

# THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the  
Gangmasters Licensing Authority (Ref 41/E/RV)

TOP UK LTD  
(Appellant)

V

THE GANGMASTERS LICENSING AUTHORITY  
(Respondent)

## APPOINTED PERSON

MISS C GRUNDY

DECISION

ORAL HEARING 16<sup>TH</sup>19-20<sup>TH</sup>, 22<sup>ND</sup>-23<sup>RD</sup>,27<sup>TH</sup>-28<sup>TH</sup> 30 MAY 2008.

REPRESENTING THE APPELLANT MR RICHARD BRADLEY COUNSEL  
REPRESENTING THE RESPONDENT MR TONY RUSSELL SOLICITOR

SITTING AT THE MARRIOTT HOTEL LIVERPOOL AND DEFRA OFFICES  
IN CREWE

## DECISION AND STATEMENT OF REASONS OF APPOINTED PERSON IN RELATION TO THE ABOVE MATTER

### DECISION

Upon consideration of the Bundle of documents submitted in respect of the appeal, additional documents added to the Bundle during the course of the hearing and the oral evidence of the witnesses set out below and the oral submissions of the parties on 30<sup>th</sup> May and in accordance with the Gangmasters' (Appeals) Regulations 2006, it is the decision of the Appointed Person that;- **the appeal is allowed.**

It follows that the Licence is reinstated upon the date service of this decision on the parties.

### WITNESSES WHO GAVE ORAL EVIDENCE

#### FOR THE RESPONDENT

Mrs Krystyna Irena Sikorska- Polish worker (16<sup>th</sup> and 19<sup>th</sup>, 20<sup>th</sup> May)

Mr Andrej Sikorski –Polish worker (20<sup>th</sup> and 22<sup>nd</sup> and 23<sup>rd</sup> May)

Mrs Claire Johnson – Compliance Officer with the GLA (23<sup>rd</sup> May)

Mr Ian Wilkinson – Head of Licensing, Officer with the GLA (23<sup>rd</sup> and 27<sup>th</sup>)

## **FOR THE APPELLANT**

Mr Carl Roberts – Garage proprietor (20<sup>th</sup> May)

Mr Paul Anthony Landrum- Director and shareholder (27<sup>th</sup> and 30<sup>th</sup> May)

Mr Mark Landrum - Director and shareholder (27<sup>th</sup> May)

Mr Igor Gast- Welfare Officer (27<sup>th</sup> May )

Miss Julie Alexander- Operational Director (27<sup>th</sup> May)

Miss Ewa Mikolajczyk- Former welfare officer, now working in London (28<sup>th</sup>)

Mr Bart Malocwicz- Former welfare officer, now working in Wallasey, (28<sup>th</sup>)

Mr Leszek Wesolowski – Maintenance operative (28<sup>th</sup>)

Mr Piotr Rozik –Maintenance operative (28<sup>th</sup>)

## **Witnesses who were not called but whose statements were relied upon**

Michal Szubrych – Manager at Top Uk Ltd

Andrej Falat- Former driver at Top Uk Ltd

Ex Employees numbering 29 (Informal statements).

## **OTHER EVIDENCE**

I was presented with an Agreed Bundle of documents, (including witness statements) which I was able to read before the commencement of the hearing pages 1 -709.

When the hearing commenced it became clear that numerous disclosable documents had not been seen, in some cases by either side, in particular-

- A raft of documentation which Mrs Sikorska provided on 20<sup>th</sup> of May after a request for her to do so on 19<sup>th</sup> May. Bundle 3 pages 724-915. Some documents were duplicated but so as not to lose valuable hearing time, they were all paginated.
- Information from Merseyside Police, (Mr and Mrs Sikorskys' statements) requested by the GLA on 19<sup>th</sup> May, provided on 20<sup>th</sup> May Bundle 3 pages 916-937.
- The police interview records relating to Mark and Paul Landrum which I requested the GLA to obtain. Bundle 3- [953 to end]
- Other documents and complete and accurate translations of documents were obtained as the hearing progressed [Example at 902a-b]

All references in the statement of reasons are to those documents in the Bundle.

## **STATEMENT OF REASONS**

### **PRELIMINARY POINTS**

- 1.1. This is an appeal against the decision of the Gangmasters' Licensing Authority (GLA) on 27.3.08 to revoke the Licence granted to Top UK Ltd with immediate effect. [39-41]
- 1.2. On 2<sup>nd</sup> April 2008 Top UK Ltd gave notice of appeal against the decision to revoke the Licence [58-73]
- 1.3. The nub of the appeal and the reason for immediate revocation asserted by the GLA relates to allegations by 2 Polish workers Mr and Mrs Sikorsky (Mrs Sikorska and Mr Sikorski) of worker intimidation by

the two Directors of Top (UK) Ltd Mr Mark Landrum and Mr Paul Landrum.

- 1.4. Directions were given on 11<sup>th</sup>, 23<sup>rd</sup> and 25<sup>th</sup> April 2008 [152-155] to bring the appeal to an oral hearing originally listed for 16<sup>th</sup> and 19<sup>th</sup> (and then 20<sup>th</sup> May 2008). One of the directions given on 25<sup>th</sup> April required the parties to file a witness template, which the parties failed to do. At the first day of the hearing in the light of the extensive cross-examination of Mrs Sikorska, it became clear that the time estimate was inadequate. The hearing time was therefore extended to 22<sup>nd</sup> and 23<sup>rd</sup> May 2008. This took the appeal outside the thirty-five working day period set down in Regulation 20(1) of the Gangmasters (Appeals) Regulations 2006.
- 1.5. Pursuant to Regulation 20(1),  
"An appeal against a decision with immediate effect shall be heard and determined not later than thirty-five working days after the date on which the notice of appeal is received by the Secretariat, unless the appointed person decides in the interests of justice that the expedited procedure in this regulation shall not apply".
- 1.6. In the circumstances, the hearing being underway, I disapplied the expedited procedure but directed that the hearing would continue expeditiously on 22<sup>nd</sup> and 23<sup>rd</sup> May 2008.
- 1.7. It became clear that this too would be inadequate time to dispose of the appeal and the 27<sup>th</sup>, 28<sup>th</sup>, and 30<sup>th</sup> May were also listed for hearing time to complete the evidence and closing submissions, although at one stage I had considered written submissions may be necessary, it proved possible to hear the oral submissions of each party on 30<sup>th</sup> May.
- 1.8. I indicated on 27<sup>th</sup> May that any decision and reasons would not be extempore but would be given in writing at the earliest opportunity.
- 1.9. On 28<sup>th</sup> May 2008 I indicated that a written decision would be given to the parties not later than 9<sup>th</sup> June 2008.
- 1.10. Further, although the Regulations permit an appointed person to give summary reasons for the decision, the issues raised by this appeal are of substance and in the interests of justice and proportionality I have considered this particular case to merit the giving of full reasons.

