

The Gangmasters (Appeal) Regulations 2006

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

Appellant 4D Farm Services Ltd

Respondent Gangmasters Licensing Authority

Heard at: Exeter

On: 10 June 2015

Appointed person: Employment Judge Carstairs

Representation

Appellant: Mr Martyn Ford, proposed Principal Authority

Respondent: Mrs Joanne Bagley, Appeals Manager

DECISION AND SUMMARY STATEMENT OF REASONS

1 The appeal is dismissed. The respondent was entitled to come to its decision that the appellant, having incurred 30 points because of its breach of standard 1.1, should not be granted a licence.

2 This decision takes effect from 15 June 2015.

STATEMENT OF REASONS

1. The issue

1.1. Whether to allow the appellant's appeal against the respondent's decision not to grant the appellant a licence pursuant to the Gangmasters (Licensing) Act 2004, the Gangmasters (Licensing Conditions) Rules 2009 and the respondent's Licensing Standards 2012.

2. The evidence

2.1. Mr Ford gave evidence on behalf of the appellant.

2.2. Mrs H Miller, Compliance Officer, and Miss C Wilson, Head of Licensing, gave evidence on behalf the respondent.

2.3. I was provided with a bundle of documents prepared by the respondent.

3. The facts

3.1. The appellant applied for a licence from the respondent on 7 July 2014. Mr Martyn Ford was named as the proposed Principal Authority ("PA") and Mrs Jacqueline Green was named as the proposed Alternative Business Representative ("ABR").

3.2. Mrs Miller was tasked with undertaking the application inspection of the business. Before doing so, as is normal practice in accordance with paragraph 4.2 of the respondent's Licensing Standards of May 2012, the respondent carried out checks with other government departments, including HMRC. On 4 August 2014 HMRC advised that Mr Ford was previously registered for VAT as a sole proprietor from 48 Queensway, Tiverton, Devon trading as MG Ford Poultry Services from 1 August 2009 until 1 October 2012. However, Mr Ford had failed to submit returns and an assessment totalling £8,760 for VAT was raised which HMRC wrote off because Mr Ford said he had no assets and had no fixed abode. Mr Ford also had £55,548 written off in respect of National Insurance contributions for the same reason.

3.3. In the course of trying to arrange the inspection, Mrs Miller was contacted by Mrs Green, who had been appointed by Mr Ford to assist him in the application. Mrs Green explained that Mr Ford had been approached by PD Hook Hatcheries, at whose site Mr Ford was working for Kwicatch Ltd, and told that they would give him a contract to supply three teams catching chickens if he obtained a licence. Mrs Green added that Mr Ford was in the process of moving house so would like the inspection to take place at her address.

3.4. Mrs Miller undertook the inspection at Mrs Green's address on 17 September 2014 where she met both Mr Ford and Mrs Green. Mr Ford's house move was discussed, during which he said that he had lived at his address for 14 years. Mrs Miller went through the form with Mr Ford who confirmed that the answers given were correct. Although the form declared that Mrs Green had worked for Kwicatch, it did not refer to Mr Ford having done so. When asked about this omission, he said it was an error but did not explain how it had occurred. Mr Ford also confirmed that the information in the form that his previous business was MF Farm Services was correct. Mrs Miller explained that the respondent's checks had revealed that his previous business was MG Ford Poultry Services. Mr Ford replied that the answer on the form was an error but again did not explain how the error had occurred. Mr Ford said that the previous business had finished because he had run short of work and Kwicatch had offered him work. He said there was no other reason for the business closing. Mr Ford explained that he had been working for Kwicatch for two and a half years immediately following closing his own business.

3.5. Mrs Miller explains that if there had been any deliberate omission or incorrect statement, the licence would be refused. She asked Mr Ford if there was anything else he wanted to tell her, which might affect the licence decision, and Mr Ford replied there was nothing else he wanted to say. He did not mention the debt to HMRC in respect of MG Ford Poultry Services of £64,308.

