

# **THE GANGMASTERS (APPEALS) REGULATIONS 2006**

In the matter of an appeal against a decision made by the  
Gangmasters Licensing Authority (Ref 17/E/R)

**PRIMEVAL Ltd  
(Appellant)**

**V**

**THE GANGMASTERS LICENSING AUTHORITY  
(Respondent)**

## **APPOINTED PERSON**

MISS C GRUNDY

WRITTEN DETERMINATION

## **DECISION AND STATEMENT OF REASONS OF APPOINTED PERSON IN RELATION TO THE ABOVE MATTER**

### **DECISION**

Upon consideration of the appeal documents, it is the decision of the Appointed Person that the Appeal of Primeval Ltd be dismissed.

### **REASONS**

1. This is an appeal against the decision of the Gangmasters' Licensing Authority (GLA) on 14.4.08 to refuse to grant a Licence to Primeval Ltd.
2. 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 documents they wish to rely upon and these have been considered by me in accordance with regulation 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/ non-compliance.
4. 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, "(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 enactments in so far as they relate to or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities.”

5. Persons acting as gangmasters must be a fit person Regulation 12(4).
6. Regulation 5(1)(a) of the Gangmaster (Appeals) Regulations 2006 allows Primeval Ltd to bring an appeal against a decision of the Authority to “refuse his application for a licence ”.

#### BACKGROUND

7. The history is as follows and I so find, Primeval Ltd applied for a licence on 1.2.08. The Principal Authority at the time of the application was Mr Nazir Ahmed. The application form was posted to him for signature on 1.2.08. This was not returned and a second letter was sent on 22.2.08 to remind him to sign the form. The form was received on 28.2.08. Payment was received on 4.3.08.
8. OGD checks gave cause for concern in the following particulars-
  - (a) HMRC check identified that there was no trace on their system of the principal authority.
  - (b) HMRC check identified an incorrect NI number had been provided.
  - (c) HMRC check identified that The Companies House number was incorrect.
  - (d) Further there was no registration date or number for PAYE and VAT purposes or any pre- registration in progress.
  - (e) Further there was no evidence of an accurate payroll system in place.
9. An Application inspection was required by the GLA, which took place on 1<sup>st</sup> April 2008.
10. At the inspection the Inspector found that Primeval Ltd did not sufficiently demonstrate an ability to conform to the Licensing Standards in particular Standards 1,2,3,5, 6, 7 and 10.
11. In the circumstances the application was refused. Primeval Ltd responded by letter dated 24.4.08 and subsequently sought to appeal by letter dated 27.4.08.

#### FINDINGS IN RELATION TO LIKELIHOOD OF FUTURE CONFORMITY TO LICENSING STANDARDS BASED ON NON-COMPLIANCE ON INSPECTION

##### **STANDARD 1** **POSSESSION OF VALID LICENCES**

12. The inspection was carried out at the Principal Authority’s (PA) new business premises at 618, Stratford road, Sparkhill, Birmingham. An individual who was identified as the Principal Authority of A-Z Employment whose Licence has been revoked by the GLA had been present initially but was asked to leave. The PA showed very

little business acumen and lacked knowledge on basic matters such as minimum wage. There were certificates on display belonging to Mazhar Iqbal and another ex-employee of A-Z Employment. Further the PA admitted he sought advice from Mazhar Iqbal and intends to employ him as a driver. All the paperwork presented to the Inspector was a duplication of the paperwork used by A-Z Employment. In my judgment it is a reasonable conclusion for the GLA to make that in the light of Mr Ahmed's poor command of English and the other matters, the business is not going to be run by him and that it may be a front for the previous business of A-Z Employment with those previous involved there being involved here.

## **STANDARD 2.**

### **PAYMENT OF WAGES, TAX, NATIONAL INSURANCE, VAT, IMPROPER DEDUCTIONS AND ALLIED MATTERS**

13. The PA told the Inspector that he did not know if the business was registered as an employer with a PAYE reference number and his accountant was dealing with it. The name of the accountant was the same individual as that of A-Z Employment. The incorrect NI number was provided.
14. Initially the Labour Provider did not know what the national minimum wage was. He referred to a minimum of 7 crates being packed each day. Different size crates were referred to. The PA was not aware of the Agricultural Wages Order or of increased pay for overtime.
15. The PA was unclear about holiday entitlement for his workers.

