THE GANGMASTERS (APPEALS) REGULATIONS 1996

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE GANGMASTERS LICENSING AUTHORITY ON 9 JANUARY 2014

BETWEEN

Roberto Mac Limited

Appellant

And

The Gangmasters Licensing Authority

Respondent

APPOINTED PERSON: Mr V J Adamson

ORAL HEARING

22nd, 29th, 30th June, 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 15th and 17th July 2015

REPRESENTATION

For the Appellant: Mr Martin Budworth, Counsel

For the Respondent: Mr Tariq Sadiq, Counsel

Interpreter (assisting during the evidence of Mr Ceslavs Sarkoviks): Ms Albina (Homer): Language, Russian

DECISION

1. The Respondent's decision to revoke the Appellant's licence is upheld.

REASONS

Introduction

1. Roberto Mac Limited, now in Voluntary Liquidation, is a gangmaster, formally licensed as such by the Respondent. By letter dated 9th January 2014 the Respondent notified the Appellant's solicitor that it revoked the Appellant's licence with immediate effect within which letter it provided its reasons for doing so. By notice dated 18th January 2014 Roberto Mac Limited exercised its right of appeal. By a response dated 21st November 2014 the Respondent replied to the Appellant's appeal.

2. The Respondent was established by the Gangmasters (Licensing) Act 2004 (the Act) whose purpose (as described in its headnote) is "..to make provision for the licensing of activities involving the supply or use of workers in connection with agricultural work...certain processing and packaging; and for connected purposes.". The agricultural work to which the Act applies is that carried out within the United Kingdom. By virtue of Section 4 of the Act a person acts as a gangmaster if they supply a worker to do work to which the Act applies for another person. For this purpose it does not matter whether the worker is under a contract with the gangmaster or is supplied to him by another person, or indirectly under arrangements involving one or more intermediaries (Section 4(1)-(3)). Section 6 of the Act prohibits a person from acting as a gangmaster except under the authority of a licence issued by the Respondent. A licence granted by the Respondent may be revoked where it appears to it that a condition of the licence or any requirement of the 2004 Act has not been complied with. The Act makes it an offence to act as an unlicensed gangmaster or for a person to enter into arrangements with an unlicensed gangmaster for the supply to them of workers (Sections 12(1) and 13(1)(2).

3. Pursuant to the Act the Secretary of State made the Gangmasters (Licensing Authority) Regulations 2005 (the Licensing Authority Regulations), regulation 12 of which provides (amongst other things):

> (1) For the purposes of the exercise of its functions under sections 1, 7, 8 and 9 of the 2004 Act and rules made under section 8, in determining –
>
> (a) the criteria for assessing the fitness of an applicant for a licence or a specified person, and
> (b) the conditions of a licence and any modification of those conditions,
>
> the Authority shall have regard to the principle that a person should be authorised to act as a gangmaster only if an in so far as his conduct, and the conduct of a specified person, comply with the requirements of paragraph (2).

(2) The requirements referred to in paragraph (1) are –

(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. The Gangmasters (Appeals) Regulations 2006 (the Appeals Regulations) provide the procedure for appeals against certain decisions, including revocation of a licence, made by the Respondent. The overriding objective of the Regulations is set out in Regulation 2 of those regulations, namely to enable the appointed person (ie the person appointed to determine the appeal) to deal with appeals justly, and for the appointed person to seek to give effect to that objective exercising powers given to them by the Appeals Regulations and interpreting any provision. Regulation 21 of the Appeals Regulations simply provides that the appointed person shall allow or dismiss the appeal and that their decision is binding on the parties.

5.1 I heard submissions on both parties on the scope of the matters upon which I could take into account in determining the appeal. On the first day when evidence was called but prior thereto, I determined that I would consider anything known at the date the Respondent's decision appealed against was made, which included any document within the bundle which was then before me, there being no dispute that both parties had all copies of all the documents within it. There was also a submission that the hearing should be *de novo*, rather than a review of the Respondent's decision.

5.2 I was referred and had regard to the decisions in *Kavanagh v Chief Constable of Devon and Cornwall* (Weekly Law Reports, May 31st, 1974), a decision involving the jurisdiction of the relevant appellant body under the Firearms Act 1968, which decision was relied on in an appeal made pursuant to Section 100 Road Traffic Act 1988 when the Appellant's (in that case) driving licence had been revoked on medical grounds, in particular at page 766 when the following was said:

> *It seems to me that the Crown Court is in the same position as the court of quarter sessions. The Crown Court is to try cases according to the same rules as the court of quarter sessions used to do. The court of quarter sessions, when trying criminal cases, applied the rules of evidence applicable to criminal cases. But from time immemorial the court of quarter sessions exercised administrative jurisdiction. When so doing, the justices never held themselves bound by the strict rules of evidence. They acted on any material that appeared to be useful in coming to a decision, including their own knowledge. No doubt they admitted hearsay, though there is nothing to be found in the books*

about it. To bring the procedure up to modern requirements, I think they should act on the same lines as any administrative body which is charged with an inquiry. They may receive any material which is logically probative even though it is not evidence in a court of law. Hearsay can be permitted where it can fairly be regarded as reliable. No doubt they must act fairly. They should give the party concerned an opportunity of correcting or contradicting what is put against him. But it does not mean that he has to be given a chance to cross-examine. It is enough if they hear what he has to say.".

5.3 I was referred also to a decision by an appointed person made pursuant to the Appeals Regulations relevant in these proceedings in *Top UK Limited v The Gangmasters Licensing Authority* following a hearing in May 2008 at which both parties to that appeal had agreed that an appeal under the Appeals Regulations "... 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 [Respondent] with regard to the facts.". Counsel for the Appellant sought a hearing *de novo* to which the Counsel for the Respondent initially resisted.

5.4 I informed that I would determine once I had heard all the evidence on those matters I could take into account. The Respondent proceeded on the basis that the hearing would be *de novo*.

6. As the Appeal Regulations enable a gangmaster to appeal against a decision of the Respondent to revoke the licence granted by it, it is thus the Respondent's decision which is being appealed against. Having regard to the guidance in *Kavanagh*, albeit under different legislation, I consider that I must consider anything which is logically probative, including hearsay where it can be fairly regarded as reliable, and anything which the Appellant has had an opportunity of correcting or contradicting in respect of matters put against him. The matters put against the Appellant are those contained in the Respondent's letters notifying him of the revocation of his licence and its reply to his grounds of appeal. Having regarding to the overriding objective I can consider any other matter so far as it is in line with that objective.

7. There was no dispute that the (civil) burden of proof was on the Respondent. The standard of the evidence necessary is commensurate with the allegations, thus the more serious the allegation the stronger and more cogent the evidence must be. I accept the submissions of the Appellant's Counsel that where there is information of good practice and co-operation that is relevant, and if it is discounted or given less weight by the Respondent there should be a good explanation to explain why.

8. I accept the Appellant's Counsel's submission that the licence that is the subject of this appeal is property within the meaning of Article 1 First Protocol Human Rights Act 1998. That Article provides that "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law...".

9. During the course of the hearing the issue of responsibility for the provision of personal protective equipment (PPE) was referred to. The Personal Protective Equipment at Work Regulations 1992 (the PPE regulations) provide that "Every employer shall ensure that suitable personal protective equipment is provided to his employees who may be exposed to a risk to their health and safety while at work, except where and to the extent that such risk has been adequately controlled by other means which are equally or more effective.". It follows that the responsibility for ensuring the provision of suitable PPE rests with the employer.

10. The National Minimum Wage Regulations 1999 are relevant to these proceedings, in particular, Regulations 31, 32 and 36. In respect of the interpretation of those provisions I was referred to the Court of Appeal decision in *Leisure Employment Services Limited v The Commissioners for Her Majesty's Revenue and Customs* [2007 EWCA Civ 92] and have full regard to the entirety of that decision and indeed also the earlier decision of the Employment Appeal Tribunal EAT/0106/06 in that case. There being no dispute between the party's representatives regarding the interpretation of those provisions (whose interpretation I accept), I do not refer to them further at this stage.

11. I had the benefit of written opening submissions from the Appellant's Counsel and written closing submissions from both Counsel, those closing submissions being supplemented orally. I heard evidence on oath or affirmation from: Robert Divkovic, the Managing Director and sole shareholder of the Appellant; Maria Divkovic, the Company Secretary of the Appellant company at the material time; Ceslavs Sarkoviks, employed by the Appellant as a driver, supervisor and Operations Manager between March 2009 to 20th December 2013; Karen Tracey Newell, employed by the Appellant as a Personal Assistant and Office Administrator between October 2011 until December 2013; William Williamson, a Senior Accountant at Sandcroft Management Services Limited and who provided accountancy services between March 2009 until December 2013 to the Appellant, including completing its monthly management accounts; Arturas Kozulas, who was employed by the Appellant on a self-employed basis as a Welfare Officer between May 2012 until October 2013; Maxine Hazel, the owner of Green Ledger which provides book-keeping and payroll services to the Appellant, amongst others, who was responsible for the Appellant's payroll; Nigel Verden Miller Walker, Director and Shareholder of Morris Crouch Growers Limited, a labour user to whom the Appellant provided workers (amongst other labour users); Stephen Lea, an Enforcement Officer employed by the Respondent between 5th November 2012 to date; David Paul Nicks, employed by the Respondent between 2005 and July 2014, at the material time being Head of Policy and Communications, who had responsibility for the Respondent's licensing team; Peter Yensen, formerly employed by the Respondent between September 2007 until October 2014; Roger Dent, employed by the Driver and Vehicle Standards Agency (formerly the Vehicle and Operator

Services Agency) as a Traffic Examiner between December 2005 to date; and Gary Salter, employed by the Driver and Vehicle Standards Agency as a Vehicle Examiner between October 2008 to date. I was presented with a witness statement from Genadijs Gorkins, employed by the Respondent as a Supervisor and Manager between March 2009 until October 2013. I read Mr Gorkins' witness statement but when the time came for him to give evidence he did not attend, the reason being given as commitments to his current employer. Mr Gorkins' witness statement contained evidence which was generally in line with that of the Appellant's other witnesses. Apart from noting the similarity I did not give Mr Gorkins' evidence any particular weight, he not having submitted himself to cross examination. All witnesses provided written statements (Mr Nicks having provided also a supplementary statement) and I had regard to all statements that I read. All witnesses confirmed on oath or affirmation that the content of their statement was true. I was presented with a bundle of documents in 29 volumes consisting of some 9,044 pages; a Respondent's brief issue 26, April 2013 (the Inspection Process). I was referred to a number of other documents during the course of the proceedings and had regard to all documents to which I was referred. Counsel for the Appellant provided a spreadsheet in relation to a number of workers, the date of their employment vis a vis timesheets and other matters. It had not been possible for the parties to agree the content of the spreadsheet and thus I used it as an aide (but no more), referring always to the source documents.