## **BACKGROUND**

- 2.1. Top UK Ltd is a company operating in the recruitment business providing workers to different industries some of which are in the GLA regulated sectors such as the food production industry. As part of this business Top UK Ltd was granted a Gangmasters' Licence on 16<sup>th</sup> May 2006. [1] This was renewed on 16<sup>th</sup> May 2007. Mr Mark Landrum was named as the Gangmaster. He is a Director and shareholder of the firm. Mr Paul Landrum is the Managing Director and shareholder, (or was at the time of these events.)
- 2.2. In February 2007 the Sikorsky's met with Ewa Mikolajczyk and Paul Landrum in Milton Keynes and indicated they wished to be considered for work by Top UK Ltd. In April 2007 they returned to the UK to start

work and also accepted a tenancy offered by Emporda Limited a sister company of Top UK at 29, Littledale road Wallasey ("the property"). Paul and Mark Landrum are also directors and share-holders of Emporda Ltd which buys and rents properties to tenants.

- 2.3. The events after their employment began and ended and surrounding their occupation of the property are substantially in issue.
- 2.4. On 18<sup>th</sup> January 2008, Claire Johnson Compliance Officer of the GLA met with Mr and Mrs Sikorsky who had during the earlier part of 2007, been workers working for Top UK Ltd. They speak no English. They met with a Polish interpreter present. A second meeting took place on 24<sup>th</sup> January and a further meeting on 7<sup>th</sup> March 2008 when translated statements were shown to them for their approval with the assistance of a different interpreter.
- 2.5. The statements contained allegations of worker intimidation and harassment of Mr and Mrs Sikorsky by the two Directors named above, on several different occasions between July 2007 and September 2007.
- 2.6. On 27<sup>th</sup> March 2008, Ian Wilkinson, Head of Licensing at the GLA concluded that "there was evidence of numerous separate incidents of serious intimidation." [363] He decided that the Directors were not fit and proper persons to hold a Licence, and the incidents were serious enough to justify an immediate revocation.

### **PRELIMINARY RULINGS**

- 3.1. At the hearing on 16<sup>th</sup> May 2008, I admitted pages 710-720 because they were previously not available and were uncontentious.
- 3.2. I ruled that a statement [721-723] which was given on 15<sup>th</sup> May 2008, in which Mrs Sikorska alleged she and her husband had been offered £15,000 each by an intermediary, (one Andrej Falat) acting on behalf of the Landrums to not attend the hearing and to leave the country, should be admitted as it seemed to me to be directly relevant to the issue of worker intimidation and the credibility of the individuals concerned.
- 3.3. I admitted an email at [723] dealing with Mr Wilkinson's communication with the police.
- 3.4. I ruled that Mr Sikorski should not be present whilst Mrs Sikorska was giving evidence to avoid the suggestion that he had tailored his evidence having heard the evidence of his wife. This was in the interests of fairness given that the issue of credibility lies at the heart of the appeal.
- 3.5. Further documentation was admitted as the hearing progressed piece-meal, as set out above including disclosure from Merseyside police.
- 3.6. I was told at the outset of the hearing that the CPS had determined that there would be no further action by them against Messrs Landrum, although formal communication had not been made with either side to this effect.

## THE LAW

- 4.1. The Gangmasters (Licensing) Act 2004 aims to curb exploitation of labour in agriculture and other particular industries including wholesale food processing. Certain industries such as construction are not currently subject to any such regulation by the GLA.
- 4.2. The statutory scheme was enacted to counter the problems of financial and other exploitation of the workers provided by gangmasters. These workers were recognised to be typically vulnerable because of their lack of knowledge of the English language and legal and cultural rules and norms.
- 4.3. Pursuant to section 4(2)  
"A person ("A") acts as a gangmaster if he supplies a worker to do work to which this Act applies for another person, ("B")
- 4.4. Pursuant to section 6(1)  
"A person shall not act as a gangmaster except under the authority of a licence."
- 4.5. Section 9(1) provides in respect of modification, revocation or transfer of the licence,  
"The Authority may by notice in writing to the licensee modify or revoke any licence granted to him (including any of the conditions of that licence)- a) with the consent of the licensee, or b) where it appears to him that a condition of the licence or any requirement of this Act has not been complied with."
- 4.6. This provision does not read clearly regarding the words "to him" in part (b) which, to give the section meaning appear to have to be read as the Authority.
- 4.7. The GLA has established Licensing standards to assess compliance for use by labour providers.  
**The Licensing Standards**, (published March 2006 by the GLA), indicate in Part1:

### How the Licensing Standards are Applied

5. "Application of the Licensing Conditions will be aimed at identifying the more persistent and systematic exploitation of workers rather than concentrating on the isolated occurrence of non-compliance. The Authority recognises that many Labour Providers are legitimate, hard working businesses. Those businesses should not find it difficult or burdensome to comply with the GLA Licensing Standards."

### Methods of Obtaining Compliance Information

13. "As a regulatory authority, the GLA is able to collaborate closely with other Government Departments and exchange information through legal gateways.
14. "It has its own Intelligence team and systems and will have its own inspection teams and enforcement officers.
15. "Evidence of compliance will be assessed from a variety of sources, but particularly by
  - Face to face interviews with workers
  - Data collected from the labour provider

- Interviews with the Labour provider
  - Evidence collected by the GLA's own officers
  - Data provided by other Government sources
  - Data collected from the Application process
  - Other intelligence sources
16. "The information collected will assist the GLA to determine whether a licence will be granted, refused, suspended or revoked."

#### Licence Standards Scoring

- 4.8. For the purpose of assessing non-compliance, according to the categories used critical, major, reportable and correctable, -a scoring system has been introduced to determine whether a labour provider has passed or failed an inspection. This result will inform decisions on whether to refuse a licence, or revoke an existing licence. The scores for each category of non-compliance are FAIL Score- 30
- Critical 30
  - Major 8
  - Reportable 4
  - Correctable 2

- 4.9. Part 2 The GLA Licensing Standards include  
**Licensing Standard 3;- Debt Bondage, Harsh Treatment or Intimidation of Workers.**

**"Guidance;-**The GLA will take a very serious view of any evidence of abuse against workers in the following categories. Employment must be freely chosen and no-one must be retained against their will, whether or not there is a debt owing.

(If a worker is loaned money by the Labour Provider to meet travel or other expenses in order to take up a position, they must be provided with details in writing of the amount loaned and the agreed repayment terms.

If loan repayments are deducted from worker's wages, they must give their written permission for this to be done.)

Workers (including those whose first language is not English) should be aware of how to seek redress or make a complaint where there has been harassment. There should be no evidence that a Labour Provider does not deal with such cases properly.

#### **An inspection will seek to assure that:-**

##### **Unfair treatment**

LS 3.1 **critical** Workers are not subjected to physical or mental mistreatment .

##### **Existence of any Bonded Debt:-for Travel, Unearned Wages, Job Transfer**

##### **Employment Freely Chosen**

##### **Passports/ Identity not retained**

##### **Harassment, Abuse, Complaints Procedures**

LS 3.8 **correctable** Disciplinary matters or complaints are properly dealt with by the Labour provider.

