

IN THE MATTER OF

THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Appellant

All Staff Solutions (UK) Limited

and

Respondent

Gangmasters Licensing
Authority

Appointed Person: Mr R F Ashton

Representation:

For the appellant: Osborn Abas Hunt
Solicitors

For the respondent: Gangmasters Licensing Authority

DECISION

The Gangmasters Licensing Authority was correct in refusing All Staff Solutions (UK) Limited a licence under the Gangmasters (Licensing) Act 2004 and in its decision that Mrs Joanne Taylor is not a fit and proper person to hold such a licence or to be the Principal Authority for any such licence holder.

REASONS

Background

- 1 I am the person appointed to deal with this appeal pursuant to regulation 3 of the Gangmasters (Appeals) Regulations 2006.
- 2 On 8 October 2007 the appellant was granted a licence under the Gangmasters Licensing Act 2004 to provide labour in the food packaging and processing sectors, Mrs Joanne Taylor being the Principal Authority and a director of the appellant company. That licence was due for renewal on 8 October 2009 but for reasons which are dealt with below was not renewed. A new application was submitted on 20 October 2009 the application being submitted by the Principal Authority, Mrs Joanne Taylor. The application inspection was carried out by GLA Enforcement Officer Angila Holden and Compliance Officer Stephen Smith on 23 November 2009. Following that inspection the decision was taken to refuse the appellant a licence and that Mrs Joanne Taylor is not a fit and proper person, that decision being communicated by letter dated 18 January 2010. By its solicitor, on 12 February 2010 the appellant appealed against that

decision. The basis of the appeal is that the respondent did not take into account relevant facts and that the decision was disproportionate. The parties have agreed that the matter be determined on the basis of written submissions without there being an oral hearing.

3 In determining the appeal I have had regard to:-

3.1 A bundle of documents prepared by the respondent which included the decision letter of 18 January 2010, the appellant's appeal dated 12 February 2010, the respondent's response to that appeal dated 14 July 2010 as well as a number of other documents, all of those documents being numbered 1 to 31;

3.2 The statements of Angila Holden, Stephen Smith and Ian Wilkinson, formerly head of the GLA, and that of Emma Smith submitted on behalf of the appellant and the submissions made by the appellant's solicitors; and

3.3 The Gangmasters (Licensing) Act 2004 ("the Act"), the Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations"), the Gangmasters (Licensing Conditions) Regulations 2006 ("the 2006 Regulations"); the Compliance Code of Practice dated July 2006 ("the Code"), the Gangmasters (Licensing Conditions) Rules 2009 ("the 2009 Rules") and the Licensing Standards dated April 2009 ("the Licensing Standards").

Law & Regulatory Framework

4 The purpose of the Act is to protect potentially vulnerable workers from exploitation in agriculture and certain other industries. The Act established the Gangmasters Licensing Authority, section 6(1) providing that a person shall not act as a gangmaster except under authority of a licence. Section 7 provides that the respondent may grant a licence if it thinks fit and that it shall be granted subject to such conditions as the respondent thinks fit. Section 8 provides that the respondent may make such Rules as it thinks fit in connection with the licensing of persons acting as gangmasters. Section 9 provides that the respondent may revoke any licence. Regulation 12 of the 2005 Regulations provides that for the purpose of the exercise of its functions under sections 7, 8 and 9 of the Act and making Rules made under section 8, in determining:

(a) the criteria for assessing the fitness of an applicant for a licence; and

(b) the conditions of a licence and any modifications of those conditions

the respondent shall have regard to:

- (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 insofar as they relate to or affect the conduct of the licence holder.
- 5 The respondent has published Licensing Standards, the version applicable for the purposes of this appeal being those dated April 2009.
- 6 The Licensing Standards state that the respondent adopts a proportionate approach and is concerned with identifying the more persistent and systemic exploitation of workers rather than concentrating on isolated non-compliances, unless such non-compliance is "critical" in its own right. In particular Licensing Standard 1.1 states 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 and Licensing Standard 2.1 states that a licence holder who employs workers under a contract of employment, contract of service, engages them under a contract for services or where the provisions of Chapter 7 of Part 2 Income Tax (Earnings and Pensions) Regulations 2003 apply must be registered with HMRC, have a valid PAYE number and accurately calculate and deduct tax and National Insurance from all workers pay and pay the correct amount to HMRC in a timely manner.
- 7 Following receipt of an application and reports from other government departments, an applicant is required to undergo an inspection to assess compliance with the Licensing Standards. The aim of the inspection is to establish, from documents and interviews, if the Principal Authority is a fit and proper person, that they are competent and they can demonstrate an ability to comply with all relevant sections of the Licensing Standards.
- 8 A scoring system determines whether an applicant has passed or failed the inspection. Under the Licensing Standards those designated as "critical" are awarded 30 points. All other standards are awarded 8 points, except licence standard 1.4 which is awarded 16 points. If no issues are identified the licence will be granted. If the inspection score is below 30 Additional Licensing Conditions will be attached to the licence. If the inspection score is 30 or above the licence will be refused.
- 9 Regulation 2 of the 2006 Regulations provides:
 - (1) The overriding objective of these Regulations is to enable the appointed person to deal with appeals justly.
 - (2) Dealing with an appeal justly includes, so far as practicable
 - (a) ensuring that the parties are on an equal footing;