12. After the hearing had opened but before any evidence was given the parties largely agreed a list of issues to be addressed in these reasons. Those issues are as follows:

General

1. *Was there a collateral agenda for the revocation of the Appellant's licence namely (a) political imperatives and/or (b) having investigated the Appellant the Respondent simply refused to countenance not getting a result (the result being the revocation of the licence)?*

2. *The Appellant contends that the relevant issue is – does the evidence show that the Appellant was involved in a systematic and persistent exploitation of workers? The Respondent submits that it does not need to show that this was the case regarding the revocation decision and that is not an agreed issue.*

3. *The Appellant states an issue of – Is revocation a proportionate response to the relevant evidence? The Respondent contends it should be worded – Was the revocation a proportionate response to the relevant evidence?*

Licensing Standard 1.1. – Fit and Proper

4. *Did Mr Sarkoviks, a senior employee of the Appellant, tell a worker Mr Bakanovas to lie to GLA officers during a field visit on 29 January 2013 that PPE was provided, when it was not?*

5. *If so, did this amount to a breach of the Fit and Proper Licensing Standard 1.1?*

Licensing Standard 2.2 – Paying Wages

6. *Were the transport charges that were deducted from workers' wages deducted for the Appellant's own use and benefit under Regulation 31(1)(b) of the National Minimum Wage Regulations 1999?*

7. *If so, did the deductions for transport from workers' wages result in workers being paid below the national minimum wage?*

8. *Did the Appellant's accommodation charge exceed the "accommodation offset" and if so did this result in workers being paid below the national minimum wage?*

9. *Regarding the "Type B" Accommodation was the charge for "additional services" namely TV licence, cleaning communal areas and shopping trips, in respect of the provision of accommodation under Regulation 31(1)(i) of the National Minimum Wage Regulations 1999, and/or for the employer's own use and benefit under Regulation 32(1)(b)?*

10. *If so, did the charge for "additional services" result in workers being paid below the national minimum wage?*

11. *Was the option for "Type B" Accommodation current at the time of the inspection on 15 October 2013?*

12. *Regarding piecework, the parties set out two differently worded issues. The Respondent contends that the correct issue is whether the records disclosed by the Appellant to the GLA to prove that workers undertaking piecework were paid the national minimum wage, sufficient or not. The Appellant submits that the correct issue is whether the Appellant's record keeping was adequate in relation to piecework.*

Licensing Standard 2.4 – Payslips

13. *Did the deductions for transport and accommodation appear on the worker's payslips?*

14. The Appellant contends the issue is – is there any evidence of workers being misled? The Respondent submits that it does not need to show that this was the case regarding the revocation decision and this is not an agreed issue.

Licensing Standard 4 – Accommodation

15. Was the accommodation provided by the Appellant safe for the workers under Licensing Standard 4.1?

Licensing Standard 6.3 – PPE

16. The Respondent contends the issue is – Did the Appellant ensure that adequate PPE was provided to workers and was it provided free of charge? The Appellant contends that the relevant issue is (a) was the Appellant obliged to provide PPE? And (b) did the Appellant comply with Licensing Standard 6.3?

Licensing Standard 6.4 – Transport

17. Were the vehicles used by the Appellant to transport workers in a roadworthy condition and did they carry workers in a safe manner and did the drivers used by the Appellant comply with the rules covering drivers' hours and tachographs under Licensing Standard 6.4? The Appellant contends that a complaint about hours and tachographs was not cited in the revocation decision. To raise it now is permissible if the Respondent takes a position consistent with its position in previous cases that the hearing is de novo; or if the Appointed Person so decides. If the Respondent maintains its inconsistent position and the Appointed Person agrees then an appeal which merely reviews the revocation decision should not consider the complaint about hours and tachographs.

Licensing Standard 8 – Using unlicensed subcontractors

18. Did the Appellant use subcontractors and/or other labour providers who did not hold a current GLA licence?"

13. The relevant Licensing Standards were those made by the Respondent in May 2012. The Respondent's stated approach to the application of its Licensing Standards is that it will adopt a proportionate approach being concerned with identifying "...the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances, unless such non-compliance is "critical" in its own right.". Further, the Respondent informs that it will work closely with other Government departments and agencies. The Standards describe that there may be inspections to assess compliance (as referred to in the Respondents brief, issue 26), albeit that is not what happened on this occasion. The Respondent attributes points to different licence conditions (the conditions being described as standards), some of which are

considered critical and others non-critical. Different points are attributed to each of the conditions, the critical conditions being given a 'score' of 30 points. When following an inspection by the Respondent a score of 30 points or more is assessed, the Respondent's stated position that it will usually revoke the licence. Following the revocation of the licence the Respondent will usually refuse an application for a new licence where it is proportionate to do so if the applicant for the licence proposes a Principal Authority (or any person named or specified in the application) who has been previously found not to be fit and proper, that approach to be applied by the Respondent for at least two years from the date of that earlier decision.

14. The standards relevant to this appeal are: 1.1; 2.2; 2.4; 4.1; 6.3; 6.4; and 8.1. Those standards and the notes which are attached to them by the Respondent are as follows:

Licensing Standard 1:

1.1 Critical: Fit and Proper

The licence holder, Principal Authority and any person named or specified in the licence must at all times act in a fit and proper manner.

Please note

- *The GLA will assess all relevant facts in considering whether a licence holder acts in a fit and proper manner.*

- *The factors the GLA will consider include, but are not limited to, whether the Principal Authority, directors or company officers (where the licence holder is a company), partners (where the licence holder is a partnership), members of the association (where the licence holder is an unincorporated association) and any person named or otherwise specified in the licence has:*

    - *Intentionally obstructed the GLA. This includes preventing an inspection being conducted without reasonable cause,*
    - *...*
    - *Not been candid and truthful in all their dealings with any regulatory body and they have not demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards. This includes deliberately under declaring turnover ...*

Licensing Standard 2: Pay and Tax Matters

...

2.2 Critical: Paying Wages

- *A worker must be paid at least the National Minimum Wage (NMW) or, if applicable, in accordance with the appropriate Agricultural Wages Order (AWO).*

- *Sufficient records must be kept to prove payment of NMW or in accordance with the appropriate AWO.*

Please note

Failure against this standard will lead to the licence being revoked without immediate effect.

...

2.4 Payslips

A licence holder must provide workers with itemised payslips at or before the time when wages or salary is paid.

Please note

The payslip should contain the gross and net amounts of wages or salary and the amounts and purposes of any deductions.

Licensing Standard 4: Accommodation

4.1 Critical: Quality of Accommodation

A licence holder who provides, or effectively provides, accommodation must ensure the property is safe for the occupants.

Please note

- *The accommodation must be maintained in a good state of repair, must contain adequate kitchen, bathroom and toilet facilities for the number of occupants and must not be overcrowded. Any category 1 hazards under the Housing Health and Safety Rating System must be properly resolved.*

- *Furniture and furnishings supplied in the accommodation must comply with all relevant legislation.*

- *Gas installations must be maintained at least annually by a suitably qualified person registered with the Gas Safe Register: www.gassaferegister.co.uk. Copies of the annual gas safety check must be given to all occupants or prominently displayed in the property. If such a person has said that remedial actions are needed to make the installation safe, this remedial work must be undertaken as soon as possible by a suitably qualified person.*

- *Electrical equipment, including the fixed wiring and any appliances, must be safe and properly maintained.*

- *The GLA will take a proportionate view in deciding on whether to fail this standard for minor infringements or easily fixable issues.*

- *A licence holder will be considered as providing or effectively providing accommodation in all the following circumstances whether or not the accommodation is let by the licence holder or a third party:*

    - *The accommodation is provided in connection with the worker's contract of employment,*
    - *A worker's continued employment is dependent upon occupying particular accommodation, or*
    - *A worker's occupation of accommodation is dependent upon remaining in a particular job.*

...

- *Failure against this standard may lead to a licence being revoked with immediate effect.*

Licensing Standard 6: Health and Safety

...

6.3 Safety at work

A licence holder must co-operate with the labour user to make sure that:

- *Adequate and appropriate Personal Protective Equipment (PPE) is provided. Employees and workers who would be legally regarded as employees for health and safety purposes must be provided with PPE without charge,*

- *Adequate arrangements have been made to provide welfare facilities (sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and consuming food and drink) where it is reasonably practicable to do so or if it is legally required, and*

- *Adequate arrangements have been made for first aid and the recording and reporting of reportable incidents at work.*

Please note

- *A licence holder must not ask for payment for PPE from employees and workers who would be legally regarded as employees for health and safety purposes. This includes seeking refundable or non-refundable deposits.*

...

