

**IN THE MATTER OF**

**THE GANGMASTERS (APPEALS) REGULATIONS 2006**

**BETWEEN**

**Appellant**  
MBM (Midlands) Limited

**and**

**Respondent**  
The Gangmasters  
Licensing Authority

**DECISION**

The appeal by MBM (Midlands) Limited against the refusal of a licence under the Gangmasters (licensing) Act 2004 is dismissed.

**REASONS**

1. I am the person appointed to deal with this appeal pursuant to regulation 3 of The Gangmasters (Appeals) Regulations 2006.
2. The parties have agreed that the appeal be determined without an oral hearing.
3. In determining this appeal I had regard to:-
  1. The letter of appeal from the appellant dated 3 June 2008;
  2. The respondent's Response to Appeal dated 30 June 2008 and attachments; and
  3. The Gangmasters (Licensing) Act 2004 ("the Act"), The Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations") and The Gangmasters (Licensing Conditions) Regulations 2006 ("the 2006 Regulations").
4. The purpose of the Act is to protect workers in agriculture and certain other industries. The Act established the Gangmasters Licensing Authority and section 6(1) provides 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
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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 issued in October 2006.
  6. By an application dated 14 March 2008 the appellant applied for a licence under the Act to operate as a labour provider. Following an inspection of the appellant's business in accordance with Rule 4(9) of the 2006 Regulations and which was carried out against the GLA Licensing Standards, a decision was taken to refuse the appellant a license, that decision being communicated to the appellant on 8 May 2008.
  7. 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.
  8. Compliance with the Licensing Standards is assessed through inspections. For the purpose of inspections there are four categories of Licensing Standards, each with an associated score. The categories and associated scores are:
    - Critical(C): most serious category (30 points)
    - Major(M): major non-compliances but less than critical (8 points)
    - Reportable(R): significant non-compliances which may be reported to other government departments or agencies (4 points)
    - Correctable(Co) less severe non-compliances than above (2 points)
  9. For licensing purposes, only Critical and Major non-compliances count towards the score. If a company scores 30 or more, the license is refused or revoked. The 2006 Regulations provide for the right of appeal against any decision by the respondent to refuse or revoke a licence.
  10. The appellant was inspected on 30 April 2008, a copy of the inspector's report being included in the respondent's response to this appeal. The inspector found a number of areas of non-compliance, namely a breach of Standard 3 of the Licensing Standards in that the workers may not be free

to leave and could be penalised for not attending English lessons; a breach of Standard 6 in that the appellant had given little thought to the health and safety of its workers and potential risks to its workers in the fields and did not have written agreements with labour users although it was stated in the application form that written agreements were in place; breaches of Standard 7.3 in relation to the terms under which workers were employed and breaches of Standard 10 in that the appellant could not demonstrate any understanding of which nationalities are legally entitled to work in the UK. That is one Critical and three Major issues of non-compliance

11. While the report does not give a score, it is apparent that the score would have been 54. That is a fail score and, accordingly, the application for a licence was refused.
12. 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. It is noted though that in its letter of appeal the appellant does not provide details of any action taken to remedy the defects noted on inspection.
13. The Act and the Regulations were introduced in order to prevent the exploitation of workers and to save lives that had been tragically lost on other occasions. A licence can only be issued to and maintained by "a fit and proper person". A high level of compliance is required with which the appellant has a duty to be familiar. The respondent was correct in identifying one Critical and three Major issues of non-compliance. I conclude that the scoring system set out in the Licensing Standards was properly applied and the respondent acted appropriately in all the circumstances.
14. It follows that, in accordance with my findings, the decision by the respondent to refuse the appellant a licence was correct and the appellant's appeal against that decision is therefore dismissed.



R F ASHTON  
Appointed Person  
18 August 2008