction for payment and the process of registration (on the Register of Approved Instructors). Section 123 of the Road Traffic Act 1988 prohibits anyone whose name is not on the Register of Approved Driving Instructors from giving paid driving lessons.

20. In order to qualify as an Approved Driving Instructor, applicants must pass the Qualifying Examination. This comprises: the written examination ('Part 1'); the driving ability and fitness test ('Part 2'); and the instructional ability and fitness test ('Part 3').

21. Whilst a person may attempt the theory test Part 1 unlimited times; three attempts are permitted at each of Parts 2 and 3. The whole examination must be completed within 2 years of passing Part 1, failing which the whole examination process has to be retaken.

22. A trainee who has passed Part 2 may apply for a trainee licence and the grant of a trainee licence enables applicants to provide instruction for payment before they are qualified. The circumstances in which trainee licences may be granted are set out in section 129 of the Act and the Motor Cars (Driving Instruction) Regulations 2005. The purpose of a trainee licence is to allow the trainee to get practical experience ahead of Part 3. It is not a prerequisite to hold a trainee licence before qualifying as an

Approved Driving Instructor and there is nothing to prevent a trainee instructor practising their instructing ability without payment. Trainee licences are usually granted for six months.

23. In determining the appeal, the Tribunal stands in the shoes of the Registrar taking account of all of the information. The Appellant has the burden of showing that the Registrar's decision was wrong.

24. Under s131 of the 1988 Act the Tribunal may make such order as it considers fit.

### **Analysis of the evidence and findings on appeal**

25. The process of getting a trainee licence is simplified by an online application process or booking by telephone. The Part 3 involves one hour of the trainee driving instructor's time with about 40-45 minutes of that being an observation of a lesson and some general questioning thereafter. It is not over-onerous in terms of expense and time commitment.

26. There is no expectation that a trainee licence will be renewed. There should be some reason for a renewal and why the Part 3 test has not been successfully passed.

27. The Guidance on the Gov.Uk website provides -

#### **Getting another trainee licence**

You can apply for another trainee licence when it expires. You can do this if you feel you have not had the full benefit out of it. You'll need to give evidence to support the reason.

It's unlikely you'll get another licence just to give you more time to pass the ADI part 3 test.

Tell DVSA if you stop using your trainee licence. This will count in your favour if you need to apply for another licence.

The ADI Registrar has refused applications for another trainee licence when the applicant had not reasonably attempted the ADI part 3 test during the 6-month period covered by their previous licence.

28. This is clearly a statement of government intent as regards trainee licences.
29. The Appellant has held a trainee licence since March 2023. He has had 17 months to prepare and pass his Part 3 test. His first test was booked in November 2023 which was already outside the time confines of his first licence. No doubt the second licence was to enable him to take that test. There was no evidence as to the reason why he cancelled the test in November 2023. He had obtained medication in March 2024 for an infection and cancelled his test which was scheduled for nine days later. It was less than clear the reason why he cancelled his test in March 2024. The inference was ill-health but I was unclear of his medical condition, the onset and the symptoms as at his test date. The Appellant referred to anxiety but there was little in the bundle to show how this impacted on him and indeed whether he was fit enough to pursue the qualification, noting anxiety is often an enduring condition.
30. He has made no attempt to re-book his Part 3 since failing the test in June 2024. He would be aware of the delay in re-booking. This indicates his lack of commitment to passing his Part 3. He has had more than adequate time to pass his Part 3 already in the 17 months that he has held a trainee licence.
31. There is a compelling public interest to ensure that trainee instructors are not avoiding the registration process by restricting renewals of their licence. In addition, pupils should not receive sub-standard instruction by instructors who are not capable of passing the qualifying tests. The absence of a trainee licence does not prevent the Appellant from taking his Part 3 test. His own dilation in booking and taking the tests has led to the circumstances that he now finds himself in. Even if the Tribunal granted him a further licence, there is no guarantee that he would secure a test before the two period expires.

32. The appellant has not presented a compelling case for renewal. There is no reason to disturb the refusal of the Registrar and on the facts that was the reasonable response to the renewal application. That decision is confirmed.

33. The appeal is dismissed.

District Judge Moan sitting as First Tier Tribunal Judge

24<sup>th</sup> September 2024.