

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the Gangmasters
Licensing Authority (Case No. 45/E/RV)

ELS RECRUITMENT LIMITED

(Appellant)

V

THE GANGMASTERS LICENSING AUTHORITY

(Respondent)

APPOINTED PERSON

MR R CASSEL

DECISION

APPEAL CONSIDERED IN CHAMBERS WITHOUT AN ORAL HEARING ON
THE 26 JUNE 2008

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

DECISION

Upon consideration of the Notice of Appeal received on the 25 April 2008, the Statement in support of Shamus Paul and three boxes of documents submitted by ELS, the submissions provided by GLA on the 10 June 2008 and supporting documentation and in accordance with the Gangmasters (Appeals) Regulations 2006 it is the decision of the Appointed Person that the **appeal is dismissed**, and this decision shall take effect on the date of its service on the parties.

1. STATEMENT OF REASONS

Preliminary Points

- 1.1 This is an appeal against the decision of the Gangmasters Licensing Authority ("GLA") on the 15 April 2008 to revoke with immediate effect the license granted to ELS Recruitment Limited ("ELS").

- 1.2 Notice of Appeal was completed and signed by a Director of ELS, Shamus Paul, showing that ELS was represented by Solicitors, Hegarty LLP Solicitors in Peterborough.
- 1.3 Directions were given by me at various stages. Under Regulation 20 of the Regulations, the appeal "shall be heard and determined not later than 35 working days after the date on which the Notice of Appeal is received by the Secretariat". There is power under Regulation 13 to extend time to hear the appeal which I directed.
- 1.4 A detailed response was submitted by the GLA with extensive supporting documentation. That documentation was received by the Secretariat on or around the 11 June 2008, and a copy of those documents was sent to ELS' nominated representative.
- 1.5 I further extended time until today to ensure that ELS had time in which to respond to those submissions. No response was submitted and in considering the overriding objective under Regulation 2, I decided that there was no further good reason to extend time and that the appeal should be considered without further delay.

2. BACKGROUND

- 2.1 There are two Directors of ELS. Shamus Paul O'Sullivan, who is known as Shamus Paul, and Kevin Lee. Together, as Directors of another business trading as European Labour Services, an audit with the Temporary Labour Working Group (TLWG) took place on the 5 May 2005 in preparation for their license application. An application made on behalf of European Labour Services was received by the GLA on the 11 May 2006. On the 8 June 2006 the application was delayed pending the response to certain questions that were posed.
- 2.2 In response to the questions, in summary, the responses were accepted by the GLA, and for the purposes of this appeal, clarification was given, among other things, to the name of one of the Directors as "Shamus Paul", and that ELS did not provide accommodation.
- 2.3 Three additional conditions were added to the license for non-compliances identified during the TLWG audit process, requiring evidence of compliance with license standard 2.7, relating to the withholding or threatening to withhold payment to workers, license standard 5.1, the allowance of workers to take statutory breaks, and license standard 6.2 in relation to training and other matters.
- 2.4 The third condition was complied with and removed and the other two standards remained on the license that was granted.
- 2.5 The GLA received a phone call from Shamus Paul on the 16 May 2007 who advised that there was a change of status to the company.

Following the advice that was given, "ELS" applied for a license on the 17 May 2007.

- 2.6 An application inspection was undertaken on the 2 August 2007, and a license was issued with conditions and, following compliance with those conditions, a full license was issued on the 11 January 2008.
- 2.7 A compliance inspection was scheduled following an allegation of assault at one of the sites to which ELS provided workers, Allpress Farms, Chatteris.
- 2.8 The result of the compliance inspection was a licensing standards score of 230 points. ELS were unable to satisfy the GLA inspector that they were compliant with licensing standards in respect of 14 matters.
- 2.9 By reason of this failure and non-compliance, the license of ELS was revoked on the 15 April 2008.

