



THE GANGMASTERS (APPEALS) REGULATIONS 2006

Appellant Cornwall Recruitment Limited

Respondent Gangmasters Licensing Authority

Heard at: Bodmin **On:** 29 & 30 August 2013

Before: Appointed Person - Employment Judge Goraj

Representation

Claimant: Mr Adam Young, Managing Director.
Respondent: Mrs L Gilligan, solicitor.

DECISION

The appeal is dismissed

REASONS

Background

1. This is an appeal pursuant to Regulation 6 of the Gangmasters (Appeals) Regulations 2006 ("the Regulations"). The appellant is Cornwall Recruitment Limited, formerly known as Westcountry Staffing Limited. I will henceforth refer to the appellant as WS. The respondent is the Gangmasters Licensing Authority which I shall henceforth refer to as the GLA. I have been appointed to determine the appeal by WS against the refusal by the GLA to issue it with the necessary licence to enable WS to operate in the GLA controlled work environment. A detailed oral judgment dismissing the appeal was delivered at the conclusion of the Hearing on 29 August 2013.

The witnesses and associated matters

2. I have heard oral evidence from Mr Adam Young who was the Proposed Principal Authority of WS. Mr Young is a director of WS together with his wife Mrs Sarah Young.
3. Mr Young was also the Principal Authority of a company called West Country Staffing Solutions Limited, which I will henceforward refer to as WSS. WSS has been placed into liquidation following a winding up petition by HM Revenue & Customs ("HMRC"). There was an associated appeal by WSS pursuant to the Regulations against the revocation of its licence by the GLA. That appeal was however withdrawn in the light of the liquidation of WSS.
4. I have also heard oral evidence from Mr Peter Yensen, who is an Enforcement Officer with the GLA, and from Mr Ryan Hooper, who is a Licensing Officer with the GLA.
5. The witnesses have helpfully provided me with written statements which, by agreement, were taken as read.
6. The parties have also provided me with an agreed bundle of documents ("the Bundle").
7. We have had two Case Management Discussions during the proceedings including a Case Management Discussion on 31 May 2013 at which we identified the issues. The agreed issues are set out in the Order dated 31 May 2013 ("the Order"), which is at pages 36-37 of the Bundle.

FINDINGS OF FACT

Background - WSS

8. On or around the 16 October 2008, a company called A & S Young Limited was incorporated with Mr Young as the Managing Director and his wife Mrs Sarah Young as a Director. On or around the 18 December 2008, A & S Young Ltd was granted a licence by the GLA with Mr Young as the Principal Authority. This company subsequently changed its name and became known as West County Staffing Solutions Limited ("WSS") from around 11 October 2011. Mr Young was the Principal Authority of WSS throughout the relevant period.
9. On the 28 July 2011, WSS entered into a CVA Agreement with HMRC. An extract from that CVA is at page 131 of the Bundle. I have noted in particular that at paragraph 16 of the CVA, WSS was required to make no fewer than 60 monthly voluntary contributions, with a total minimum contribution to the CVA fund of £180,000. Paragraph 15 of the CVA also provided that if WSS failed to pay two monthly contributions that would constitute a default under the terms of the CVA which could not be remedied and that the supervisor would immediately petition for the compulsory winding up of WSS. According to the pre- appeal review application of WS dated 22 November 2012, the liabilities of WSS to HMRC stood at £331,058 when the CVA was entered into on 28 July 2011 (page 9 of the Bundle).

Background – WS

10. WS was incorporated on or around 22 March 2012. WS subsequently changed its name to Cornwall Recruitment Limited on 19 February 2013. As stated above, the Directors of WS are Mr Young and his wife Mrs Sarah Young.
11. WS applied to the GLA for a Gangmasters Licence on the 24 April 2012 with Mr Young as the Proposed Principal Authority. On 12 April 2012 WS was issued with an Employee registration and reference number for the purposes of PAYE by HMRC, this document is at pages 220 to 221 of the Bundle.

The events in question

12. By a letter dated 27 April 2012, Mr Young wrote to the GLA advising them that he was proposing to transfer the assets and goodwill of WSS to a pre-pack business called WS which would involve WS buying the assets and goodwill from WSS. WSS would then cease trading and any creditor debts would be written off. Mr Young also confirmed that the only creditor of WSS was HMRC. This letter is at pages 221 to 222 of the Bundle. Mr Young also advised the GLA that WSS was no longer able to meet its CVA payments to HMRC because of a reduction in business from one of its main customers.
13. Mr Young contended in paragraph 6 of his witness statement that during a meeting with HMRC on 8 May 2012, he explained the reasons why WSS was unable to maintain its CVA payments together with his intention to put WSS into pre-pack administration and to start trading via WS. Mr Young further contended that he was informed by Mrs Read and Mrs Hancock of HMRC that WS would be able to apply for VAT registration when he held a GLA licence and that the company would be allowed to trade on payment of a security bond which was likely to be £30,000. Mr Young further contended that they told him that the tax affairs of WS would be closely monitored and that if his tax compliance was good after a year the security bond would be returned to him.
14. Mr Young also relied on the subsequent correspondence passing between WS and HMRC from the 25 June 2013 onwards which is at pages 332 to 339 of the Bundle.
15. I am not satisfied on the evidence that there was any agreement between WS/ Mr Young and HMRC to allow WS to trade subject to the payment of a security bond. When reaching this conclusion, I have noted in particular the absence of any contemporaneous documentation confirming any such arrangement and to the absence of any reference to such alleged agreement in Mr Young's letter dated 25 June 2013 which is at page 332 of the bundle.
16. On 28 May 2012 HMRC wrote to WSS advising them that there was an outstanding debt of PAYE and VAT in respect of post-CVA liabilities in the sum of approximately £54,000 which Mr Young was required to pay by 6 June 2012. Mr Young was threatened with a winding-up petition if the monies were not paid by that date.

