



Neutral citation number: [2025] UKFTT 00082 (GRC)

Case Reference: FT/D/2024/0602

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

**Heard by: Cloud Video Platform  
Heard on: 17 January 2025  
Decision given on: 31 January 2025**

**Before**

**JUDGE JONATHAN SCHERBEL-BALL**

**Between**

**PETER JOHN SHOLES**

Appellant

**and**

**REGISTRAR OF APPROVED DRIVING INSTRUCTORS**

Respondent

**Representation:**

For the Appellant: In Person  
The Respondent did not attend.

**Decision:** The appeal is allowed. A new trainee licence is granted from the date of promulgation of this decision until and including 28 February 2025.

**REASONS**

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 5 July 2024 to refuse to grant the Appellant a third trainee licence.
2. The Appellant is trainee driving instructor who was granted a trainee licence under section 129 of the Road Traffic Act 1988 (the “Act”), for two consecutive six-month periods, starting on 12 June 2023 and expiring on 11 June 2024. On 28 May 2024, the Appellant applied for a third licence. That application was refused by the Registrar on 5 July 2024. The Appellant now appeals the Registrar’s decision.

3. The proceedings were held by CVP with the Appellant joining remotely by telephone and confirming that he could clearly hear the Tribunal. The Registrar did not attend the remote hearing. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

### **The Appeal**

4. The Appellant's Notice of Appeal dated 18 July 2024 relies on the following grounds:

- a. The Appellant had been unable to secure three instructional tests within a prompt period of time. He had applied for tests promptly but they were put on hold by the DVSA. He narrowly failed his first two instructional ability tests on 4 December 2023 and 29 April 2024. His third request for a test was further delayed and had been allocated to 28 August 2024. The Appellant had taken exceptional steps to ensure he had sufficient training for this third attempt.
- b. The Appellant is a single parent and accordingly has limited availability given his commitment to his child's schooling. It is difficult to balance his family commitments with his work commitments but he has worked hard to ensure he has had the necessary training.
- c. The Appellant worked hard to pass the instructional test but due to the lack of test availability he has been unable to pass the test before his second licence expired. He applied in good time and followed advice. He has been "on hold" for nine months while waiting tests for his area. His third test was booked for 28 August 2024 and the extension he sought would allow him to continue to work with his current students.
- d. The Appellant has a keen and dedicated list of pupils under his instruction at various stages of competency. He is developing and improving as an instructor and this will continue till his test in late August. A continuation of his licence will ensure that this on-the-job training continues while he works towards his third instructional test.

5. The Registrar's Statement of Case dated 25 July 2024 resists the appeal. The Registrar says that:

- a. he decided to refuse the Appellant's application for a third trainee licence because the Appellant had provided no evidence of lost training time or a lack of pupils and has had the benefit of two trainee licences for twelve months.
- b. the purpose of the provisions governing the issue of trainee 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 an alternative to the system of registration.
- c. the licence granted is not to enable the instructor to teach for however long it takes to pass the exams but to allow a confined period of experience of instruction. Six months is ordinarily a very reasonable period in which to reach the necessary standard and in particular to obtain any necessary practical experience in tuition. The Appellant has already had two trainee licences, and by virtue of his appeal in respect of his third application, his second licence has remained in force until the determination of that appeal, which allows him to continue to give paid instruction until determination of the appeal.

- d. Since passing his driving ability test, the Appellant has failed the instructional ability test on two occasions. Despite ample time and opportunity, the Appellant has not been able to reach the required standard of driving for qualification as an Approved Driving Instructor.
- e. The refusal of a third licence does not bar the Appellant from attempting the instructional ability test. 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 training.

### **The law**

6. 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 "Regulations").

7. 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*".

8. In order to qualify as an Approved Driving Instructor, applicants must pass the Qualifying Examination. This is made up of: the written examination (Part 1); the driving ability and fitness test (Part 2); and the instructional ability and fitness test (Part 3). Three attempts are permitted at each part. The whole examination must be completed within two years of passing Part 1, otherwise the whole examination has to be retaken.

9. A candidate may be granted a trainee licence if they have passed Part 2. However, holding a trainee licence is not necessary in order to qualify as an Approved Driving Instructor, and many people qualify without having held a trainee licence.

10. The powers of the Tribunal in determining this appeal are set out in section 131 of the Act. The Tribunal may make such order as it thinks fit (section 131(3)). 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. The burden of proof in satisfying the Tribunal that the Registrar's decision was wrong rests with the Appellant.

### **The evidence**

11. I have considered a bundle of evidence containing 22 numbered pages, together with a further email from the Appellant dated 7 January 2025 concerning the cancellation of an instructional ability test that same day. I also heard from the Appellant at the remote hearing.

