

**IN THE MATTER OF AN APPEAL PURSUANT
TO REGULATION 6 OF THE GANGMASTERS
(APPEALS) REGULATIONS 2006**

B E T W E E N:

FIRSTCALL ADVANCE RECRUITMENT LTD

Appellant

-and-

THE GANGMASTERS LICENCING AUTHORITY

Respondent

HELD AT Birmingham **ON** 24 and 25 May 2012

APPOINTED PERSON: K.J.G. TUCKER

Representation:

For the Appellant: Mr Grewal

For the Respondent: Mrs Gilligan, solicitor

DECISION

The appeal by Firstcall Advance Recruitment Ltd against the refusal of a licence under the Gangmasters (Licensing) Act 2004 is dismissed.

REASONS

1. I was appointed to consider this appeal pursuant to reg. 3 of the Gangmasters (Appeals) Regulations 2006, (SI 2006 No.662), ("the Gangmasters Appeals Regulations"). This document records the summary reasons pursuant to reg. 22 of those Regulations.
2. The appeal was determined following an oral hearing, arranged at the Appellant's request, on 24th May 2012. An oral decision was delivered at the end of that hearing. At the hearing the Appellant was represented by Mr Grewal, who, had the GLA licence been granted would have been the Principal Authority, ("PA") for the Appellant. Mr Grewal gave evidence on behalf of the Appellant. He gave evidence through a Punjabi interpreter, Mrs Shukla, who interpreted throughout the proceedings. For entirely legitimate reasons, although Mr Grewal has a good command of English he had decided that he would prefer to give evidence through an interpreter: he stated that he understood most things but sometimes would need help. In fact, during the proceedings Mr Grewal would slip into talking English rather than Punjabi. However, in order to ensure that Mr Grewal understood all of the proceedings we agreed that the most sensible approach was that Mrs Shukla should interpret all of the proceedings and she did so.

3. The Respondent was represented by Mrs Gilligan, solicitor. On behalf of the Respondent I heard evidence from Mrs Boyle, Mrs Holden and Mr Nix. Mrs Holden and Mrs Boyle carried out an inspection for the purposes of the Appellant's application for a licence and interviewed Mr Grewal during that inspection. Mr Nix made the decision not to grant the Appellant a licence. I had regard to documents in an agreed bundle of documents which ran to a total of 407 pages. Each of the witnesses from whom I heard evidence had prepared a signed statement in advance of the hearing.
4. I found the Respondent's witnesses to be entirely credible witnesses. They gave their evidence in a measured, clear and honest manner. The evidence which they gave was consistent with the documents before me. By contrast, I found Mr Grewal's evidence evasive, inconsistent and unreliable. Regrettably, I did not consider that all of the evidence which he gave was honestly given. On each issue where there was a dispute of fact between the Respondent's witnesses and Mr Grewal's, I preferred the Respondent's witnesses evidence.
5. The Appellant applied for a Gangmasters Licence on 20 June 2011. Pursuant to the Gangmasters Licencing Regulations 2005, the GLA was given power to determine rules in connection with the licensing of persons acting as gangmasters, in particular the criteria for assessing the fitness of an applicant for a licence. The GLA has published Licensing Standards against which it assesses applications for licences [117-158]. Some standards are "Critical" and some are "non-Critical". A failure of a non-Critical standard attracts 8 points and a Critical Standard 30 points. An overall mark over 30 will normally result in an application being refused. The Appellant was scored with 46 points having failed two non-Critical Standards and one Critical Standard. The Licencing Standards are not particularly onerous. There is significant guidance available to the public about them and about the licensing process. They seek to ensure that gangmasters adhere to certain basic minimum standards and legal requirements when supplying workers and thereby avoid exploitation of workers in relevant fields.
6. On 18 August 2011 Mr Grewal, who was identified in the application as the proposed PA, was contacted by Mrs Holden who stated that she intended to carry out an application inspection on 23 August 2011. In that conversation she explained that Mr Grewal's wife could not interpret for him and that if he wanted assistance with interpretation, the Respondent would arrange for an independent interpreter to be present. Mr Grewal stated that he did not want to have an interpreter during the inspection. This arrangement was confirmed in writing in a letter dated 18 August 2011 [213]. Mr Grewal was also provided with access to a significant volume of material which (a) explained in detail the GLA standards and (b) explained the inspection process. This information was in fact available to him from, at least, the date upon which he made his application to the GLA.
7. The inspection took place on 23 August 2011. Mr Grewal answered the questions asked of him by the inspectors and he also showed them documents he proposed to use in the new business. I accepted that the inspectors' notes of the inspection [215-378] were accurate and reflected what they were told and

shown by Mr Grewal. A number of the responses given to the inspectors gave rise to concern that the Appellant had not demonstrated compliance with the GLA's Licencing Standards, as did the quality of the documentation provided. During the inspection Mr Grewal spoke to his wife in Punjabi. The inspectors explained again that his wife could not interpret for him and Mrs Holden offered to stop the inspection if Mr Grewal would prefer to continue with an interpreter and arrange for one to attend. Mr Grewal stated that he did not wish to do that.