The GLA inspection on 12 June 2012

17. Mr Peter Yensen, a GLA Enforcement Officer, carried out a GLA inspection at the premises of WSS on the 12 June 2012 in respect of WSS' licence number CORN0003, and also in respect of the application by WS for a GLA licence. Mr Yensen's contemporaneous notes of the inspection visit are at pages 229 to 232 of the Bundle. I have noted in particular that at page 231 of the Bundle, Mr Yensen recorded that Mr Young admitted that he owed thousands of pounds in PAYE and the reasons which he gives for such debt.
18. Mrs Read of HMRC was also in attendance at this meeting. I am not satisfied however, that there was any detailed discussion regarding Mr Young's plans for the future of WS or of any HMRC requirements regarding any such trading at this meeting, as there is no reference to such matters in Mr Yensen's manuscript notes of that meeting.

Subsequent events

19. During and following the inspection on 12 June 2012, Mr Yensen requested and obtained further information from Mr Young concerning the financial position of WSS including, in particular, with regard to the failure to make payment of outstanding monies to HMRC and the circumstances which had led to the CVA. The information which Mr Young provided to Mr Yensen included Mr Young's Managing Director's report and notes, at pages 129 and 244 to 275 of the Bundle, the audited accounts of WSS for October 2011, at pages 260 to 270 of the Bundle, and also evidence relating to payments which WSS had made to HMRC, and correspondence with HMRC.
20. During September 2012, Mr Young forwarded to Mr Yensen the letters which he had received from HMRC dated 3 September 2012 and 11 September 2012. The letter from HMRC to WSS dated 3 September 2012 is at pages 292-293 of the Bundle. The letter contained a statement of unpaid debt in the sum of £207,821.09. In the letter from HMRC dated 11 September 2012, which is at pages 294 to 295 of the Bundle, the statement of unpaid debt was in the sum of £47,789.96 which Mr Young was required to pay in full within seven days in order to prevent the filing of a petition winding-up without further notice. Mr Young advised Mr Yensen that the amounts quoted by HMRC were inaccurate and contended that there was approximately £14,000 outstanding in VAT to HMRC.

Mr Yensen's inspection report - WSS

21. On 18 September 2012, Mr Yensen submitted an inspection report in respect of WSS. This report is at pages 296-306 of the Bundle. I have noted in particular, that Mr Yensen confirmed that his inspection was confined to issues relating to HMRC and that he recorded Mr Young's intention to rid himself of the HMRC debt held by WSS and to commence trading through WS. Mr Yensen also set out in his investigation report the position relating to tax and associated matters as recorded at pages 297-300 of the Bundle, including that Mr Young challenged the figure cited by the Inland Revenue and that Mr Young contended that he owed approximately £14,000 in VAT in respect of the post-CVA debt. Mr Yensen also recorded Mr Young's explanation that the financial problems of WSS had arisen because of the decline in business. Mr Yensen further pointed out in his report that if it was not for the GLA implications Mr Young's intention to set up a new business would be legal, and that HMRC could then consider the possibility of requiring WS to pay financial security in the sum of up to approximately £30,000.

Mr Yensen's report - WS

22. Mr Yensen also prepared a report in respect of the licence application by WS. This report is at pages 306 to 312 of the bundle. Mr Yensen made it clear that this report had to be considered in conjunction with the report which he had prepared for WSS.

Mr Hooper's consideration of the matter

23. Mr Yensen's reports were submitted to Mr Ryan Hooper, licensing officer, for consideration. Mr Hooper considered the documents which had been submitted by Mr Yensen including the information which had been provided to Mr Yensen by Mr Young on behalf of WSS and WS.
24. Mr Hooper requested confirmation of the up to date position regarding WSS from HMRC. Mr Hooper's email to the intelligence team dated 10 October 2012, to which he attached his proposed letters confirming the revocation of WSS' licence, and the refusal of WS' application for a licence, are at pages 312a to 312b of the Bundle. Mr Hooper explained in his email that he understood that Mr Young, as the owner of WSS, proposed to enter into a pre-pack administration and to transfer the assets and goodwill of the business to WS, so that the WSS debts could be written off. Mr Hooper asked HMRC to confirm whether the pre-pack had the support of HMRC as, if it did have the support of HMRC, it would change the licensing decisions.
25. The GLA received a reply from HMRC via the secure gateway. This reply, dated 24 October 2012, is at page 312c of the Bundle. In summary, the GLA was advised by HMRC that the post-CVA debt of WSS, as at 23 October 2012, was £70,668 and, that in view of Mr Young's failure to make payments of the outstanding debt by the 15 October 2012, and in the light of his intention to proceed by way of a pre-pack, HMRC was not going to allow any leniency and would be submitting the case for an immediate winding-up petition.