6.4 Critical: Transport

- *A vehicle used by the licence holder to transport workers must:*
  - *Have a valid vehicle licence (tax disc),*
  - *Have an applicable MOT certificate if required,*
  - *Have appropriate insurance, including cover for all circumstances of hire or reward regardless of the size of the vehicle,*
  - *Be in a roadworthy condition and have no obvious or identifiable defects, and*
  - *Carry workers in a safe manner.*

- *A licence holder who operates vehicles with 9 or more passenger seats used for hire or reward must:*
  - *Have a Public Service Vehicles (PSV) Operator's licence, and*
  - *Have documentary evidence that the vehicles are registered and maintained as PSVs and have a Certificate of Initial Fitness.*

- *A driver used by the licence holder to transport workers must:*
  - *Hold a valid driving licence,*
  - *Have Passenger Carrying Vehicle (PCV) entitlement and driver Certificate of Professional Competence if driving a vehicle with nine or more passenger seats used for hire or reward; and*
  - *Comply with rules covering drivers' hours and tachographs.*

Please note

- *In assessing whether a vehicle has "obvious or identifiable" defects, the GLA will apply a common sense test of whether the vehicle is clearly unsafe, for example, without seatbelts or with unsafe seats and doors.*

- *The GLA will take a proportionate view in deciding on whether to fail this standard for minor infringements or easily fixable issues.*

- *Failure against this standard may lead to a licence being revoked with immediate effect.*

Licensing Standard 8: Sub-contracting and using other Labour Providers

8.1 Critical: Sub-Contracting and Using Other Labour Providers

A licence holder must only use a sub-contractor and/or other labour provider who holds a current GLA licence.

Please note

- *It is a criminal offence to use an unlicensed gangmaster under section 13 of the Gangmasters (Licensing) Act 2004.*

- *Failure against this standard may lead to a licence being revoked with immediate effect.*

- *The standard will not be failed if the licence holder has complied with the Reasonable Steps guidance or the GLA's Active Check process for verifying that the sub-contractor or other labour provider is licensed, and has retained documentary evidence of such compliance to establish a statutory defence.*

The Facts

15. The Appellant is owned by Mr Divkovic (who is the Principal Authority in respect of the licence granted to that company) and has been in operation since 2006 within the area of work covered by the Act. For two seasons during 1989 and 1991 Concordia Consultancy, who administered a Seasonal Agricultural Workers Scheme, employed the Claimant in the role of administrator with Morris Crouch Growers Limited, an agricultural business based in Manea, Cambridgeshire. In 2000 Mr Divkovic again worked for Morris Crouch Growers Limited in the administration of students working for that company through Concordia. In 2005 Mr Divkovic incorporated the Appellant company which operated in the business of supplying labour not only to agriculture but to other sectors. At

the time the Respondent suspended the Appellant's licence (and so far as material to these proceedings) the Appellant company had approximately 760 workers registered with it, with approximately 400 working on any one day.

16. During 2013 the Respondent and police gathered information relevant to their functions in the Fens. Rising out of this information an operation took place jointly led by those two bodies, named Operation Endeavour, focussing on the criminal activity of unlicensed gangmasters operating in the Fens and surrounding area. The operation also encompassed the activities of licensed gangmasters to whom the Respondent and police believed unlicensed gangmasters were supplying labour. Enquiries made during the operation included into the question of whether the Respondent's licensing standards were being complied with, albeit the investigation was principally a criminal one.

17. On 15th October 2013 the police and Respondent working with other agencies conducted an "executive day of action" in respect of Operation Endeavour, during which the Appellant's licence was suspended. Another licensed gangmaster also had its licence suspended on the same day and subsequently revoked. That licensed gangmaster and two unlicensed gangmasters were subsequently charged with and convicted of criminal offences in respect of using the services of unlicensed gangmasters or operating as unlicensed gangmasters respectively. No criminal proceedings have been brought against the Claimant.

Licensing Standard 6.4 – Transport

18. Mr Divkovic placed reliance on his Transport Managers for technical matters, but did not call either of his two former Transport Managers as witnesses, nor the auditor he had employed to carry out audits of his transport operation. While Mr Pamment (the Appellant's first Transport Manager) may (I do not say, does) have "an axe to grind" there was no suggestion that either Mr Betts (the Transport Manager employed immediately before and on the executive day of action) or Mr D Sterman (the Appellant's auditor) did nor was there any reason why either, in particular Mr Betts, could not give evidence.

19. The Appellant (who had the necessary Operators Licence) has a fleet of 24 buses, 5 of which were used (for a time) in Cornwall and 19 in Cambridgeshire, Lincolnshire and Norfolk. Ten of the vehicles had the benefit of a Licence for Transport as Public Service Vehicles (other vehicles being minibuses which did not require such licences). The vehicles were used by the Appellant in transportation of workers as part of his business. The Appellant has a workshop in March and outsourced other work to a local accredited garage as and when necessary. In August 2013 the Appellant purchased a garage with an MOT centre.

20. Following a breakdown in the approved vehicle maintenance procedures an inspection was carried out by VOSA on 24th June 2013. This

investigation was not instigated by the Respondent. The outcome was that a prohibition notice was issued for, amongst other reasons, "gaps in the Appellant's inspection cycle; reported faults not endorsed as repaired; seatbelts reported as inoperative not repaired until the next inspection; while there was a driver defect system in place only very small reported defects for certain vehicles had been made; many of the defects expected to have been reported had not; and a prohibition on a licence had been reported as fixed but had not. On that occasion three public service vehicles were inspected, of which one was found to be defect free, one (which had just returned from a journey) had faulty seatbelts, and the third had a rear exit door which did not latch effectively. On the day of that inspection a driver was observed to park a vehicle and hand to the Transport Manager (Bob Betts) a defect sheet for the day indicating no defects despite a defect being immediately visible. An inspection of the vehicle found two further defects of longstanding, neither of which had been reported. In his August report following that inspection Mr Salter recited that in addition to prohibition notices issued in respect of minibuses (which were not detailed), during the previous two years the Appellant had been issued with five prohibition notices effective immediately. Of the five prohibition notices issued within the two years prior to 24th June 2013 which had immediate effect, all related to matters of safety. For example, on 17th May 2013 defects with a direction indicator; on 22nd June 2012, a tyre was seriously underinflated. In respect of non PSV vehicles probation notices had, to Mr Salter's knowledge and which I accept, been issued in respect of vehicles which amongst other defects had: fuel leaking in the engine area; an obligatory seatbelt being inoperative; load sensing valve linkage being defective and unable to function as intended together with excessive movement in the steering joint; a seatbelt being dangerously defective and likely to inflict injury; a driver's seatbelt being defective; tyres being worn below the legal limit; and insufficient parking brakes.

21. While Mr Salter reported that a visit in January 2013 was satisfactory, he also recorded that in the previous two years the 'prohibition rate' for road side inspections was 66% and the fleet check 'prohibition rate' was 42%. During Mr Salter's inspection he discovered that the vehicle inspection frequency had on occasion been extended without agreement from six weeks as approved to 12 weeks.

22. On 15th October 2013 (the executive day of action) Mr Salter conducted an inspection of the Appellant's vehicles. Defects were found which Mr Salter considered to be excessive, including abnormal movements in steering joints; seatbelts being inoperative; an exhaust being significantly insecure with detachment being imminent; low engine oil; anti roll bar pivot/linkage being significant secure; an absence of brake fluid in a hydraulic brake reservoir; a seatbelt being inoperative; a door that could not be retained in a closed position; and rear doors tied shut with string. The vehicles which were inspected by Mr Salter, with one possible exception, were all being used for the carriage by the Appellant of (many of) its workers.

23. Eight prohibition notices that were effective immediately were issued. Work was subsequently carried out on those vehicles to correct the defects but it has not been suggested that the prohibition notices were inappropriately issued. I am satisfied that adequate lighting was available for Mr Salter to carry out his work, notwithstanding the fact that it took place in the early hours of the morning.

24. I am satisfied that the vehicles used by the Appellant to transport its workers as referred to above and as described by Mr Salter in his report, were not in a roadworthy condition and had obvious or identifiable defects such that they were unable to carry workers in a safe manner. The Appellant had the benefit of a qualified Transport Manager, who would be able to ascertain the defects which would not be obvious to a lay person. In any event, some of the defects would be obvious to a lay person.

25. The Appellant's Supervisors understand the regulations regarding drivers' hours. The Transport Manager Mr Betts understood the relevant regulations. All the Appellant's drivers were informed of the restrictions on their driving hours and the requirements to keep appropriate records. On 17th May 2013 an employee of the Appellant, Josef Smagacz, had begun his day's work at 5.05 in the morning with only a rest period of eight hours before that time, rather than the minimum of nine. Mr Smagacz was issued with a prohibition notice by Mr Dent on behalf of VOSA and informed through an interpreter that he must not work for the next nine hours. Mr Smagacz did not comply with the prohibition notice. That was not the first breach of the legislation regarding driver's hours by Mr Smagacz, who had been given oral and written warnings previously, and whose supervisors had been informed. The previous year the Appellant's Auditor, Mr Sterman, had reported to Mr Divkovic deficiencies within the Appellant's record keeping in respect of vehicle usage and driver's hours, and that the mode switch was not being used appropriately.

26. Mr Dent of VOSA obtained tachograph charts from the Appellant and compared those to timesheets and other documentation. The documents for ten drivers were analysed. Of a total of 50 charts, 12 revealed no issues, thus the failure rate was 76%. I accept Mr Dent's evidence that the majority of the problems involved the Appellant's worker's driving its vehicles containing fellow workers, those 'driver workers' then working in the factory or field during the day, and then to driving the workers back at the end of the day. The work that the 'driver workers' were doing during the day was not recorded on the tachograph charts as required. This supports the information Mr Betts provided to Mr Sterman on 24th May 2013 namely that Mr Smagacz was not the only driver to do this.

