

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the
Gangmasters Licensing Authority (Ref 67/R/RV)

Saphire Trading Ltd

(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 15 December 2008 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 the promulgation of this decision.

Summary Statement of Reasons

1. This is an appeal against the decision of the Respondent dated the 28 November 2008 to revoke the Appellant's licence without immediate effect.
2. The expedited procedure set out in Regulation 20 Gangmasters (Appeals) Regulations 2006 ("the Appeals Regulations") applies. The Respondent has

agreed that the appeal will be dealt with without an oral hearing pursuant to Regulation 15 of the Appeals Regulations.

3. The Appellant was informed by the Secretariat via their representative Johal & Co Accountants on the 17 February 2009 of the right to request for the appeal to be determined by either a written determination or oral hearing. No reply was received and the Secretariat again wrote on the 4 March 2009 and again no response was received. An e-mail was then sent by the Secretariat on the 16 March, 2009 asking for a response but again none was received. It was noted that e-mail was opened by Johal & Co Accountants on 17 March, 2009 at 10.17. The Secretariat also wrote to the Appellant personally but no reply was received. The Appointed Person has decided that the matter will proceed by way of written determination having taken into account the views of the Respondent and having received no objection from the Appellant or their Representative. 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

4. 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 inspection to consider compliance or non compliance. The GLA should adopt a proportionate approach when applying license standards and the primary concern should be identifying "the more persistent and systematic exploitation of workers".
5. 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.
6. 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".
7. The Public Passenger Vehicles Act 1981 section 1(a) defines a "a public service vehicle" as a motor vehicle "being a 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.

The Background

8. The Appellant applied for a licence on the 25 July 2006 and a full licence was granted on the 25 July 2006; no GLA inspection was required as a successful TLWG audit had already been carried out on the 8 December 2005.
9. The licence was renewed on the 16 July 2007 subject to the Appellant providing documentary evidence of the compliance with standard 6.11 showing documentary evidence that vehicles with eight 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. The due date for compliance with this standard was the 6 September, 2007. A compliance inspection was carried out on the 7 September 2007 and following this inspection the Respondent wrote to the Appellant on the 21 September, 2007 confirming that the Appellant had informed the Respondent's inspector that he had applied for PSV registration and the condition would remain on his licence until the PSV application had been approved. The Appellant was requested to inform the Respondent when they had received the approval. The Appellant sent to the Respondent a self declaration signed on the 7 July, 2008 confirming that he had complied with licence standard 6.11. As a result of this self declaration the licence condition was removed and a full licence was issued on the 21 July, 2008.
10. The Appellants licence was renewed on the 4 August 2008 and a compliance inspection was carried out on the 13 November 2008. The report produced was dated the 27 November, 2008 and recommended that the licence be revoked without immediate effect. The Respondent wrote to the Appellant on the 28 November, 2008 informing them of its decision to revoke the licence on the 29 December unless an appeal was submitted. The letter informed the Appellants that they had scored 186 points against a fail score of 30 points. The Appellant submitted their appeal by e-mail on the 21 December and the hard copy was received by the Secretariat on the 24 December 2008.

Findings in relation to the alleged breaches of the Licensing Standards

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

1. Licensed standard 1.1

"A current GLA licence to act as a Gangmaster under the 2004 Act is in the issue and the licence holder is or remains a fit a person to hold it"

The inspection

It was noted from the Respondent's appeal submission that the Appellant provides workers to three labour users, Barfoots of Botley Ltd and Emmett UK. The inspection commentary recorded that the investigation took seven weeks to complete because of the workers' reluctance to provide statements for fear of losing their job and their accommodation. The report mentioned that at previous inspections the workers were coached and in some instances paid to say the right things. It was also noted that the labour provider Mr.

Singh was described as being obstructive and was found to change his explanation when faced with evidence of breaches especially in respect of provision of accommodation to workers. The circumstances were that the GLA inspector turned up unannounced and identified a list of properties pinned to a board, he asked this list to be provided. Mr. Singh duly photocopied the list but blacked out half of the addresses saying that the properties were not used to accommodate workers. The inspector requested a complete list of properties and asked Mr. Singh to identify which properties were used to house workers and which were not. The inspector inspected the properties that were identified as not accommodating workers and found them to be in use by workers but in poor and unsafe condition. A week later Mr. Singh was interviewed under caution and stated that he had not known the workers were in the premises but had removed them within 3 hours, on request. The Respondent also concluded from their investigation that Mr. Singh also had completed a false declaration in order to remove the requirement to comply with licence standard 6.11; this is dealt with below. Mr. Singh also failed to provide bank statements, payroll details and worker time sheets.