The licence decision reports

26. Mr Hooper's licence decision reports, dated 9 November 2012, relating to WSS and WS are at pages 313 to 317 and 318 to 319 of the Bundle respectively.

The licence decision report relating to WSS

27. I have noted in particular, Mr Hooper's conclusions at pages 313 to 317 of the Bundle including with regard to the outstanding debt of WSS and further, that the proposed pre-pack arrangement did not have the support of HMRC. Mr Hooper stated that he considered that WSS was in breach of Licensing Standard 2.1 as there was a large debt outstanding to HMRC and that Mr Young was unable to comply with the CVA and the additional debt which had accrued since the implementation of the CVA. Mr Hooper also stated that Mr Young was not owed any monies from any labour users and that he did not consider that there were any extenuating circumstances to explain the breach of Licensing Standard 2.1. Mr Hooper concluded that the failure by WSS constituted a failure of a critical standard and, therefore, allocated a score of 30 points. Mr Hooper also concluded that in view of the serious nature of the breach and the amount of unpaid tax, it was proportionate, in all the circumstances, to revoke the licence of WSS.

The licence decision report relating to WS

28. Mr Hooper's licence decision report is at pages 318 to 319 of the bundle. I have noted in particular, Mr Hooper's assessment of the outstanding debt at WSS at 318a of the Bundle and his conclusion that Mr Young was creating a phoenix company so that the business could continue to trade and avoid the tax liabilities which were owed by WSS to HMRC. I have further noted Mr Hooper's conclusion that in the light of Mr Young's management connections with a business which had contravened the requirements of HMRC by owing significant tax debts he was satisfied that Mr Young had failed to demonstrate that he was a fit and proper person to hold a GLA licence. Mr Hooper allocated a score of 30 points in respect of the failure of the critical licensing standard 1.1, Mr Hooper concluded that in the light of the serious nature of the breach involving a connected business with substantial tax debts he considered that it was proportionate to refuse WS a licence.

The letters of revocation/ refusal

29. The letter from the GLA dated 9 November 2012 giving notice of the revocation of the licence of WSS is at pages 1 to 3 of the Bundle. The revocation of the licence was stated to take effect from 10 December 2012 unless Mr Young submitted an appeal within 20 working days. The GLA's letter dated 9 November 2012 refusing the licence application of WS is at pages 4 to 6 of the Bundle. The reasons stated at pages 4 to 5 of the Bundle reflected the reasons contained in Mr Hooper's licence decision report including in respect of Mr Young's failure to comply with Critical Standard 1.1. I have further noted that the letter erroneously stated that the decision as to whether Mr Young complied with the Critical Standards was determined as at the date of the inspection.

Appeals

30. Mr Young was advised of his right of appeal. Mr Young lodged an application on behalf of WS for a review of the decision to refuse the grant of a licence. The letter of application is at pages 7 to 15 of the Bundle. This was rejected by the GLA by a letter dated 17 January 2013. The letter of rejection is at pages 16 and 17 of the Bundle. Mr Young subsequently presented a formal notice of appeal on behalf of WS which is at pages 18 to 29 of the Bundle. I have noted in particular not only the grounds of appeal but also the financial information at page 25 of the Bundle including, that Mr Young accepted that as at the 23 October 2012 there was a tax debt due to HMRC from WSS in relation to the CVA of £153,000. Mr Young also accepted that as of the 19 October 2012, there was a post-CVA debt of approximately £27,000 (£43,533.21 less the sum of £16,142.94 which Mr Young stated he had paid to HMRC).

31. The GLA's response to Mr Young's notice of appeal on behalf of WS is at pages 30 to 34 of the Bundle.

The winding up of WSS

32. WSS was subsequently wound-up, pursuant to a petition by HMRC. WSS ceased trading by reason of such winding up rather than by reason of the revocation of its licence by the GLA, as the revocation was not with immediate effect.