27. The Appellant did not have an effective system in place in order that checks could be made in respect of the tachograph charts and the worker's hours. While it is the responsibility of the driver not to drive in a dangerous manner or to breach the regulations regarding driver's hours and completion of tachographs, it is also the responsibility of the Appellant, and in particular, it is the Respondent that allocates all the work.

Considering the information provided by Mr Sterman in his 2012 audit report, Mr Betts' correspondence with Mr Sterman and the evidence of Mr Dent, I am satisfied that a number of the drivers did not take the breaks required by the Road Transport (Working Time) Regulations 2005. That of itself does not mean that the drivers were driving dangerously, but it does increase the risk of accidents.

28. Some workers described Mr Sarkoviks as driving dangerously. Mr Sarkoviks, unsurprisingly, disputes that description. The workers who described Mr Sarkoviks' driving had been driven by him in Cornwall. Without further information it is impossible at this distance in time, and without knowing more, to find it established that Mr Sarkoviks drove dangerously as alleged.

29. There is no dispute that one driver employed by the Appellant had been caught driving while under the influence of alcohol and beyond the legal limit while carrying the Appellant's workers. Further there is no dispute that the Appellant discovered and prevented another worker allocated to drive from driving when it was discovered that he was under the influence of alcohol. While the Appellant did initially provide a breathalyser kit to the Transport Manager, that was stolen and it would appear not replaced. There appeared to be no system in place to monitor or check for this type of situation. I am satisfied that the driver who was caught driving under the influence of alcohol would have been the subject of disciplinary proceedings had he continued in the Appellant's employment (he left). While the Respondent considers that a driver driving under the influence of alcohol is a contravention of condition 6.4, I note that the first bulletpoint of the condition relates to the vehicle itself and it is the third bulletpoint which relates to drivers and then only in a limited manner. I find that the fact that one of the Appellant's workers drove one of its vehicles carrying the Appellant's workers while over the legal limit does not fall within condition 6.4, no matter how serious the matter.

30. Having regard to the condition of the Appellant's vehicles' roadworthiness and the detrimental effect on the safe carriage of passengers, the failure by the Appellant to ensure that its workers complied with the rules covering drivers hours (which appeared to be a continuous state of affairs), and bearing in mind both the size of the Appellant's vehicle fleet and the number of workers potentially involved, I consider this matter to be extremely serious. (See also the report to the Appellant by Jeremy Boot referred to elsewhere within those reasons in respect of Licensing Standard 6.3)

Licensing Standard 6.3 – Personal Protective Equipment

31. The Appellant's standard terms and conditions of business require that it is its client's responsibility to provide PPE to the Appellant's workers. I heard evidence on this issue in respect of the provision of PPE from around the end of 2012 onwards. Mr Vytautas Jablonskis made a statement in August 2013 that around December 2012 he carried out some work for the

Appellant, did not receive nor was offered any protective clothing for working in the fields, and that he and his co-workers all understood that they to provide their own, albeit no one told them that. Ms Smirnova Skaidrite arrived in the UK on 10th October 2013 and began work that day on a rig processing leeks for the Appellant, as she did until the Executive Day of Action. Ms Skaidrite informs in a statement made on 16th October 2013 that she was not provided with any PPE and understood that she would have to pay for her own. Ms Skaidrite did not inform that she had been required to pay for her own, nor that any was necessary. Mr Divkovic's position is that while working on a rig processing leeks workers carry out their task inside a tent and so are protected from inclement weather; I accept that to be the case as far as Mr Divkovic's statement goes. Mr Ilgonis Pless in a statement made on 16th October 2013 informed that in early October he was taken to a field by Mr Sarkoviks without being given a chance to get changed and thus he got dirty. Mr Pless, who had previously been carrying out duties for the Appellant, does not state whether he had PPE. Ms Inara Prole in a statement made on 16th October 2013 informed that she arrived in the UK on 3rd October 2013 and complained that coats provided were non-waterproof and, unlike some other equipment provided, unfit for purpose. Ms Rita Muzijenko in a statement made on 16th October 2013 who described her occupation as "leek picking" informed that she was provided with £30 by the Appellant to purchase wellingtons and a duvet and was not told what she would have to pay back. Many workers and indeed the Appellant provided evidence that they were provided with money by the Appellant to purchase wellingtons, albeit one did report to the Respondent that he had been required to sign an IOU. Ms Dzintra Liepina in a statement made on 15th October 2013 informed that no PPE had been provided to her.

32. In respect of these workers, the Appellant's case is that as Mr Jablonksis was working in fields picking leeks (and thus was protected from the weather, but would have been provided with waterproofs if the weather was wet). Mr Jablonksis' evidence was also that while picking leeks the workers worked on a rig and thus did not need waterproofs. His evidence is thus confusing. With regard to the time of year when workers were picking leeks it appears more likely than not that PPE should have been provided such as was necessary to protect the workers from the elements (albeit they would be protected from the elements when inside the tent). Considering also the evidence of Mr Divkovic I am satisfied that Mr Pless was required to carry out work outdoors without being provided with PPE by anybody. The Appellant's evidence is that Ms Liepina was picking strawberries in a field and would have been provided with a high visibility jacket and cap by the Appellant. I accept Mr Divkovic's evidence that it is unclear whether Ms Liepina would have understood that that clothing was the relevant PPE. I did not hear any specifics about the PPE Ms Liepina informed that she had not received.

33. One person who made a statement on 16th October, Ms Nina Culkova, informed that she had arrived in the UK on 9th October, had worked in a field for three days and owed £10 for a uniform and £35 deposit for a

house. I am not persuaded that the Appellant charged deposits for accommodation and in those circumstances although the reference to £10 could be a charge for PPE, it could also be for something else. I do not give any weight to Ms Culkova's statement.

34. Mr Aigars Petrevics in a statement made on 16th October 2013 informs that he informed that he arrived in the UK on 11th October and was given a £10 advance in order to purchase suitable clothing to do his job, that being trousers and a waterproof jacket. £10 is insufficient to purchase items of the type Mr Petrevics described. Mr Petrevics also informed that he was provided with gloves by the Appellant. Having regard to the Appellant's practice of providing funds for workers of around that sum to purchase wellington boots I place little weight on Mr Petrevics' statement.

35. Ms Everita Kalnina in a statement made on 16th October 2013 informed that she worked picking strawberries and was not provided with any PPE to protect against sun, cold or wet, and had to provide her own. Although the person taking Ms Kalnina's statement on 16th October made notes regarding PPE which were inconsistent with each other, in her reception centre screening interview she gave clearer information.

36. In a statement made on 13th June 2013 Mr Donatas Perminas said that he worked picking daffodils in Cornwall for the Appellant in the first week of March 2013 and that he was not provided with gloves or any other PPE, further that after the first day it rained and that on the Thursday of that week he finished his work at 1pm because it was raining heavily, was soaked and did not have any waterproofs. Mr Perminas further informed that, when he spoke to Mr Sarkoviks he was informed by him that he did not have any waterproofs and (Mr Permi) could buy his own.

37. Mr Silvestras Polinauskas in a statement made on 16th July 2013 informed that the agency with whom he arranged to obtain work in England (which was for Roberto Mac) informed him that he had to provide his own waterproof suit and boots. Mr Polinauskas also worked in the first week of March 2013, was warned by Mr Sarkoviks of daffodil rash and that those people who did not have boots and waterproof clothing and gloves should purchase them themselves, further that some of the workers who did not have waterproofs but worked became soaked.

38. In a compliance assurance report prepared by Jeremy Boot for the Appellant following visits on 11th and 19th April 2012, Mr Boot produced a report within which he addressed a number of matters. During his inspection he discovered that the workers (who were working in a field) had to provide their own wellington boots or other footwear. Further, that workers were paying 40p for protective gloves. In respect of this matter, Mr Boot advised the Appellant "It does not matter who pays for PPE: the worker does not". A further matter discovered was that one of the workers worked on a rig during the day and was also a driver of a vehicle with 9 passengers or more. Mr Boot provided guidance on the relevant legislation and recommended that care be taken to ensure that drivers

take the required breaks. I did not hear these workers were being charged for protective gloves after this report.

39. Mr Nerijus Sukys in a statement made on 15th April 2013 provided information about the lack of PPE by the Appellant. Mrs Evelina Sukine made a statement about the same matter on 22nd March that year and on a date unknown so did Mr Konstantinas Bakanovas. In his statement Mr Bakanovas informs that he arrived in England on 28th January 2013 and when working for the Appellant in Cornwall that month despite it raining, was not provided with PPE. Mr Bakanovas also informed that during the morning of his first day of work Mr Sarkoviks, who had "come back from somewhere", told him to go to the minibus and stay there, explaining that people were coming to check and he didn't have waterproofs: this Mr Bakanovas did and had a drink of coffee. Mr Yansen spoke to Mr Bakanovas, albeit Mr Yansen informed in his witness statement that he had been informed that Mr Bakanovas had been working for four weeks. Mr Bakanovas informs in his statement that when he was asked whether he had any waterproofs he responded that he did and pointed to them on the seat as, he stated, Mr Sarkoviks had instructed him to do. In this conversation Mr Bakanovas informed that Mr Sarkoviks was beside him talking to another inspector. Mr Yansen's evidence is that he spoke to Mr Bakanovas alone. Mr Bakanovas further informs that he heard an inspector ask Mr Sarkoviks if he had wellingtons and waterproofs for people, whereupon Mr Sarkoviks opened the rear door of the minibus and showed wellingtons and the waterproofs that were there. Mr Bakanovas states that he remained in the minibus for an hour to an hour and a half until the inspectors left.

40. Mr Sukys in his statement describes this incident as Mr Bakanovas' approaching him and being informed by Mr Bakanovas that he had been told by Mr Sarkoviks to stay in the minibus because he did not have any waterproofs and wellingtons, and that he then saw Mr Sarkoviks leave with the minibus, return soon after, and give Mr Bakanovas some wellingtons and somebody's waterproofs. Mr Sukys reported that there never had been any bags with wellingtons and waterproofs and they had never been offered to people. I note that this was the first day that Mr Sukys had worked for the Appellant.