The Respondent recorded that Mr. Singh mislead the GLA as to the true nature of the accommodation which resulted in their conclusion that he acted dishonestly and was therefore not a fit and proper person to hold a license.

The Appellant's appeal

The Appellant's response was that it was unfair to call Mr Singh dishonest. It was accepted however that he had to correct himself during the visit and this was due to the fact that the visit was unannounced and disturbed his schedule. It was mentioned that the Mr Singh was hospitable to the inspector and provided documents such as bank statements. It was accepted that in the inspection Mr. Singh did say to the inspector he was not providing accommodation but **"he meant he was not personally providing this"** in fact it was being provided through a Company which is owned by him called Portswood Properties Limited. The Appellant described the inspector as being underhanded attending the properties on his own. The appeal stated that Mr. Singh was not **"trying to be dishonest that is why he gave the addresses of all of the rented houses"**. It is accepted that Mr. Singh crossed out the wrong properties on the list but no explanation was given as to why this was done. It was accepted in the appeal submission that one of the houses was unfit but others were fit their purpose.

Finding of Fact

Considering the evidence before the inspector at the time there was sufficient evidence for him to conclude that Mr. Singh, the labour provider, was being less than forthcoming in the evidence he provided to show compliance with the rules. Had the inspection not taken place unannounced, the serious breaches that had been identified would not have been discovered. Mr. Singh was asked direct questions by the inspector and he gave misleading answers and this is accepted in the appeal statement, it was clear that he was being

asked whether he provided accommodation and his reply was no, even though he was providing accommodation through a separate Company. His reply was therefore misleading at best. It was admitted in the appeal statement that Mr. Singh crossed off the wrong properties but no explanation was given as to why this was done. The appeal does not explain why, under caution a week later, Mr. Singh then stated that he did not know workers were in the premises which conflicted with the version provided in the appeal statement which maintained that Mr. Singh was aware he was providing accommodation but through a property company.

There is sufficient evidence to conclude that Mr. Singh had been dishonest in evidence he gave to the inspector as to the accommodation provided to his workers. The information was misleading and his account changed when incorrect evidence was discovered and when questioned under caution he provided a different explanation. Paperwork was also not available and no reason was stated for the failure to have this available for inspection. In the appeal the inspector was described as being under handed however this was seen as a rather unfair criticism as unannounced inspections or unescorted inspections are sometimes necessary to discover the extent of non-compliance and are part of the inspection process. No criticism can be aimed at the inspector for carrying out his duties in this way. The licensing standards also make it clear that failure to co-operate with a GLA officer may be considered to be obstruction which is a criminal offence. It appeared to be necessary on this occasion to conduct an unannounced inspection in order to uncover the substantial and systematic breaches that were discovered. The evidence available before the GLA was sufficient for it to conclude that there had been a failure to comply with licence standard 1.1 and that the failure was critical and carried a 30 point score.

2. License standard 2.2

"Deductions from workers' pay of income tax and national insurance are accurate appropriate and paid to HMRC".

The Inspection

The inspection report produced by the Respondent discovered from taking three witness statements from workers and a further 20 worker interviews, that workers were not routinely given pay slips. The workers were not registered with HMRC and had no National Insurance numbers. Emmett UK and another labour user had, during the investigation, ceased their contract with the labour provider due to complaints made by workers about the lack of pay slips. This was found to be a breach of the licensing standard as documents had not been maintained or retained and as the workers had not been registered with HMRC, the labour provider could not have been paying tax.

The Appellant's appeal

The Appellants response to this allegation was that **"it may be that some administration may have needed to be updated"**. It was accepted by the

Appellant that at the time of the inspection, there were cases where workers had left employment and files may not have been kept, which was accepted was not appropriate practice. The Appellant did not respond specifically on the issue of pay slips and National Insurance numbers. It was noted that in the appeal document the Appellant requested details of the workers whose files could not be located, however the Respondent refused to supply this information due to the fact that the labour provider was held in custody for alleged assaults workers.