3. EVIDENCE

- 3.1 I was provided with three boxes of documents submitted by ELS. I spent one day in chambers considering the following documents, which I list according to box. I understand that the three boxes were provided by the Secretariat, for which I am grateful, and there is no particular significance as to which box the various documents were placed:-

Box 1 - this box contained various documents included in which were:-

Copy correspondence between the ELS and GLA including the grant of the license on the 3 August 2007 to revocation on the 15 April 2008. Notice of Appeal dated the 28 April 2008 with a Statement of appeal undated and unsigned in the name of Shamus Paul comprising 73 paragraphs. Correspondence, documents, and correspondence to and from the ELS regarding workers as follows:-

M Makuch	E Sivak	M Kedzierski
K B Rechul	K Kaminsnas	K Dubrawski
A Sliausaris	D Miseckiene	D Sliwinska
V Orlovas	M Nemcova	S Beliakovas
M Smyk	E Sandorova	S Gorniewicz
K Olbrys	L Skubisz	K Gorniewicz
M Pawlowski	S Puzaraite	P Wrona
V Jankauskas	R Braskiene	A Perun
M Dlugoszenwska	S Locmele	I Koltovs
B Kasprzyk	M Mixtacki	A Smyk
V Sincareva	D Martinkus	S Stachowiak
I Indrasiuse	H Krasa	S Savickas
A Osipova	V Stankeviciene	T Pawlowski
A Steponaviciene	O Piskunova	L Kirsza
L Dolowiel	S Slezak	K Zitkus

I Kamycka	A Jaskiewicz	W Izworski
R Tekeli	M Nocun	M Pakula
M Kowalczyk	P Pakula	M Wozniak
E Potrykus	M Dabrowski	

Copy e-mails from Accountants. Copy documentation regarding ELS company's vehicles. Forms from the Boarder and Immigration Agency and other documentation. Rent deduction consent forms, payslips, average hours computations, holiday request forms, copy correspondence terms and conditions of the 19 February 2008, faxes and e-mails in relation to pay and holidays. Bank statements from January 2007 to April 2008.

Box 2 – Correspondence, documentation and correspondence to and from the ELS regarding the following workers:-

S Slezak	E Vinogradovas	L Vierira
T Pietraitto	K Kamiski	A Savins
M EI Melity	M Pecar	B Beyer
L Andrulyte	R Sanha	M Zydorek
A Tyranowska	A Klima	

Induction forms and translations into various foreign languages. Application forms and foreign language versions, apparently, of those forms. Payroll printouts from October 2007 to April 2008. Copy wageslips and supporting time records and other supporting documents.

Box 3 – Correspondence, documentation and correspondence to and from the ELS regarding the following workers:-

J Sidelka	D Walachhowska	M Mazurkiewicz
J Perun	M Szydowski	L Kaluzinski
E Chrzastowska	N Kisova	K Koziel
L Michalar	B Kretorz	S Zwierzewicz
K Patykowski	L Stojka	S Mansour Ibrahim
R Zuczkowski	J Whaley	E Sobkiewicz
K Useniaks		

There were also audit notes, GLA press releases, time sheet tracking collation, personal details collation, third party contracts, holiday details, time sheets for all press and RB Organics, invoices, time sheets, copy cheques and supporting documents.

- 3.2 I received from GLA a bundle of documents comprising in total 294 pages, all of which I considered. The documents included the Witness Statements of Helen Miller, Neil Court, Jayne Garner and Ian Wilkinson. There were 17 exhibits and 153 pages of other documentation.

4. THE LAW

- 4.1 The GLA was created by an Act of Parliament under the Gangmasters (Licensing) Act 2004, which was described as an Act to make provision for the licensing of activities involving the supply or use of workers in connection with agricultural work, the gathering of wild creatures and wild plants, the harvesting of fish from fish farms and certain processing and packaging; and for connected purposes.
- 4.2 Licensing standards to assess compliance for use by labour providers are described under The Licensing Standards in 2006.
- 4.3 Categories of non-compliance are detailed in part 2 of the Standards. There are four categories of non-compliance comprising critical, described as most serious category of non-compliance which carry a score of 30, Major non-compliances are referred to as "major non-compliances but less than critical", and carry a score of 8. Reportable non-compliances are defined as significant non-compliances that may be reported to other government departments or agencies and carry a score of 4. Correctable non-compliances are defined as "less severe non-compliances than the above" and carry a score of 2. In part 1 at note 16, the failed score for inspection is given as 30 points.
- 4.4 The GLA has the power to revoke a license under Section 9 of the Gangmasters (Licensing) Act 2004. An appeal against revocation is provided for under Section 10 of the same Act.
- 4.5 Under the Gangmasters (Appeals) Regulations 2006, under Regulation 21(1) power is vested in me to allow or dismiss the appeal. Under Regulation 21(2) the decision shall be binding on the parties.

