

**The Gangmasters (Appeal) Regulations 2006**

**In the matter of an appeal against a decision made by the Gangmasters  
Licensing Authority (GLA)**

**Appeal Reference 134/E/RV**

**K7 Limited**

**Appellant**

**V**

**The Gangmasters Licensing Authority**

**Respondent**

**Appointed person: K. TUCKER**

**Decision and Summary Statement of Reasons of the Appointed person in relation  
to the above matter:**

**Decision**

The appeal of K7 Limited against the decision of the Gangmasters Licensing Authority to revoke a Gangmasters Licence without immediate effect is dismissed.

**Summary Statement of Reasons**

1. In this case the Gangmasters Licensing Authority ("GLA") revoked the Appellant's (K7) licence. The basis for that decision was that K7's Principal Authority ("PA"), Mr Khara, had not been candid or truthful with the GLA either when K7 made an application for a licence in 2009 or thereafter in renewal applications in 2010 and 2011 because Mr Khara had stated, in reply to question E18 on the application form that he had not worked for another GLA licence holder. In fact, since 2008 he had worked for DDL Recruitment Ltd, ("DDL"), a company which had had a GLA licence and for whom Lakhbir Singh Hayer was the Principal Authority. (The evidence placed before me by the GLA was that DDL's licence was revoked and that Lakhbir Singh Hayer had been deemed to be unfit to hold a licence. That evidence was not challenged by K7.) The GLA considered that K7 accordingly had not complied with Licensing Standard 1.1, namely that at all times the PA should act in a fit and proper manner.

2. The parties agreed that the appeal should be decided without a hearing. Having read the papers I considered that it was appropriate to deal with the appeal in that manner. I had regard to relevant legislation including the Gangmasters Appeals Regulations 2006, the Gangmasters (Licensing) Act 2004, the Gangmasters (Licensing Authority) Regulations 2005, the Gangmasters (Licensing Conditions) Rules 2009 and the Gangmasters Licensing (Exclusions) Regulations 2010 and to the Licensing Standards published by the GLA.

3. I had regard to the documentary evidence before me included in a file of papers in addition to further written submissions lodged on behalf of K7. Those documents included copies of the renewal applications made in 2010 and 2011. Each application clearly asked the following question:-

“ E18 Have you or any person named in sections B, C or D ... worked for another GLA licence holder ... ?

The “No” box was ticked on each form. Further, on the final page of the form the Principal Authority was asked to sign a declaration to confirm that the information given in the application was correct to the best of his or her knowledge and that he or she did not believe that a deliberately incorrect statement had been made. Mr Khara had signed that part of each form.

4. I saw some evidence to suggest that Mr Khara may have been asked the same question regarding his employment with another GLA licence holder in 2009. However, there was no clear documentary record of that specific question having been asked or answered at that time. In view of the dispute of fact on that point and the fact that I decided this appeal without an oral hearing I did not finally decide whether the question had been asked. I was able to reach my conclusion on the appeal without doing so.

5. At an inspection which took place on 5 July 2011 Mr Khara informed the Enforcement Officer, Linda Boyle, that he worked for DDL. Mrs Khara stated at the inspection that the failure to disclose this fact was an omission on her part and that as she had copied the details of the original application form onto the subsequent renewal forms the error remained. Mr Khara agreed with that account.

6. The licence was revoked without immediate effect and Mr Khara and K7 were notified of this by a letter dated 29 July 2011. As noted above the basis for that decision was that the Appellant had failed Standard 1.1 which was a Critical standard with a score of 30 points. The letter stated that the PA had not been “candid or truthful” in his dealings with the Authority.

7. In summary, it was submitted on the Appellant’s behalf that the decision to revoke the Appellant’s licence was disproportionate. It was submitted that the error was inadvertent and was in fact a common error due to widespread misunderstanding of the question; that the error was less serious in this case as the Appellant had never traded; that the error was readily admitted to and that there was no intention to deliberately mislead; that Mrs Khara holds a responsible position within a bank; that the letter of 29 July 2011 contained an incorrect inference which improperly influenced the GLA’s decision, namely that the Appellant had a working arrangement with DDL whereas in fact Mr Khara simply worked for DDL as a driver. The documents from the Appellant also stated that Mr Singh of DDL had approached Mr Khara to ask whether he would take over his workers should Mr Singh lose his GLA licence and proposed that they should then share in the profits on a 50/50 basis. The document stated that this offer was rejected out of hand because the family did not wish to work with “outsiders”, and that this was the first time that the Appellant had any indication that DDL had any problems with the GLA.

8. I did not consider that the Appeal should be allowed for the following reasons:-

- (1) There was no dispute that the Appellant had submitted incorrect information to the GLA on at least 2 occasions. As set out above I did not make a determination as to what occurred in 2009.
- (2) The PA for the Appellant was Mr Khara. He signed the applications in 2010 and 2011 and as a fit and proper person should have ensured that (a) he understood the content of the document he signed on each occasion and (b) that on each occasion the answers he supplied were correct. I accepted that Mrs Khara assisted Mr Khara. She speaks 'perfect' English and had a job within the banking industry. Despite these facts the error (if it was that) occurred not on a single occasion but was repeated at least twice. I considered that that suggested that the question at E18 was either answered deliberately incorrectly or that it was answered without due and proper care being given to it. In either case I considered that the failure to answer the question correctly on at least 2 occasions was not consistent with Licensing Standard 1 that at all times the Principal Authority must act in a fit and proper manner.
- (3) I did not consider that the revocation of the licence was disproportionate. In the Licensing Standards it is clearly stated that the GLA is concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliance unless the non-compliance is "critical" in its own right. The Standards set out 8 licensing standards and the GLA regulates compliance with those Standards. A failure to meet a particular standard attracts a score and the fail point is 30. Critical Standards each in themselves attract a score of 30. Standard 1 is a "Critical" Standard. Accordingly a failure in respect of Standard 1 will result in a non compliant application for a licence. In my view, Standard 1 is a Critical standard for readily understandable reasons: it is imperative that companies to which are granted licences are run by individuals who are honest and who are diligent regarding compliance with legal, regulatory and professional requirements as appropriate. The incorrect completion of a form is, of itself, less serious than what that error betrays, namely either dishonesty or a lack of appropriate diligence regarding such requirements and standards. In my view that was the position here.
- (4) Set against that background I did not consider that the fact that the Appellant had not traded sufficiently mitigated the position: the licence was granted on the basis of the information provided, that information was false and in my view the PA (and Mrs Khara) either knew that to be so or was significantly and improperly careless as to its accuracy.
- (5) I recognised that the impact of this decision may be that the PA will be unable to acquire a licence for 2 years. I noted however

that that is not an absolute rule and that the GLA will consider each case on its own merits and that Mr Khara may, if he considers it appropriate, make a further application for a licence.

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

Dated 1st November 2011.....