Findings of Fact

Taking the above evidence into account, the Appellant does not seem to specifically deal with the allegation. It is not stated that the inspector was not justified in the conclusions reached during the inspection nor is it stated that the information was in some way incorrect. The Appellant appears to accept that some administration may needed to have been updated however the breaches discovered by the inspector were serious and no evidence has been produced by the Appellant that the evidence and the conclusions reached were flawed.

It was considered whether the Appellant was placed at a disadvantage by the Respondent's refusal to supply the details of the worker files that were identified as being non compliant, but on balance the Appellant would have had sufficient information of the breach from the inspection and from inspection report, to put forward any points they wish to have considered as part of the appeals process and to respond to the allegations. It was concluded therefore that the action taken by the Respondent was proportionate in the light of potential risk to the workers and for the Appellant to know the details of the case they had to answer.

The GLA were therefore entitled on the evidence before them at the time of the inspection to conclude that there had been a breach of licence standard 2.2 and that this was a major breach attracting 8 points.

3. License standard 2.5

"Where deductions from wages, other than those legally required, are made (e.g. for transport), there is evidence on file of workers written consent to those deductions"

The Inspection

On the inspection the Respondent found nothing in the worker's files or on pay slips to show any deductions for accommodation and transport had been made with the worker's consent. Contributions were taken in cash and deducted before the wages were issued. It was concluded that this was a breach of standard 2.5 as workers had not signed to consent to the deduction from wages.

The Appellant's appeal

The Appellants response to this allegation was as follows: **"we have instructed our client to obtain written consent from their workers to allow for stoppages to be made from their wages for accommodation, transport or for any other purpose. We have informed them that there must be a separate authority for each individual deduction"**.

Finding of Fact

It was noted in the appeal that it is not alleged that at the time of inspection there was a signed consent on the file to make deductions from wages. This seemed to be an admission that there was no such consent at the time of inspection. That being the case there is therefore sufficient evidence to conclude that the time of inspection there was a clear breach of standards 2.5 justifying a breach to be deemed to be major resulting in 8 points being awarded.

4. Licence standard 2.7

"The Gangmaster has not withheld or threatened to withhold payment to any worker on the following grounds:

- non receipt of payment from the labour user**
- the worker failing to prove that he has worked during a particular period of time (although the licence holder can satisfy themselves that the worker did carry out the work using other means)**
- the worker only having worked during the period to which the payment relates**
- any matter within the control of the Gangmaster"**

The Inspection

The inspection report recorded that those who had worked at Emmett UK had not received their last 7 to 10 days pay. The Appellant stated that the reason they had not been paid was because they had not been paid by Emmett UK. When he was told he must pay the employees he then changed his answer to say that he owed them nothing. It was found that workers had not been paid the appropriate Agricultural Minimum Wage throughout their employment.

The Appellant's appeal

In the appeal it was stated that Emmetts UK owed the labour provider in excess of £300,000 **"which is the reason for the non payment of wages"**. They contended that they had on occasions used money from other contracts to pay wages which he stated was evidence to **"confirm the Company's intentions of trying to operate to your standards"**.

With regard to the issue of non payment of holiday pay the appeal stated **"we will now ensure when a worker leaves our clients employment they are paid any outstanding holiday pay"**. The appeal then goes on to request details of the two workers who claimed not to have been paid SSP. The

Respondent in their reply refused to supply the names of workers due to their fears as stated above.

Findings of Fact

Having taken into account the contents of the inspector's report and the response on appeal, it was not disputed that wages had not been paid due to the labour user not paying the Appellant. This was the first reply given by the Appellant when asked why workers had not been paid and this was confirmed in the appeal and was a clear breach of licence standard 2.7. Although the Appellant produced evidence to show that post inspection the Appellant had paid statutory sick pay, this error was only corrected after the inspection and after the revocation decision was made. The evidence at the time of inspection and the contents of the appeal statement confirmed that at the time of inspection there was a breach of licence standard 2.7 and this was a major breach attracting 8 points. This decision was therefore correct on the facts and the evidence available to the Respondent at the time and they were entitled to conclude that this was a major breach.