- 4.10. Regulation 12(1) of the Gangmasters (Licensing Authority) Regulations 2005 states that:

“The Authority shall have regard to the principle that a person should be authorised to act as a gangmaster only if and in so far as his conduct complies with the requirements of paragraph (2), namely “(a) the avoidance of any exploitation of workers as respects their recruitment use or supply and (b) compliance with any obligations imposed by or under any enactment in so far as they relate to or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities.”

- 4.11 By virtue of the Gangmasters (Appeals) Regulations 2006 Regulation 21(1) I have the power to allow or dismiss the appeal. By virtue of Regulation 21(2) my decision is binding on the parties.
- 4.12 I indicated during the course of closing submissions that in the absence of any specific provision in the Appeal regulations dealing with a successful appeal against an immediate revocation, it must follow that if the appeal was allowed then the effect would be that the licence must be reinstated. This Licence fell for renewal on 15 May 2008 and in the absence of other non-compliances to my knowledge would have been renewed.
- 4.13 I was referred to a number of decisions by Appointed Persons specifically in the following appeals 4/E/R Mr K Doughty, 2/E/R Mr A Kuzniar (AK Link UK), 1/E/RV MRC International and 7/E/RV Dynamic Workforce Ltd which I have considered.

### **BURDEN AND STANDARD OF PROOF**

- 5.1. During the course of oral closing submissions the parties agreed on several aspects of the legal approach that I should follow in determining the appeal. Firstly that the appeal was the opportunity to determine facts by way of re-hearing -starting afresh and not to conduct a review of the decision –making of the GLA with regard to the facts.
- 5.2. Consideration of the proportionality of the revocation would arise if my view of the facts on fresh consideration accorded in any material particular with that of the GLA.
- 5.3. Secondly that the burden of proof to establish facts (to support a revocation) rested on the GLA and despite the regulatory framework and ability to take pre-emptive action, there was no reverse burden of proof on the Appellants.
- 5.4. Thirdly that the standard of proof to be applied was the civil standard of proof in determining findings of fact ie. on a balance of probabilities. Where an allegation relating to fraud or forgery was concerned, the appropriate standard of proof has to be commensurate with the seriousness of the allegation. The more serious the allegation, the less likely it is the event occurred and thus the stronger and more cogent

should be the evidence before a court determines that on the balance of probabilities, the event did occur.

### **ISSUES FOR DETERMINATION**

- 6.1. Firstly the factual matrix surrounding the relationship between the Sikorskys and Top UK Ltd in particular the 2 Directors must be determined.
- 6.2. In essence either, the Sikorskys are witnesses of truth and all of the Appellants witnesses are untruthful or the other way around.
- 6.3. Whether the evidence justifies the conclusion that the Directors of Top UK subjected the Sikorskys to physical or mental mistreatment, thereby intimidating them? In breach of Licensing Standard 3.1 and 3.8 .
- 6.4. If worker intimidation is made out could the Directors be said to be fit and proper under the Regulation?
- 6.5. If it is not made out, should the appeal be allowed?

### **EVIDENCE OF WITNESSES AND ASSESSMENT OF CREDIBILITY**

#### **GENERAL POINTS**

There was an inherent difficulty in assessing some of the Polish witnesses' evidence as some of them do not speak any English and therefore translation was required. This was particularly the case for the Sikorskys. However I am satisfied that the quality of the interpretation of all the witnesses' evidence, including Mrs Sikorska's was good. In the case of the interpreter who translated all of Mrs Sikorska's evidence she herself studied in Poznan, in Poland which is the town which the Sikorskys come from and therefore fully understood their accent and emphasis. She was able to translate "acronym" as an English word in the correct context. I give this as an example of the good quality of the interpretation.

#### **MRS SIKORSKA**

I heard evidence from Mrs Sikorska over the course of 3 days. The translation was at times difficult due to the low pitch of the voices of Mrs Sikorska and the interpreter and the intrusive noise of the air conditioning. I observed Mrs Sikorska, as I did all of the witnesses, very carefully during the course of the lengthy period over which she gave evidence. I assessed her demeanour, presentation and the content of the answers she gave and the questions she posed. She was intelligent and educated, dogmatic, demanding, at times arrogant and self-righteous.

By my direction each witness statement was to stand as that witness' evidence in chief in order to avoid extending the time estimate further. Therefore most of Mrs Sikorska's time in the witness box was to answer questions asked in cross examination. She began in a calm manner than became agitated upset and defensive. She wanted to tell her narrative of what happened. On several occasions during the course of her evidence she was visibly worried and uncomfortable and



I began to question whether she was genuinely upset or was not comfortable because she was not telling the truth.

It was necessary during the course of her evidence in particular to take breaks in part due to the intensity of concentration. Mrs Sikorska intimated on more than one occasion that she was reluctant to continue giving evidence and indeed that she no longer wished to answer questions. I explained that I needed to hear evidence to decide the case. She also intimated that she wanted a copy of my notes.

Having heard all the evidence I consider Mrs Sikorska was uncomfortable and wanted to leave because she was not telling the truth.

She asserted in evidence that the POLISH translation on her contract of employment was not there when she signed it and therefore it is a forgery. She asserted to her solicitor instructed to claim for compensation for unfair dismissal [735] that the complaint was about the contract not being translated. It was also suggested there was a complaint about the costs of translation. There were clearly shifting sands regarding her evidence on the contract.

She demonstrated further inconsistencies in her evidence on the second day,, in respect of the alleged conversation with Andrej Falat which was alleged to have taken place on 30.4.08. On 16th May she said "I rang him, **he was in Poland** and was supposed to bring us cigarettes back from Poland." On day 2, she said she spoke to him **while he was in England**. During this conversation it is alleged £15,000 was offered to each of the Sikorskys to leave the UK. This is a very serious allegation. Mr Falat says in a handwritten statement,[ 948/9] that Mrs Sikorska phoned him and asked what had been going on with Top Uk. I believe, that had there been a conversation on a mobile phone, given the Sikorsky's lack of funds and the reason for call,(bringing cigarettes from Poland), Mrs Sikorska would well know Mr Falat's whereabouts when such a call was made and I conclude this is a matter she was lying about and she made a mistake forgetting where she had said he was, when so doing.

Mrs Sikorska was evasive regarding the whereabouts and her knowledge of her son .She was pressed at length as to why she did not want to answer questions about her son. She was defensive and unhelpful refusing to answer proper questions. She was asked how many times the police had been to the property. At first she said "I don't know, then she agreed it was more than once, then more than twice, then she said she used to go out walking, and was not at home at all times that they might have called which I regarded as evasive. I was later told by Bart Milocwicz that the police had been called to 29 Littledale road due to her son being involved in a fight. Unfortunately this was not put to Mrs Sikorska, because it only came out during the course of my questioning of Mr Milocwicz at the conclusion of his

evidence, but it tends to suggest a plausible reason for her defensiveness in case her sons' behaviour was viewed in a dim light by me.

