

**IN THE MATTER OF THE GANGMASTERS (APPEALS) REGULATIONS 2006  
BETWEEN**

**Appellant**

**AND**

**Respondent**

Euroconcept Recruitment Limited

The Gangmasters Licensing Authority

**DECISION**

The appeal by Euroconcept Recruitment Limited against the refusal dated 16 May 2012 of its application for a Licence pursuant to the Gangmasters (Licensing) Act 2004 is dismissed.

**REASONS**

1. This is an appeal against a decision of the Gangmasters Licensing Authority (GLA) not to grant a licence pursuant to the Gangmasters (Licensing) Act 2004 (the Act) to Euroconcept Recruitment Limited (ERL).
2. I was appointed to hear this appeal pursuant to regulation 3 of the Gangmasters (Appeals) Regulations 2006. The Expedited Procedure provided for in Regulation 20 does not apply and both parties have agreed that I can determine the appeal without an oral hearing. I therefore instructed the Appeals Secretariat to inform the parties that I would consider any written representations provided that they were lodged with the Appeals Secretariat within 14 days. They have been lodged and considered by me along with the enclosures thereto together with the appeal and the documents attached, the response and the documents annexed to it, and the various documents and provisions referred to herein.

The Background

3. ERL applied for a licence through its principal authority, Mrs Beata Stojek, on 23 November 2011. The process by which a decision whether this should be granted is explained in the GLA'S Licensing Decision Policy. The version before me is that dated May 2012. In summary the procedure provides that following any background checks that are deemed necessary that an inspection is carried out. In this case this was arranged for 19 April 2012.
4. Following an inspection a review is carried out by the GLA's licensing team which includes consideration of the inspection report that is generated in each case. That in turn generates an analysis and decision on the inspection report.
5. The documents before me show that the inspection report identified a number of non-compliances with the licensing standards that I identify below. The analysis and decision was prepared by Ryan Hooper who recorded therein that he considered that the applicant was not sufficiently prepared to adequately demonstrate knowledge of a number of standards or was familiar with all the business documentation. He determined that he did

not consider the applicant had sufficient competence to operate a labour providing business which would be compliant with the GLA Licensing Standards (the Standards). As a result he concluded that the applicant had failed the competency test and the licence application should be refused. The analysis and decision document was dated 16 May 2012. Also on that date a four page refusal letter setting out the standards alleged to have been breach and the GLA's rationale was forwarded to the applicant.

6. Within its appeal ERL stated that motivated by mistakes pointed out by inspectors it had gathered all the information and documents and policies required to comply with the Standards. It went on to relay in some detail the steps that the ERL had taken to remedy this.
7. I have before me a number of emails ERL has subsequently forwarded to the Appeals Secretariat enclosing documents that it has produced in order to demonstrate to compliance and its knowledge. I was also told via an email of 5 October how ERL had appointed Mr Shaun Watts in September 2012 to put the necessary procedures in place. A series of documents were appended to ERL's email of 23 October including amongst others a registration form, working time opt out, terms of business, and manual handling documents. Amongst the other emails from ERL on the 1 November 2012 it wrote setting out amongst other matters how it has informed its staff of their entitlements to holiday and how this is calculated, measures it has taken to inform itself of legal duties such as the entitlement to work and clarified how it has addressed the non compliances.
8. The GLA's position can be summarised as follows:-
  - 8.1. The Appellant was unable to demonstrate its compliance at the time of the inspection therefore its licence application was refused due to failure to comply with Licensing Standard 1.2.
  - 8.2. It is at the time of the inspection that compliance with the Standards must be demonstrated and not at some later point in time.
  - 8.3. No new information has been submitted to suggest that the GLA's decision to refuse the Appellant's licence application was incorrect. Instead ERL has provided a list of steps it has taken towards compliance since the inspection and an explanation of various other matters.

#### The Law

9. The purpose of the Act is to protect workers in agriculture and certain other industries for exploitation and to ensure that they work within a risk responsible health and safety reach regime and none of their condition terms and conditions of employment.
10. The GLA was established by section 1 of the Act. The constitution, structure and other matters relating to the operation of the GLA is regulated by Gangmasters (Licensing Authority) Regulations 2005 SI 448/2005.
11. Section 6 of the Act provides that a person shall not act as a Gangmaster except under the authority of a licence. Section 7 of the Act provides that the GLA may grant a licence if it thinks fit. Section 8 of the Act permits the GLA to make such rules as it thinks fit in connection with the licensing of persons acting as Gangmasters. The Act states that the