(b) dealing with the appeal in ways which are proportionate to the complexity or importance of the issues; and

(c) ensuring it is dealt with expeditiously and fairly.

(3) The appointed person shall seek to give effect to the overriding objective when he

(a) exercises powers given to him by these Regulations; and

(b) interprets any provision.

(4) The parties shall assist the appointed person to further the overriding objective.

- 10 In the absence of any authority, I accept that the question of whether the appellant was compliant with the Licensing Standards has to be determined as at the date of the inspection and not some later date.

Facts

- 11 Since the matter is to be determined without an oral hearing, I have not had the benefit of hearing the witnesses or of their evidence being tested under cross-examination. I have therefore examined all the submissions and documentary evidence, resolving where necessary any conflicts of evidence on the balance of probabilities.

Findings

- 12 The appellant was granted a GLA licence on 8 October 2007, the Principal Authority being Mrs Joanne Taylor. That licence was due for renewal on 8 October 2009. The appellant says that an application for renewal was made and a cheque in respect of the fee of £400 was sent to the respondent on 28 September 2009. The respondent says that this was not received by them and accordingly on 20 October 2009 they wrote to the appellant stating that as the appellant had not responded to the renewal notice sent on 26 August and the renewal reminder sent on 10 September, the appellant's licence had expired on 8 October 2009. That letter continued "If you continue to supply workers to the regulated sector you will be committing a criminal offence and will be liable to prosecution".
- 13 In its appeal notice the appellant surmises that the delay in the respondent receiving the renewal application was as a result of disruption in the postal services and that "it genuinely did not cross Mrs Taylor's mind that there was a real expectation for All Staff to cease supplying labour".
- 14 In her statement Angila Holden says that on 19 November she telephoned the appellant to arrange a time for the application inspection. She says that she spoke to Jacqueline Copeland, a director of the respondent, who told

her that the staff previously supplied by the appellant to Freshpack had been employed by Freshpack directly. That is denied in the appellant's appeal notice but no supporting statement has been provided. In the absence of any such statement I accept the statement by Angila Holden.

- 15 The appellant accepts that at the inspection meeting on 23 November Mrs Taylor told the inspectors that she was no longer supplying workers to Freshpack. In its appeal notice it is suggested that "in the heat of the moment Mrs Taylor panicked and lied to the GLA inspector" and that at the time she "was emotional and perhaps overly sensitive" as a result of her recently having suffered a miscarriage.
- 16 It is further suggested that "Mrs Taylor immediately tried to rectify the situation by attempting to contact Freshpack". However, it is accepted that on the same day Mrs Taylor confirmed the supply of labour to Freshpack for the following day, it being suggested that this was done pending Mrs Taylor being able to speak with a director of Freshpack and that Mrs Taylor had contacted the respondent on the morning of the following day to inform them that, contrary to what she had said during the inspection, the appellant had supplied staff to Freshpack without a licence.
- 17 On behalf of the respondent it is suggested that Mrs Taylor had only tried to contact them following their having spoken to the director of Freshpack and his having spoken with Mrs Taylor as a result of which Mrs Taylor knew that the respondent was aware that the appellant was continuing to supply labour to Freshpack.
- 18 Again it is noted that there is no statement from Mrs Taylor in support of the contentions made in the appeal notice. Also the question has to be asked why, as is suggested, Mrs Taylor tried to contact Freshpack and not the respondent. For those reasons I reject the suggestion that Mrs Taylor contacted the respondent of her own volition and find that she did so as she had realised that the respondent was already aware that, contrary to what she had said, the appellant was continuing to supply labour to Freshpack.
- 19 As a result the appellant was found to be non-compliant with Licensing Standard 1.1 which is "critical" and resulted in the appellant having a "fail" score of 30.
- 20 While being sympathetic to Mrs Taylor in her recently having suffered a miscarriage, I reject the contention that it did not cross her mind that there was a real expectation that the appellant would cease to supply labour as the letter from the respondent of 15 October stated explicitly that for it to do so would constitute a criminal offence and there is no suggestion or evidence that the respondent or Mrs Taylor had sought to clarify the situation with or seek an exemption from the respondent.
- 21 On balance I find that Mrs Taylor deliberately lied to the inspectors in saying that the appellant had ceased to supply labour to Freshpack and that she

