

# THE GANGMASTERS (APPEALS) REGULATIONS 2006

## In the matter of an appeal against a decision made by the Gangmasters Licensing Authority (Ref 32/E/RV)

Morantus trading as 247 Staff  
(Appellant)

V

The Gangmasters Licensing Authority  
(Respondent)

### Appointed Person

Mr David Perry

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

#### Decision

Upon consideration of the appeal documents and the accompanying papers lodged by the Appellant and the response to the appeal and accompanying papers lodged by the Gangmasters Licensing Authority it is the decision of the Appointed Person that the Appeal of Morantus (trading as 247 Staff) is **dismissed** and that this decision shall take effect 14 days after the date of its service on the parties.

#### Summary Statement of Reasons

- 1 This is an appeal against the decision of the Gangmasters Licensing Authority ("GLA") on the 21 November 2007 to revoke with out immediate effect the Gangmaster's licence ("the Licence") granted to Morantus trading as 247 Staff ("Morantus").
- 2 The parties have agreed the appeal will be dealt with without an oral hearing pursuant to reg. 15 of the Gangmasters (Appeals) Regulations 2006 ("the Appeals Regulations"). I have considered all documents the parties wish to rely upon in accordance with reg. 15(3) of the Appeals Regulations.

#### THE LICENSING STANDARDS

- 3 Whilst the GLA regime is regulatory, the purpose of the GLA, is *"to protect workers from exploitation"*. The GLA attempt to *"adopt a proportionate response when applying the licensing standards"* and are *"concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non compliances"*. The standards state *"In overall terms the GLA standards are a reasonable range of measures that*

*should be in place in any well-run business complying with existing law.”* (paragraphs 1, 8 and 14 of the Licensing Standards, October 2006).

- 4 The Licensing Standards published by the GLA summarise how the legal requirements that relate will be applied and assessed, they are known to all concerned and are clear. They adopt a point scoring method that categorises infringements according to the seriousness of the same. “Critical” non-compliances score 30 points and “major” non-compliances score 8 points.
- 5 Only if the total score exceeds 30 points, that is, 4 or more major non-compliances or one critical non-compliance, can the licence be revoked. A licence holder will be permitted to retain its licence with up to three “major” non-compliances, subject to additional licence conditions being imposed.
- 6 Thus, the scoring system has provisions built in excluding isolated non-compliances unless they are “critical”.

## **BACKGROUND**

- 7 Morantus applied for the Licence on 15 December 2006. An inspection took place on 16 February 2007 and the licence was granted without conditions on 20 February 2007. Morantus had no contracts within the regulated sector at the time of the application and thus the Licence was classed as a “new business licence”. As a result Morantus was instructed to notify the GLA when it began to supply workers into the regulated sector.
- 8 On the 24 April Morantus notified the GLA that it had started to supply workers into the regulated sector. This triggered a compliance inspection that took place on 16 August 2007 at Morantus’ offices (“the Inspection”).
- 9 As a result of the Inspection the GLA assessed Morantus against the Licensing Standards and a Licensing Standard score was generated. Morantus scored 130 made up of 3 critical non-compliances in relation to standards 2.8, 3.6 and 4.3 and 5 major non-compliances in relation to standards 2.5, 2.7, 4.2, 5.2 and 6.6.
- 10 Notwithstanding the score and the three critical non-compliances the GLA did not revoke the Licence with immediate effect.

## **FINDINGS IN RELATION TO THE ALLEGED BREACHES OF LICENSING STANDARDS**

- 11 In relation to the alleged breaches of the Licensing Standards I find as follows:-

### **Standard 2.5 (Major non-compliance)**

- 12 The documents before me do not in my view show that the three workers (out of 15) that the GLA allege had no tenancy agreements or damage deposit

forms were provided with accommodation. Accordingly I find that that aspect of the allegation is not made out.

13 However I find that the written consent to deductions form does not set out with the necessary precision how much workers would be charged for transport so as to allow the worker to provide the necessary consent. Morantus has not disputed this part of this allegation.

14 I find that Morantus was in breach of this standard.

#### **Standard 2.7 (Major non-compliance)**

15 Morantus accepts that for reasons in its control it withheld monies without the workers' consent although it says this was due to an administration error.

16 I find that Morantus was in breach of this standard.

#### **Standard 2.8 (Critical non-compliance)**

17 I am satisfied that workers were paid less than the National Minimum Wage taking into account the accommodation offset. In addition to the amount permitted to be taken into account in reg. 36 National Minimum Wage Regulations 1999 the tenancy agreements I have seen show that a further £15.95 per week was to be deducted. There is also evidence that this sum was paid by standing order. The GLA assert that workers were paid at the minimum wage rate prior to this deduction being made. Morantus make no challenge in its appeal in relation to this allegation but state that as of 7 December 2007 the rents were reduced so they were less than the accommodation offset applicable. That is no defence.