SUBMISSIONS

33. I have had regard to the helpful submissions which have been made by the GLA and by Mr Young on behalf of WS. I have also had regard to the two authorities to which I have been referred at pages 38 – 43 and 43a – 43g of the Bundle. I have also had regard to the relevant legislation and guidance, including the Gangmasters (Licensing) Act 2004 and the associated regulations including the 2006 Regulations and the Gangmasters (Licensing Conditions) Rules 2009. I have also had regard in particular, to the guidance contained in the GLA's Licensing Standards document dated May 2012, which is at pages 47 to 78 of the Bundle, and also to the GLA's Licensing Decision Policy document also dated May 2012, which is at pages 81 to 88 of the Bundle.
34. I have noted, in particular, the following provisions in the GLA's Licensing Standards document namely, the guidance contained in paragraphs 4.1 to 4.3 (page 50 of the Bundle), and the guidance given for assessing compliance, including the requirement to adopt a proportionate approach when applying the licensing standards together with the GLA's stated concern to identify more persistent and systematic exploitation, rather than isolated non-compliance unless such compliance was "critical" in its own right. I have also had regard, in particular, to the guidance at paragraphs 4.11 and 4.12 (page 51 of the Bundle) concerning situations where an inspection score is 30 points or more including that an application for a licence would usually be refused or revoked where it was considered proportionate to do so, subject to the discretion identified at paragraph 4.11. I have also had regard to the guidance which is contained at paragraph 5.8 of the document namely, that the GLA would usually automatically refuse applications, where it was proportionate to do so, in circumstances where a proposed Principal Authority was found not to be fit and proper including, that such refusal would apply for at least two years from the date of that decision.
35. I have also given careful consideration to Licensing Standard 1: - the Fit and Proper Test (at page 57 of the Bundle). This is designated as a critical standard which requires that anyone named or specified in a licence, including a Principal Authority, must at all times act in a fit and proper manner. I have further taken into account that guidance states that one of the factors which the GLA would consider when deciding whether a person had acted in a fit and proper manner was whether they had contravened any of the requirements and standards of other regulatory authorities such as HMRC.
36. I have also given careful consideration to Licensing Standard 2: Pay and Tax Matters (at page 60 of the Bundle) which is also designated as a critical standard including in respect of the requirement to pay the correct amount of tax to HMRC in a timely manner.
37. I have further noted in particular, the guidance contained in the GLA's Licensing Decision Policy concerning the inspection and decision making processes including that it states at paragraph 6 (page 82 of the Bundle) that an inspector would not make a decision at the end of an inspection and that his findings would be submitted to the licensing team for consideration. It further states at paragraph 7 of the document (page 83 of the Bundle) that the licensing team would review all relevant information, including any information available from government agencies. Finally, I have had regard in particular, to paragraphs 10 and 17 of the document (pages 84 and 85 of the Bundle) including the confirmation of the application of proportionality in decision making.

MY CONCLUSIONS

38. I am satisfied, having given careful consideration to the findings of fact and also to the relevant regulations and guidance referred to above, that the decision by the GLA to refuse the application by WS for the grant of a licence was a reasonable and proportionate decision in all the circumstances and I hereby dismiss this appeal by WS.
39. When reaching my conclusions I have taken into account, in particular, the matters referred to below.
40. Firstly, I am satisfied on the evidence before me, that on the date when the decision was taken to refuse the licence, which is 9 November 2012, the GLA was entitled to conclude that the proposed Principal Authority of WS, Mr Young, was not a fit and proper person for the purposes of Licensing Standard 1.1 by reason of the fact that he had contravened Licensing Standard 2.1 in respect of the requirement to make payment of the tax liabilities of WSS in a timely manner.
41. I am further satisfied on the facts, that this was sufficiently serious to warrant a refusal of the grant of a licence given, in particular, the extent and length of time over which Mr Young/WSS had failed to make timely payments to HMRC. When reaching this conclusion I have taken into account in particular, that when the CVA was entered into on the 28 July 2011 there was outstanding debt of in excess of £300,000 (albeit that I accept, as Mr Young has contended during these proceedings, that the minimum amount that he was required to pay under the CVA was £180,000).
42. I have also taken into account that Mr Young was unable to maintain payment of the CVA debt and further that he was unable to pay the post-CVA liabilities as they fell due. Even on Mr Young's figures, there was a sum of at least £27,000 outstanding in respect of the post-CVA debt as at the 19 October 2012 (page 25 of the Bundle). Further, and, in any event, I am satisfied that it was reasonable for Mr Hooper to rely on the figure of £70,668 as the post CVA debt of WSS as at 23 October 2012 (page 312c of the Bundle) as this was the figure which was provided by HMRC via the secure gateway.
43. I accept that there may have been legitimate reasons for Mr Young's inability to pay these monies, however this does not mean that it was unreasonable for Mr Hooper to conclude by 9 November 2012 that WSS was unable to pay its debts to HMRC in a timely manner and, moreover, that this state of affairs had continued for a protracted period of time.
44. I am also satisfied that Mr Hooper was entitled to take into account Mr Young's stated intention to rid himself of the debt accumulated by WSS and to trade via the new business
45. I am further satisfied that the failing of Mr Young as the proposed Principal Authority of WS was a serious matter as he was in breach of the critical Licensing Standards 1 and 2 and that, in all the circumstances, it was proportionate for GLA to refuse WS' application for a licence.
46. When reaching this conclusion, I am also satisfied that it was appropriate and proportionate for the GLA to refuse the licence, as opposed to the application of sanctions against WS, in the light of the fact that Mr Hooper was not satisfied

that there was any agreement by HMRC for WS to trade with a security bond. When reaching this conclusion, I have taken into account that Mr Hooper requested in his email dated 10 October 2012 (page 312a and b of the bundle) confirmation from HRMC as to whether the pre-pack arrangement had its support as if it had such support it would change the licensing decision. However the response which was received from HRMC (at page 312c of the Bundle) was that having been advised of Mr Young's intention with regard to the pre-pack HRMC would not allow any leniency and would be proceeding with an immediate winding up petition against WSS. In all the circumstances, I am satisfied that the refusal of the licence application was a proportionate sanction in the light of the nature and extent of the default of WSS together with the lack of any confirmation by HMRC that they were prepared to allow WS to trade with a security bond as was contended by Mr Young.