She was adamant that the last time she was in contact with him was when he left 29 Littledale road on 9.7.07 despite a Tribunal claim in his name being made after he had supposedly returned to Poland. She later admitted that she had been in touch with her son but said it was for fear of the Landrum's that she hadn't wanted to admit she had been in contact with him. She admitted she had not said the same thing during course of evidence about this. As was submitted by the Appellants in closing, and I agree with the submission, if a witness accepts they have not been frank in some aspects of their evidence it becomes extremely difficult to assess which part of their evidence is credible, if any and which part is not.

I doubted whether she was truly fearful of the Landrums in the context that she volunteered that she had said "mind your own business – you shouldn't be interested" to Paul Landrum on 17.5.07 in a discussion at the office.

She said that the complaints from other workers 508-9, (Anna and Michal as detailed later) were all rubbish, but the letters appeared genuine and were supported by the Appellants witness evidence to me in respect of complaints about difficulties in living with the Sikorskys to the extent Anna had been reduced to tears.[Evidence of Bart Milocwicz].

She claimed that at Cranswick -(the factory where she worked, " no-one complained about me." This is refuted by email evidence at 370-372 and specifically in the evidence of Ewa Mikolayczyk.

Further she was plainly inconsistent about the specifics and the date of the alleged food throwing from the fridge. She said it happened on 1 occasion. In her statement [355] she puts it on 7.9.07 but in evidence, she said it happened on the Wednesday which was 5.9. Further it is incomprehensibly left out of the account to the Polish Embassy at [902, 902a], it appears in part of her instructions to her solicitor and not others. I conclude it is left out of such an important letter, because it is an embellishment which did not happen, despite her seeking to persuade me it had been akin to a rape. It would therefore on any view, require cogent evidence to justify a finding.

She also gave bizarre evidence at times; to the question, "You were shouting and very agitated (on 7.9)?" She replied about the alleged decay to Paul Landrum's teeth through which she seemed to be making a personal insult against him, which she claimed was supportive of him opening his mouth to abuse her. She at one stage alleged the hearing room may be bugged and that Top UK had left

Polish girls by the motorway. I thought these strange and incongruous answers were an attempt to deflect attention from her own mendacity.

She exaggerated complaints about the property. On any view the electricity was not cut off yet this was reported to Angela Eagle MP.

### **MR SIKORSKI**

It was established during the evidence that the statement of Mr Sikorski was elicited by Claire Johnson at the same time on 18.1.08 and 24.1.08 and in the presence of Mrs Sikorska. Given that husband and wife are to my knowledge the only two workers making complaints of worker intimidation against Top Uk Ltd, it is regrettable that such a course was followed at the outset. In the context of such serious allegations the evidence is inevitably tainted by such a process having been adopted.

My impression of Mr Sikorski was that he was calmer, more rational, and potentially more believable than his wife. A calm persona accords with the observations of the Appellants' witnesses in particular Ewa and Bart who had the greater dealings with the couple. Ewa indicated Mr Sikorski had even apologised for his wife's behaviour to her which I accept as credible, from my own observation of him. It also rings true with the calm conversation when Mr Paul Landrum visited the property, when Mrs Sikorska went outside in the garden on one occasion.

He had a better grasp of basic English greetings but did not understand English to any degree. I consider he was more receptive, than his wife to trying to be understood and to trying to communicate with his hosts in this country, (by use of sign language or Basic German).

I consider he was giving evidence to support his wife, who is clearly the more domineering and dominant of the two and in defence of his refusal to pay Carl Roberts' bill.

He, (as did Mrs Sikorska,) tried to persuade me that the solicitor at Court on 7<sup>th</sup> February 2008 at Birkenhead County Court in respect of possession proceedings had blatantly failed to follow his instructions and ridden rough-shod over a genuine counterclaim and defence, by failing to seek instructions or failing to translate matters. Mr Sikorski is an intelligent man, I consider he and his wife were well aware of what happened at Court that day and did not pursue the counterclaim because of the risk they would not be believed because the allegations of racial abuse and threats were untrue.

### **CLAIRE JOHNSON**

I accept Mrs Johnson was a witness of truth. I considered Mrs Johnson to be sympathetic to the Sikorskys. I make no criticism of her in this respect given her role in taking detailed statements. Save that the methodology for obtaining such evidence was clearly flawed (seeing both at the same time) as she accepted with the benefit of hindsight.

She was fair to Top Uk about her findings on the inspection which were being dealt with in correspondence.

She sought to avoid responsibility for the current situation, saying "she was a small cog in a big wheel". Although I accept the decision on revocation was not hers, disappointingly there were significant errors in the Compliance Inspection report which she compiled and which was relied upon by Ian Wilkinson when he made his decision. Further, I am not satisfied that she has a full understanding of the meaning of contracts for and of services, relating to workers/ employees or the self-employed. I accept this is a complex area of law but I would expect an Officer of the GLA to have a working understanding of it.

### **IAN WILKINSON**

My assessment of Mr Wilkinson was that he was in the main, sensible and realistic and honest. He suggested valid points of investigation to be followed in an email to his Director, [100] but he was told to make a decision on information available which he duly did. He was defensive in evidence about the decision made. Given the points he himself raises at [100], and that a compliance inspection had not revealed concerns regarding worker intimidation when workers were spoken to, and accommodation seen; his decision to revoke on an immediate basis was questionable, especially in the light of the fact that the Sikorskys had left the property, following a lawful possession order at the date of the revocation and by that time 6 months had elapsed since the last allegation of harassment.

### **MR CARL ROBERTS**

I found Mr Roberts to be straightforward, blunt and down to earth. He trades as a garage proprietor and mechanic in a successful business at Bebington Car Care at 2A Argyle Street, Birkenhead, Merseyside. When he was aware Mr Sikorski worked at Top UK, and given his successful business relationship with many Polish people, he did not hesitate in giving Mr Sikorski credit. I found him to be a credible witness. He did not have a historic or exceptionally long-standing relationship with the Landrum brothers. He first came into contact on his evidence "on the end of a tow rope."

### **MR PAUL ANTHONY LANDRUM**

In the main I accept the content of Mr Paul Landrum's evidence as truthful. He is a man of good character with no criminal convictions. I consider him to be determined and ambitious, and eager to find a solution to a problem. It is right to say that I did not find aspects of Mr Paul Landrum's evidence entirely satisfactory. I did not consider that he would be verbally racially abusive or act in a physically abusive manner, due to his calm and unassailable manner in evidence. But there can be no doubt he was frustrated by the problem the Sikorskys presented. It was in my view unwise to attend at the property in September, in the context of the fact that possession proceedings had been intimated in August and would follow an entirely lawful course. I

accept that he had built a multi- million pound business from humble beginnings but I do not think he was stupid or power-crazed enough to make threats of a criminal nature to be rid of the Sikorskys. I think he misguidedly thought he could influence the situation by offers of money for travel home to solve everyone's' problems. I think the threats most unlikely to have been made, in the context that the Sikorskys agree that even in September Paul Landrum offered them the possibility of work in Milton Keynes.

None of the witnesses called on behalf of Top Uk even those who had left their employ, voiced criticism of him as a boss.