41. In her statement Mrs Sukine does not inform that waterproof clothing was not provided when she attended for work on the first day.

42. Although the Appellant was not informed of this matter until December 2013, Mr Divkovic now accepts that Mr Bakanovas probably was present. I am satisfied that Mr Bakanovas was present when Mr Yansen visited the Respondent's site in Cornwall as he describes. Mr Bakanovas had a company registration number as he describes on the day of the inspection. Mr Divkovic was clearly not present on the occasion when Mr Yansen spoke to Mr Bakanovas and Mr Yansen at the time would not know whether Mr Bakanovas was being truthful. Mr Sarkoviks has no

recollection of Mr Bakanovas or the matter and unsurprisingly denies any lie to the Respondent's inspectors.

43. That Mr Sarkoviks is alleged to have lied to Mr Yansen is extremely serious and has potentially very serious consequences regarding the Appellant. I would not expect statements taken some months after the event from different people to be identical. It appears from the evidence that Mr Bakanovas carried out some work for the Appellant but was not paid. Mr Bakanovas describes in his evidence that he and a number of others were not provided with PPE and yet he is the only one who is described as being sent back to the minibus before the inspection took place (I bear in mind that Mr Yansen reports seeing three workers in the field working without waterproofs). Further, however, Mr Sukys describes Mr Sarkoviks providing Mr Bakanovas with wellingtons and waterproofs before the inspection and yet Mr Bakanovas reports that he remained in the minibus for an hour and a half. Mr Bakanovas was on his first day of employment for the Respondent after having recently arrived from Lithuania. As such I recognise that Mr Bakanovas would be likely to be pliable and may say to the Respondent's inspector what he had been instructed to say, irrespective of how close or distant Mr Sarkoviks was from Mr Yansen.

44. There was a consistent pattern by the Respondent of requiring workers to bring their own waterproof clothing when coming from abroad, but also of providing some money or, on occasion, secondhand wellington boots. Considering all the matters, I find that the workers in Cornwall in early 2013 were not automatically provided with Personal Protective Equipment by the Appellant during the period of the inspection, even though they needed it, and in March I further find that gloves were not always provided for daffodil picking when they should have been.

45. The Appellant did provide some money for PPE in particular for wellington boots to some of its workers. Similarly the Respondent did purchase and have in its possession waterproof clothing. I am not persuaded, however, that there was any methodical system in place to ensure that the Appellant's workers had appropriate PPE suitable to their work.

46. In respect of more recent events, the statements taken in October 2013, and considering my finding before regarding the breach of the conditioning during the period it was operating in Cornwall 2013, I find it more likely than not and so find that the Respondent further broke the standard in October 2013. I am not persuaded to the contrary by the Appellant's standard documentation that PPE workers had signed (and often boxes ticked) to say that they had received PPE irrespective of the description of that PPE or the tasks for which they were required, particularly when some of those workers confess not to understand the language within which the forms were written (English). There is no dispute that many of the workers did not have fluent English.

Licensing Standard 1.1 – Critical, Fit and Proper

47. In respect of the allegation regarding a breach of standard 1.1, I do not find it established that Mr Sarkoviks instructed Mr Bakanovas to lie to an inspector of the Respondent on 28th January 2013. Even if Mr Bakanovas had, and despite the fact that he was a senior manager in the Appellant's employment at the time, he was never the licence holder, Principle Authority or, so far as I heard, any person named or specified in the licence.

Licensing Standard 2.2 – Paying wages and Licensing Standard 2.4 – Payslips

48. Pursuant to the National Minimum Wage Regulations 1999 an employer cannot treat certain deductions as part of wages for calculation of the National Minimum Wage. The Appellant provided a facility for its workers to use its transport from a number of pick up points to and from their place of work. When the workers used this facility they were charged £3 per journey which, in the case of workers who were paid via BACS, was deducted from their wages before these wages were paid into their bank accounts. Those sums deducted cannot be included in the sums paid by the Appellant to those workers when calculating whether they have been paid the National Minimum Wage. Workers who used the Appellant's transport signed or otherwise indicated on a document whether they had used transport on a particular day and the sums which were then attributable to that journey were retained by the Appellant, rather than paid into the workers' bank accounts (a separate system was in place for those workers whose wages were paid in to their FirstThere card (about which more below). It follows that the workers paid via BACS never had the benefit of that money. Mr Boot in his April 2013 report to the Appellant (at page 9, bundle 19 – 5788) stated in the context of any such deduction that "Such deductions for low-paid workers if it reduced their National or Agricultural Minimum wage would be illegal." The deduction of the transport charges before the workers were paid was for the employer's benefit as he was paid and paid promptly, apart from any benefit there would be to the worker. I accept the evidence of Mr Nicks that during a telephone conversation between himself and Mr Divkovic on 20th December 2013 Mr Divkovic informed that he should not have made these deductions from his workers' wages where BACS was the method of payment, and that he did it that way because it was cheaper to do than direct debit. The numbers of workers affected by this practice was considerable, ranging for example from 72 – 50 in number for each of the weeks between weeks 5 and 8 in 2013.

49. A number of workers had their wages paid into the FirstThere card system. The FirstThere system is a card based system which has the benefit that the workers do not need to have a bank account and can use the card as if it is a debit card against funds which have been paid on to it. Those workers who used the FirstThere system would have their wages paid on to the card and, the records indicate, the payments for transport would

then be removed very shortly thereafter. Both payments were in the evening. The workers effectively did not have access to those monies which were to be transferred away from the card (because of the time of day the payments were made and the short intervening period before they were then transferred). Without hearing more about the operation of the FirstThere system and because, in the absence of any information to cast doubt on it, I accept Mr Divkovic's evidence that he had no involvement in the way it operated, I do not find that those transferred payment sums were within the meaning of Regulation 32(1)(b) National Minimum Wage Regulations 1999.

50. Many of the Respondent's workers, in particular those who did not have bank accounts, were paid through the FirstThere system. While not all the Appellant's workers used its transport, many did. Many of the Appellant's workers were new to this country, some very new, and their places of work distant from where they lived (or effectively had to live until those that did established themselves), and of course many lived in rural locations. When added to these facts many of those workers did not have fluent English and would be unable to source alternative means of transport, I find that many workers were effectively obliged to use the transport the Appellant provided and thus in those circumstances for those workers their payments for transport were payments which fall within Regulation 34(1)(a) National Minimum Wage Regulations 1999.

51. The National Minimum Wage was also not paid to a number of other workers because they paid fees for accommodation in excess of the 'offset' amount prescribed for at the relevant time by Regulation 36 of the National Minimum Wage Regulations 1999. I accept the Appellant's evidence that the period when this took place was between July 2012 and the end of September 2013. While Mr Divkovic's evidence was that this arose because of a contract it acquired, that does not provide any acceptable reason for deducting excess sums from the Appellant's workers wages. The excess sums deducted was the difference between the offset rate at the material time and the rate charged was a little over £10 per week. The Appellant provided accommodation to some of its workers under two licence arrangements during this period, namely a (the statutory offset maximum level) and a type B (at £45). The only additional matter provided for in type B that was not otherwise provided was a "free shopping trip", the value of which was about £4-5. Both type agreements provided for the cleaning of communal areas and for a television licence.

52. The workers affected by this were as described by Mr Nicks in his evidence. These workers did not receive the National Minimum Wage.

53. A number of workers stated in their statements that they did not believe they had received the correct remuneration when they were paid piecework. Mr Divkovic provided an explanation for the Appellant's system which included a calculation of the amounts earned by each team (when the workers worked in a team) and produced documentation showing those calculations endorsed by one of the team members. On

the balance of the evidence I am satisfied that sufficient records were kept to prove payment of the National Minimum Wage or appropriate Agricultural Wage to those workers who were paid piecework.

54. There was no dispute that the Appellant did not itemise on its worker's payslips any transport charges it imposed. In respect of those workers who were paid by BACS this was a deduction which was required to be identified. Similarly there was no dispute that the Appellant did not identify on the relevant workers' payslips any deduction in respect of type B licence agreements. These are admitted breaches of licence condition 2.4. To the Tribunal Mr Divkovic informed that the reason for this was because of advice he said that he had received from HMRC and he had to decide whether to comply with national legislation or the licence conditions. This is despite advice from his own auditor, Mr Boot, as referred to before. Ms Hazel informed that during a visit to the Appellant's premises in June 2013, Mr Lee had agreed that this procedure was appropriate. Mr Lee denied making any such statement. I consider it inherently unlikely that the HMRC, insofar as it may have provided some form of informal advice during a discussion or Mr Lee would have advised as Mr Divkovic asserted, particularly in light of the fact that at no time did I hear that Mr Divkovic had ever discussed the matter with the Respondent between receipt of Mr Boot's April 2012 report or the meeting in June 2013.

55. Workers are entitled, and need to know, the sums they earn and when there have been deductions from those sums, what they are for. This is particularly the case when workers are vulnerable. Many of the Appellant's workers were. Having regard to the situations in which a number of the workers found themselves who were affected by this practice, these two breaches both separately and together are not minor matters. The breaches are serious.

56. It was submitted by the Respondent's Counsel that in considering Regulation 31(1)(i) and its inter-relationship with Regulations 32, 33 and 36, that the phrase "... provision of living accommodation by [the Appellant] to the worker..." must include accommodation provided to the Appellant's workers, through the Appellant or Mr Sarkoviks, but not owned by the Appellant itself. I have regard to the guidance referred to within the bundle (14-4176 A-B) but more particularly that of the Department for Business, Innovation and Skills, February 2015, in particular pages 25 and 26. The evidence showed that in respect of those people they were required to pay an amount in excess of the accommodation 'offset'. Payment of such sums is not unlawful but the sum beyond the 'offset' amount reduces the worker's pay for minimum wage calculation purposes. I do not hear evidence, however, that the workers in the accommodation, and I have regard to Mr Sadiq's submissions at paragraph 51, were paid or liable to be paid to the Appellant. I do not consider therefore that these payments beyond the offset are relevant to licensing standards 2.2 or 2.4. I do not consider them further in respect of this issue.