5. FINDINGS OF FACT

- 5.1 In relation to each of the breaches of the Licensing Standard, I make the following findings of fact:-
- (1) **License Standard 2.5** – In the Statement of Mr Paul, the appeal is based on the failure, or so it is claimed, that had the GLA checked the various files "they would have seen signed authorised deductions for all workers". I am however satisfied, having considered all the documents, that there is clear evidence that workers were penalised or threatened with dismissal should they not use the transport provided by ELS. I am satisfied that any such written evidence of "consent" was not consent and obtained under duress and that there was a clear breach of this standard and deductions were made from pay without express written permission
- (2) **License Standard 2.7** – The basis of the appeal to this standard is in representations that the payroll summaries show

that payment was made to workers when due; there was no threat with dismissal in response to wage queries, any underpayments whereby mistaken were rectified as they were discovered; that Witness Statements were not provided for comment.

- (3) I am satisfied that time having been extended to enable the ELS to comment on the Witness Statements that were included in the Bundle of Documents provided by the GLA, and that having considered those documents and the submissions made by the GLA, that there was a clear breach of this Standard. There is evidence of unlawful deductions from payment for queries or complaints being met with the threat of dismissal and dismissal itself.
- (4) **License Standard 2.8** – The Appeal is based in a denial that accommodation had been provided or indeed offered to workers. There is a denial that any deductions had been made from workers for the accommodation, and that the payroll and bank statements would “clearly show that no deductions are made”. There is also a complaint that there had been no opportunity to comment on witness evidence.
- (5) I am satisfied that there is clear evidence of a breach of this critical Standard, and that workers were paid less than the minimum wage and were charged for accommodation provided by one of the Directors of ELS, Kevin Lee.
- (6) **License Standard 2.9** – The appeal to this breach is that an examination of the payroll would show that annual leave had been paid. It is also denied that pay for holiday accrued and not taken would not be paid to a departing worker. It was similarly denied that sick pay was not paid, nor that there was knowledge of an entitlement to such pay. Again the appeal is also based in part on the inability to consider the Statements that were made in support of these breaches.
- (7) I am however satisfied that there was a failure to comply with this Standard, and that there is clear evidence of breach in interviews with workers and that holidays requested or taken did not meet with appropriate payments, that there was no evidence that SSP had been paid.
- (8) **License Standard 2.10** – The principal point of appeal is that Witness Statements had not been provided to ELS for comment. I am satisfied that workers were not provided with itemised accurate payslips recording hours worked correctly, deduction of Income Tax and National Insurance payments and any other deductions. There is evidence of scribbled notes on the back of wageslips without any explanation.

- (9) **License Standard 3.1** – This Standard relates to the subjection of workers to physical or mental mistreatment, a breach of which is critical in the above numbering scheme. The basis of the appeal is in a denial of the truth of Statements made in support of the breach, on the basis that “we regard the Statements by the workers to be misguided or malicious”. There is a rejection of mistreatment relating to the manner and use of company vehicles, or verbal abuse or other abuse and the failure to have access to Witness Statements generally to comment.
- (10) I am however satisfied that there were serious breaches of this License Standard. Although I am not persuaded that there was evidence of vehicles being driven at excessive speed, I am satisfied that there is clear evidence of breach in that Shamus Paul often swore and shouted at workers and on one occasion assaulted a worker. There is also evidence that company vehicles were driven erratically in a manner in which the welfare of workers was disregarded.
- (11) **License Standard 3.6** – The appeal to this critical breach is in the denial that the allegation that workers were not free to leave their employment without incurring (or fear of incurring) a penalty is based in the absence of any supporting evidence. It is also said that in failing to allow access to the Statements, ELS have not been able to defend themselves.
- (12) I am satisfied however that there is clear evidence in workers interview that there was a well-founded fear that if they left the ELS’ employment they would not receive appropriate payment, and that they only stayed with ELS through fear. I am satisfied there was a failure to comply with this Standard.
- (13) **License Standard 4.2** – The appeal against this finding is on the basis that “neither of the Directors provide or effectively provide accommodation, nor do we deduct charges for accommodation from any of our workers”. The decision is also appealed on the basis that the relevant witness evidence was not provided.
- (14) I am satisfied there was a failure to comply with this Standard. There was evidence that Kevin Lee, a Director of ELS, also ran a letting agency called “Quicklet”, from the same premises as ELS. Workers did live in accommodation so provided and there is evidence that some considered they could not leave the accommodation without losing their jobs.
- (15) **License Standard 4.3** – The appeal to this finding is on the basis that no such accommodation was provided, and that no Statements of evidence were shown.