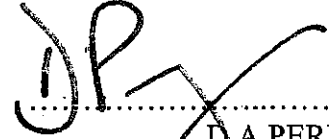
- rules may prescribe the requirements which must be met before a licence is granted; and make provision for the manner in which the meeting of those requirements is to be verified. The current rules are the Gangmasters (Licensing Conditions) Rules 2009 SI 307/2009 (the Rules) which came into force on 6 April 2009.
12. As is stated above the GLA also publishes the Standards which set out the conditions that must be complied with in order to qualify and retain a GLA licence. They are known to all and are clear. The current Standards were issued in April 2009.
  13. The Standards relay (paragraph 4.1) that the GLA adopts a proportionate approach when applying the Standards; that involves 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.
  14. A scoring system is adopted which determines whether an applicant or license holders pass or fail an inspection. The fail score for an inspection is 30 points or more. Points are awarded for each Standard breached. Standards designated as "critical" score 30 points. A breach of the other standards score 8 points save for licensing standard 1.4 breach of which scores 16 points.
  15. Of relevance here is Standard 1.2, the principal authority competency test, that provides that regard will be had to matters including, but not limited to whether the principal authority has an understanding of the GLA Licensing Standards and/or has sufficient management processes in place including being able to provide a number of documents and an understanding of various procedures. That is it is defined as a critical standard. The note to that Standard emphasises the point by stating that where that Standard is failed a licence may be revoked with immediate effect.

#### My Findings

16. In my judgment ERL has commendably acknowledged within both its appeal and the other documents that it has lodged (for instance its email of 5 October 2012) that at the time the inspection was carried out it was unable to demonstrate a thorough knowledge of the Standards. From the documents before me ERL does not dispute that the GLA was entitled to consider that ERL did not have sufficient competence to operate a Labour providing business. Furthermore in my judgment there is no evidence brought forward by ERL that casts doubt on the GLA's decision at the time this was made; instead ERL suggest they have remedied those failings now.
17. I have been referred by the GLA in its response to the appeal to a number of decisions made by appointed persons in previous appeals as to time when the applicant for a licence should demonstrate compliance. Both the decisions provided suggest this is when the inspection takes place.
18. The GLA's Licensing Decision Policy May 2012 makes clear that the inspector will not make a decision at the end of the inspection instead the findings of the inspection will be submitted to its licensing team and that the licensing team would then review all relevant information to determine whether the business was compliant with the Standards.

19. In my judgement therefore the relevant time at which the applicant must demonstrate compliance is the time when the licensing team review all relevant information. In many cases the latest date the respondent can demonstrate that will be the date of the inspection but I note that may not always be the case. For instance I note that the inspection process permits the inspector to identify compliance issues with the applicant and the Licensing Decision Policy provides that the GLA will take into account information provided by the applicant to demonstrate compliance thereafter.
20. Accordingly in my judgment the time the licensing team take the decision to grant or refuse a licence is the relevant time for demonstrating compliance not necessarily the time of the inspection.
21. That matters not here because ERL accept at the time the licensing team took the decision to refuse a licence the GLA was entitled to come to the view it did.
22. ERL in the correspondence that has been passed to me suggest that it is essentially unfair that they should be expected to reapply for a licence when they have now demonstrated compliance and that instead of having to do so the GLA should re-inspect. The statutory framework and rules in my judgment do not provide for that.
23. I note the Licensing Decision Policy provides that an applicant has an opportunity to correct any factual errors within 10 working days before the decision takes effect and if so the licensing team will review its decision (paragraph 13). That process was made clear within the refusal letter of 16 May as was the right of ERL to appeal.
24. Whilst the inspection report identified ERL had failed to comply with Standards 2.3, 5.2 6.1 6.4 7.3 8.1 and 8.2 the licence was refused on the basis that due to those failures the ERL had failed to demonstrate compliance with Standard 1.2. The GLA did not undertake a points scoring exercise in relation to those non compliances because it accepts that would give rise to the breaches being counted twice as the breach of Standard 1.2 is based on the failure to comply with other requirements. I accept the rationale put forward here by the GLA that to do would have given rise to duplication.
25. Standard 1.2 of itself was a critical non compliance entitling the GLA to refuse the application for a licence. ERL not only did not challenge the entitlement of the GLA to reach the decision it did at the relevant time (see my analysis above when this was) but essentially accept that at that time the GLA was entitled to reach the view it did.
26. That being so the GLA was in my judgment entitled to reject the licence application and that accordingly the decision of the GLA to refuse the application for a license was correct. For that reason this appeal is dismissed.

27. I should for the sake of completeness state that I have also considered the reasonableness of the refusal and note that whilst a score was not calculated there were 2 critical non-compliances and 5 other non-compliances which ignoring breach of Standard 1.2 (to avoid duplication) would have given rise to a score of 100, more than three times the fail score. Thus in my judgment the GLA would have been entitled to reject the licence application for that reason also.



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D.A PERRY  
Appointed Person  
7 November 2012