only sought to retrieve that situation when she realised that the truth was already known to the respondent.

- 22 Also in an interview on 24 November Mrs Taylor admitted that the respondent had continued to supply labour to another organisation. That was again contrary to what she had indicated at the meeting on the previous day and which, having regard to the contents of the letter of 15 October, she must or should have realised would constitute a criminal offence.
- 23 In its letter of 19 November confirming the date of the inspection meeting the respondent said that they would want to see evidence that the appellant's VAT and PAYE payments were up to date with HMRC. In her statement Angila Holden says that when question about this Mrs Taylor had produced the yellow PAYE book which showed the due payments as having been made. Further enquiries however showed that the payments due on 5 September and 5 October had not been made. Mrs Taylor had then said that the payments for September, October and November had not been made but that she had an agreement with HMRC to pay the amount due.
- 24 It is the appellant's case that the respondent should have explored with HMRC whether any arrangement was in place before awarding a "critical" score in respect of any breach of Licensing Standard 2.1 and the statement of Emma Smith supports some kind of informal arrangement being in place. However, on the basis of the statements by Angila Holden and Stephen Smith, I find that Mrs Taylor initially attempted to mislead them in suggesting that the payments due to HMRC were up to date and that it was only on further enquiries being made that she was forced to admit that was not the case.
- 25 The appellant's appeal as set out in the submissions made by their solicitors is that the decision to refuse the appellant a licence was "disproportionate"; that there is no evidence of exploitation of workers or harm to their welfare; that insufficient weight was given to the circumstances relating to the expiry of the earlier licence and of the new application; that the issues identified by the respondent in the November inspection were easily "fixable" and that the respondent should have exercised its discretion to grant a licence. It was also suggested that the respondent should have had regard to Mrs Taylor's miscarriage which, it was suggested, may have caused her to be "emotional and overly sensitive" (although it is noted that her miscarriage had been some three months previously in August) and that the respondent should have made enquiries of HMRC before deciding that there was a breach of Licensing Standard 2.1.
- 26 I reject those contentions. Mrs Taylor was or ought to have been aware from the respondent's letter of 15 October that it was an offence for the appellant to continue to supply labour into the regulated sector. In that respect I have found that Mrs Taylor deliberately lied when she told the inspectors at their meeting on 23 November that the appellant was no longer supplying labour into the regulated sector and that she only tried to retrieve that situation

when she realised that the inspectors knew that what she had said was untrue. I have also found that Mrs Taylor deliberately sought to mislead the inspectors in relation to the question of whether the respondents PAYE payments were up to date and in that respect it is irrelevant whether there was an arrangement in place with HMRC for those payments to be paid late. The fact is that in respect of both of these matters Mrs Traylor had at best deliberately sought to mislead the respondent and at worst had lied to the inspectors.

- 27 It is not clear what consideration if any was given by the respondent to the circumstances of the expiry of the earlier licence and the new application. This was though a new application and from her experience Mrs Taylor should have been prepared to deal with all of the issues that were likely to be raised on the inspection. The facts, as I have found them to be, are that she was not and that she deliberately lied to and sought to mislead the respondent on two "critical" matters.
- 28 I specifically reject the contention that the issues identified on the inspection were easily "fixable". I have found that Mrs Taylor lied to and sought to mislead the respondent. That is not "fixable". While I accept that there was no evidence of exploitation of workers or harm to their welfare, Mrs Taylor, as I have found, lying in relation to the respondent continuing to supply labour to Freshpack and her continuing to do so when she had clearly been told that would constitute a criminal offence, raises the question of what other lies she may be prepared to tell and offences to commit in the course of the respondent's business.
- 29 On the basis of my findings I am satisfied that the appellant and/or Mrs Taylor as the Principal Authority are not "fit and proper" to hold a licence and that it was appropriate and not disproportionate for appellant's application for a licence to be refused.



R F ASHTON

Appointed Person

22 November 2010