- (16) I am however satisfied there was a clear breach of this Standard. Accommodation provided was in a poor state of repair, had pest problems and was occupied by an excessive number of persons. I make this finding on the balance of probabilities, having considered the witness evidence but noting that no formal inspection of the premises had been undertaken, and that one of the witnesses wished to remain anonymous.
- (17) **License Standard 5.2** – The appeal is on the basis that workers have freely signed an opt out to work in excess of 48 hours per week. It is denied that the GLA has identified any workers who worked in excess of 48 hours.
- (18) Having considered the witness evidence, there is evidence of excessive hours being worked, and that all relevant documents were in English and not explained. I am satisfied that in these circumstances any such consent given was not done so freely, and there was a failure to comply with this Standard.
- (19) **License Standard 6.2** – The basis of this appeal is that the findings are factually incorrect and that health and safety training was in fact given, and that in any event Statements have not been provided for comment.
- (20) I am satisfied that there was a breach of this Standard, that witness evidence shows that there was no health and safety training record available for workers on site, and that documentation produced in the native languages of workers had never in fact been shown to them.
- (21) **License Standard 6.6** – The appeal is based in documentation which shows, so it is said, that employees had been provided with correct protective work wear. It is also again submitted that comment could not be made in more detail as Statements had not been shown to the ELS. However in considering the available evidence, I am satisfied that there was a failure to comply with this Standard. Interviews with workers support the finding that forms that were required to be signed confirming the issue of required items did not relate to the actual issue of those items, and that some workers were forced to buy their own boots, hats or gloves. In my view there was a clear breach of this Standard.
- (22) **License Standard 7.3** – The basis of this appeal is that there is clear written documentation to support that workers were provided with written Statements of Employment Particulars and that those that were issued contained wrong information.
- (23) Having inspected that documentation provided by ELS, I am satisfied that it is not clear whether the contractual

documentation relates to employment or a Contract for Services, and that information in relation to notice pay, holiday entitlement and the payment provisions was missing and that the conclusions that the GLA reached were ones they were entitled to reach. In my view there was a breach of this Standard.

(24) **License Standard 10.1** – The appeal for this finding is based on the suggestion that there was just one Iraqi worker who was found not to have the correct documentation, and that it was an isolated non-compliance and not a persistent and systematic failure. It is denied that there was any intention to employ workers who did not have the right to work in the United Kingdom, and that if some of the documentation that was presented was fake, ELS acted unknowingly and unwittingly as accepting it as genuine.

(25) I am however satisfied that there was a breach of this Standard. There was no indication whatsoever that any checks undertaken were in line with Home Office Guidelines and that documents that were produced were clearly fake and should have alerted the ELS. Again I am satisfied there was a clear breach of this Standard.

(26) **FIT AND PROPER PERSON**

(26.1) The appeal is based on a suggestion that the GLA have decided to bring the number of complaints, based on “unsubstantiated evidence”, and “incomplete and unfair investigation process”. It is denied that workers were treated “appallingly” and that there have been misguided and malicious allegations by some of the workers, and that there had been no opportunity to answer these allegations.

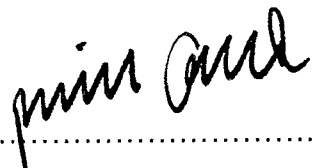
(26.2) In my view there was clear evidence of a systematic and cynical series of breaches, that inevitably led to the finding that there has been total disregard for the Standards required of all license labour providers, and ELS cannot be regarded as “fit and proper” to hold a GLA License.

6. CONCLUSIONS

6.1 The findings that I reached leave me in no doubt that ELS exceeded the score permitted to allow the License to continue.

6.2 Four critical scores of 30 points were recorded, and any one of these was sufficient to lead to the revocation of the License.

- 6.3 I have found that the GLA were right to reach the conclusions that they did and to find that in addition to the critical scores above, there was ample evidence to reach the conclusion that was reached in relation to other non-compliances.
- 6.4 Within paragraph 14 of the Licensing Standards, reference is made to "the GLA adopts a proportionate approach when applying the Licensing Standards". I can find no evidence that the response in revoking the License is in any way in breach of this approach.
- 6.5 Revocation is of course a sanction which should be applied after careful and reasoned consideration. The revocation of a License with immediate effect is a sanction which should only be used in the most extreme of circumstances.
- 6.6 I have no doubt that the immediate revocation of the License in the circumstances as disclosed in the documents was entirely appropriate and beyond criticism.
- 6.7 For these reasons I dismiss the appeal and order that the decision should take effect on the date of the service of this decision on the parties.

Signed  (Mr R Cassel)

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

Dated 27.6.08