3.6. Mrs Miller then prepared a Licence Decision Report on 10 October 2014.

3.6.1. The report concluded that the appellant had failed licensing standard 1.1, which required applicants "at all times [to] act in a fit and proper manner".

3.6.2. It considered that Mr Ford, as the proposed Principal Authority, had not been candid and truthful. When Mr Ford applied for the licence, he had failed to

disclose that he had worked for Kwicatch Ltd although he did declare that Mrs Green had done so. It was noted that Kwicatch's licence had been revoked.

3.6.3. There was more concern with another "false declaration". In answer to another question, Mr Ford had explained that he had traded under the name MF Farm Services although he had actually traded as MG Ford Poultry Services. When asked why he had written the wrong name on the application, he explained that it had been a mistake. This explanation was not accepted because, when completing the application form, Mr Ford had to sign a declaration of truth in which it was noted "I understand that if deliberate omissions or incorrect statements have been made, my application may be refused without further consideration..."

3.6.4. Contrary to the information received from HMRC, Mr Ford had advised Mrs Miller that he had lived at the same address for the previous 14 years. He had not, therefore, been candid and truthful with HMRC as to where he lived. It was noted that the same address was on record with both HMRC and the respondent.

3.6.5. There was also concern that Mr Ford had intentionally told the respondent an incorrect business name which was considered to have been done in the hope that the respondent would not make the connection between him and the actual business which had "gone under". He had run MG Ford Poultry Services for over three years and therefore would have remembered its name.

3.6.6. When Mr Ford had been asked why he had closed the business, he explained that he had run short of business and had been offered a job at Kwicatch. He did not declare that he owed HMRC a significant sum of money.

3.6.7. When Mr Ford was asked to review Licensing Standard 1.1, he stated that no amendments needed to be made other than to change the business name to MG Ford Poultry Services from MF Farm Services as his previous business.

3.6.8. Mr Ford had failed to declare the HMRC debt, accrued as a sole trader, which totalled £64,308.

3.7. The matter was then considered by Miss Wilson. Having done so, she wrote to Mr Ford on 21 October 2014 to advise that the application had been refused. In the second numbered paragraph of the letter she explained that it was an offence to act as a gangmaster without a licence.

3.8. Miss Wilson adopted the reasons given in the report prepared by Mrs Miller. Her letter made clear that the respondent did "not consider you have been honest with HMRC or the GLA and you have previously failed to comply with the requirements of HMRC. For the reasons above the GLA does not consider you to be fit and proper to hold a GLA licence or to be named on a GLA licence. Therefore, Licensing Standard 1.1 is failed. This is a critical standard with a score of 30 points. Applicants must score less than 30 points to be granted a licence. As [the appellant] has scored 30 points, the application is refused".

3.9. Before reaching her decision, Miss Wilson, as is her practice and in accordance with paragraph 4.8 of the respondent's Licensing Standards of May

2012, considered whether it was appropriate to grant the licence with additional conditions. However, she did not think it was appropriate because, in her view, Mr Ford had not been honest about his financial history.

3.10. Mr Ford sent a completed appeal form to the respondent which was received on 31 October 2014. The grounds of appeal were as follows:

3.10.1. He failed to enter his connection as an employee of another company regulated by the respondent. He was not a named individual on an existing licence. This was an error.

3.10.2. He misquoted the name of his old business which was an error.

3.10.3. He has some problems with reading and he believed the errors occurred between him and the person helping him to complete the form.

3.10.4. He and his accountant attended a meeting with HMRC to discuss a bill received which they did not think was correct. He thought that this occurred in 2010. He provided HMRC with various documents. However, he did not have any follow up correspondence. He had provided HMRC with addresses for all the people whose details he had provided in respect of invoices from other workers, who had confirmed they were self employed and responsible for their own tax and national insurance.