Any outstanding issues

47. Finally, I will deal, insofar as I have not already done so, with the specific issues which were raised in the Order (pages 36 – 37 of the Bundle).
48. Firstly, in respect of paragraphs (2) (i) - (iii) of the Order (whether the GLA's refusal to grant WS a licence was based on incorrect and/ or unsubstantiated information), I am satisfied that Mr Hooper's interpretation of the figures before him was permissible on the information provided. I am also satisfied that the reports of Mr Yensen and Mr Hooper both took into account the information supplied by Mr Young and that Mr Young was given a full opportunity to supply such information to Mr Yensen. Further, as explained above, Mr Hooper sought confirmation of the position of HRMC with regard to the proposed pre-pack arrangement prior to the issue of his decision. In all the circumstances, I do not accept that the GLA's refusal to grant WS a licence was based on incorrect and/or unsubstantiated information.
49. Further, in respect of paragraph (2) (iv) of the Order (whether WS/ Mr Young's compliance with the GLA standards should be judged only on the basis of the information which was available at the date of the inspection on 12 June 2012), I accept that the letters which Mr Young received from the GLA dated 9 November 2012 giving notice of the revocation of the licence issued to WSS and giving notice of the refusal of the licence application by WS both stated that the question of compliance was determined at the date of the inspection, in this case on 12 June 2012. This statement is clearly incorrect. It is clear from the above findings of fact that the relevant decisions were taken on the basis of information which was available as at 9 November 2012 and that Mr Hooper took into account, by way of example, information which was provided by Mr Young and by HMRC after the inspection on 12 June 2012.
50. Further, I am satisfied that this was an entirely proper approach as not only did it comply with paragraphs 6 and 7 of the GLA's Licensing Decision Policy (at pages 82 and 83 of the Bundle) but it also allowed the GLA to obtain further information in order to ensure that it had a complete and accurate picture regarding WSS and WS when making its decisions. If the GLA had determined the matter as at the date of the inspection on 12 June 2012, it would have deprived Mr Young of the opportunity to have provided further information to Mr Yensen and would also have prevented the GLA from obtaining formal confirmation from HMRC regarding the outstanding debts of WSS and the attitude of HMRC to the proposed pre-pack arrangement. In all the circumstances, I reject that ground. I trust however, that the GLA will review and amend its standard letters giving

notice of revocation/ refusal in order to ensure the wording complies with its Licensing Decision Policy.

51. In all the circumstances, I am satisfied that the GLA's decision to refuse the licence application by WS with Mr Young as the proposed Principal Authority was a reasonable and proportionate decision and I therefore reject this appeal. As I have made clear however, in my oral comments I do have sympathy for the position in which Mr Young has found himself and the attempts which he has made to discharge the monies owed by WSS to HMRC. Accordingly, I would take an extremely dim view of any attempt by the GLA to "name and shame" Mr Young for what has happened in this case.

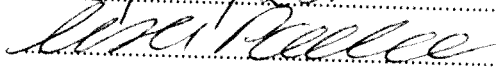


The Appointed Person

Date: 3/10/2013

WRITTEN REASONS SENT TO THE PARTIES ON

8/10/2013



FOR THE SECRETARY TO THE TRIBUNALS



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Subsequent events

19. During and following the inspection on 12 June 2012, Mr Yensen requested and obtained further information from Mr Young concerning the financial position of WSS including, in particular, with regard to the failure to make payment of outstanding monies to HMRC and the circumstances which had led to the CVA. The information which Mr Young provided to Mr Yensen included Mr Young's Managing Director's report and notes, at pages 129 and 244 to 275 of the Bundle, the audited accounts of WSS for October 2011, at pages 260 to 270 of the Bundle, and also evidence relating to payments which WSS had made to HMRC, and correspondence with HMRC.
20. During September 2012, Mr Young forwarded to Mr Yensen the letters which he had received from HMRC dated 3 September 2012 and 11 September 2012. The letter from HMRC to WSS dated 3 September 2012 is at pages 292-293 of the Bundle. The letter contained a statement of unpaid debt in the sum of £207,821.09. In the letter from HMRC dated 11 September 2012, which is at pages 294 to 295 of the Bundle, the statement of unpaid debt was in the sum of £47,789.96 which Mr Young was required to pay in full within seven days in order to prevent the filing of a petition winding-up without further notice. Mr Young advised Mr Yensen that the amounts quoted by HMRC were inaccurate and contended that there was approximately £14,000 outstanding in VAT to HMRC.

Mr Yensen's inspection report - WSS

21. On 18 September 2012, Mr Yensen submitted an inspection report in respect of WSS. This report is at pages 296-306 of the Bundle. I have noted in particular, that Mr Yensen confirmed that his inspection was confined to issues relating to HMRC and that he recorded Mr Young's intention to rid himself of the HMRC debt held by WSS and to commence trading through WS. Mr Yensen also set out in his investigation report the position relating to tax and associated matters as recorded at pages 297-300 of the Bundle, including that Mr Young challenged the figure cited by the Inland Revenue and that Mr Young contended that he owed approximately £14,000 in VAT in respect of the post-CVA debt. Mr Yensen also recorded Mr Young's explanation that the financial problems of WSS had arisen because of the decline in business. Mr Yensen further pointed out in his report that if it was not for the GLA implications Mr Young's intention to set up a new business would be legal, and that HMRC could then consider the possibility of requiring WS to pay financial security in the sum of up to approximately £30,000.