#### **MR MARK LANDRUM**

I found Mark Landrum to be consistent, credible and respectable. He is a man of good character with no criminal convictions. I do not accept he was racially abusive or made threats to kill. He struck me as determined and professional as evidenced in the email at [938]. Whilst he was the subject of criticism by the GLA for giving Mr Roberts the Sikorsky's address and I am sure would think twice before doing so again, he made clear he could not make deductions from wages which is correct and at this stage Mr Sikorsky had had several weeks credit which I view as unusual where garages are concerned.

#### **MR IGOR GAST**

I viewed Mr Gast as truthful, it is right to say he still works for Top UK in Burslem dealing with part of the unregulated sector therefore I accept he may have an interest in the outcome of any appeal.

#### **MISS JULIE ALEXANDER**

I found Miss Alexander to be an impressive witness. She was efficient and professional in trying to resolve the issues regarding the Sikorskys. She did not strike me as someone who would provide a legitimate front for illegal or illegitimate actions.

#### **MISS EWA MIKOLAYCYZK**

My views of this witness are important, because the picture painted by Mrs Sikorska in evidence in the first 3 days would have led an observer who did not hear Miss Mikolayczyk give evidence to conclude she was an outspoken and despotic tyrant with no sensitivity or thought for a worker's problems. She had worked as a welfare officer then moved over to payroll. I found her to be an intelligent, quietly spoken, gentle young woman who had struggled to cope with Mrs Sikorska's demanding and disparaging attitude to her. She was not self-interested and dismissive. I accept she was telling me the truth about her actions and those of Top UK that she observed. She no longer works for Top UK having been made redundant, when the Licence was revoked, but works in London. I did not conclude she was painting one picture because she had a vested interest in the outcome or to get revenge on Mrs Sikorska. She had moved on, to London, just as she had before when she moved from Poland where she had been

studying law, to a future in England with as she believed at the time-  
Top Uk.

#### **MR BART MALOCWICZ**

Mr Malocwicz is also no longer employed as a welfare officer by Top UK, although he remains working in Wallasey. Again therefore I regard his evidence as relatively independent. I found him to be an honest witness. He gave evidence in part in English and through the translator when required. He was clear and direct and I believed his denial of any malpractice or abuse on his behalf or the Directors when he was alleged to have been present.

#### **MR LESZEK WESOLOWSKI**

He remains working as a maintenance operative for Top UK and therefore clearly has a vested interest in a positive outcome for the Appellants. He required the assistance of the interpreter. However I did not find him to be in the slightest shifty or evasive. He was direct and clear answers which I accept.

#### **MR PIOTR ROZIK**

Mr Rozik also continues in employment with Top Uk and can therefore be said to have an interest in a positive outcome. He gave evidence through an interpreter. I found him to be a truthful witness.

I have placed only a little weight on the written evidence of Michal Szubrych – Manager at Top Uk Ltd and Andrej Falat- Former driver at Top Uk Ltd and the other informal statements as neither witness or the other employees have appeared before me.

### **THE FACTS**

- 7.1. I have dealt with the uncontentionous facts regarding the history of the Licence granted to Top (UK) Ltd at in the section regarding background.
- 7.2. Top (UK) Ltd has been in existence since August 2003 and has grown rapidly from a business turning over £1million in 2003, to £7.2 million in its 4<sup>th</sup> year of trading. It was accredited with Investors in People status in April 2005, and with ISO 9001;2000 in May 2006. It is a member of the Wirral Chamber of Commerce [950-1].
- 7.3. The Landrum brothers both have a history in the construction industry, developed through their father, although Mark Landrum did attempt to have a career as a professional golfer, which did not come to fruition. They have worked abroad and saw a potential gap in burgeoning markets for Eastern European labour to be recruited in this country.
- 7.4. At the beginning of February 2007, it is uncontentionous that the Sikorskys met Ewa Mikolajczyk and Paul Landrum in Milton Keynes to discuss the possibility of employment with Top Uk Ltd.
- 7.5. Top UK places or placed workers at sites across the UK with connections in the unregulated semi-skilled ceramics industry in the Potteries and with a large food production client Cranswick with sites at

- Deeside, Hull, Barnsley and Milton Keynes, amongst others. The Community Impact Assessment report [945] disclosed during the course of proceedings, prepared by the GLA substantially underestimated (by about 94) the numbers concerned in the regulated sector.
- 7.6. At the beginning of April 2007, the Sikorsky family, (Mr, Mrs and Mrs Sikorsky's son Jakub Wojcik and Mrs Sikorsky's sister Cestana Fechner) travelled to the UK to commence work.
  - 7.7. On 2<sup>nd</sup> April Mr and Mrs Sikorsky each signed an individual contract of employment which contained 3 lines in Polish explaining that they understood the document and a qualified translator had been used to interpret and that they understood the terms of the contract. [500-501] The translator was Magdalena Ciesla. I reject the contention that the words of Polish (on 3 lines above the signatures) were added to the document after the signature of the Sikorskys was appended. Ewa Mikolajczyk signed the contracts on 2/4/07.
  - 7.8. I make no finding on the quality of the translation by Magdalena or when a copy of the document was given to the Sikorskys.
  - 7.9. I accept that historically other contracts of employment- "version 8 October 2006" signed by an employee on 10.10.06 [939] and "version 9 16 October 2006" signed by an employee on 3.11.06 [940] did not contain any Polish words. However "version 10 12 December 2006" as signed by the Sikorskys did do.
  - 7.10. On the same day an "optional salary deduction agreement" was signed by Mrs Sikorska [501A] consenting to certain deductions from salary such as for rent and cost of making the application for the Workers Registration Scheme. Mr and Mrs also signed a furnished residential assured shorthold tenancy agreement for 29, Littledale road, Wallasey, Wirral on 2/4/07 [504,505]
  - 7.11. They commenced work thereafter at different venues but predominantly at Cranswick PLC on Deeside.
  - 7.12. Shortly after Cranswick PLC sent E-mails to Ewa expressing dissatisfaction with Mrs Sikorska and asked that she not be assigned to certain departments of the factory. [372 18.4.07 and again on 370 2.5.07] I do not accept that Mrs Sikorska work was acceptable between 2/4/07 and 14/5/07 [47] as this is in direct conflict with Cranswicks' independent emails.
  - 7.13. On 17<sup>th</sup> May it is common ground that Mrs Sikorska came to the offices of Top (UK) Ltd to ask for return of her passport. She was given the passport which had been kept by Top UK pending the process of obtaining a WRS service. Ewa Mikolajczyk felt unable to deal with Mrs Sikorska due to her unpleasantness to her and asked Bart Tomaszewski to deal with her. Mrs Sikorska stated she threatened to call the police and Paul Landrum asked who she was working for and this was translated by Ewa. I find these latter assertions to be gilding the lily on her part and I reject them.
  - 7.14. On 22<sup>nd</sup> May, the Sikorskys were asked to go to Pork Traders a food processing factory in Liverpool for induction. Mr Sikorski's car broke down in the centre of Liverpool and despite restarting it with the