12. At the remote hearing, the Appellant gave further details of why he had not been able to take his third Part 3 test by the date of his hearing. He explained that he really did not wish to have to apply for extensions but that he had been constantly frustrated by circumstances. His pupil for his planned test on 28 August 2024 pulled out shortly before and he was advised to delay the test with an appropriate student given that this was his final opportunity. He applied for a further test almost immediately, and gave a broad range of test areas, but again was put on hold and was then given a Part 3 test on 7 January 2025. This test however was cancelled through no fault on the part of the Appellant due to poor weather (snow). His test has been rescheduled for 3 April 2025.

13. In response to questions from the Tribunal, the Appellant said he had been advised by his driving school that he would still be able to take his Part 3 test on 3 April 2025, even though it would be more than two years since he had passed his Part 1 test on 28 February 2023. The Appellant was concerned about this position and said he would check it with the Registrar.

14. The Appellant emphasised that he was only in this position because two tests had had to be cancelled due to circumstances beyond his control and that he really had hoped that he would have had the opportunity to take his final Part 3 test by now but the length of time had been caused by substantial delays in tests being rebooked.

## **Discussion and Conclusions**

15. The Appellant has already had two trainee licence periods lasting for a year. As a result of this appeal, he has also had the benefit of the time which would have been covered by a third trainee licence as that licence would have expired on 11 December 2024. He is able to continue to gain experience and take the Part 3 test without a trainee licence. There is ordinarily no entitlement to be issued with continued licences until the test has been booked and passed. The public policy reasons for the issuance of a trainee licence relied on by the Registrar in his Response have considerable force. Consequently, I consider that the grant of a third trainee licence will ordinarily need to be justified by exceptional circumstances.

16. However, I do consider that on the specific facts of this case, there are exceptional reasons to grant such a licence. The Appellant's undisputed evidence, which I accept, is that he has made very substantial attempts to book his third test which has now been twice cancelled through no fault of his own. He has also sought tests in a wide area, not just his immediate locality. There have also been very substantial delays in tests being made available to the Appellant which is not his fault. If there are substantial delays in test availability, that must be given proper account by the Registrar, where justified, in considering the extension of a trainee licence. It is not reasonable to expect trainee driving instructors to be able to obtain and maintain the necessary skills if they are unable to keep practising their instruction, which may need to include paid instruction in specific circumstances.

17. Therefore, I am satisfied that the Registrar was wrong in the particular circumstances of this case to refuse to issue the Appellant with a third trainee licence. The question then arises as to what the appropriate order is which should be made by the Tribunal under s.131(3) of the Act.

18. The first issue is whether the Tribunal has the power to issue a licence which would last longer than the six-month period originally sought by the Appellant. Neither party made any submissions on this issue and I am not aware of any appellate authority on the point. I am aware that the Tribunal has, on occasion, previously granted trainee licences for a period which in practice goes further than that which was originally sought by an Appellant – see for example **Ahmed v Registrar of Approved Driving Instructors** [2024] UKFTT 1004 (GRC) at [10], where a second trainee licence was granted with effect from the date of promulgation of the decision.

19. I consider that the terms of s.131(3) of the Act are expressed in broad terms. The Act permits the Tribunal to make such order on the "application" as it "thinks fit". The statute therefore imposes no express limits on the grant of a trainee licence, but clearly the Tribunal is bound by public law rationality requirements as well as having regard to the statutory purpose for the grant of a trainee licence.

20. In these circumstances, I consider that one such limitation is that a trainee licence should not be issued beyond the date two years after a trainee driving instructor passed their Part 1

theory test. This reflects (a) the statutory requirement that trainee driving instructors pass the Part 3 test within two years of passing their Part 1 theory test and (b) the statutory purpose for granting a trainee licence is to permit them to gain relevant practical experience to allow them to pass the test of instructional ability. Granting a licence beyond this time period would therefore not accord with the statutory purpose for trainee licences.

21. In this case, the evidence shows that the Appellant passed his Part 1 theory test on 28 February 2023. He therefore must complete his Part 3 test of instructional ability by 28 February 2025. While he believes that he may be able to take his test in early April 2025 when it has been rescheduled for, he will need to consider with the Registrar whether this is indeed possible.

22. In all the circumstances, the Tribunal considers that the appeal should be allowed and that the fair and appropriate order to make is for the Appellant to be granted an extension of his trainee licence until and including 28 February 2025, that being two years from the date of his successful passing of the Part 1 test.

**Signed:** Judge Jonathan Scherbel-Ball      **Date:** 21 January 2025