5. Licence standard 2.8

"The worker is paid at least the national or agricultural minimum wage taking into account the rules on accommodation charges"

The inspection

The Respondent found during the course of the inspection that the agricultural minimum wage had never been paid to the workers to whom it applied and the wage slips showed that the appropriate rate of pay had not been paid. Workers that had worked regular overtime and were therefore entitled to the overtime rate did not receive it. There was also evidence that deductions had been made from pay without the agreement of the workers therefore they were not have paid the correct amount of money.

The Appellant's appeal

The Appellant's response was that the agricultural minimum wage was being paid but it was accepted that the overtime rate was not paid because **"our client was under the impression overtime rate did not apply to grade one workers"**.

Finding of Fact

This appears to be an admission by the Appellant that the correct wages at least in respect of overtime were not paid; but this was only after the inspection discovered the default. It was noted that in the appeal it was stated that the **"client was under the impression that the overtime rate did not apply"** and this seemed to be a breach that occurred because the Appellant failed to acquaint himself with the rules or by having a blatant disregard of those rules. Although in the appeal, the Appellant's representative stated that they will instruct the Company to look into the matter, this was only as a result of the default being discovered.

There is compelling evidence therefore that there was a significant breach of this standard at the time of inspection and that the breach was rightly identified as critical, attracting a score of 30 points.

6. Licence standard 2.9

"There is evidence that all workers receive paid annual leave entitlement, and any of the other benefits they are entitled to. Record of any paid annual leave entitlement, statutory sick pay, statutory paternity pay, statutory maternity pay and statutory adoption pay are kept on workers files".

The inspection

The inspection found that there was no evidence of any sickness benefits had ever been paid and holiday pay accrued during workers assignments and at the cessation of the assignment was not routinely paid. It was established at the inspection that the labour provider did not know the correct procedure to ensure workers received the statutory sick pay and there was no evidence that workers received statutory benefits.

The Appellant's appeal

The appeal stated that it was incorrect that the Appellant did not know how to operate the statutory sick pay scheme as the Appellant's representative operated a scheme on behalf of the client. The appeal stated **"the company does pay SSP, etc and there is one employee who is currently receiving this"**. They go on to state **"The problem that our client has is that these workers will come and go as and when they please without telling our client. They then turn up out of the blue making all kind of requests. This makes it difficult for our client if after two months down the line someone says that they should have been paid this that and the other previously"**. The appeal then goes on to state that they have installed a software program to monitor absences. This was not in place at the time of the inspection.

Findings of Fact

Having carefully analysed the contents of the appeal submitted by the Appellant, there is no credible evidence that SSP was being paid to workers at the time of the inspection and no evidence that any scheme was in place at the time to identify who was entitled to be paid under the scheme. The fact that one employee is presently receiving SSP does not assist the Appellant in showing evidence from which it could be concluded that the scheme was in place at the time. The Appellant's case seems to be that workers are in some way to blame for requesting their rights to be paid under the statutory scheme however the obligation is firmly placed upon the Appellant to have a scheme in place and to operate those schemes according to the rules. It was evident at the time of inspection that Mr. Singh failed to demonstrate that he knew how to ensure workers receive statutory sick pay and therefore the Respondent was entitled to conclude at the date of the inspection that there

was a major breach of licence standard 2.9 entitling them to assess the breach as major and attracting 8 points.

7. Licence standard 2.10

"There is evidence that workers have been provided with itemised accurate pay slips for each paid showing at least the income tax, National Insurance payments and other authorised deductions".

The inspection

On the inspection by the Respondent it was discovered that pay slips often contained false information; they did not show deductions for transport and accommodation and were inaccurate regarding the agricultural minimum wage. The Respondent concluded that there was a breach of this standard.

The Appellant's appeal

In the Appellant's appeal there seemed to be an admission that **"when the payroll was transferred to Southampton these may have been missed"** when referring to details of deductions from pay. They stated that in future all pay slips will show any deductions taken from staff wages.

Finding of Fact

Taking into account the representations by the Appellant and the Respondent, there was no evidence to show that the Appellant was acting in compliance with this standard at the date of the inspection. The Respondent was therefore entitled to identify this breach as a breach of standard 2.10 and they were entitled to identify it as a major breach attracting 8 points. Any attempts to correct these breaches after the date of the inspection are not factors that should be taken into account as to whether there was a breach at the time.

