

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

# **DETERMINATION OF AN APPEAL AGAINST A DECISION OF THE GANGMASTERS LICENSING AUTHORITY ON 14 SEPTEMBER 2007**

**LICENSEE/APPELLANT:** FRIDAY BRIDGE INTERNATIONAL FARM CAMP LIMITED

**APPOINTED PERSON:** Mr D W Skinner

**DATE OF DECISION:** 25 November 2007

## **DECISION**

The Appellant's appeal by notice dated 27 September 2007 (received 1 October 2007) against the decision of the Gangmasters Licensing Authority given by notice dated 14 September 2007 of its intention to revoke the Appellant's licence with effect from 11 October 2007 is dismissed.

## **REASONS**

### **Introduction**

1. With the object of protecting workers from exploitation, the Gangmasters (Licensing) Act 2004 ("the Act") established the Gangmasters Licensing Authority ("GLA") to operate a licensing system for direct and sub-contract UK and non-UK based labour providers (gangmasters) in specified areas of work in the United Kingdom, notably agriculture and shellfish-gathering and associated food processing and packaging. From October 2006 it is an offence to operate as a gangmaster in those areas without a licence or in breach of licence conditions. Relevant secondary legislation includes the Gangmasters (Licensing Authority) Regulations 2005 (SI No 448), Gangmasters Licensing (Exclusions) Regulations 2006 (SI No 658), the Gangmasters (Licensing Conditions) Rules 2006 (SI No 660) and the Gangmasters (Appeals) Regulations 2006 (SI No 662).

2. Prior to the Act coming into force, a Temporary Labour Working Group ("TLWG") was set up by a consortium of industry stakeholders, establishing minimum standards for labour providers through a voluntary code of practice and offering an audit service in preparation for a licence application. Indeed, the GLA might accept a successful TLWG audit as evidence of compliance for licensing purposes.

3. To determine under its regulatory regime whether a gangmaster qualifies for the grant, continuance or transfer of a licence, or whether a licence should be issued subject to conditions, or refused, modified or revoked, the GLA has introduced Licensing Standards ("LS"), which reflect industry relevant legal requirements. Paragraph 14 of the current Licensing Standards (October 2006) states that, in

assessing compliance, the GLA “...adopts a proportionate approach...” being “...concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances”. It goes on to explain in detail a method of assessing compliance with licensing standards through inspections, applying a measure of non-compliance based on a points system under 4 categories of infringement in descending order of seriousness: critical = 30 points, major = 8, reportable = 4, correctable = 2. The fail score for inspections is 30 points.

4. As well as assessing new licence applications, inspections may be carried out to check a licence holder’s ongoing compliance with licensing standards, marked as above. Following a review of the inspector’s report and information and evidence from other relevant sources, the GLA formally notifies the applicant or licensee of the result of the inspection and of any consequential decision to grant or continue a licence, on terms or otherwise. Where satisfied of evidence demonstrating systematic non-compliance with one or more *major* category licensing standard to a total score not exceeding 30, the GLA may impose additional conditions. Where such non-compliance scores over 30, the GLA will revoke the licence.

5. Licensing standards (and their *categories and scores*) include:

LS 2.8 (*critical - score 30*):

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

LS 8.1 (*critical - score 30*):

*Any subcontractors used must be properly and currently licensed by the GLA.*

6. The aforementioned Gangmasters (Appeals) Regulations 2006 (“the Regulations”) provide for appeals against the decisions of the GLA. Pursuant to Regulation 3, Employment Tribunal Chairmen are appointed to hear and determine such appeals. Pursuant to Regulation 4, a Secretariat is provided by the Department of State for Environment, Food and Rural Affairs (“Defra”) to administer the appeals process. Relevant extracts from or summaries of other Regulations include:

Regulation 2

*2(1) The overriding objective of these Regulations is to enable the appointed person to deal with appeals justly.*

*(2) Dealing with an appeal justly includes, so far as practicable*

*(a) ensuring that the parties are on an equal footing;*

*(b) dealing with the appeal in ways which are proportionate to the complexity or importance of the issues; and*

*(c) ensuring it is dealt with expeditiously and fairly.*

(3) *The appointed person shall seek to give effect to the overriding objective when he*

*(a) exercises powers given to him by these Regulations; and*

*(b) interprets any provision.*

(4) *The parties shall assist the appointed person to further the overriding objective.*

#### Regulation 5

5(1)(d) *An appeal may be brought by a person against a decision of the [GLA] ...to modify or revoke a licence*

5(3) *A licence which is the subject of an appeal against modification or revocation shall continue to have effect according to its original terms and conditions until such date as determined by the appointed person*

Regulations 6-14 make provision for pursuing and processing an appeal, including notice of appeal by the appellant (regulation 6) and reply by the GLA (regulations 9 and 10)

Regulation 15 gives power to decide an appeal without an oral hearing where both parties agree and the appointed person considers it appropriate, and the appointed person in that event shall consider any written representations from the parties.