Licensing standard 4

57. The Appellant provided accommodation for its workers in premises known as "The Cottage" and "Mudds Farm" at Wisbech which it rented. Neither on 15th October nor at any time since Mr Lee visited the premises in August 2013 did the Respondent inspect the premises. After 15th October the Appellant cleaned the premises and sent pictures showing them to be in a clean condition to the Respondent. There is a dispute as to the extent of that cleaning but I accept that there would be a need for some cleaning and tidying of the premises. As it was, the workers were not allowed to return to them. Following the Executive Day of Action some workers sought to return to the Mudds Cottage or the hostel but were not allowed to do so. As referred to above, in August Mr Lee attended the Appellant's property and save for excretia on the wall of the toilet that appeared to have been there for some time, considered that the living quarters appeared to be habitable. Mr Lee did not however carry out a detailed inspection. On the basis of the excretia on the wall of the toilet and the documents provided by the Appellant's contractors who carried out repair or maintenance work at the premises (about which more below), I am not persuaded that the Appellant's welfare staff, namely Messrs Kozulas or Lawrence's evidence regarding the premises is wholly reliable. There was also confusion between Mr Divkovic and Mr Kozulas about how often the latter inspected the accommodation, Mr Divkovic saying once a week and Mr Kozulas saying every day. Having regard to the reports of the electricians about the electrical defects and heating inefficiencies, I am not persuaded that Mr Kozulas' inspections had any thoroughness, insofar as he made any.

58.1 The Appellant obtained a House of Multiple Occupation licence for the cottage. There is confusion on the face of the licence, it being for five years from 24th February 2009, but stated to expire on 23rd February 2013. In the event it now transpires that the relevant local authority do not consider there is a need for HMO licences in respect of property of the type for which the licence was granted. That said, on 19th July 2013 the Norfolk Fire and Rescue Service reported to the Appellant that on the day of that body's visit on 10th July that year the fire safety arrangements at the Cottage were generally of a good standard, albeit it identified two areas which required improvement. No action was proposed to be taken by that Authority. Appropriate PAT testing in respect of appliance produced satisfactory results.

58.2 Works of maintenance and repair were commissioned by the Appellant. Such works were necessary, as demonstrated by invoices received from a number of contractors. On 21st December 2012 contractors visited the hostel as the heating was not working "again". The invoice describes checking relevant parts of the system, concluding that the heaters were not heating up 'again' as they should because of their condition and age "as previous report to [the Appellant]". The consequence of these defects described by the contractor was that the occupants of the hostel were putting their clothes and boots on the heaters as there was nowhere else

to dry the clothes. The premises at the time were described as being in a dirty condition.

58.3 On 23rd April 2013 the same contractors visited the Cottage, assessed the installations within it, and reported many as suitable for continued use. Ten items were identified however as requiring immediate action, including: an oven door being broken and taped up; handles broken and a hot plate control switch missing leaving a hole expiring live terminals; electrical fault on a hob circuit; smashed socket behind the microwave in the kitchen; socket under the sink had the plug top welded form the washing machine; a towel rail heater in the shower area was broken leaving exposed cables; various night storage heaters were in poor condition with controls missing leaving holes exposed to live terminals; there were exposed terminals in an upstairs cloakroom, and other matters. Further matters were recommended for repair.

58.4 On 11th October 2013 at the Appellant's request its electrical contractors visited the hostel and cottage to remove a padlock from the night storage heater fuseboard, reset the timers, removed faulty heaters and turned the heaters in the hostel on. A note was placed on the invoice that most of the night storage heaters were in poor condition and required replacing.

58.5 On 29th January 2015 the electrical contractor wrote a letter addressed to "To whom it may concern" referring to the December 2012 inspection and the concerns expressed therein regarding health and safety issues. This was explained by the contractor as having concerns for its employees having to work in dirty conditions at the hostel, such conditions being described as bedrooms being untidy, dirty and with uneaten food. The contractor did not attend to give evidence and the 2015 letter does not to my view explain the comments made in respect of the December 2012 inspection. Within his January 2015 letter the contractor takes the opportunity to describe the communal areas, showers and toilets as being clean but also informs that it regularly had to attend to replace broken or misused electrical fittings in the bedrooms, and that the night storage heaters were regularly repaired in the bedrooms due to defects caused by the tenants. Although within this letter the contractor described the need for repairs to the heaters caused by the tenants placing wet clothes on them, this omits the content of the notes on his invoices about the deficiencies to the heaters. I did not place any weight on the contractor's January 2015 letter insofar as it conflicts with the content of the invoices he issued in respect of his company's visits as described above but must note that if he had reason for concern for his workers when they were working in the accommodation, the cause of his concern would be at least equally relevant to those living there. I do not accept Mr Divkovic's assessment of the contractor's comments on the invoices as the contractor seeking to persuade Mr Divkovic to carry out work that was unnecessary. I do remind myself, of course, that the cottage and the hostel were rented by Mr Divkovic from Morris Crouch Growers Limited.

59. I was provided with reports from Neil S Force Environmental Services (pages 7371 – 7379). Those reports appear to relate to the agricultural business conducted by Morris Crouch Growers Limited rather than the premises let to the Appellant and occupied by the Appellant's workers. Nowhere in those reports or the others referred to by Mr Divkovic within his evidence is there evidence of any report of any report clearly or specifically regarding the hostel or the cottage.

60. A number of people provided statements shortly after the day of action which described the accommodation at the cottage and the hostel in poor terms. In addition to the statements that the premises were dirty, there was a common theme of broken beds (it was not said that there were insufficient beds that were not broken), dirty carpets (Ms Skidrite and Mr Alyeksyeyev), a lack of hot water (Mr Pecalis alleging there was no hot water for four days) and bed bugs (Ms Prole, Ms Puisane, Ms Biksane and Ms Kalnina). In addition Ms Blinova and Ms Culkova referred to rodents in the accommodation. Other witnesses made statements which supported this. I bear in mind Mr Yensen's caution about workers tending to give information which they anticipate an investigator may wish to hear, the predicament of the people who made these statements, and in many cases their disappointment on arrival when they found the standard of the accommodation was not what they had expected. I was provided with information regarding cleaning, initially carried out by a person external to the Appellant, and latterly I was informed undertaken by a worker employed by the Appellant as a separate job. There was some evidence to corroborate Mr Divkovic's evidence that cleaning was carried out by a worker as a separate job to another, and I accept that to be the case. Having regard to the facts found above however I find that in April 2013 a number of electrical installations were dangerous, that the heating facilities were unsatisfactory in both December 2012 and October 2013, and despite the use of a cleaner (I am not persuaded the cleaning was on a frequent basis) the premises were generally dirty and the beds contained insects. Further, I am satisfied that there was not an adequate provision for both heating and hot water in October 2013. For those reasons I find that the Appellant was in contravention of license standard 4.1 in respect of the cottage and the hostel.

61. Messrs Perminas and Polinauskas travelled from their home country of Lithuania to work for the Appellant in Cornwall in March 2013. When they arrived in Cornwall they were met by Mr Sarkoviks. Both workers had arrived in the UK and made their way to Cornwall with others in a structured and organised manner, to carry out work for the Respondent. Mr Sarkoviks took the two workers to accommodation, variously described as Newquay Surflodge or Surflodge. The bedrooms were too small for the numbers of people allocated to them, but without knowing more about the size of the building I do not make any findings as to whether the building was too small for the number of people in it. Mr Polonouskus in his statement dated 16th July 2013 describes the premises as being extremely dirty and not what he considered to be hygienic. There were four showers and two toilets for the 30 people to living there to use but only one of the

showers had hot water and the heating was switched off. Considering the time of year, and the lack of facility for washing with hot water for the numbers of people within the building, I find that accommodation was not safe for the workers which were in it. I do not accept that Mr Sarkoviks was simply assisting the workers find this accommodation. I further find that the two workers had arrived in the UK to work for the Appellant and the accommodation at Surflodge was provided in connection with their contract of employment with the Appellant. I find the Appellant was in contravention of licensing standard 4 in respect of that accommodation also.

62. I consider the evidence of Ms Nikiforova and Ms Ivanova and their description of properties they lived in a 5 and 7 Brond Street, March, respectively. I do not consider whether this accommodation was provided in connection with their contract with the Appellant as their descriptions of the accommodation were too vague to make any finding on the question of compatibility with licensing standard 4.

Licensing Standard 8

63. I accept the Appellant's evidence to the effect that he is well known. The Appellant has been in business as a labour provider/licensed gangmaster for many years. The Appellant advertises abroad through various media and informs that he does not charge a fee for finding work. The Appellant has an online advertisement and applicants can and do apply to it directly, including online. Not all applicants applied to work for the Appellant while they were abroad. Within the Appellant's documentation contact details for the Appellant are given with the name of Ceslavs Sarkoviks and his mobile telephone number provided in respect of the advertisement for field workers recruited for January to March 2012 and, I accept, on many other occasions. Within the online advertisement for fieldworkers between January and March 2012 it was expressly stated that agencies should not apply or introduce candidates as it was illegal to do so. Details of the Appellant's advertising documentation were sent to the Respondent on 29th December 2011 identifying the media where they would be published. There was no criticism by the Respondent at the time, or at all, of those advertisements nor at this hearing did their appear to be anything untoward in them. The Appellant has been supplied with workers by unlicensed labour providers, for example by Evelina Trakymaite, who subsequently received a caution from the police in December 2013. Other people were referred to during this hearing as individuals who acted, or were said to act, as unlicensed gangmasters providing labour to the Appellant. There is a difference between the Appellant using a sub-contractor or other labour provider and itself being used by that sub-contractor or provided. The Appellant has consistently denied using any unlicensed gangmasters and no evidence of any contracts or agreements between the Appellant and others to that effect have been provided. Mr Sarkoviks denied having any arrangement with any unlicensed gangmasters. Mr Gorkins, who was referred to during the Respondent's investigation following the suspension of the Appellant's licence, has not

attended and also denies any improper conduct. There does not, of course, need to be a formal agreement or anything in writing for there to be an arrangement or some other process by which a gangmaster may use another (licensed or otherwise).