8. Licence standard 4.3

"Where workers live in accommodation provided by the Gangmaster, it contains appropriate facilities (e.g. Water, power, heating, bedding, sanitation) and is safe for its inhabitants. The GLA will expect to see evidence that any electrical equipment provided for cooking, heating, recreational or similar use is being properly maintained and that tenants have been supplied with copies of the most recent of gas safety certificate as required by the current Gas Safety (Installation and Use) Regulations."

The inspection

It was found in the inspection that only one of ten properties had a valid Gas Certificate displayed, Mr Singh maintained that all properties were certificated however when documents were examined one week after the inspection, two of the properties' gas certificates were dated two days after the original inspection. Under those circumstances it could not be said to be compliant at the date investigation.

The Mr Singh informed the inspector that the first property visited was not used for accommodating workers however on inspection it was found to house workers and the property itself was not properly licensed by the local authority, had few fire doors, no evidence of fire extinguishers and the fire alarm had been turned off and the key removed. The rear exit was blocked. Mr Singh accepted that the property was a danger to residents and moved the workers into alternative accommodation. Mr Singh admitted ownership of the property and that workers were in occupation but stated he did not realise they were.

The inspector conducted an investigation and ascertained from interviews with workers that other properties owned by the labour provider were being used to house workers. These properties were put to Mr Singh under caution and he told the interviewer that these properties were owned by him but not provided by him to workers.

The Appellant's appeal

In the appeal submission it was accepted that the Appellant told the inspector that all properties had a gas safety certificate as **"he believed that to be the case at the time. This was an oversight on his part and he has rectified this"**. It was also submitted that fire extinguishers and alarms have been attended to and the heavy vehicle parts blocking the entrance have been removed. With regard to the property known as 185 Biterne Road it was admitted that the Appellant said that no workers were residing there that was **"an error on his part. He would not have stated that knowing that an investigator would be visiting the place shortly thereafter"**.

It was submitted on behalf of the Appellant that when he was advised of the dangers he found alternative residences for the workers and it was submitted that this indicated that **"he is genuinely trying to keep to the GLA standards"**.

Findings of Fact

Having taken into account the Respondents inspection report and the submission on behalf of the Appellant, the Appellant does not deny the breaches that were evident on inspection. These breaches were serious and placed workers at a real risk of injury or death. The standards are not negotiable and are a minimum standard required for Gangmasters. It has been accepted that the failure to have gas safety certificates was described as an "oversight", which showed a failure on the part of the Appellant to take his obligation seriously. It was not denied that the Appellant misled the inspector about whether workers were residing at 185 Biterne Road and again this was described as a simple error however it was an error made under caution where a blatant disregard was shown of the standards themselves and the importance of providing full and accurate information to the inspector. Although the Appellant removed the workers from the dangerous premises, he only did so after the serious breach was discovered, this did not show evidence that he was genuinely trying to keep up to the standards, on the contrary it was evidence to show that when the deception had been

discovered, action had to be taken by him to rectify the breach. From this very serious attempt to mislead, the inspector had substantial evidence before him at the time of the inspection, to lead him to conclude there were very serious breaches of this licence standard and these breaches were capable of causing serious risk to the health safety and welfare of the workers.

It was not only the seriousness of the breaches that was of cause for concern but the Appellants attempts to mislead or to misrepresent the state of affairs at the time. It is for this reason that the inspector was entitled to assess this breach as amounting to a critical breach scoring 30 points. This breach alone could have resulted in the labour provider achieving a fail score.

9. Licence standard 5.2

"There is evidence that any workers working in excess of 48 hours per week had freely signed an opt out"

The inspection

The inspection report showed that all workers were happy to work in excess of 48 hours if they were paid properly. Of the worker files that were examined three contracts were not signed and there were no worker files present for 5 workers at Barfords. As the Appellant could not produce this evidence it was concluded that the licensing standards have been breached.

The Appellant's appeal

In the appeal it was simply submitted on behalf of the Appellants that they did not agree that workers had not signed an opt out and maintained that all workers were required to sign the agreement.

Findings of Fact

Taking into account the evidence obtained on the inspection, it was found that opt out agreements were not available and the burden of proof is on the Appellant to produce accurate files on all workers. Although attached to the appeal documents was a sample of the statements signed by the workers, the appeal does not state that these documents were evidence to show that there was no breach at the date of the inspection. As the Appellant could provide no evidence that they were in full compliance with this obligation at the date of inspection, the inspector was entitled to conclude in his report that the Appellant was in breach. As this was a failure to comply with the requirement, the inspector was justified in assessing this to be a major breach resulting in a score of 8 points.