- assistance of Bart Malocwicz, the vehicle ended up having to be towed through the Wallasey tunnel and to Mr Roberts' garage at Birkenhead.
- 7.15. I find the vehicle was in Mr Robert's garage for repairs **after** it had broken down on the abortive visit to Pork Traders, and not before. Mr Roberts allowed Mr Sikorski to drive the vehicle away without settling his account due to the goodwill Mr Roberts felt towards Polish workers, many of whom were his customers and one of whom had worked for him and went motorcycle racing with him. When the bill of £200 plus VAT remained unpaid, Mr Sikorski told Mr Roberts he would pay in instalments, [49] although I find this was some time later and then later Mr Sikorski decided not to pay alleging no work had been done by Mr Roberts.
- 7.16. On 23<sup>rd</sup> May Jakub Wojcik commenced employment and signed a contract with Top (UK)Ltd. He appears to have worked at Pork Traders in Liverpool.
- 7.17. It is documented with the local police that a domestic incident occurred at 29 Littledale Road, on 26/5/07[ 513] I cannot make findings as to whether this reference and call to involve the police arises from an allegation of violence by Mrs Sikorska against another tenant Michal Sieradzki or arises in respect of Jakub whom Bartek Malowicz told me was often fighting.
- 7.18. There appears to be no allegations of improper behaviour by the Landrums during June 2007. I find nothing of note happened in June 2007, when Mr and Mrs Sikorsky were working for the Agency.
- 7.19. On 5<sup>th</sup> July it is common ground that Mr Roberts rang Mark Landrum about the non-payment by Mr Sikorski of the repair bill for his car. Mr Landrum raised this through Bart Malowicz with Mr Sikorski, Mr Sikorski came to the office to discuss the issue that day. Mr Sikorski told Mark through Bart that he would not pay because the car had not been repaired properly and the bill was excessive. It is also common ground that Mark telephoned Carl Roberts in Mr Sikorski's presence and gave Mr Roberts his name and address. Mr Roberts asked if Mr Landrum could deduct sums from his wages to pay for the repair but Mark declined saying it would be illegal. Mr Sikorski alleges that a threat was made to burn his car and kill his family and he was racially abused by Mark Landrum. I am not satisfied on a balance of probabilities that such threats and abuse occurred.
- 7.20. On 7<sup>th</sup> July the Sikorskys allege that their car was damaged, by 3 men in hoods, who broke the number-plate, scratched the car and emptied bins. Mr Roberts explicitly denied any involvement in such damage. Other than the timing 2 days after the request for payment and the knowledge that Mr Roberts had the Sikorski's address which raises suspicions, there is no evidence upon which I can find the Landrums were in anyway responsible for damage which occurred to their car. Indeed I am fortified in my conclusion by Mrs Fechner's view at the time as reported by Claire Johnson who told Mrs Sikorski "she thought it was drunks". [50]
- 7.21. On 9<sup>th</sup> July I do not find that Bart Milewicz made a threat in a telephone conversation to Mrs Sikorska, nor that he said "this is just



- the beginning" or words to that effect" in conversation with Mrs Sikorska when he collected her sons' keys from 29, Littledale road .
- 7.22. On 10<sup>th</sup> July Mrs Sikorska came to the office, she had a meeting with Mark Landrum. Bart Malocwicz acted as interpreter. The content of the emails expressing dissatisfaction with her work at Cranswick [370-372] were discussed and she was dismissed. She was annoyed and tried to talk over and interrupt Mr Landrum. No threats or abuse was directed towards her by Mark or Bart. At no time did Ewa Mikolajczyk hand to Mrs Sikorska a newspaper article in Polish containing a news story about a Polish waitress being burned alive.
- 7.23. On 17<sup>th</sup> July I do not accept Mrs Sikorska was chased out of Top UK's office.
- 7.24. On 23<sup>rd</sup> July Mrs Sikorska contacted Andy Jarek Dabrowski, a solicitor who speaks Polish who works at Aughton Ainsworth in Manchester to arrange an appointment. [734]
- 7.25. On 24<sup>th</sup> July Mr Sikorski attended a meeting with Mark Landrum and Bart Malocwicz at which he was dismissed. I accept that Top Uk had received a complaint from other workers that Mr Sikorski had been attending work smelling of alcohol. For that reason Mark Landrum decided to end his employment and gave him that reason through Bart as translator on 24<sup>th</sup> July. He was not abusive or offensive, nor were threats made to him.
- 7.26. On 26<sup>th</sup> July Claire Johnson at the GLA made an unannounced visit to the Top Uk Office, due to leave commitments of some key staff she did not complete her inspection but was shown some accommodation owned by Emporda Ltd by Igor Gast.
- 7.27. On 27<sup>th</sup> and 31<sup>st</sup>, July the Sikorskys delivered grievance letters to Top UK [25-26] [27-29] which were responded to by Mark Landrum [209] on 7th August 2007.
- 7.28. Also on that date Jules Alexander emailed Claire Johnson to confirm that a further date would be scheduled for a visit.[568]
- 7.29. On 6<sup>th</sup> August Top Uk received handwritten complaints from Anna Jachymyska and Michal Sieradzki ( other tenants of 29, Littledale road,) concerning the behaviour of Mr and Mrs Sikorsky.[509, 511]. The court interpreters' translation is at [509A] and [511A]. The tenants alleged they were "constantly insulted by them, they live in fear and stress particularly because Mrs Sikorska slapped Michal in the face." They requested that the Sikorskys be evicted. I find these complaint letters to be genuine in relation to the fears expressed and that it is likely Mrs Sikorska was intolerant and difficult to live with but I have not heard direct evidence from Anna and Michal and I make no finding on whether Mrs Sikorska actually assaulted Michal.
- 7.30. On 6<sup>th</sup> August Mr Sikorski attended a meeting which was held at the offices with Mark Landrum and a translator present. Mr Landrum attempted to give him his final salary cheque, P45 and wage slip which was not accepted by him, as there were deductions for accommodation. A letter regarding the seeking of possession of the property was then translated to Mr Sikorski [836 bears this out – this letter was produced by Mrs Sikorska] The letter regarding possession