64. This issue was raised by Mr Lee in interview with Mr Divkovic, but at no time has the Respondent, the police or other agencies so far as I am aware, asked any questions of Mr Sarkoviks. Licensing Standard 8.1 was a reason on which the Respondent revoked the Appellant's licence and details have been given, particularly in its response. There has been disclosure of documentation, including statements provided by workers of the Appellant, and the issue of this standard has been addressed in evidence in chief and in cross examination with Messrs Divkovic, Lee and Nicks. Mr Sarkoviks was not cross examined and was not asked any detailed questions about connections with unlicensed gangmasters.

65. At a meeting on 6th June 2013 Mr Lee informed the Appellant that unlicensed gangmasters operated in the geographical area where the Appellant also operated and there were some discussions regarding the Appellant's procedures. On enquiry from Mr Lee, Mr Divkovic informed that he trusted Mr Sarkoviks. Following that meeting Mr Sarkoviks sent a memorandum to a number of his subordinates stating amongst other things that applicants for work had to register at the Appellant's office or with Messrs Gorkins or Sarkoviks, that only the top copy of the application form could leave the office and the other forms were to be completed in the office or with Messrs Gorkins or Sarkoviks. Mr Divkovic notified his subordinates that Lithuanian agencies were downloading the Appellant's information pack, altering the details on them, and then charging workers to get them to the UK under the pretence that they had paid to get work with the Appellant. Mr Divkovic finished his communication with "we DO NOT AND WILL NOT tolerate any illegal working here, Disciplinary Action will be taken".

66. When new workers arrived with the Appellant they were issued with a form to sign confirming they had not paid a fee to the Appellant. This they did. Workers were asked for marketing purposes how they had learnt of the Appellant and I was taken to a number of such documents where the question was stated. Mr Divkovic's evidence was that workers were also asked to confirm they had not paid a fee to other agencies on induction and all the applicants informed they had not. Although there were a number of documents the workers had to sign, there was no document to be signed to that effect. This is inconsistent with the considerable number of workers who made statements to the Respondent to the contrary.

67. In considering the statements made by workers to the Respondent I again bear in mind the caution expressed by Mr Yansen referred to before. I further bear in mind that it is unlikely that if the Appellant had entered into arrangements with unlicensed gangmasters there would be any documentary evidence before me to consider. There was inconsistency on the Appellant's side as to how the registration took place, Mr Divkovic

informing at one stage that he carried out several each day. This I find implausible bearing in mind the size of the Appellant's business and also Ms Newall saying that she did the majority. Further, when there were language difficulties, and many of the applicants could not communicate well or at all in English, members of the Respondent's staff were used to speak to them.

68. I remind myself that, as Counsel for the Appellant pointed out, there was a possibility that foreign gangmasters had intercepted the Appellant's advertisements, or indeed because the Appellant was well known as no doubt were the contact details for Mr Sarkoviks, that information could be put together without the Appellant's knowledge. I was shown documentation which I was informed showed that certain workers had applied to the Appellant themselves online. The documentation on its face did not confirm that to be the position, albeit it may well be that they had. A few workers did state in their statements to the Respondent that they had applied directly to the Respondent themselves.

69. Messrs Perminas and Polinauskas reported that they obtained employment with Roberto Mac through an agency in Lithuania called Baltic Staff to which they paid a fee and were given documentation with Mr Sarkoviks details on. They stated that following the arrangements they had made with Baltic Staff they travelled to England with others. Mr Perminas described being picked up in Lithuania and being driven to London, where he was moved on to a coach with around 20 other people. In London Mr Perminas reports the party moved on to another coach from which some hours later almost all of the passengers were moved to a minibus, 3 or 4 people being dropped off before Newquay, where they were met with Mr Sarkoviks and then went to the Surflodge and the following day dealt with what appears to be their registration. These workers describe a co-ordinated series of actions beginning with Baltic Staff, then an organised journey in the company of others to the area of work and then being met by the Appellant's representative. This points to some form of arrangement between the Appellant and Baltic Staff.

70. A number of workers for the Appellant secured employment after initially contacting an agency in Latvia known as Satva (the spelling varied). All the workers described paying fees to that agency and ultimately working for the Appellant, the contact on all occasions being Mr Sarkoviks. Some of the workers informed that they paid additional fees for transportation to the Latvian agency. The workers were Ms Musijenko; Mr Lablaiks; Ms Liepina; Ms Puisane; Mr Petrevics; Ms Virbule; Mr Kozlovskis; and Ms Letinska. Both Ms Musijenko and Ms Puisane described an organised transportation of a number of people. All the workers described having the contact details of Mr Sarkoviks and being met either immediately or shortly after arrival by Mr Sarkoviks. One worker, however, Ms Letinska, initially obtained employment through the Latvian agency Satva in Scotland and only later gained employment with the Appellant after she had again contacted that agency.

71. Four workers from Estonia were relied on by the Respondent as showing a breach of licence condition 8. Of these three Ms Liudmila Kozemijaka informed that whilst she had found the job through a friend's mother, to whom she paid €200, when she arrived in the UK and contacted Mr Sarkoviks he had no record of her. Similarly, Ms Irina Ivanova paid a friend of a friend's mother to find the job to whom she paid a fee and also a separate sum for the flight from Latvia to Stansted. Ms Ivanova informed that her friend's mother had given her the contact (with Roberto Mac, ie Mr Sarkoviks who had been found on the internet). One worker, Ms A Nikiforova, travelled to the UK and paid €200 to her friend's mother in Estonia. Ms Nikiforova was provided with a print out of a web page, which I understand to be the Appellant's web page, showing Mr Sarkoviks' contact details. On arrival Mr Sarkoviks had no record of her. I consider this supports the Appellant's contention, at least to this extent, that others unconnected with it were making use of the information available to act in a manner of a gangmaster, albeit unlicensed. Indeed the evidence of the witnesses who referred to this person indicated that at the time the information was provided the woman had not (at the time relevant to these matters) been in a business. Mr Aleksandr Semernja informed that he found the job with the Appellant on the internet. Despite saying this he also informed that a woman in Estonia helped arrange the work and accommodation for which he paid her the sum of €250. Mr Semernja reported that although it was arranged that he would be met by Mr Sarkoviks, that did not happen. In respect of these four workers I am not persuaded that their evidence shows any link between the unidentified unlicensed gangmaster in Estonia and the Appellant.

72. Two workers relied on by the Respondent described an unlicensed gangmaster in Moldova. Mr Serghei Tatarv reported that he saw an advertisement for the Appellant on the internet and phoned the associated telephone number, speaking to 'Olga' who then spoke to Mr Sarkoviks, following which he was instructed to come to the UK and that Mr Sarkoviks would be waiting for him. Mr Tatarv described paying €2,000 for the service and when he arrived in the UK Olga texted him with Mr Sarkoviks' number, who on being contacted, arrived to meet him an hour later. Mr Ion Ignat describes contacting a man in Moldova, agreeing to pay €1,500 to secure work, who then gave him Mr Sarkoviks' name. Further, although when he arrived in the UK he was not met by Mr Sarkoviks, he did meet him the following day. On their own I would not consider the reports of Messrs Tatarv and Ignat sufficient to conclude there was an arrangement with the Appellant and the unlicensed agency or individuals in Moldova. However, both workers were ultimately picked up by Mr Sarkoviks and, coupled with the evidence of the other workers whose evidence above show a link between Mr Sarkoviks and unlicensed gangmasters, I find the evidence of these two individuals persuasive. I find that Mr Sarkoviks had a working link with Moldovan unlicensed gangmasters.

73. A Ms S Svilikouska described paying an unnamed Latvian agency money to arrange transport and employment with the Appellant. The connection to the Appellant is that on arrival Ms Svilikouska was dropped off at the

Appellant's hostel, albeit not by Mr Sarkoviks. That is supportive of a connection between the Appellant and an unknown gangmaster. A further witness relied on by the Respondent, Ms C Juzvika, stated that her employment was arranged through an agency in Latvia and referred to the Appellant. Ms Juzvika describes gaining employment with the Appellant through the agency in Latvia. While I find this evidence supportive of a link between the Appellant and an unnamed unlicensed Latvian gangmaster, I do not regard the evidence as strong.

74. Mr Nerijus Sukys, his wife Mrs Sukiene, and others, including Constantos Bakanovas, arrived in the UK together, travelling from Lithuania as part of an organised group. The three had registered with an agency in Lithuania called Job Centre and informed that they had paid it a fee to work for the Appellant in Cornwall. The contact provided to them was Mr Sarkoviks. When the three arrived in Cornwall the evidence is that Mr Sarkoviks did not know about them but nevertheless because he was short of workers, (Mr Sukys reported) they were offered employment. I find the evidence of these three workers to be insufficient to support the Respondent's assertion that their evidence supports a finding that, in their respect, of any arrangement between the Appellant and Job Centre.