10. Licence standard 5.3

"Accurate records are kept of days and hours worked for all workers".

The inspection

The inspection report showed that the Appellant failed to keep comprehensive records of all their workers that were provided to the labour user Barfords. When the Appellant was asked to produce these records for inspection, they were not provided. The inspector concluded that there was a breach of this licence standard as the Appellant failed to produce the documents when requested to do so.

The Appellant's appeal

The Appellant enclosed the record of hours worked by the field workers but they failed to provide any evidence that these files were in existence on the day of the inspection and the reason for failing to provide them as required by the licensing standard

Findings of Fact

Having taken into account the inspection report and the Appellant's response, there was no evidence produced by the Appellant as to why these documents were not available the time of inspection and whether or not they were in existence at the time. It was not submitted by the Appellant that these documents were in existence and were available for inspection. On the balance of probabilities therefore the evidence of the inspector is preferred to that of the Appellants, that there were no such documents available at the time of inspection. The inspector was, at the time of inspection, entitled to conclude that there had been a breach of licence standard 5.3 and that the inspector was entitled to conclude that this was a major breach attracting 8 points.

11. Licence standard 6.2

"The Gangmaster has cooperated with the labour user to ensure that responsibility for:

- the provision of information to workers about any special qualifications or skills they required to do the work for which they have been employed has been agreed and assigned**
- any health and safety training, including induction training deemed necessary to carry out the work safely has been agreed and assigned and that**
- the workers provided have received any necessary health and safety (including induction) training appropriate to the site(s) at which they are working and the work they have been employed to do. The information and training should be comprehensible"**

The inspection

The inspection report showed that none of the field workers interviewed had received any health and safety training and that the only evidence of any training was provided after a worker was injured at work.

The Appellant's appeal

The Appellant's appeal submitted that **"this is not the duty of our client as they supplied the labour to the farm. It was agreed with farm (sic) that it was their responsibility."**

Finding of Fact

Having taken into consideration the Appellant's appeal and the results of the inspection report, it has to be concluded that there was no evidence that there was compliance with licence standard 6.2. The evidence showed that there was no health and safety training and there appeared to be no agreement or co-operation with the labour user as to how the training and information should be carried out and disseminated. It is simply incorrect for the Appellant to say that it is not their duty to provide health and safety training as there is a clear duty placed upon the Gangmaster under license standard 6.2 to ensure that this training is rolled out to the workers. From the contents of the appeal statement, it has to be concluded that breach of this standard is admitted by the Appellant. The finding of the inspector, that this was a major breach requiring imposition of 8 points, was justified on the facts before them and is not disputed.

12. Licence standard 6.6

"The Gangmaster has cooperated with the labour user to ensure that:

- adequate and appropriate personal protective equipment has been provided to the workers they supply and that**
- adequate arrangements have been made with regard to the provision of sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and the consumption of food and drink, for first aid and the recording and reporting of reportable accidents and cases of ill health at work"**

The inspection

It was identified in the inspection that field workers were expected to provide their own inclement weather clothing and boots. It was also noted that field workers did not receive health and safety training. It was concluded that the Appellant failed to comply with this provision.

The Appellant's appeal

The Appellant maintained that this was not the responsibility of the labour provider; it was the responsibility of the farm.

Finding of Fact

Taking into account the representations by the Appellant and the Respondent on this point, it was evident that there had been a lack of co-operation between the Appellant and the labour user. The Regulations envisage there will be co-operation between the Gangmaster and the labour user, this co-operation is clearly not taking place with the result that farm workers receive no training and are not provided the necessary equipment. This again was evidence of a cavalier disregard of the obligations placed upon the labour provider. Had the inspection not taken place, this breach would have gone uncorrected with the result that workers were subjected to an unacceptable and avoidable risk. The Appellant does not claim that there was no breach at the time of the inspection. The Respondent was entitled, at the date of the inspection, to conclude that there was a major breach of licence standard 6.6 and they were entitled therefore to award 8 points in respect of this breach.