## **STANDARD 3**

### **DEBT BONDAGE, HARSH TREATMENT OR INTIMIDATION OF WORKERS**

16. The PA understood he must check and copy all original identification. However he could not operate the photocopier and had a poor understanding of immigration matters. He was not aware of the WRS system, he thought Bulgarians and Romanians were not allowed to work. He did have an employee handbook courtesy of A-Z Employment. It would be difficult given his command of the English language and the person he said would help him being Polish and speaking only a little English, for him to ensure he complied with his obligations, especially in relation to dealing with disciplinary matters or complaints.

## **STANDARD 5**

### **HOURS WORKED, WORKING TIME REGULATIONS ETC**

17. Overall the PA had a poor understanding of the Working Time Regulations; save that he was aware of the number of breaks a worker

was entitled to during the working day. Rest periods between shifts and 2 days off following a period of 12 days work had to be explained to him.

18. He was not aware of the "48 hour opt out" and did not have any paperwork relating to it including any draft opt out agreement. He was advised to use the BERR website.

19. The labour provider did not have a draft copy of a time sheet, with which to show an accurate record of days and hours worked.

20. It is reasonable to conclude on the information available at the Inspection that the labour provider would not have been compliant with this standard.

## **STANDARD 6**

### **BREACHES IN HEALTH AND SAFETY INCLUDING TRAINING**

21. The labour provider indicated he would explain Health and Safety to workers and complete an Induction at the labour user site and get the worker to complete a health questionnaire. It is unlikely this would be completely effective given the poor command of English of the labour provider. He had not prepared a written agreement with the labour user but was aware that there should be one in place.

22. The certificate of insurance for the labour providers' proposed vehicle covered him for journeys to and from the workplace but excluded "hire and reward". He said he had paid £65 for this but the certificate was not up to date. The vehicle was not registered in his name with the DVLA despite the fact that he says he purchased it 2 months ago. He understood the requirements relating to PSV and PCV certificates but was unaware of the 101 restriction on the driving licence relating to "hire and reward". It is reasonable to conclude he would not have been compliant with this standard.

## **STANDARD 7**

### **RECRUITMENT AND CONTRACTUAL ARRANGEMENTS**

23. The labour provider had a contract of employment, provided by A-Z Employment. However it was not compliant with the Licensing Standards because it referred to piece rates. Holiday entitlement was unclear and sick pay. Further it required an undertaking to pay the worker even if he does not receive payment from the labour user, to be included. A further contract was found on inspection with a different type face and laid out differently. No proper explanation was provided for this.

## **LICENSING STANDARD 10**

### **LEGALITY AND RIGHTS OF WORKERS**

24. The labour provider appeared to lack knowledge of who is legally entitled to work in the UK, visa requirements and work permits. It is reasonable to conclude his lack of knowledge in regard to checks he

must undertake shows likely his failure to comply with this section in future.

**Conclusions**


25. Primeval were at the time of the inspection visit failing to show that they could comply with the Licensing standards identified above. The Introduction to the Standards provides page 6 paragraph 27  
"A new business will be expected to show systems in place that demonstrate the ability to conform to each section."

26. The GLA were correct in identifying that there were numerous concerns relating to the grant of a Licence here.

27. Primeval intimate that they have taken steps to comply with the standards in some aspects however they did not make sufficient preparations before the inspection to show they would be able to comply with the standards and there are still fundamental actions to be taken to show that there could be full compliance. No revised documentation was submitted regarding the appeal to give any reassurance that as a matter of fact any areas of non-compliance had been addressed.

28. Further I have grave concerns as to the ability of the Principal Authority to act as a fit and proper person in regard to his duties in particular because his English is poor, he lacks business acumen and he was manifestly ignorant in relation to key aspects of knowledge which he is required to have to be regarded as a fit and proper person to hold a Gangmaster's Licence. I am also troubled by the clear links between the Appellant and A-Z Employment which as I understand it, is a Company which has had its Licence revoked as referred to above.

29. The extent of the failure to show future compliance is a matter to which I have regard in determining that the refusal was on the evidence available entirely appropriate. I conclude that the GLA acted proportionately in all the circumstances in line with GLA policy, standards and procedure. The appeal against the refusal to grant a Licence is therefore dismissed.

Signed .....  .....

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

Dated <sup>23</sup>..... JULY 2008.....