



Neutral citation number: [2025] UKFTT 157 (GRC)

Case Reference: FT-D-2024-0666

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

**Heard remotely by CVP
Decision given on: 12 February 2025**

Before

JUDGE BRIDGET SANGER

Between

MOHAMMED ABDUL BASIR

Appellant

and

REGISTRAR FOR APPROVED DRIVING INSTRUCTORS

Respondent

Decision: The appeal is dismissed.

REASONS

Introduction

1. This is an appeal against a decision of the Registrar of Approved Driving Instructors ('the Registrar'), made on 16th August 2024, to refuse to grant the Appellant a third trainee licence.
2. Mr Basir appeared at the hearing. The Registrar did not appear and was not represented.

3. A case management direction was sent to the parties on 6th December 2024, advising them of the hearing date. I am satisfied that the Registrar had notice of the hearing. This tribunal has been notified that the Registrar has made a decision not to attend trainee licence appeal hearings for the foreseeable future.
4. Rule 36 allows the Tribunal to continue in the absence of a party if I am satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party, and it is in the interests of justice to do so.
5. I took account of the overriding objective and was satisfied that it was in the interests of justice to proceed. The hearing went ahead.

Legal Framework

6. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified.
7. A trainee licence may be granted in the circumstances set out in s. 129 of the Road Traffic Act 1988 ('the Act') and the Motor Cars (Driving Instruction) Regulations 2005.
8. A licence under section 129(1) of the Act is granted: 'for the purpose of enabling a person to acquire practical experience in giving instruction in driving motor cars with a view to undergoing such part of the examination... as consists of a practical test of ability and fitness to instruct.'
9. 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').
10. Three attempts are permitted at each part. The whole examination must be completed within 2 years of passing Part 1, failing which the whole examination has to be retaken.
11. If a candidate has passed Part 2, they may be granted a trainee licence. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified. It is possible to qualify as an Approved Driving Instructor without having held a trainee licence.
12. The powers of the Tribunal in determining this appeal are set out in s.131 of the Act. The Tribunal may make such order as it thinks fit.
13. When making its Decision, the Tribunal stands in the shoes of the Registrar and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar's decision as the person tasked by Parliament with making such decisions.

14. The burden of proof in satisfying the Tribunal that the Registrar's decision was wrong rests with the Appellant.

Factual Background to the Appeal

15. The Appellant had not previously been on the Register.

16. The Appellant passed Part 1 of the Qualifying Examination on 12th December 2022. He passed Part 2 on 3rd July 2023.

17. The Appellant was in receipt of a trainee licence which was valid from 14th August 2023 to 13th August 2024.

18. The Appellant booked, and subsequently cancelled, his Part 3 test on 28th November 2023 and again on 5th December 2023. He took it on 30th January 2024 and failed.

19. On 30th July 2024 the Appellant applied for a third trainee licence. This was before the expiry of his second trainee license.

20. On 31st July 2024 he was informed, by the Registrar, that he was considering refusing the application and invited to make representations.

21. The Appellant did not make any representations to the Registrar within the required time frame.

22. The application was refused on 16th August 2024.

23. A further attempt was made at Part 3 test on 4th November 2024. The Appellant failed.

24. The reasons for the Registrar's decision, in summary, was that the Appellant had provided no evidence of loss of training time or lack of pupils and he had already had the benefit of a trainee license for twelve months.

Appeal to the Tribunal

25. The Appeal was filed on 5th August 2024, which pre-dates the decision appealed against.

26. The grounds of appeal are, in summary:

a. The Appellant failed his first attempt at Part 3 by 2 points;

b. Examination dates were difficult to come by and he had waited several months and called for cancellations numerous times.

27. The Registrar, in his response, states:

- a. 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;
- b. 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;
- c. since passing his driving ability test the Appellant has failed the instructional ability test once and cancelled two more such tests booked for 28 November and 05 December 2023. Despite ample time and opportunity the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor; and
- d. 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.
- e. it should be noted [*as at 4 September 2024*] that the Appellant has his second attempt at the instructional ability test booked for 05 November 2024.

Evidence

28. I read and took account of a bundle of documents.

29. I heard evidence from the Appellant who told me:

- a. If there were cancellations in December 2023 that would have been because the Appellant's wife had an operation, though he did not remember cancelling the tests on 12th and 15th December 2023;

- b. He could not recall what reason was given for the request for the first extension, which had been granted by the Registrar in February 2024;
- c. His second attempt was taken on 4th November 2024. This was failed by a small margin;
- d. His final attempt at the test is booked for 3rd February 2025 ;
- e. He did not make representations to the letter of 31st July because he mistakenly started the Appeal process instead.

Discussion and Conclusions

- 30. The Appellant's appeal form pre-dates the decision he seeks to challenge and it would appear that the error was not identified until the day of the hearing.
- 31. It was the Appellant's evidence that he had misunderstood the process and filed the Appeal early. The decision was, however, made as he had anticipated that it would be.
- 32. I took the Appellant's evidence as an application to amend the date on the form and refresh the Appeal. Given that he had appeared today and gave evidence, it was clear that his intention was to proceed with the application. There was no prejudice to the respondent in doing so as they had responded to the Appeal form and had the opportunity to participate in the Appeal. There was no fresh evidence on which they should have the opportunity to make submissions.
- 33. I determined that it was in the interests of justice to proceed to a decision.
- 34. I may overturn the decision of the Registrar if I am of the opinion that it was wrong. The burden is on the Appellant to show this.
- 35. I accept the explanations offered in evidence with regard to the high number of cancellations of the Part 3 test by the Appellant.
- 36. However, the Appellant passed Part 1 (Theory) test on 12th December 2022. He is thus ineligible to take the Part 3 test, which must be passed within two years of passing part 1.
- 37. Having weighed all matters in the balance, the Appellant has not persuaded me that the Registrar's decision was wrong in any way. In all the circumstances, I agree with the Registrar's decision and the appeal is dismissed.

Signed: Judge Bridget Sanger

Date: 20 January 2025