

THE GANGMASTERS (APPEALS) REGULATIONS 2006

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In the matter of an appeal against a decision made by the  
Gangmasters Licensing Authority (Ref 68/E/RV)

Euro Contracts Services Limited

(The Appellant)

V

The Gangmasters Licensing Authority

(The Respondent)

**Appointed Person**

Ms Gill Sage

Written Determination

**Decision and Summary Statement of Reasons of the Appointed Person in relation to the above matter:**

**Decision**

Upon consideration of the appeal documents and accompanying letter lodged by the Appellant dated 5 January 2009 and the response to the appeal lodged by the Respondent, it is the decision of the Appointed Person that the appeal of the Appellant be dismissed and the decision will take effect on the date of receipt of this decision.

## Summary Statement of Reasons

1. This is an appeal against the decision of the Respondent dated the 5 December 2008 to revoke the Appellant's licence without immediate effect.
2. As a result of the expedited procedure set out in Regulation 20 Gangmasters (Appeals) Regulations 2006 ("the Appeals Regulations") applies, directions have been given to me and the parties have agreed that the appeal will be dealt with without an oral hearing pursuant to Regulation 15 of the Appeals Regulations. The parties have supplied all the documents they wish to rely upon and these have been considered by me in accordance with Regulations 15(3) of the Appeals Regulations.

### **The Law**

3. The Gangmasters (Licensing) Act 2004 aims to curb exploitation of labour in agriculture and other particular industries. The GLA has established standards to assess compliance. The GLA assesses on inspections to consider compliance or non compliance.
4. For the purposes of assessing non compliance, a scoring system is used which categorises infringements according to their level of seriousness. The fail score of non-compliance is 30. If a licence holder is found to be in breach, additional licence conditions can be added to the licence to set down specific improvements and to set down timescales for that improvement to be made. Failure to comply with any additional licence conditions may result in the licence being revoked; this is set down in paragraph 26 of the Licensing Standards.
5. Regulation 12(1) of the Gangmasters (Licensing Authority) Regulations 2005 states that "the authority shall have regard to the principle that a person should be authorised to act as a Gangmaster only if and in so far as his conduct complies with the requirements of paragraph (2), namely "compliance with any obligations imposed by or under any enactments insofar as they relate to or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities".
6. The Public Passenger Vehicles Act 1981 section 1(a) defines a "a public service vehicle" as a motor vehicle "being of vehicle adapted to carry more than eight passengers, [which] is used for carrying passengers for hire or reward". That Act imposes various requirements for licences in relation to such vehicles, the definition of reward is not limited to where fares are paid by passengers. To this end I am directed to the decision of 3/E/C which considered that the use of the vehicle for transport to move workers to a place of work where the contract price for the supply of those workers included the

cost of the vehicle, was used in the course of business as a business expense which amounted to reward. Therefore a vehicle used to transport employees to a place to work is a vehicle that was carrying passengers for reward.

### **The Background**

7. The Appellant applied for a licence on the 28 June 2006 and a full licence was granted on the 21 August 2006 no GLA inspection was required as a successful TLWG audit had already been carried out.
8. A licence renewal was sent to the Appellants on the 5 July 2007 and a reminder was sent on the 31 July 2007. The licence was renewed on the 13 August 2007. A compliance inspection was carried out on the 10 June 2008 and a decision was made by the GLA to add a condition to the licence that non-compliance with licence standard 6.11 had been discovered as the labour provider did not have a PSV licence and none of the vehicles were PSV registered. The Appellant received a score of 8 and was informed that they had 3 months to demonstrate compliance with 6.11. The date for compliance of this standard was the 23 September 2008. This decision letter was sent to the Appellants on the 24 June 2008. Two licence renewal letters were sent to the Appellant, one dated the 8 July and one dated the 22 July 2008.
9. Mr Barber of the Appellant's telephoned the Respondent on the 18 September 2008 about the licence condition and told the Respondent that he had applied for a PSV licence and once this had been obtained he would contact the GLA again.
10. Having not heard again from the Appellant, the Respondent wrote to Mr Barber on the 15 October 2008 reminding him of the outstanding condition on his licence and that no evidence of compliance had been sent to the Respondents. The Respondent warned the Appellant that they were unable to issue him with a new licence until the information had been received confirming that he had obtained a PSV licence.
11. Mr Barber requested an extension of time to comply with the outstanding condition by an email of the 21 October 2008. The Respondent replied on the 27 October 2008 asking for details of the licence number issued by VOSA and the name of the applicant that had applied for the licence on the 18 September. On the 17 November 2008 a copy of a postal application was sent to the Respondent by email. The Respondent then searched through the applications on the VOSA system but the application was not found. The condition was to remain on the licence as there was no evidence that the PSV licence had been applied for.