3.10.5. He was not aware that the debt had been written off and had contacted HMRC to open communications to resolve the issue.

3.10.6. When he referred to being of no fixed abode, at the time he was separated from his wife and had left the marital home at 48 Queensway, although she allowed him to continue to use the address for correspondence. The separation was temporary and their differences have been solved.

3.10.7. It was true that he approached Kwicatch for work because other work dried up and he needed to support his family.

3.10.8. He believed that his debt to HMRC was approximately £20,000 and repeated that he had opened communication with them to resolve the issue and agree a plan going forward. He added that he was fully committed and willing to work with HMRC and respondent to make the appellant a good employer and business. He accepted that the problems with HMRC might not have been dealt with properly and, with hindsight, he felt that he required more assistance with paperwork and should have asked for it.

3.10.9. Finally, he explained that his prospective customer encouraged him to make an application for a licence to provide the customer with a second source of catching and that it would be his only customer.

3.11. On the 27 November 2014 the appellant sent to the respondent an undated email from a Mr Howard of Hook2Sisters Ltd, a letter of 25 November 2014 from Mr Riddell, a director of Egwood Management Solutions Ltd, to Mr Ford and a letter of 24 November from a Mr Ryan.

3.11.1. Mr Howard wrote that his company had worked with the appellant for the past six months in preparing its GLA licence and looking to provide labour for his company's catching operation. He had found the appellant to be very professional in its attitude, very willing to meet his company's in house standards and to complete any audits.

3.11.2. Mr Riddell stated that he had known Mr Ford for some six or seven years and Mr Ford had shared his business plan with Mr Riddell some months before. He noted that Mr Ford had been held in high regard by Lithuanian workers who had worked under him. He was aware that Mr Ford had prevented some non-English workers from being tricked into signing zero hours contracts. Those employees were keen to work with Mr Ford.

3.11.3. Mr Ryan wrote that he had known Mr Ford for about 15 years and was happy to support Mr Ford in gaining a Gang Masters Licence. He would then be happy to support Mr Ford in his business and allow his company to catch his free range birds in Devon and his broiler breeders in Lincoln.

3.12. In response to the appellant's statement that he had contacted HMRC again, further investigation was undertaken by the respondent. This resulted in a report of 12 December 2014 from the respondent's Intelligence Manager that HMRC had advised on 11 December 2014 that there was "no record of Mr Ford contacting HMRC to resolve the issue and all remains as previously notified".

3.13. Further information was obtained from HMRC on 25 March 2015. This showed that MG Ford Poultry Services had failed to submit any VAT returns in the eight quarters from the last quarter of 2010 to the third quarter of 2012 which resulted in central assessments being made totalling £8,445 plus a surcharge of £315 making a total of £8,760. It was also noted that the debt had been written off in April 2014 because HMRC was unable to contact Mr Ford. HMRC had not been able to trace any contact from Mr Ford in October 2014.

4. Submissions

4.1. Mrs Bagley submitted that the appropriate test to decide whether to allow the appeal is that set out in **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 CA**. She noted that the evidence showed that Mr Ford had not submitted VAT returns for three years. He appeared to have misled HMRC by saying that he was of no fixed abode, contrary to having told the respondent that he had lived at the same address for 14 years. He had not disclosed the debts owed to HMRC. He had breached licensing standard 2. No explanation had been given by Mr Ford for the inaccuracies in his application form during the inspection. He had deliberately misstated the name of his previous business and the respondent was entitled to infer that this was to avoid disclosing its debts. There was no evidence to suggest that the Ford had tried to resolve any dispute as to the amount of the debt. HMRC had no record of his having met with its officers.

4.2. Mrs Bagley also referred to two earlier decisions in gangmaster appeals, namely Staffit (UK) Ltd v GLA, 32/E/R and K7 Ltd v GLA, 134/E/RV.

