



Neutral citation number: [2024] UKFTT 761 (GRC)

Case Reference: FT/D/2024/0285

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(TRANSPORT)**

**Determined in the absence of the Appellant in a Remote Oral Hearing
On: 14 August 2024**

Decision given on: 27 August 2024

Before

JUDGE DAMIEN MCMAHON

Between

SHIVANI VARMA

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Decision: The appeal is Dismissed. The Decision of the Respondent made on 13 March 2024 is confirmed.

Representation

The Appellant failed to appear. She did not have a representative.

The Respondent was represented by Ms. Claire Jackson

Background

1. This appeal concerns a decision of the Respondent made on 13 March 2024 to refuse to grant the Appellant a third trainee licence.
2. The Appellant is trainee driving instructor who had been granted two trainee

licences pursuant to s.129 of the Road Traffic Act 1988 ('the Act') for the period from 27 February 2023 to 26 February 2024 (a total of 12 months), but who was refused an application dated 30 January 2024 for a further, third, trainee licence.

3. This appeal was listed for remote oral hearing by CVP at 12.00 noon on Monday, 14 August 2024. The Appellant failed to appear. Two telephone call was made to her this morning by the clerk but, each time, the call went straight to voicemail. The clerk also sent the Appellant an email this morning but no reply was received. No communication was received, at any time, from the Appellant, to explain her non-appearance. The Tribunal waited until 12.10 before proceeding in the Appellant's absence.

4. The Respondent's reasons for refusal, in summary, taking account of representations made by the Appellant on 23 February 2024, that she had been suffering from longer than expected unpredictable and varying ill-health, since May 2005 - a condition that had existed when the Appellant applied for her second trainee licence - in respect of which she provided certain medical evidence, requiring her to take time away from tuition and her experiencing certain financial strains; that she could not continue to deliver driving tuition to pupils, with a suitable vehicle, through her franchise, without a valid, third, trainee licence; that a trainee licence (two in the case of the Appellant) was to give an ADI applicant an opportunity of giving driving instruction to people, for payment, while endeavouring to obtain registration as an ADI - not to be used as an alternative to the ADI registration system; that the Appellant had been given more than adequate time to reach the qualifying standard to become an ADI and get any necessary practical experience in tuition; that a trainee licence was not to enable an ADI applicant to provide paid driving tuition for however long it took them to pass the Part 3 test; that the Appellant had cancelled three Part 3 test appointments (although one other appointment had also been cancelled by the Respondent); that it was not necessary to hold a trainee licence in order to undertake a Part 3 test; that a refusal to issue a third trainee licence, did not prevent the Appellant from undertaking a Part 3 test (there being precedent whereby successful ADIs never had held a trainee licence). Finally, since the Appellant applied for a third trainee licence before her second trainee licence had expired, her second trainee licence remained in force until the determination of this appeal, thus proving her with a trainee licence of over 17 months duration.

5. The Appellant, as at the date of today's hearing, had failed her first attempt at a Part 3 test on 31 May 2024.

6. The Respondent's representative submitted, in oral submissions at the hearing, that the Appellant's appeal was not late as suggested by the Appellant; that the Appellant may be under a contractual obligation to her franchise to hold an existing trainee licence - a consideration that was not determinative of this appeal - a position accepted by the Tribunal and that the Appellant did not require to have a dual-control vehicle to undertake a Part 3 test. The Respondent's representative also

submitted the Appellant had booked a second attempt at her Part 3 test on 23 August 2024. This would be her final permitted attempt due to the expiry of a two-year period to do so.

Appeal to the Tribunal

7. The Appellant's Notice of Appeal, dated 26 March 2024, elaborated on the representations made by her on 22 February 2024 to the Respondent as set out in paragraph 4 of this Decision.

The Response of the Respondent.

8. The Response of the Respondent dated 23 April 2024 is summarised in paragraph 4 of this Decision.

Mode of Determination

9. The parties and Tribunal agreed that this matter was suitable for oral determination in accordance with Rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended ('the Rules'). The Tribunal considered a bundle containing 51 pages.

The Law

10. 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 s. 129 of the Act and the Motor Cars (Driving Instruction) Regulations 2005 ('the Regulations').

11. 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'.

12. In order to qualify as an ADI, 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').

13. 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.

14. If a candidate has passed Part 2, they may be granted a trainee licence. However, holding a trainee licence is not a prerequisite to qualification as an ADI and many people qualify as an Approved Driving Instructor without having held a trainee licence at all.

15. 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.

16. When making its Decision, the Tribunal stands in the shoes of the Respondent and takes a fresh decision on the evidence available to it, giving appropriate weight to the Respondent's decision as the authority tasked by Parliament with making such decisions. The burden of proof in satisfying the Tribunal that the Respondent's decision was wrong rests with the Appellant.

Evidence

17. The parties did not file any witness statements. I have seen the Appellant's test history; her application for the two trainee licence previously granted; her application for a third trainee licence, and the submissions and correspondence passing between the parties.

Conclusion

18. I have considered carefully all the papers before me. I note that the Appellant has already had, most recently, the benefit of two trainee licences in total, covering a period of 12 months which is adequate to prepare for the Part 3 test (she having an even longer period pending determination of this appeal). She was able to continue to gain experience and take the test without a trainee licence, and it is not a substitute for taking and passing the Part 3 test. It is not the purpose of trainee licences to keep renewing them until all attempts at passing Part 3 have been taken.

19. The Appellant has not persuaded me that the Respondent's decision was wrong in any way. In all the circumstances, I agree with the Respondent's decision.

20. Accordingly, I dismiss this appeal.

Signed

Date: **14 August 2024**

Damien McMahon,

Tribunal Judge

**Corrected 25 November 2024 (paragraph numbering sequence). *Damien McMahon,*
Tribunal Judge**