8. The concerns about the responses given to questions asked by the inspectors and about the documentation provided are explained in detail in the Licence Decision Report [399-403] and the Decision Letter of 5 October 2011 [404-7]. In particular:-

8.1 Mr Grewal had stated in the application that he would be the PA for the Appellant, i.e., the individual responsible for the day-to-day management of the business. The GLA was required to assess whether he was "fit and proper" for that role, when assessing compliance with Critical Licencing Standard 1.2, in particular whether he had sufficient ability/competence to fulfil that role and to operate in accordance with the GLA Licencing Standards. In my judgment, at the inspection, Mr Grewal failed to demonstrate that this was the case. In particular:-

- He stated that he would work in the field and that his wife would be responsible for the day to day management of the business. I accept that he said that at the inspection notwithstanding that in evidence he stated that this was not the case: he suggested that he would be responsible for the business and his wife would assist as a secretary, particularly when he was away from the office, working in the field.
- Mr Grewal did not appear to understand the documents he showed the inspectors: he stated that had not read the contract he intended to use for workers. He stated that he was not sure what to put in a risk assessment. He was unable to explain any relevant details about proposed "transfer fees".
- The documentation which was produced was incomplete. For example, Mr Grewal did not produce the "assignment details form" referred to in the worker's contract, nor Schedule 2 referred to in the Hirer's contract (which would set out the basis for calculating fees). Equally, although the staff handbook referred to an accident reporting book, Mr Grewal stated that there was not one.
- Further, some of the documentation did not appear to be suitable for the new business. It appeared that Mr Grewal had used documents used by himself and his wife in another business (which operated in the healthcare sector) and simply changed the name of the company at the top of those documents. That explained why nearly all of the documents referred to Mr Grewal's wife as the person responsible for various matters and not Mr Grewal. Mr Grewal's explanation in

oral evidence about this matter evolved and was unconvincing. Initially he stated that the inspectors had told him to print out copies of the documents with his wife's name on them. Then he stated that he had copies with both his and his wife's name on, that he asked which he should print out; that the inspectors did not reply so he printed out the copies with his wife's name on. The fact that the documents provided were "lifted" from another business also explained why the document referred to as the Building Premises Checklist stated that it was "[t]o be completed in all business premises where domiciliary care staff are required to work". The Appellant proposed to supply workers to the agricultural sector (field based work, mushroom picking and packing). Mr Grewal suggested that the reference to "domiciliary care" was simply a mistake he made when he typed the document and that he should not have typed the words "where domiciliary care staff are required to work", but that in all other respects that document was suitable for workers he would supply because it was suitable for use for those operating in packing areas or picking mushrooms. I found that evidence thoroughly unconvincing. It was one of several occasions when I considered that Mr Grewal was not truthful when giving evidence.

8.2 One of Mr Grewal's responses to a question asked by the inspectors demonstrated a clear failure to adhere to licence standard number 5.4 (providing workers in industrial disputes). He stated that he would supply workers to a labour user when workers were not working because of industrial action. Again, I found Mr Grewal's evidence that he had not said or meant that unconvincing. Again, his evidence about his response to that question evolved. Initially he stated that he had said he would speak to the Unions first and that if they were happy, he would then supply workers; then he stated he would speak to the striking workers and see if they would be happy to be provided through his company.

8.3 A further response to a different question demonstrated a clear breach of Licencing Standard 6.2 (instruction and training). Mr Grewal stated that he would not pay workers either for time spent on induction or health and safety training. Again, Mr Grewal's oral evidence at the hearing to the contrary was unconvincing.

9. The application for a GLA licence has to be determined on the basis of the information gathered at the inspection and, in this case, which was before Mr Nix when he made his decision. The Appellant failed three standards and achieved an overall score of 46. Mr Nix refused to grant a licence. I considered that Mr Nix was entitled to reach the decision which he did: it was justified on the evidence and was a proportionate decision: i.e., the refusal was appropriate and necessary given the evidence of non-compliance by the Appellant with both critical and non-critical Licensing Standards.

10. Mr Grewal suggested that he did not have sufficient time to prepare for the inspection. I did not accept that. The inspection took place on 23 August 2011 and the initial application was made in June 2011. He also suggested that he would have been ready had the inspection taken place within 30 days of the application because he would have remembered things better so that he could have answered questions properly. I did not consider that the evidence of non-compliance suggested that Mr Grewal had simply forgotten some things. I considered that he had demonstrated a failure to grasp or understand key issues relating to the Licensing Standards. He also appeared to suggest that the inspectors should have told him which documents he needed to provide. That assertion missed the point. He, on behalf of the Appellant, was required to demonstrate compliance with the Licensing Standards at the inspection and he failed to do so. Finally, Mr Grewal asserted on several occasions that he would comply with the Licensing Standards and "act in accordance with the law". That assertion could not be determinative of the appeal. The Appellant failed to establish compliance with the standards at inspection: mere assertions that it will operate in compliance with legal and other requirements, coupled with less than truthful evidence from the proposed PA is neither a legitimate nor sufficient basis for appeal.
11. Mr Grewal also suggested that other applicants for licences employed consultants to prepare documents for them and that some gangmasters put forward "fake" PAs in order to obtain licences and deliberately circumvent the Licensing Standards. Neither of these assertions provided a valid ground of appeal. What others may or may not do is not a relevant issue in this context. The GLA were required to assess the Appellant's application. It did so fairly and properly in accordance with its stated procedure and Licensing Standards. It reached a legitimate decision and was entitled to refuse to grant a licence. I dismissed the appeal.

Signed by Katherine Tuelor on 30 May 2012
Appointed Person
24 May 2012