4.3. Mr Ford submitted that the form contained genuine mistakes. Mrs Green had not worked him for very long but was "just a know all and busybody" who completed the form for him. He just "whizzed in and signed the form". He was not trying to hide the tax debt. During the course of Mrs Bagley's submissions, Mr Ford was forthright in explaining that if his appeal was unsuccessful he would "have to do it the other way", in other words by circumventing the requirement to obtain a licence.

5. The law

5.1. Sections 1 and 2 Gangmasters (Licensing) Act 2004 create the respondent and set out its functions. Section 6 provides that a person may not act as a gangmaster except under the authority of a licence and that the secretary of state may make regulations specifying circumstances in which a licence is not granted. Section 7 provides that the respondent may grant a licence if it thinks fit for such period as it thinks fit.

5.2. Section 8 gives the respondent power to make such rules as it thinks fit in connection with the licensing of persons acting as gangmasters, including the requirements which must be met before a licence is granted.

5.3. Section 10 gives the Secretary of State power to make regulations in respect of appeals, including appeals against the refusal of applications for licences.

5.4. Regulation 12(1) Gangmasters (Licensing Authority) Regulations 2005 provides that in determining the criteria for assessing the fitness of an applicant for a licence, the respondent shall have regard to the principle that a person should be authorised to act as a gangmaster only if and so far as his conduct and the conduct of a specified person comply with the requirements of paragraph (2). Those requirements 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. Paragraph (5) defines a "specified person", in relation to any given licence, as any person proposed to be specified in the licence as a person authorised to undertake certain activities by virtue of section 7(3)(b) of the 2004 Act.

5.5. The schedule to the Gangmasters (Licensing Conditions) Rules 2009 provides, in Part 2, paragraph 4, that the licence holder, principal authority and any person named or otherwise specified in the licence must at all times act in a fit and proper manner. Furthermore, if the licence holder or any person named or otherwise specified in the licence is a body corporate, an unincorporated association or partnership every director, manager, secretary or other similar officer of the body corporate, every officer of the association or any member of its governing body, and every partner, including any person purporting to act in any such capacity, must at all times act in a fit and proper manner.

5.6. The respondent's Licensing Standards of May 2012 provides that the licensing standards it contains are the conditions for a licence from the respondent. Section 4, headed. "Assessing Compliance and GLA Inspections"

provides at paragraph 4.1 that the respondent adopts a proportionate approach when applying the licensing standards and that it is concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances, unless such a non-compliance is "critical" in its own right.

5.7. Paragraph 4.2 explains that the respondent will work closely with other government departments and agencies and exchange information through legal gateways. This forms part of the licensing process and assessment of compliance with the standards.

5.8. Paragraph 4.8 explains that the respondent's inspection will test the relevant licensing standards, which will result in an overall score. Each standard has an associated score. Standards designated as "critical" are worth 30 points. All other standards are worth eight points, except licensing standard 1.4 which can score up to sixteen points. There are three possible outcomes. The third is where the inspection score is 30 points or more. Paragraph 4.11 provides that the application will usually be refused. However, the respondent may consider attaching additional licence conditions where it is proportionate to do so after considering the extent and nature of the non-compliance.

5.9. Licensing standard 1 is entitled "Fit and Proper Test" and provides that 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". For these purposes, "licence holder" includes an applicant for a licence. The standard explains that the respondent will assess all relevant factors in considering whether a licence holder acts in a fit and proper manner. The factors which the respondent will consider include (so far as is relevant in this case), but are not limited to, whether the Principal Authority, directors or company officers (where the licence holder is a company) ... has:

5.9.1. contravened any of the requirements and standards of other regulatory authorities, including HMRC,

5.9.2. 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.

5.10. The Standard continues by noting that the respondent treats each case individually, taking account of the seriousness of, and circumstances surrounding the matter in question. It notes the respondent will consider the explanation offered by the person to whom it relates, the relevance of any conviction, rehabilitation and evidence that the matter will not reoccur.