Mr Yensen's report - WS

22. Mr Yensen also prepared a report in respect of the licence application by WS. This report is at pages 306 to 312 of the bundle. Mr Yensen made it clear that this report had to be considered in conjunction with the report which he had prepared for WSS.

Mr Hooper's consideration of the matter

23. Mr Yensen's reports were submitted to Mr Ryan Hooper, licensing officer, for consideration. Mr Hooper considered the documents which had been submitted by Mr Yensen including the information which had been provided to Mr Yensen by Mr Young on behalf of WSS and WS.
24. Mr Hooper requested confirmation of the up to date position regarding WSS from HMRC. Mr Hooper's email to the intelligence team dated 10 October 2012, to which he attached his proposed letters confirming the revocation of WSS' licence, and the refusal of WS' application for a licence, are at pages 312a to 312b of the Bundle. Mr Hooper explained in his email that he understood that Mr Young, as the owner of WSS, proposed to enter into a pre-pack administration and to transfer the assets and goodwill of the business to WS, so that the WSS debts could be written off. Mr Hooper asked HMRC to confirm whether the pre-pack had the support of HMRC as, if it did have the support of HMRC, it would change the licensing decisions.
25. The GLA received a reply from HMRC via the secure gateway. This reply, dated 24 October 2012, is at page 312c of the Bundle. In summary, the GLA was advised by HMRC that the post-CVA debt of WSS, as at 23 October 2012, was £70,668 and, that in view of Mr Young's failure to make payments of the outstanding debt by the 15 October 2012, and in the light of his intention to proceed by way of a pre-pack, HMRC was not going to allow any leniency and would be submitting the case for an immediate winding-up petition.

The licence decision reports

26. Mr Hooper's licence decision reports, dated 9 November 2012, relating to WSS and WS are at pages 313 to 317 and 318 to 319 of the Bundle respectively.

The licence decision report relating to WSS

27. I have noted in particular, Mr Hooper's conclusions at pages 313 to 317 of the Bundle including with regard to the outstanding debt of WSS and further, that the proposed pre-pack arrangement did not have the support of HMRC. Mr Hooper stated that he considered that WSS was in breach of Licensing Standard 2.1 as there was a large debt outstanding to HMRC and that Mr Young was unable to comply with the CVA and the additional debt which had accrued since the implementation of the CVA. Mr Hooper also stated that Mr Young was not owed any monies from any labour users and that he did not consider that there were any extenuating circumstances to explain the breach of Licensing Standard 2.1. Mr Hooper concluded that the failure by WSS constituted a failure of a critical standard and, therefore, allocated a score of 30 points. Mr Hooper also concluded that in view of the serious nature of the breach and the amount of unpaid tax, it was proportionate, in all the circumstances, to revoke the licence of WSS.

The licence decision report relating to WS

28. Mr Hooper's licence decision report is at pages 318 to 319 of the bundle. I have noted in particular, Mr Hooper's assessment of the outstanding debt at WSS at 318a of the Bundle and his conclusion that Mr Young was creating a phoenix company so that the business could continue to trade and avoid the tax liabilities which were owed by WSS to HMRC. I have further noted Mr Hooper's conclusion that in the light of Mr Young's management connections with a business which had contravened the requirements of HMRC by owing significant tax debts he was satisfied that Mr Young had failed to demonstrate that he was a fit and proper person to hold a GLA licence. Mr Hooper allocated a score of 30 points in respect of the failure of the critical licensing standard 1.1, Mr Hooper concluded that in the light of the serious nature of the breach involving a connected business with substantial tax debts he considered that it was proportionate to refuse WS a licence.

The letters of revocation/ refusal

29. The letter from the GLA dated 9 November 2012 giving notice of the revocation of the licence of WSS is at pages 1 to 3 of the Bundle. The revocation of the licence was stated to take effect from 10 December 2012 unless Mr Young submitted an appeal within 20 working days. The GLA's letter dated 9 November 2012 refusing the licence application of WS is at pages 4 to 6 of the Bundle. The reasons stated at pages 4 to 5 of the Bundle reflected the reasons contained in Mr Hooper's licence decision report including in respect of Mr Young's failure to comply with Critical Standard 1.1. I have further noted that the letter erroneously stated that the decision as to whether Mr Young complied with the Critical Standards was determined as at the date of the inspection.