13. Licence 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"

The inspection

On the inspection it was noted that none of the buses were registered as PSV even though the Appellant had notified the GLA the 21 July, 2008 that they were PSV registered. It was concluded that there was a breach of the standard and that the declaration was false.

The Appellant's appeal

The Appellant's response stated that **"the self declaration stating that our client was PSV registered was sent to the GLA in error by ourselves for which we can only apologise."** The appeal went on to state that the Appellant had applied for a licence on the 27 November, 2008 but it was refused. They went on to state that the labour provider had stopped transporting workers in their own vehicles and were instead using a coach company.

Finding of Fact

Having taken into account the evidence before the Respondent at the time of the inspection, they were entitled on the evidence before them to conclude that the Appellant was in breach of licence standard 6.11. The Respondent was also entitled to conclude that a false declaration had been signed by the labour provider on the 7 July, 2008 and sent to the Respondent on the 21 July 2008. Although the appeal stated that the self declaration was sent to the GLA in error, they do not explain how this error occurred. Looking at the self declaration form that has been signed and dated, it was made clear that the person who signed it certified that the licence condition 6.11 has been cleared and the business was fully compliant. The person who signed it also signed on the understanding that if the information in the self declaration was

incorrect "it may result in a refusal to renew the licence, or subsequent revocation of the licence".

As the Appellant's representative admits it was sent in error, this also must mean that the self declaration was completed in error either by the Appellant's representative on instruction from Appellant or by the Appellant personally. It is not clear who signed the declaration but it is clear that the self declaration is incorrect as is now admitted and this alone would have justified revocation of the licence due to the terms attached to the self declaration which are now admitted to be false.

It is also of no consequence that the Appellant is no longer in breach of this provision, as subsequent attempts to comply with the standards have no impact upon the original decision to revoke. The Respondent was therefore entitled on the evidence before them to conclude that this was a major breach entitling them to award 8 points.

14. Licence standard 7.3

"There is evidence that all workers who have been employed continuously for one month or more under a contract of employment have a written statement of employment particulars. Or, if workers are engaged under contracts for services, there is evidence that these are agreed and provided to the workers before work commences"

The inspection

On inspection the Respondent discovered that many workers never received a contract and this was established by interviews conducted with workers and workers providing statements. It was also noted that contracts in workers names not been signed. It was concluded that this was a breach of the licence standard.

The Appellant's appeal

In response the Appellant stated as follows **"for those workers for whom contracts had not been provided our client is in the process of rectifying this"**.

Finding of Fact

Taking into account the submissions of the Appellant and Respondent on this point, there is no evidence that the Appellant disputed that there was a breach of this standard. Again attempts to rectify breach after the inspection should not be taken into account when establishing whether the inspector was justified at the time of the inspection of concluding that there was a breach. As the breach is not disputed, the inspector was justified on the evidence before him of found finding that this was a major breach of the standard justifying an award of 8 points.

15. Licensed standard 9.1

"Records on workers files include their name, date of birth, address, National Insurance number, and documentation showing their entitlement to work in the UK".

The Inspection

On the date of the inspection, the inspector could not locate the worker files for many of the workers. According to HMRC, the Home Office had many workers registered by the Appellant that never appeared on HMRC records. As a result of this evidence the labour provider was unable to demonstrate he had complied with the requirements of 9.1.

The Appellant's appeal

On behalf of the Appellant it was submitted that **"we are surprised to note that many of the workers files could not be found"**. It was admitted that **"for the majority of the workers files are in place containing the required documentation"**. It was submitted that the labour provider was in the process of reviewing all workers files.

Findings of Fact

Having taken into consideration the Appellants and the Respondents submissions on this point, there again appears to be an acceptance on behalf of the Appellant that there has not been full compliance with licence standard 9.1 and no good reason has been given for this non-compliance. The Appellant only submits that "for the majority of workers the files are in place" but there is no evidence to show, and it is not submitted on behalf of the Appellant, that files were kept for all workers that were compliant with the licence provisions. Therefore taking into account the evidence available at the time, the Respondent was entitled to conclude that, at the date of the inspection the Appellant was in breach of licence standard 9.1 and they were entitled to conclude that this was a major breach entitling them to award this breach 8 points.