5.11. However, it ends by stating that failure against the standard may lead to a licence being revoked with immediate effect.

5.12. Licensing standard 2 is entitled "Pay and Tax Matters". Under the heading "Critical: PAYE, NI and VAT" it states: "A licence holder who employs workers under a contract of employment, contract of service, engages them are under a

contract for services... must... accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HMRC in a timely manner. A licence holder who exceeds the VAT threshold must be registered with HMRC and charge and pay the correct amount of VAT in a timely manner".

5.13. The respondent's Licensing Decision Policy, incorporating its Licensing Standards and the Inspection Process reflects the provisions set out above. Paragraph 4 notes: "Applicants and licence holders must comply with the Authority's Licensing Standards in order to be granted and to keep a licence". Paragraph 9 reiterates that standards designated as "critical" are worth 30 points. All other standards are worth 8 points, except licensing standard 1.4 which can score up to 16 points. It also repeats that there are three possible outcomes, one of which where the inspection score is 30 points or more, namely: "The application or licence will usually be refused or revoked. However, the GLA may consider attaching Additional Licence Conditions where it is proportionate to do so after considering the extent and nature of the non-compliance".

5.14. **Associated Provincial Picture Houses** provides what is now well known guidance as to the three matters to be taken into account when considering whether a decision of a public authority should be overturned. First, whether the authority took into account factors which ought not to have been taken into account. Secondly, whether the authority did not take into account factors which ought to have been taken into account. Thirdly whether the decision was so unreasonable that no reasonable authority could have reached it.

6. Conclusions

6.1. I agree with Mrs Bagley that, in considering whether or not to allow the appeal, I should apply the test set out in **Associated Provincial Picture Houses**. Although that related to judicial review proceedings in the Administrative Court, it dealt with a consideration as to whether the decision of a public authority should be quashed. It is, therefore, similar to what is sought from the appointed person in appeals such as this.

6.2. Neither the failure to submit VAT returns for three years (suggested by HMRC on 4 August 2014 although the information supplied on 23 May 2015 indicated only two years) nor Mr Ford's reasonably clear failure to comply with Licensing Standard 2 had been considered by Mrs Miller or Miss Wilson. This was because these details were not established until five months after Miss Wilson's decision. These two matters are not therefore relevant to a review of the respondent's decision to refuse the application for a licence.

6.3. On the other hand, consideration was given to Mr Ford not being truthful or candid regarding his former employment, misstating the name of his previous business, it being apparent that he had misled HMRC by saying that he had no fixed abode when he told the respondent that he had lived at the same address for 14 years and his not having declared the HMRC debt. Those are matters relevant to, variously, the requirement to act in a fit and proper manner for the purposes of Part 2, paragraph 4 of the Licensing Conditions Rules, in particular paragraphs 4.2, 4.8 and 4.11, and paragraph 4 of the Licensing Decision Policy.

6.4. Consideration was given to the appellant's grounds of appeal as follows:

6.4.1. In respect of not detailing his connection with Kwicatch and misquoting the name of his former business in his application form, Mr Ford explained that these had been errors. He has suggested that the errors were the result of problems he has with reading. During the course of the hearing he observed that this related to "spelling". Difficulties with spelling could not have led to such an error. However, if Mr Ford had difficulty with reading, it was striking that he did not mention this as the explanation for the errors in the form. While it might have engendered embarrassment, it was clearly important that he explained to Mrs Miller why he had completed the form in 'error'. However, any inability to read would not explain why he had confirmed in the discussion with Mrs Miller that the information was correct, when it was raised with him, and only said that the information had been included in error when he realised that the true position was known by Mrs Miller.

6.4.2. He also suggested that the errors had occurred between him and Mrs Green when she had helped him to complete the form. Bearing in mind Mrs Green had correctly included her own involvement with Kwicatch in the form, it appears unlikely that a complete failure to mention Mr Ford's involvement was an 'error'.