Appeals

30. Mr Young was advised of his right of appeal. Mr Young lodged an application on behalf of WS for a review of the decision to refuse the grant of a licence. The letter of application is at pages 7 to 15 of the Bundle. This was rejected by the GLA by a letter dated 17 January 2013. The letter of rejection is at pages 16 and 17 of the Bundle. Mr Young subsequently presented a formal notice of appeal on behalf of WS which is at pages 18 to 29 of the Bundle. I have noted in particular not only the grounds of appeal but also the financial information at page 25 of the Bundle including, that Mr Young accepted that as at the 23 October 2012 there was a tax debt due to HMRC from WSS in relation to the CVA of £153,000. Mr Young also accepted that as of the 19 October 2012, there was a post-CVA debt of approximately £27,000 (£43,533.21 less the sum of £16,142.94 which Mr Young stated he had paid to HMRC).

31. The GLA's response to Mr Young's notice of appeal on behalf of WS is at pages 30 to 34 of the Bundle.

The winding up of WSS

32. WSS was subsequently wound-up, pursuant to a petition by HMRC. WSS ceased trading by reason of such winding up rather than by reason of the revocation of its licence by the GLA, as the revocation was not with immediate effect.

SUBMISSIONS

33. I have had regard to the helpful submissions which have been made by the GLA and by Mr Young on behalf of WS. I have also had regard to the two authorities to which I have been referred at pages 38 – 43 and 43a – 43g of the Bundle. I have also had regard to the relevant legislation and guidance, including the Gangmasters (Licensing) Act 2004 and the associated regulations including the 2006 Regulations and the Gangmasters (Licensing Conditions) Rules 2009. I have also had regard in particular, to the guidance contained in the GLA's Licensing Standards document dated May 2012, which is at pages 47 to 78 of the Bundle, and also to the GLA's Licensing Decision Policy document also dated May 2012, which is at pages 81 to 88 of the Bundle.
34. I have noted, in particular, the following provisions in the GLA's Licensing Standards document namely, the guidance contained in paragraphs 4.1 to 4.3 (page 50 of the Bundle), and the guidance given for assessing compliance, including the requirement to adopt a proportionate approach when applying the licensing standards together with the GLA's stated concern to identify more persistent and systematic exploitation, rather than isolated non-compliance unless such compliance was "critical" in its own right. I have also had regard, in particular, to the guidance at paragraphs 4.11 and 4.12 (page 51 of the Bundle) concerning situations where an inspection score is 30 points or more including that an application for a licence would usually be refused or revoked where it was considered proportionate to do so, subject to the discretion identified at paragraph 4.11. I have also had regard to the guidance which is contained at paragraph 5.8 of the document namely, that the GLA would usually automatically refuse applications, where it was proportionate to do so, in circumstances where a proposed Principal Authority was found not to be fit and proper including, that such refusal would apply for at least two years from the date of that decision.
35. I have also given careful consideration to Licensing Standard 1: - the Fit and Proper Test (at page 57 of the Bundle). This is designated as a critical standard which requires that anyone named or specified in a licence, including a Principal Authority, must at all times act in a fit and proper manner. I have further taken into account that guidance states that one of the factors which the GLA would consider when deciding whether a person had acted in a fit and proper manner was whether they had contravened any of the requirements and standards of other regulatory authorities such as HMRC.
36. I have also given careful consideration to Licensing Standard 2: Pay and Tax Matters (at page 60 of the Bundle) which is also designated as a critical standard including in respect of the requirement to pay the correct amount of tax to HMRC in a timely manner.
37. I have further noted in particular, the guidance contained in the GLA's Licensing Decision Policy concerning the inspection and decision making processes including that it states at paragraph 6 (page 82 of the Bundle) that an inspector would not make a decision at the end of an inspection and that his findings would be submitted to the licensing team for consideration. It further states at paragraph 7 of the document (page 83 of the Bundle) that the licensing team would review all relevant information, including any information available from government agencies. Finally, I have had regard in particular, to paragraphs 10 and 17 of the document (pages 84 and 85 of the Bundle) including the confirmation of the application of proportionality in decision making.

MY CONCLUSIONS

38. I am satisfied, having given careful consideration to the findings of fact and also to the relevant regulations and guidance referred to above, that the decision by the GLA to refuse the application by WS for the grant of a licence was a reasonable and proportionate decision in all the circumstances and I hereby dismiss this appeal by WS.
39. When reaching my conclusions I have taken into account, in particular, the matters referred to below.
40. Firstly, I am satisfied on the evidence before me, that on the date when the decision was taken to refuse the licence, which is 9 November 2012, the GLA was entitled to conclude that the proposed Principal Authority of WS, Mr Young, was not a fit and proper person for the purposes of Licensing Standard 1.1 by reason of the fact that he had contravened Licensing Standard 2.1 in respect of the requirement to make payment of the tax liabilities of WSS in a timely manner.
41. I am further satisfied on the facts, that this was sufficiently serious to warrant a refusal of the grant of a licence given, in particular, the extent and length of time over which Mr Young/WSS had failed to make timely payments to HMRC. When reaching this conclusion I have taken into account in particular, that when the CVA was entered into on the 28 July 2011 there was outstanding debt of in excess of £300,000 (albeit that I accept, as Mr Young has contended during these proceedings, that the minimum amount that he was required to pay under the CVA was £180,000).
42. I have also taken into account that Mr Young was unable to maintain payment of the CVA debt and further that he was unable to pay the post-CVA liabilities as they fell due. Even on Mr Young's figures, there was a sum of at least £27,000 outstanding in respect of the post-CVA debt as at the 19 October 2012 (page 25 of the Bundle). Further, and, in any event, I am satisfied that it was reasonable for Mr Hooper to rely on the figure of £70,668 as the post CVA debt of WSS as at 23 October 2012 (page 312c of the Bundle) as this was the figure which was provided by HMRC via the secure gateway.
43. I accept that there may have been legitimate reasons for Mr Young's inability to pay these monies, however this does not mean that it was unreasonable for Mr Hooper to conclude by 9 November 2012 that WSS was unable to pay its debts to HMRC in a timely manner and, moreover, that this state of affairs had continued for a protracted period of time.
44. I am also satisfied that Mr Hooper was entitled to take into account Mr Young's stated intention to rid himself of the debt accumulated by WSS and to trade via the new business
45. I am further satisfied that the failing of Mr Young as the proposed Principal Authority of WS was a serious matter as he was in breach of the critical Licensing Standards 1 and 2 and that, in all the circumstances, it was proportionate for GLA to refuse WS' application for a licence.
46. When reaching this conclusion, I am also satisfied that it was appropriate and proportionate for the GLA to refuse the licence, as opposed to the application of sanctions against WS, in the light of the fact that Mr Hooper was not satisfied