Regulation 21 empowers and requires the appointed person either to allow or dismiss the appeal.

#### **Facts**

7. Both parties have agreed that the appeal be decided without an oral hearing, which I find entirely appropriate under regulation 15, not only in view of their joint wish but reflecting that the facts of the case appear uncontroversial and the relevant judicial considerations, as it seems to me, straightforward. Before determining this appeal, I have therefore considered all the written representations from the parties, comprising principally the appellant's notice of appeal dated 27 September 2007 (received 1 October) and the GLA's appeal submission and response of 26 October 2007. I have also noted the other material provided to me by the Secretariat with its letter dated 13 November 2007.

8. The salient facts are not in dispute and I chronicle them briefly.

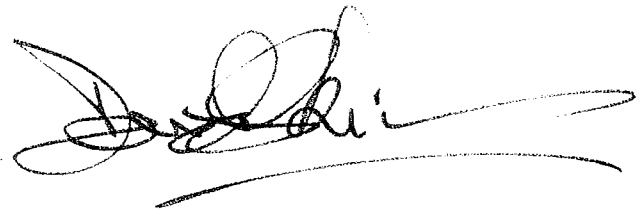
6/4/06	TLWG audit of appellant in preparation for licence application
29/5/06	Appellant's application for licence
22/9/06	GLA notification of decision to grant licence, without inspection,

	deeming the appellant "TLWG successful". The letter advises that the licence holder must continue to comply with applicable LS
Date not given	Compliance inspection of appellant, found to be in breach of LS 2.8 and 8.1, scoring 2 x 30 = 60 points, in excess of the fail score 30 (see paragraphs 3-5 above)
14/9/07	<p>GLA notice to appellant of decision to revoke licence with effect from 11/10/07 (subject to appeal) on grounds of above fail score, specifically:</p> <p>LS 2.8 – the Agricultural Wages Order ("AWO") requires payment for overtime work, but 23 workers were found to have worked in excess of 39 hours without overtime payment, in breach of the applicable AWO.</p> <p>LS 8.1 – 3 unlicensed overseas labour providers were found to be in a contractual relationship with the appellant to recruit and supply workers to the appellant's business.</p> <p>The notice sets out the appellant's options: to re-apply for a licence or to appeal this decision.</p>
27/9/07	<p>Appellant's notice of appeal under regulation 6, Birketts LLP solicitors acting, on grounds:</p> <p>LS 2.8 – appellant relied on misleading advice from ACAS in summer 2006 that there was no legal requirement to pay overtime. Having been informed otherwise during the GLA compliance inspection, the appellant has "made our labour users aware of their legal obligations".</p> <p>LS 8.1 – The appellant was not aware that overseas recruitment agencies had to be registered with the GLA. Since the compliance inspection, the appellant has severed its relationship with unlicensed agents and established links with licensed agents.</p>
1/10/07	Secretariat's letter to appellant's solicitors acknowledging notice of appeal and (inter alia) advising that any further documentation or evidence that the appellant wishes taken into consideration must be provided within 20 working days.
26/10/07	GLA's appeal response with detailed submissions contesting the appeal and elaborating the procedural and factual grounds for the licence revocation, in short contending that the decision to revoke was consistent with standard operating procedures and correct against all reported circumstances at that time.

## Conclusion

9. The appellant does not dispute that it failed the compliance inspection on the grounds recited or challenge the decision to revoke as a matter of practice or

procedure or call in aid any legal principles which impugn the GLA's exercise of its regulatory function in the way that it did on the then facts. The appeal at its highest relies on the appellant at the time of the inspection being ignorant of the licensing standards to which it was subject and of which it was in breach, in part as a result of misleading information from a third party, and having subsequently remedied the breach. This is no basis for overturning a decision properly made on established facts. Plainly there was serious non-compliance of licensing standards and the GLA was entitled if not obliged to revoke the licence. I cannot re-make the decision on fresh facts, even if there was evidence to find any. Nor can I revive the existing licence or re-issue a new one, even if there were grounds to suggest that the appellant is now compliant. The only decision available to me is to dismiss the appeal and it would be disproportionate and unjust as well as groundless to do otherwise.



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**Appointed Person  
(Employment Tribunal Chairman)**

**Dated 25 November 2007**