- being sought was wrongly addressed but its content had been explained to Mr Sikorski on the 6<sup>th</sup> August.
- 7.31. On 8<sup>th</sup> August Emporda Ltd through their solicitors Morecrofts sent the letter seeking possession of property, but it was wrongly addressed. [710]
- 7.32. On 21<sup>st</sup> August Top UK Ltd received a grievance letter received from the Sikorskys.
- 7.33. On 26<sup>th</sup> August Emporda Ltd attempted to send a further letter regarding the property to the family but this was also wrongly addressed [711]
- 7.34. On 3<sup>rd</sup> September I do not find that Paul Landrum visited 29, Littledale road.
- 7.35. On 5<sup>th</sup> September it is common ground that Paul Landrum visited the accommodation. I do not find that he pushed or "shoulder-barged" Mr Sikorski, nor that he made throat slitting gestures nor that he emptied a fridge and told the Sikorskys to eat food from the floor. I find that Paul Landrum called the police at 7.46am as his mobile phone records show, [530] as did Mr Sikorski, both wanted the benefit of a third party present. The police attended and a translator namely Ewa attended the property. (8.08 am call to Top Uk offices.) Mr Landrum explained he wanted to remove furniture because the other tenants (Anna and Michal) had left. He offered the Sikorskys employment in Milton Keynes which was declined and assistance with the ferry costs if they returned to Poland. The Sikorskys declined to show the police the tenancy agreement.
- 7.36. On 7<sup>th</sup> September It is accepted Paul Landrum visited the property in the afternoon with Michal Szubrych as translator. Some furniture, including a table, chairs, sofa and 2 fridges and a washing machine were removed from the property by Leszek Wesolowski and another worker making 2 separate visits to the property that day. Mr Landrum was not abusive and did not kick Miss Fechner's door such that it was damaged and did not throw food on the floor from the fridge, gesturing the Sikorskys should eat it. He telephoned for police assistance [531] but the police did not attend on this occasion. A fridge remained in the property for the Sikorskys' use as seen on a photograph at [541]. Leszek Wesolowski later reported that he thought he could smell gas at the property.
- 7.37. On 10<sup>th</sup> September Notice to Quit the property was served by special delivery on the Sikorskys. [712-713] and confirmed at [296].
- 7.38. On 11<sup>th</sup> and 12<sup>th</sup> September the GLA carried out a compliance inspection [578a-h] Claire Johnson confirmed that there were some issues which were being dealt with on an ongoing basis but which had not reached a critical score level. These issues were regarding deductions [578b] which were being debated with Customs and Excise. Accommodation was seen and worker interviews confirmed satisfaction with the accommodation [578d]. There was an issue regarding deductions for personal protective clothing which was being resolved. An issue regarding contracts was under discussion. Mrs Johnson had proposed the contracts of employment should be amended to reflect

- contracts for services rather than contracts of service. [578f] The GLA were satisfied with the results of the inspection.
- 7.39. On 12<sup>th</sup> September Paul Landrum visited the property and was offered coffee. He offered to assist the Sikorskys by paying for a few tanks of petrol and the ferry costs to assist them to return to Poland. They later declined this offer.
  - 7.40. On 17<sup>th</sup> September or later concern was raised about Mr and Mrs Sikorsky by Angela Eagle MP with Wirral Borough Council asking them to investigate.[ 763] Nick Johnson attended the property with an interpreter and thereafter required Emporda Ltd to take steps to return the cooker and gave them a warning regarding harassment.[310]
  - 7.41. On 19<sup>th</sup> September Leszek Wesolowski having attempted to seek access to the property earlier that week, removed the cooker due to the smell of gas, leaving a microwave oven for use. He did not at any stage disconnect the gas nor did he disconnect the electricity as has been falsely asserted by the Sikorskys.
  - 7.42. At some stage around 21<sup>st</sup> September (although 2 letters bear the same date) the Polish Embassy contacted TOP Uk Ltd naming Mr and Mrs Sikorsky and Mr Wojcik and asked for details regarding complaints about Top UK Ltd.
  - 7.43. On 24<sup>th</sup> September Mr Wesolowski returned the cooker having cleaned it and replaced a pipe. Jules Alexander telephoned Mr Johnson and explained Top Uk Ltd's position. [311-2]
  - 7.44. On 26<sup>th</sup> September Jules Alexander asked the Polish Consul to confirm full details of the complaints against Top Uk Ltd. [308-309]
  - 7.45. On 2<sup>nd</sup> October Notice seeking possession was served on the Sikorskys.. [714-5] Morecrofts, solicitors replied to Wirral BC in respect of accommodation issues. [717].
  - 7.46. On 5<sup>th</sup> October Mr Sikorska made a claim to the Employment Tribunal at Liverpool in respect of unfair dismissal only, with no reference in the claim form to any allegation of race discrimination. [235-243]
  - 7.47. On 8<sup>th</sup> October Wirral BC set up a meeting with Top UK and GLA.
  - 7.48. On 10<sup>th</sup> October Aughton Ainsworth indicated they had issued a claim for unfair dismissal and unpaid wages, and race discrimination on behalf of Mrs Sikorska. [267]; and the same on behalf of Mr Sikorski [271] and claims for unfair dismissal and unlawful deductions in respect of Jakub Wojcik.
  - 7.49. On 19<sup>th</sup> October Aughton Ainsworth sent a grievance letter on behalf of Mr, Mrs Sikorsky and Jakub Wojcik [275-283] to Top UK Ltd.
  - 7.50. On the same date Claire Johnson was "tasked" to obtain witness evidence from witnesses at Top Uk Ltd. It is unclear to me which witnesses this refers to and whether an earlier complaint about treatment of pregnant workers was dealt with remains unclear although it is referred to in the Intelligence report at [943-944]
  - 7.51. 22<sup>nd</sup> October Liverpool ET gave 14 days notice to strike out Mr Sikorski's claim in respect of unfair dismissal, unless good reason is given why this should not be done.[244]
  - 7.52. 26<sup>th</sup> October Morecrofts on behalf of Top Uk replied to the grievances raised using the modified procedure.[284]

- 7.53. On 31<sup>st</sup> October Mrs Sikorska issued a claim to an Employment Tribunal at Shrewsbury alleging race discrimination, unpaid wages, unlawful deduction of rent [214].
- 7.54. On 1<sup>st</sup> November the Liverpool Employment Tribunal struck out Mr Wojcik's claim.
- 7.55. On 6<sup>th</sup> November, Paul Landrum attended a meeting with Wirral BC to consider allegations made in respect of accommodation issues. The Agenda appears at [636]. The GLA did not attend that meeting. It is unclear if an invitation was issued to them it was clearly meant to be. They were aware a "productive meeting" (GLA recording) had taken place by 27<sup>th</sup> November [944]
- 7.56. On 12<sup>th</sup> December Mr Sikorski signed a receipt acknowledging he had received a cheque for £100 for Miss Fechner's deposit from Ewa Mikolajczyk. Miss Fechner had continued working for Top Uk and living at the property throughout this period. [942]
- 7.57. On 18<sup>th</sup> January Claire Johnson visited Mr and Mrs Sikorsky with an interpreter to take a statement in respect of harassment issues whilst both were present and others. The handwritten statement appears at [45-51]. She accepted with hindsight this was not the best way to have proceeded.
- 7.58. On 29<sup>th</sup> January Claire Johnson made a second visit to them and continued to make notes as before. [51-57].
- 7.59. On 31<sup>st</sup> January Ian Wilkinson became aware of concerns regarding the Sikorskys through email correspondence with Darryl Dixon [97]
- 7.60. On 1<sup>st</sup> February Ian Wilkinson observed that "there are several very serious allegations made against Top Uk, if proven, it may result in the immediate revocation of this licence" He then asked for further information [100] which was not given and a decision was made without it.
- 7.61. On 5<sup>th</sup> February Mrs Sikorska's Employment Tribunal claim was struck out on the grounds of unreasonable conduct.
- 7.62. On 7<sup>th</sup> February there was a hearing at Birkenhead County Court before District Judge Travers of Emporda's claim for possession of the property and, the counter claim alleging unlawful harassment under the Prevention of Eviction Act. Both sides were legally represented and an interpreter was present. Before the hearing commenced the Sikorskys indicated through their legal representative that they withdrew their claims of unlawful harassment. This was subsequently clarified in Court by the Judge who specifically raised the matter and the Sikorskys position was re-iterated.[173] A Possession order was made effective on 21/2/08. [172 ]
- 7.63. On 29<sup>th</sup> February The Sikorskys had failed to vacate the property. The Birkenhead County Court Bailiff gave notice that he would execute the warrant of possession on 13<sup>th</sup> March.
- 7.64. On 7<sup>th</sup> March Claire Johnson visited the Sikorskys to confirm they agreed the contents of the statements as typed and re-translated into Polish
- 7.65. On 11<sup>th</sup> March The Sikorskys vacated the property.
- 7.66. On 27<sup>th</sup> March the decision to revoke the Licence on an immediate basis is communicated to Top Uk Ltd [39-41]

