



Neutral Citation Number: [2024] UKFTT 001026 (GRC)

Case Reference: FT/D/2024/0560

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

**Heard on: GRC - CVP on 12 November 2024.
Decision given on: 21 November 2024**

Before

Judge Brian Kennedy KC

Between

MICHAEL O'ROURKE

Appellant

and

THE DRIVER AND VEHICLE STANDARDS AGENCY

Respondent

Representation:

For the Appellant: Michael O'Rourke

For the Respondent: N/A

Decision: The appeal is Allowed.

Substituted Decision Notice: The Appellant is granted an extension to his Second training licence or in the alternative a Third training licence (which alternative is at the discretion of the Respondent under Section 129 of the Road Traffic Act 1988) until 09 January 2025.

REASONS

1. Section 123(1) of the Road Traffic Act 1988 ('the Act') prohibits the giving of instruction paid for by or in respect of a pupil in the driving of a motor car unless the instructor's name is on the Register of Approved Driving Instructors, or he is the holder of a current licence issued under Section 129(1) of the Act.
2. The Appellant is not now and has never been on the said Register.
3. 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 22 May 2023 to 21 May 2024 **(D1)**.
4. On 06 May 2024 the Appellant applied for a third licence **(D2)**. By way of a letter dated 07 May 2024 **(D3)** the Appellant was notified that I was considering the refusal of his application for a third licence. By way of a letter received on 17 May 2024 **(D4)** the Appellant made representations. He stated the unexpected death of his first instructor in August 2023 delayed his training as he was unable to find a suitable local instructor, causing the cancellation of part three test. Has also said a family bereavement affected his mental health, he has been diagnosed with depression and anxiety, for which he is receiving medication.
5. After considering these representations the Respondent decided to refuse the Appellant's application. He provides no evidence of lost training time or a lack of pupils and has had the benefit of two trainee licences for twelve months. If he was unable to use his licence, he could have returned it as advised on gov.uk and the letter accompanying his licences.
6. The reasons given for refusal were as follows:
 - (i) 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.
 - (ii) 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;
 - (iii) since passing his driving ability test the Appellant has failed the instructional ability test once and cancelled one more such test booked for 21 November 2023 **(Annex A)**. Despite

ample time and opportunity, the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor; and

(iv) 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.

7. It was noted that the Appellant has his second attempt at the instructional ability test booked on hold, awaiting a test date.

8. The Appellant appeared before the Tribunal and in essence disputes the assertion that he provided no evidence of lost training time and produced to the Tribunal the following evidence of a number of deaths which severely affected his health at the time when he had tests including;

(i) The death of his late mother who died on 19 February 20024 had suffered, inter-alia advanced dementia and frailty of old age.

(ii) The death of his driving instructor Louise Walsh who died on 24 August 2023 and

(iii) Perhaps most significantly a medical certificate from his G.P, Dr. Chad Tew of the Coastal Medical Partnership which stated as follows: *"I am the GP of Mr O'Rourke and would support his appeal for his trainee licence extension due to his medical conditions. I first assessed him on 02 April 2024 and diagnosed anxiety and depression. I commenced treatment and he had further appointments on 10 April 2024, 16 April 2024, 19 April 2024 and 03 May 2024. He would not have been in any state to take an examination in April or May 2024. He is now much better and back at full time work."*

9. The Appellant confirmed (as is often the case) that it is extremely difficult to obtain a date for a test, but he is fortunate enough to have been able to book a test for 08 January 2025 and is quite optimistic that he will pass this test.

10. For these reasons I have decided to grant his appeal for an extension of his trainee licence or in the alternative be granted a third licence (according to the Respondents discretion under Section 129 of the Act) either way with effect up to 09 January 2025.

Signed Brian Kennedy KC

Date: 13 November 2024.