that there was any agreement by HMRC for WS to trade with a security bond. When reaching this conclusion, I have taken into account that Mr Hooper requested in his email dated 10 October 2012 (page 312a and b of the bundle) confirmation from HRMC as to whether the pre-pack arrangement had its support as if it had such support it would change the licensing decision. However the response which was received from HRMC (at page 312c of the Bundle) was that having been advised of Mr Young's intention with regard to the pre-pack HRMC would not allow any leniency and would be proceeding with an immediate winding up petition against WSS. In all the circumstances, I am satisfied that the refusal of the licence application was a proportionate sanction in the light of the nature and extent of the default of WSS together with the lack of any confirmation by HMRC that they were prepared to allow WS to trade with a security bond as was contended by Mr Young.

Any outstanding issues

47. Finally, I will deal, insofar as I have not already done so, with the specific issues which were raised in the Order (pages 36 – 37 of the Bundle).
48. Firstly, in respect of paragraphs (2) (i) - (iii) of the Order (whether the GLA's refusal to grant WS a licence was based on incorrect and/ or unsubstantiated information), I am satisfied that Mr Hooper's interpretation of the figures before him was permissible on the information provided. I am also satisfied that the reports of Mr Yensen and Mr Hooper both took into account the information supplied by Mr Young and that Mr Young was given a full opportunity to supply such information to Mr Yensen. Further, as explained above, Mr Hooper sought confirmation of the position of HRMC with regard to the proposed pre-pack arrangement prior to the issue of his decision. In all the circumstances, I do not accept that the GLA's refusal to grant WS a licence was based on incorrect and/or unsubstantiated information.
49. Further, in respect of paragraph (2) (iv) of the Order (whether WS/ Mr Young's compliance with the GLA standards should be judged only on the basis of the information which was available at the date of the inspection on 12 June 2012), I accept that the letters which Mr Young received from the GLA dated 9 November 2012 giving notice of the revocation of the licence issued to WSS and giving notice of the refusal of the licence application by WS both stated that the question of compliance was determined at the date of the inspection, in this case on 12 June 2012. This statement is clearly incorrect. It is clear from the above findings of fact that the relevant decisions were taken on the basis of information which was available as at 9 November 2012 and that Mr Hooper took into account, by way of example, information which was provided by Mr Young and by HMRC after the inspection on 12 June 2012.
50. Further, I am satisfied that this was an entirely proper approach as not only did it comply with paragraphs 6 and 7 of the GLA's Licensing Decision Policy (at pages 82 and 83 of the Bundle) but it also allowed the GLA to obtain further information in order to ensure that it had a complete and accurate picture regarding WSS and WS when making its decisions. If the GLA had determined the matter as at the date of the inspection on 12 June 2012, it would have deprived Mr Young of the opportunity to have provided further information to Mr Yensen and would also have prevented the GLA from obtaining formal confirmation from HMRC regarding the outstanding debts of WSS and the attitude of HMRC to the proposed pre-pack arrangement. In all the circumstances, I reject that ground. I trust however, that the GLA will review and amend its standard letters giving

notice of revocation/ refusal in order to ensure the wording complies with its Licensing Decision Policy.

51. In all the circumstances, I am satisfied that the GLA's decision to refuse the licence application by WS with Mr Young as the proposed Principal Authority was a reasonable and proportionate decision and I therefore reject this appeal. As I have made clear however, in my oral comments I do have sympathy for the position in which Mr Young has found himself and the attempts which he has made to discharge the monies owed by WSS to HMRC. Accordingly, I would take an extremely dim view of any attempt by the GLA to "name and shame" Mr Young for what has happened in this case.

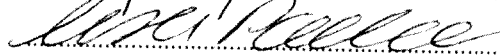


The Appointed Person

Date: 3/10/2013

WRITTEN REASONS SENT TO THE PARTIES ON

8/10/2013



FOR THE SECRETARY TO THE TRIBUNALS