



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

NCN [2024] UKFTT 00470 (GRC).

Appeal Reference: D/2024/105

Decided without a hearing on 23 May 2024

Before

JUDGE ANTHONY SNELSON

Between

TREVOR ROSS

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

DECISION

The decision of the Tribunal is that the appeal is dismissed.

REASONS

1. This is the appeal of the Appellant, Mr Trevor Ross, against the decision of the Registrar of Approved Driving Instructors ('the Registrar'), conveyed in a letter of 16 January 2024, to refuse his request for a second trainee licence.
2. The matter was listed before me for consideration on the papers. I was satisfied that it was just and proper to decide the appeal without a hearing.

The statutory framework

3. The Road Traffic Act 1988 ('the Act'), s123(1) prohibits the giving of paid driving instruction except where the instructor's name is included in the Register of Approved Driving Instructors¹ ('the Register') or he/she holds a trainee licence.

4. Candidates for membership of the Register must fulfil a number of conditions. These include the requirement to pass an examination divided into three parts ('the examination'): theory; driving ability and fitness; and instructional ability and fitness (the Act, s125(3)(a)). They must apply for a part three test within two years of passing part one; if they do not, they must re-take the entire examination. Candidates who fail part three on three occasions must also re-take the entire examination.² And in this case the current trainee licence comes to an end on the day following the third test.³

5. By the Act, s129(1) it is provided that trainee licences are granted for the purpose of enabling prospective ADIs who have passed parts one and two of the examination to gain practical experience in driving instruction with a view to taking part three. Trainee licences are valid for six months only. The Registrar is expressly empowered to refuse to grant a trainee licence to an applicant to whom such a licence has previously been issued (s129(3)). It is clear from the language of s129 as a whole that trainee licences are not intended to serve as an alternative to registration.

6. The DVSA website (not, of course, a legal source) includes this advice:

You should return your trainee licence to DVSA if you are not using it, for example because of a long period of illness.

You will not get a refund, but DVSA will know that you have not had full use of the licence. This will be a factor in deciding whether to give you another licence in future.

On the subject of applications for further trainee licences it states:

You're more likely to get another licence if you told DVSA you had stopped using the first, for example because of a period of illness.

It's unlikely that you'll get another licence if you:

- **just want more time to pass the approved driving instructor (ADI) part 3 test**
- **did not follow the [rules for using your previous trainee licence](#)⁴**

7. The effect of the Act, s129(6) is that, where a holder of a temporary licence applies during its currency for a fresh licence, the life of the original licence is extended until the commencement of the new licence or, if the application is refused and the holder appeals, until disposal of the appeal.

8. By the Act, s131(2) an appeal lies to the First-tier Tribunal against a decision to refuse an application for the grant of a licence. On the appeal, the Tribunal may make such order for the grant or refusal of the application as it sees fit (s131(3)). In a different but analogous statutory context in *In the matter of the Bonas Group Pension Scheme* [2011] UKUT B 33 (TCC) Warren J, sitting in the Upper Tribunal, held that there was nothing to constrain the first-instance Tribunal's approach on appeal. Its function is simply to make its own decision on the evidence before it (which may differ from that before the statutory body whose decision

¹ Hereafter the usual abbreviation 'ADI' will be used.

² See the Motor Cars (Driving Instruction) Regulations 2005 ('the Regulations'), reg 3(4)(c) and (d).

³ The Regulations, reg 14(b)

⁴ These include a requirement to undertake a specified number of training hours over the first three months of the licence.

is under challenge). Despite this latitude, however, high authority of general application recognises two important points. First, the burden is on an appellant to persuade the Tribunal that the relevant decision should be overturned or otherwise interfered with. Second, the Tribunal should give careful consideration to the reasons for the decision being impugned, given that Parliament has invested the relevant body with exclusive authority (subject to appeal) to make decisions on such matters.⁵

The key facts

9. The background facts can be summarised as follows.
- 9.1 Mr Ross passed parts one and two of the examination on 16 May and 5 July 2022 respectively.
- 9.2 On Mr Ross's application, the Registrar granted him a trainee licence covering the period from 2 July 2023 to 1 January 2024.
- 9.3 On 12 December 2023 Mr Ross applied to the Registrar for a second licence. That application was refused by the letter of 16 January 2024, to which I have already referred.
- 9.4 Given the timing of the application for the second licence, the life of the original licence was extended by the Act, s129(6) to the date of disposal of this appeal (see above).
- 9.5 On 19 February 2024 Mr Ross received notification from DVSA that an appointment had been booked for him to take the part three test on 15 May 2024. I have not been told whether he was successful or not.
- 9.6 In his written case, Mr Ross states that there have been substantial delays in providing dates for part three tests, particularly in his locality (he lives in Aberdeen). I accept that this is so.

The appeal

10. In his notice of appeal dated 23 January 2024 and supporting documents, Mr Ross made three main points. First, he stated that various factors including his personal commitments and those of his trainer, problems with his motorcar and that of his trainer and his ill health had combined to cause him to lose the potential benefits of at least eight of the 26 weeks' life of the trainee licence. Second, he had been adversely affected by the systemic delays in providing part three test dates. Third, he had made a promising start as a driving instructor and was fully committed to his chosen career as an ADI.

11. The Respondent resisted the appeal, stressing the importance of not allowing trainee licences to serve as an alternative to the registration system and the fact that eligibility to take the part three test is not conditional upon possession of a trainee licence. Generally, it was contended that the decision which Mr Ross seeks to challenge was solidly based and there was no good reason to disturb it.

Discussion and conclusions

12. I am not persuaded that there is a good reason to allow this appeal. I accept that Mr Ross has had to contend with some delay in securing a part three test date. I also proceed on the footing that what he says about time lost during the currency of the trainee licence in the

⁵ See *eg R v Westminster Magistrates Court ex p Hope & Glory Public House Ltd* [2011] EWCA Civ 31, paras 39-48 (Toulson LJ).

second half of 2023 is accurate. Nonetheless, I see nothing to justify the grant of a second licence. It seems to me that when he launched his appeal, he may have been under a misunderstanding as to how the rules work. As already explained, the effect of the appeal is that the original licence was automatically extended until the date of the Tribunal's decision. In other words, he has by appealing secured the protection of 'the badge' for a consecutive period of almost 11 months to date. He will not need any extension thereafter. If (as one would expect) the test booked for 15 May 2024 proceeded as scheduled, he may well have passed, in which case this appeal will have become academic, since he will have been admitted to the Register. And if he has not passed by the date of publication of this decision, I would hope and expect that a fresh date (necessarily applied for before 16 May this year) will be set quite soon. I would add that granting him a further licence would have benefited him very little since it would have extended his protection by no more than a matter of a few weeks (licences last for six months and accordingly the licence for which has applied, if it had been granted, could not have extended beyond 1 July 2024 in any event). Furthermore, in so far as they are relevant, I agree with the remarks on the nature and purpose of the training licence system contained in the Respondent's response and on its website (see above). Those points also argue convincingly against this appeal.

Outcome

13. For the reasons stated, I dismiss the appeal.

(Signed) Anthony Snelson
Judge of the First-tier Tribunal

Date: 23 May 2024