- 7.67. On 2<sup>nd</sup> April Top Uk Ltd give Notice of Appeal and seek further particulars of the Revocation.[58-73] [156-161]
- 7.68. On 11<sup>th</sup>,21<sup>st</sup> and 25<sup>th</sup> April Directions given in respect of hearing of appeal including requiring the GLA to name the 2 workers concerned who had made the allegations of intimidation.[152-155] Hearing originally listed for 16<sup>th</sup> May 2008.
- 7.69. On 30<sup>th</sup> April Mrs Sikorska was in contact with Andrej Falat about the possibility of him supplying her with cigarettes from Poland. He did not intimate that Paul Landrum wanted to know where to find her and offer £15,000 each to her and her husband not to come to hearing.


## CONCLUSIONS

- 8.1. Essentially in this case I am asked to make a stark choice as to whose evidence I prefer on the facts before me.
- 8.2. On the one hand that of Mr and Mrs Sikorsky who allege intimidation and harassment between July and September 2007, They were demonstrably financially poor workers who were unpopular with the tenants with whom they were living and had complained to numerous authorities about their alleged treatment by Top UK –TGWU, their solicitor and the Employment Tribunal, Angela Eagle MP, the Police, the Wirral BC, the Polish Consulate, then the GLA. Their employment created an issue which required a solution. Given what was at stake for Top UK it would be superficially attractive and straight forward enough to conclude that their allegations were true and the vociferous way in which they put their grievances to many, consistent with them being true.
- 8.3. It is submitted their grievances are corroborated by a “recent complaint” to the local MP Angela Eagle on 17.9.07 after the early September visits to the house by Paul Landrum.
- 8.4. I am clear that the Sikorskys are vulnerable to exploitation because they do not speak English and are lacking in financial resources. However I do not believe them to be lacking in guile and intelligence. They have made complaints to a plethora of authorities, although the genesis of the various allegations has changed.
- 8.5. On the other hand, I am asked to accept the evidence of the Landrums and the 7 witnesses called on their behalf, some of whom are no longer in their employ and one of whom is a garage proprietor with a business connection to them.
- 8.6. Further I am asked to consider the various individual ex-employee letters-statements numbering some 29 individuals listed at [657], whose letters appear from 658-709 which praise Top UK without exception.
- 8.7. I observe that throughout the course of the time over which the Sikorskys make the allegations of harassment, Mrs Sikorsky's sister, Cestana Fechner lived with them and worked uneventfully for Top UK Ltd. Mr Sikorski accepting monies due to her and signing for them on 12<sup>th</sup> December [942] This does not accord with individuals living in fear of their lives and safety.

- 8.8. It is clear from my assessment of the witnesses and my findings that I have rejected the Sikorskys evidence where it is in conflict with Top UK witnesses or former employees.
- 8.9. Mrs Sikorska's evidence having been discredited as explained in my assessment of her credibility, I consider she exaggerated innocuous events to put Top UK in a bad light because she was angry to have lost her work. Mr Sikorski's evidence is also tainted by the manner in which it was obtained and was given in support of his wife. Rarely, individuals do make false allegations for their own motives I conclude this is what has happened in this case.
- 8.10. In the light of the fact that I have not found any allegations of worker intimidation to be made out, save that I regard Paul Landrum's attendance at the property in September to have been unwise, but not to amount to intimidation, the decision to revoke the licence in breach of standard 3.1 worker intimidation was not justified.
- 8.11. I consider it appropriate to comment on the decision making process by the GLA in this case. It was submitted that the "real decision maker" did not give evidence before me. Given that Mr Wilkinson's queries as set out at [100] were not explored or investigated this decision was not "proportionate", as at 27<sup>th</sup> March 2008.
- 8.12. At the time it was made the workers concerned had not worked for Top UK for 8 months. They were no longer living at 29, Littledale road, Wallasey. The last allegation of intimidation related to late September-6 months earlier. There had been no attempt, save most superficially, through the earlier broadly successful compliance visit to test the truthfulness of complaints. Police liaison and sharing of information, despite arrests and interviews in November and December 2007 was scant and ineffective. As at 27<sup>th</sup> March 2008, the Landrum brothers remained on police bail. As at 16<sup>th</sup> May there was to be no further action against them. Save for unconfirmed Intel reports no other allegations appear to have been made nor indeed substantiated.
- 8.13. For all of those reasons I do not share the view of the GLA expressed as, "workers are in immediate danger" [39]. Mr and Mrs Sikorsky, on the evidence placed before me had made isolated complaints. Their veracity was substantially in dispute.
- 8.14. I accept that there will be occasions when the severity of the allegations, viewed together with other information may lead the GLA properly to revoke a Licence on an immediate basis. I am told, that of 58 revocations this has occurred on 8 occasions including this one (Mr Wilkinson's evidence).
- 8.15. The draconian nature of an immediate revocation, (as commented upon in the Dynamic case), cannot be underestimated, and must be balanced with a proper consideration of the grounds upon which such a conclusion has been reached.
- 8.16. Where there is countervailing information of good practice and co-operation this cannot simply be ignored. There must be a good explanation for its being discounted or for less weight being attached to it. I have not been presented with any good explanation in this case.
- 8.17. On the chronology of this case in accordance with the need to "identify more persistent and systematic exploitation of workers rather than

concentrating on isolated non-compliances” justice would have been more appropriately served by the revocation taking place **NOT** on an immediate basis, and the allegations tested.

- 8.18. Those issues properly identified by Ian Wilkinson [100] could have been addressed and the workers concerned properly protected in the meantime and the gang master could have continued to trade in the regulated sector.
- 8.19. This is not solely the benefit of hindsight, it is in keeping with fairness and the right to be heard, which was lacking in this case.

Signed  .....(Miss C Grundy).....

Person appointed by the Secretary of State to determine appeals under the Gangmasters (Appeals) Regulations 2006.

Dated.....5<sup>TH</sup> JUNE 2008..... 5.6.08 .