74.1 As referred to before, Ms Trakymaite, received a caution from the police in respect of unlicensed gangmaster activities, having admitted in interview that she had supplied workers to the Appellant. Mr A Lukosius describes how in the latter part of 2012 Ms Trakymaite found work for him with the Appellant. Mr Lukosius describes being instructed to be outside a BP garage around 5am when he would be picked up, that this took place, the van having the Appellant's name on the side. Mr Lukosius had not completed any documentation with the Appellant. Mr Lukosius describes how when he raised this he was taken to the Appellant's office a day or two later by the van driver. In the Appellant's office, Mr Lukosius said he was informed that everything had been completed and all the Appellant needed was his bank details. Particularly, but not solely, in the light of Ms Trakymaite's agreement to a caution, I accept the content of Mr Lukosius statement. If there had not been some arrangement between the Appellant, however informal, to use Ms Trakymaite as an unlicensed gangmaster supplying workers to it, not only would the Appellant not have Mr Lukosius' details but also there was no suggestion that there was anything untoward when he entered the Appellant's van at 5am in the morning to travel to the Appellant's worksite.

74.2 Mr A Alkevicius describes being provided with work through Ms Trakymaite for the Appellant and being picked up outside a BP garage by a van with the Appellant's name on the side. Mr Alkevicius worked for over two weeks before he went into the Appellant's office when he had not received a FirstThere card. When Mr Alkevicius reported this to the Appellant he was informed that the situation was impossible but nevertheless it blocked the card it had issued and ultimately issued another one. The fact that a card had been provided in the first place to someone who was not the Appellant's worker and no apparent action was

taken by the Appellant in respect of Ms Trakymaite supports the finding that there was an acceptance of workers provided by Ms Trakymaite to the Appellant to the extent that there was a breach of licence condition 8.

75. Two workers in statements describe an unlicensed individual namely Pranas Lucinskas arranging employment for them with the Appellant. Ms Erensta Rudzeviciute describes Mr Lucinskas as her landlord, someone she got on with well and who would help her with work. Ms Rudzeviciute describes attending an agency in Vilnas in Lithuania, paying a fee to that agency for which she was informed that accommodation could be found in England as well as a job through that agency. Ms Rudzeviciute describes transport being arranged (for which she had to pay separately), that when she arrived in Wisbech the driver made a telephone call following which Mr Lucinskas arrived. When Ms Rudzeviciute informed Mr Lucinskas that she was aged sixteen he expressed concern that she would be unable to work but informed that he would ring the manager at the Appellant to make enquiries, which he then did, following which he informed that she could work on strawberry picking. Mr Lucinskas then drove Ms Rudzeviciute to the Appellant's office and helped her with filling in the forms, she later carrying out work for the Appellant. Ms Rudzeviciute arrived in Wisbech on 6th July 2013. (I note that within Ms Rudseviciute's statement dated 12th October 2014 there is a reference to her meeting the bus in Lithuania on 4th October – that appears to be an error.)

76. Mr Vytautas Jablonskis describes visiting an agency in Lithuania to whom he paid a fee to secure work in England. The agency, Mr Jablonskis informed, provided details of a transport company to him and through that company, together with his brother, he made his way to England. Mr Jablonskis travelled by minibus. On arrival in this country Mr Jablonskis (and others) were driven to a car park where other coaches and minibuses were present, each of which was going to different locations. On arrival in Wisbech the minibus driver contacted the number Mr Jablonskis had been given by the agency. Shortly thereafter Mr Lucinskas collected Mr Jablonskis and took him to accommodation. The following day Mr Lucinskas provided documentation for Mr Jablonskis to sign and although the documentation was English and he did not understand it, he signed nevertheless in order to gain the job. Mr Jablonskis arrived in England around 1st September 2012 and carried out various work. At the end of October/beginning of November that year Mr Lucinskas arranged work for Mr Jablonskis in a leek field and after having completed one day's work was taken to the offices of the Appellant, along with his brother and two others, by Mr Lucinskas where Mr Lucinskas completed registration forms for them all. The forms were in English and Russian, again Mr Jablonskis did not understand either but nevertheless signed where required. Mr Jablonskis described that each day Mr Lucinskas would contact someone in the house where he and others lived to inform whether there was any work for them. If there was any work he was to attend the BP station at a particular time when the Appellant's minibus would collect them. Other matters were described by Mr Jablonskis whose wife by this time had also arrived in Wisbech. I am satisfied that the two workers were supplied to

the Appellant via Mr Lucinskas, albeit in different years. Their statements indicate a lack of concern about the method of introduction of the workers, and certainly contradict Mr Divkovic's evidence that registration could take an hour and a half to two hours for new workers.

77. Two workers, namely Ms Ruta Jankeviciute and Mr Joskas Vytoldas, made statements to the police in Kent on 19th March 2013 during which they informed that Mr Audrius Zobernis and Ms Jurga Kiselioviene, who were subsequently arrested for human trafficking, had been supplied by Mr Zobernis and Ms Kiselioviene to the Appellant. Ms Jankeviciute was working for the Appellant at the end of 2012 with the work being arranged by Mr Zobernis and Ms Kiselioviene, and having no dealings themselves with the Appellant. Mr Vytoldas describes a number of jobs he had including working for the Appellant in a leek factory for two periods, initially for two days and after a gap again for the Appellant, the work being provided secured for Mr Vytoldas by Ms Kiselioviene through her contact at the Appellant, understood to be known as Gene. This is most likely Mr Gorkins.

78. Mr Ivan Petrovas attended a police station, it would appear on his own initiative, on 28th June 2013 and made a statement describing a number of matters, but of relevance for these proceedings that through an unknown agency in Lithuania to which he paid money (and gave additional funds for transport), he travelled with a number of others to this country to work. Mr Petrovas reported that around sixty people travelled to the UK of which about nine went to Wisbech. On arrival in Wisbech Mr Petrovas stated he was approached by a person called Mindaugas (whose surname is Mileris). Through Mr Mileris Mr Petrovas was provided with accommodation and work, including work for the Appellant. When he began working for the Appellant it was Mr Mileris who took Mr Petrovas to the factory and informed him that he would be registered there. It would appear that this employment was in May 2013.

79. Also in a statement made to the police on 16th June 2013, Ms Lucija Certovskich informed that she had arrived in the UK on 3rd November the previous year after paying an agency in Lithuania for arranging work and also a further sum for transportation. Ms Certovskich describes that when she arrived in Wisbech she was met, along with others, by Mr Mileris and that she was provided with a day's work for the Appellant, later registering to work. This would appear to be in late 2012.

80. Both Mr Petrovas and Ms Certovskich appeared from their statements to be older than many other workers about which I heard (Mr Petrovas describes difficulty for people (like him) aged over 45 obtaining work in Lithuania). Having regard to the similarities between the way in which these two workers found work through an unlicensed agency in Lithuania, travelled to this country as part of a structured group and were ultimately provided through a third party, in this case Mr Mileris, with work for various bodies including the Appellant, I am persuaded that both statements are

true so far as the link with unlicensed gangmasters and the Appellant is concerned. I do not make any finding in respect of any other matter.

81. In arriving at these conclusions I have born in mind Mr Divkovic's evidence that he has no connection with unlicensed gangmasters. I have not found all of the statements relied on by the Respondent to be wholly supportive of its case. Nevertheless I have found that a considerable number are.

82. I find that the Appellant broke licence condition 8.1 as found above. The breaches are serious.

Collateral agenda

83. The Respondent is a statutory body with purposes as described before. The Respondent has a procedure for carrying out inspections described in issue 26 of its brief. The process as described in the brief provides for a structured approach through which considerable information and documentation can be solicited by the Respondent from the gangmaster. The use of such a process, however, does not imply that the outcome will necessarily be one which the gangmaster would find desirable, albeit it may be. It is however potentially less confrontational than what took place on the Executive Day of Action which resulted in the immediate suspension of a licence. In this case, however, the Respondent and the police had information arising out the exercise of their statutory functions which led them to believe that there were a number of people acting as unlicensed gangmasters who were engaging in criminal activities. In the statements given by Mr Petrovas and Ms Certovskich and others, I am satisfied there was genuine and proper concern that vulnerable people were being manipulated and used by people who operated as unlicensed gangmasters. The Respondent had before August 2013 begun to gather information in respect of gangmasters, both licensed and otherwise, in the area of the Fens in East Anglia.

84. Having regard to the facts found above, I am satisfied that there was ample evidence held by the Respondent for it to conclude as it did. Internal memoranda from senior managers of the Respondent congratulating subordinates following the Executive Day of Action on 15th October can look suspect in the cold light of the day but in the context of internal communications by senior managers to more junior ones, following a large operation, take on a different hue. I do not conclude that there was any collateral agenda. Following its enquiries, the Respondent had ample evidence to consider the Appellant may have broken the conditions of his licence and act as it did on the Executive Day of Action. The events of the day were observed by the local media. The Respondent denies briefing the media in advance. I accept that to be the case. I do not find that there was any inappropriate imperative for the Respondent to act as it did on the 15th October, nor, once it had completed its enquiries, to revoke the Appellant's licence when it did.

Conclusions

85. In arriving at the findings of fact I have had full regard to the fact that all the statements by the Appellant's workers are hearsay, that many of the workers were vulnerable in that they were in a foreign country, short of money and dependent on others for work and in some cases accommodation. I have taken into account Mr Yansen's caution that the workers may say what they think the authorities want them to say. That said, in the round, the statements from the workers regarding recruitment, travel, accommodation and contract with the Respondents reveal common themes.

86. I am not bound by the scoring system of the Respondent as far as points for breach of licence conditions and I do not use it. The Appellant has committed a number of breaches of a number of the Respondent's licence conditions. All of those breaches found are serious. In considering the appeal, I have considered not only the position of the Appellant but also that of the workers the Respondent's licence conditions are designed to protect. Not only the number of breaches but the serious nature of all of those found means that I must dismiss the appeal.

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Appointed Person

Signed: 25th November 2015

Issued on 27th November 2015