18 I find that Morantus was in breach of this standard.

#### **Standard 3.6 (Critical non-compliance)**

19 I find that Morantus's contracts with its workers were such that the workers were liable to a penalty if they left their employment. Morantus' tenancy agreement provides that if a worker left his/her employment he/she would be required to vacate the property and that in the event the tenancy was terminated within the first twelve months that the worker was liable for the rent for the remainder of that period.

20 I find that Morantus was in breach of this standard.

#### **Standard 4.2 (Major non-compliance)**

21 For the reasons I give above in relation to the alleged breach of standard 3.6 I find that workers were not allowed to find alternative accommodation after giving an agreed notice period. Morantus's only challenge to this allegation was that it was not aware the workers's children were in the UK. This has no relevance to this breach.

22 I find that Morantus was in breach of this standard.

#### **Standard 4.3 (Critical non-compliance)**

23 In relation to the allegations regarding the fitness of the accommodation and maintenance of electrical equipment, I find the evidence before me is insufficiently detailed to allow me to be apprised of the factual circumstances to enable me to make determinations.

24 However, I find that Morantus failed to provide, as it is required to do by this standard, the appropriate electricity and, specifically in this case, gas certificates for accommodation provided for workers. None were available on the day of the inspection and only 3 certificates (in relation to its 19 properties) were provided within 48 hours.

25 Morantus's challenge to this allegation was that it was not aware of the requirement. This requirement is plain in the Licensing Standards and thus that is no defence.

26 For the reasons set out in paragraph 24 I find that Morantus was in breach of this standard.

#### **Standard 5.2 (Major non-compliance)**

27 Whilst the burden is on Morantus to ensure its paperwork is in order the only evidence I have in support of the GLA's allegations are a few lines of submission. The evidence before me does not show the number of files inspected, the number of files where an opt out was missing from the file or state by reference to specific workers that worked in excess of the limit that the opt out was missing.

28 Morantus asserts the 48-hour opt-out from the Working Time Regulations 1998 is included within all their packs and this may have come loose in this instance. They attach examples of their opt out.

29 I find there is insufficient evidence before me to conclude there was a breach of this standard.

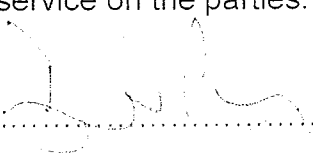
#### **Standard 6.6 (Major non-compliance)**

30 I find that Morantus had not co-operated with the labour user to ensure that adequate protective equipment had been supplied. Evidence before me shows that workers were charged for this equipment despite previous warnings to Morantus from the GLA that this was not acceptable. Morantus do not challenge this.

31 I find that Morantus was in breach of this standard.

## CONCLUSIONS

- 32 In this case I have found the GLA were right to hold there were 3 critical and 4 major non-compliances at the date of the inspection (a score of 122).
- 33 Each of the critical non-compliances justifies the revocation of the Licence. Morantus also exceeded the score permitted to allow the licence to continue even with conditions. In my view these are not isolated occurrences and the score is over 4 times the permitted score. Many of these standards require nothing more than compliance with current legal requirements and thus they are basic.
- 34 Taking into account the published points scoring criteria adopted by the GLA, its review of the scores, and the nature and extent of the breaches as set out in my findings above, I am satisfied that the scores were applied in accordance with the published criteria and the Licensing Standards. Whilst Morantus has not challenged and has admitted many of the breaches this is no defence and I conclude that the GLA were correct to revoke Morantus' licence as at the 21 November 2007.
- 35 I therefore dismiss this appeal.
- 36 There are no submissions before me from either party on the date this decision shall take effect pursuant to reg. 22(2) of the Appeals Regulations. In my view the number, extent and type of the non-compliances is such that this could have justified the withdrawn of the Licence with immediate effect. Taking this into account and Morantus' admitted lack of knowledge of the Licensing Standards in my view this is not a case where the date this decision takes effect should be deferred to allow Morantus to continue to trade whilst a new licence is sought.
- 37 In order to allow for appropriate arrangements to be made so that Morantus' workers and clients are not inconvenienced more than necessary I am minded to allow a two week period for this decision to take effect from the date of its service on the parties.

Signed:  .....

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

Dated : 28<sup>th</sup> February 2008