Decision

16. As stated in the above findings of fact, the conclusions reached by the Respondent were correct on the evidence before them at the time of the inspection. It was noted that the appeal submitted on behalf of the Appellant in many instances confirmed that there had been a breach at the date of inspection and that only subsequent to the inspection had matters been corrected. It was put on behalf of the Appellant that the inspector had in some way been underhanded by inspecting properties used to house workers without the labour provider being present, however the Gangmasters (Licensing Conditions) Rules 2006 and the licensing standards do not require the licence holder to be present during an inspection. It has to be taken into account that the licensing standards were introduced to identify "the more persistent and systematic exploitation of workers". In order to identify exploitation an inspector has to be able to carry out an inspection without the

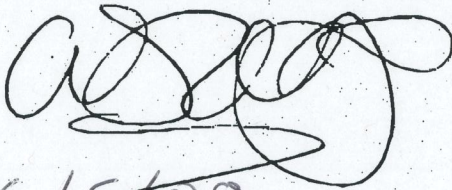
licence holder being present in order for a thorough and searching inspection to take place and to allow workers to give evidence freely. There was evidence uncovered that tended to show that workers were afraid of giving evidence to the inspector for fear of losing their jobs and accommodation, they were allowed to give their evidence anonymously for this reason. Evidence was also supplied to the Appointed Person, during the course of the directions stage of this case that the labour provider had been arrested and was remanded in custody for allegedly assaulting workers and it was for this reason that it was decided that the names of workers would not be provided to the Appellants' representative during disclosure. This was seen to be a proportionate approach to adopt and the Appellants' representative in any event did not apply for disclosure of this evidence and there was no indication from the Appellant that they were in any way disadvantaged or prejudiced by this approach.

17. Having established that the scoring applied by the Respondent was correct on the evidence before them, the Respondent was entitled to conclude that the Appellant achieved the fail score. The score was 185 points and it was noted that the Appellant could have been failed by reason of a breach of licence standard 1.1 by reason of the fact that the Appellant was not considered to be a fit and proper person to hold a licence due to the facts of his dishonesty when providing evidence to the inspector and for making a false declaration in respect of licence standard 6.11. The labour provider would also have failed in respect of the individual breach of licence standard 4.3 which was found to be a serious breach of that licence standard which placed the workers considerable risk by reason of the fact that the properties did not have gas safety certificates, operational fire exits, fire alarms or fire extinguishers. It was also noted with considerable concern that the labour provider provided false and misleading information to the inspector about the identity of the properties made available for this purpose. It was noted by the Appointed Person that not all the properties used to house workers had been inspected and it may be the case that persons are residing in those properties may be residing in substandard or dangerous properties. The Appellant also would have failed by reason of a false declaration given on the 7 July, 2008 to the effect that the vehicles had the appropriate PSV licence, it was discovered that this declaration was incorrect and that the Appellant never held the licence at the date declaration was signed either by himself or by his accountants at his instruction. This showed a blatant disregard of the license conditions by the Appellant and his representative.
18. The Appointed Person having read in detail the contents of the appeals statement was surprised to note that the opening sentence to the appeal stated as follows: **"the Company scored 185 points against the licensing standards where as the fail score is 30 points. The fact that they scored this level of points establishes the facts that they have a system in place in order to adhere your standards."** The Appointed Person was unclear as to why such a high score could be evidence to show that the Appellant had a "system in place" and no evidence was provided as to the system that they applied and how it helped them comply with the licence standards. On the contrary, a score of 185 points showed a wholesale and blatant disregard of

the licensing standards. It was evident from the scale and the extent of the breaches that the Appellant placed his workers at risk not only in the workplace but also in the accommodation that was provided for them. There was evidence of fear and intimidation in the workplace which appeared to have culminated in an alleged assault. There was a failure pay the workers SSP and holiday pay and a failure to administer tax and National Insurance in accordance with the law. The Appointed Person believes that the evidence that has been uncovered in this investigation has identified a persistent and systematic exploitation of vulnerable workers.

19. In conclusion therefore the Respondent was correct to conclude that the licence should be revoked. The investigation took place in compliance the Gangmasters (Licensing Conditions) Rules 2006 and the decision was correct on the evidence before them. The appeal of the Appellant is therefore dismissed and the licence is therefore revoked from the date of the promulgation of this decision.

Signed

A handwritten signature in black ink, appearing to be 'A. J. [unclear]', written over a horizontal line.

Dated

6/5/09.

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