6.4.3. Mr Ford explained that he had attended a meeting with HMRC with his accountant, to discuss the bill he had received because he did not think it was correct. However, the respondent enquired about this and was informed on 11 December 2014 that HMRC had no record of Mr Ford contacting it to resolve the issue. The respondent was entitled to conclude that the information was untrue.

6.4.4. On the other hand, HMRC stated it did not know where he was so that Mr Ford would not have been aware that the debt had been written off.

6.4.5. So far as HMRC's understanding that Mr Ford had no fixed abode, he stated that, although he had left the marital home, his wife had allowed him to continue to use the address for correspondence purposes and that, in the event, the separation had been temporary and their differences had been solved. It appears from the information provided by HMRC that this was never explained to it.

6.4.6. Similarly, no evidence was provided as to why Mr Ford believed the debt amounted to £20,000 rather than £64,308.

6.5. Mr Ford also explained that a prospective customer had encouraged him to apply for a licence. Additionally, the Mr Ford had provided three letters of support. The tenor of those letters is that the writers had found Mr Ford to be honest and trustworthy and that the appellant had, over a course of six months, shown itself to be very professional, complying with the writer's standards.

6.6. So far as this last point is concerned, it does not address the appellant's relationship with the respondent and HMRC. What is at issue is whether the appellant complied with any obligations imposed by or under any enactment insofar as they relate to the conduct of the applicant for a licence (regulation 12(1) of the 2005 Regulations).

6.7. Having regard to the guidance in Associated Provincial Picture Houses, the respondent only took into account factors which ought to have taken into account in reaching its decision. Those factors related to whether or not the appellant would "at all times act in a fit and proper manner" (paragraph 4 of the Rules).

6.8. There is no evidence that the respondent failed to take into account factors which ought to have been taken into account.

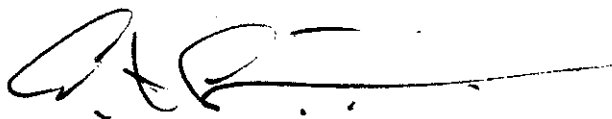
6.9. I therefore need to consider whether the decision was so unreasonable that no reasonable authority would ever consider imposing it. While the respondent was disappointed that the appellant had not disclosed his relationship with Kwicatch, whose licence was revoked shortly before the decision in this matter was announced, it did not regard that failing as the most serious. However, it did view the failure to give the proper name of Mr Ford's previous business to be a serious matter. This was because the respondent considered that the true reason for Mr Ford having done so was to prevent the respondent from investigating his former business which would, indeed did, lead to the discovery that he owed HMRC £64,308.

6.10. It was also very concerned that the appellant did not appear to have given the true reason for that previous business ending, clearly being of the view that the business could not have continued in circumstances where it was being chased for such a substantial debt by the authorities.

6.11. Finally, it was very concerned that the appellant had not revealed the indebtedness at all, let alone the amount of it.

6.12. In those circumstances, I am satisfied that the respondent was entitled to come to its decision that the appellant, having incurred 30 points because of its breach of standard 1.1, should not be granted a licence. It is noteworthy that, even after the application was refused, when the received the appellant's notice of appeal, it sought further information from HMRC to establish whether HMRC would support the fact that the appellant had been in contact with it. Having discovered that HMRC had no evidence to that effect, the respondent was entitled to abide by the decision to refuse the application. The respondent was, therefore, clearly acting in accordance with paragraph 4.11 of the Licensing Standards of May 2012 and paragraph 4 of its Licensing Decision Policy.

6.13. Accordingly, this appeal is dismissed.



Employment Judge Carstairs
(Person appointed by the Secretary of State to determine appeals in accordance with regulation 3 (1) of The Gangmasters (Appeals) Regulations 2006)

Date: 15 June 2015