12. The decision was made by the Respondent to revoke the licence without immediate effect on the 4 December 2008 due to failure to comply with the requirement by the deadline set and no trace of the application was found on the VOSA web site, it was therefore concluded that the Appellant remained in breach of 6.11.

### Finding in relation to the alleged breaches of the Licensing Standards

The findings of fact in relation to the breaches of the Licensing Standards, I find to be as follows:

1. Licensing standard 6.11

"There is documentary evidence that vehicles with nine or more passenger seats used for hire or reward are registered as Public Service Vehicles (PSV) and that drivers have Passenger Carrying Vehicle (PCV) entitlement".

It was noted that at the date of inspection on the 10 of June, 2008 the Appellant was found to have been in breach of the above licensing standard. On the inspection, the Appellant was found not to hold a PSV licence and the drivers of the vehicles could not show that they had a PCV entitlement on their licences. In the Licence Decision Report produced on the 23 of June 2008 the Appellant was given three months to demonstrate compliance of this standard which gave them until the 23 of September 2008 (the decision not being sent to them until following day).

2. In the renewal letter sent to the Appellants' by the Respondent on 8 July, 2008 they were reminded that there was an outstanding additional licence condition "ALC" which had to be resolved. This letter warned the Appellant that **"if you do not take sufficient action to deal with non compliances, this may result in revocation or a refusal to renew a licence"**. It was noted that the Appellant, Mr. Barber telephoned the Respondents on the 18 of September 2008 to confirm he had applied for a PSV operator's licence. The details of the application were not despatched to the Respondent until the 17 of November, 2008 and when these details which checked by the Respondent no such application could be found on the VOSA system. It was reasonable for the Respondent to conclude therefore from the evidence before them that as of the 17 November the Appellant had no PSV licence and that the Appellant remained in breach after the deadline set for compliance with licence condition 6.11

3. The decision was made by the Respondent on the 4 of December, 2008 to revoke the licence without immediate effect as at the time of revocation the Appellant had failed to comply with the requirement to produce a PSV operator's licence within the deadline that had expired on the 23 of September. At that date the Appellant could produce no evidence of compliance despite reminders being sent on the 8 and the 22 of July and on the 15 of October, 2008 and further requests for information on the 27 of October 2008 and the final letter requesting information on the 10 of November, 2008. Despite all these reminders the Appellant failed to produce the relevant PSV or PCV documentation.
4. The Appellants' appeal was dated the 5 of January, 2009 and the reason that was given for failing to comply with standard 6.11 was that he required more time and that he had been unwell "for the months leading up to December". Although this may have been the case (there was no documentary evidence produced to support this), it was noted in the above findings of fact that Mr. Barber was in contact with the Respondent's throughout this period of time indeed it was noted that Mr. Barber spoke to the Respondent on the 18 of August and the 18 of September and during these to calls no mention was made of his health problems and how they prevented him, or his staff, from making the application to the VOSA. It was also noted that the Appellant had signed a contract with a coach company on the 24 of December to transport his staff for a six month time period to expire on the 4 June 2009. This contract was signed three months after the deadline had expired for him to comply with licence standard 6.11.
5. At the time of the inspection therefore and within the three month time period for compliance, the Appellant had been in breach of licence standard 6.11 and although subsequent to the deadline for compliance the Appellant has put in place interim measures to comply, at the time the decision was made the Respondent was justified in concluding that the Appellant was in breach.

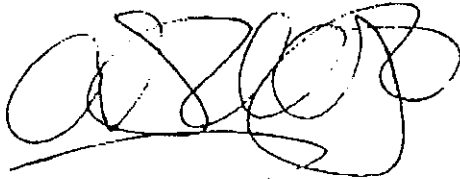
### Decision

6. At the time of the inspection visit and during the further time limit for compliance, the Appellant failed to comply with the additional licensing condition and had failed to achieve compliance of licence standard 6.11. The actions taken by the Appellant to comply with the additional licensing condition were only taken after the licence had been revoked and therefore could have no impact on the correctness of the decision taken at the time by the Respondent. It is concluded therefore that the Respondent properly applied the scoring system and the decision to revoke the licence, on the evidence before them at the time was correct. It was made clear in the

licensing standards at paragraph 26 that "the additional licence conditions that are added to the licence will specify improvements within set timescales and will increase the likelihood of further compliance inspection. Failure to comply with any additional licence conditions may lead to the licence being revoked". The Appellant was warned of the additional licence conditions that had been set down and failed to comply with them within that further time period, the Respondent's response was correct on facts before them and on the evidence available to them at the time.

7. The Appellant's will now have to apply for a new licence with an inspection to demonstrate compliance with 6.11. It will be for the Appellant to demonstrate that the actions that they have taken after the date of revocation are sufficient to comply with 6.11. The revocation will take place on service of this decision on the parties.

Signed

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Dated

**Person appointed by the Secretary of State to determine appeals under the Gangmasters (Appeals) Regulations 2006**