Case No: 83/E/R

GANGMASTERS (APPEALS) REGULATION 2006

Appellant: D J Houghton Catching Services Limited

Respondent: Gangmasters Licensing Authority

Heard at: **London South Croydon**
On: **16 November and 17 November 2015 (in chambers)**

Before: **Employment Judge Sage sitting as the Appointed Person**

Representation

Claimant: Mr. Boyd of Counsel
Respondent: Mr. Lazarus of Counsel

RESERVED JUDGMENT

The appeal is dismissed.

REASONS

Preliminary Matter

1. It was noted in the Appeal document at page 11 that the Appellant stated that he did not accept the finding that was set down in the respondent's letter dated 29 October 2012, which led to a revocation of his previous license with immediate effect. Although the Appellant said that he had appealed, he had decided to withdraw the appeal but did not accept that the breaches that were identified in relation to the exploitation of workers.

2. It was confirmed at the commencement of this Hearing that the only issue before the Tribunal was whether or not the Respondent was entitled, on

the evidence before them, to refuse the Appellant's application for a license. The Appellant could not therefore challenge to any previous decisions made by the Respondent in respect of previous license revocations. This hearing will therefore proceed on the basis that previous inspection reports are correct. This was agreed as a preliminary matter and the basis on which the Hearing was conducted.

The Issues

The issues before the Tribunal were as follows:

3. Does the Respondent have discretion as to whether to carry out an inspection in general?
4. Was the Respondent entitled to decline to inspect in this case?
5. Was the Respondent entitled to refuse the Appellant's application for a license on the evidence before them (pursuant to Regulation 5(1)(a) of the Gangmasters (Appeals) Regulations 2006)?

The witnesses before tribunal were:

For the Appellant we heard from:
Mr Houghton and Ms Judge

For the respondent we heard from Ms Wilson.
A witness statement was provided by Ms Ford but as her evidence was not challenged therefore oral evidence was not taken.

The Appeal and the Response

6. It was the claimant's case that he felt that the Respondent had pre-judged his new application and had made an "**arbitrary an uninformed decision on the basis of their historical findings**". It had been two years since the revocation of his previous license and he claimed that the respondent had prejudged the decision on historical information and had refused to carry out a license inspection (seepage 4 paragraph 9 of his appeal). He stated in the appeal that he and his wife had been the subject of extortion and effectively been "groomed" by a person called Mr. Mankevicius. He had reported this person to the police 18 months before his property was raided.

7. The respondent responded to the Appellant's appeal on 27 May 2015 (see pages 21 to 31 of the bundle). The Respondent disputed that the refusal to carry out an inspection was unlawful and stated that the Respondent was not obliged to carry out an inspection, it is entitled to do so and it is within their discretion to decide whether it is proportionate to do so. The Respondent contended that they acted lawfully and in a manner consistent with the Act and the Rules.

Relevant Findings of Fact

8. The Gangmasters Licensing Authority protects workers from exploitation in agricultural shellfish gathering and associated processing and packaging sectors. The GLA operates a licensing scheme for those acting as Gangmasters; license decisions are evidenced-based.

9. The tribunal noted that the Respondent's Licensing Standards dated May 2012 (page 33-70 of the bundle) set down the licensing standards that were required to be met by the Principal Authority "PA" (who was the person applying for the license). The Licensing Standards stated at paragraph 4.11 (page 36) that if an inspection score is 30 or more, the application or license will usually be refused or revoked. It stated at paragraph 5.8 (page 37 of the bundle) that the GLA will "**usually**" refuse applications when it is "**proportionate**" to do so in the following circumstances "**if an applicant, proposed Principal Authority or any other person named specified in the application has been found not to be fit and proper. This applies for at least two years from the date of that decision**". The Licensing Decision Policy stated at paragraph 11 (page 68 of the bundle) also reinforced that same provision that the GLA will **consider** automatically refusing an application following circumstances "**if an applicant, proposed Principal Authority and any person named or specified in the application has been found not to be fit and proper. This applies for at least two years from the date of the fit and proper decision**". The requirement to conduct an inspection is not mandatory as set out in Rule 3(3) of the Gangmasters (Licensing Conditions) Rules 2009 where it states that the Authority **may** require the Applicant to permit an inspection of the Applicant's business..". There was no evidence to suggest that the Respondent was obliged to offer an inspection. It is noted that under the Gangmaster (Licensing) Act 2004 section 7, the Respondent has a power to grant a license "if it thinks fit" and they have a discretion under Section 8(2) (b) to make such rules as it thinks fit in relation to the regulation of "the procedure to be followed in connection with applications...". Ms Wilson gave evidence for the Respondent; at the time of giving evidence her role was Head of Licensing. She was asked in cross examination about the relevance of the two year time period and she stated that the "**passage of time is not important, it is the rectification**".

10. The Claimant presented an application for a Gangmaster license on the 13 November 2014 (see page 641-658 of the bundle), this was signed by the Appellant as the PA. Ms Wilson wrote to the Appellant a letter headed "**Minded to Refuse**" asking the Appellant to "**make any representations which you consider relevant before the GLA reaches its final decision**", the letter also referred to the GLA licensing standard at paragraph 5.8 (referred to above) and the letter stated that it had referred to the two previous license revocations when considering his application. Ms Wilson told the Tribunal in answer to cross examination that this letter was part of the suite of documents used by the Respondent and they were used regularly. She confirmed that when this letter was written she had seen his application form and was aware of the Appellant's license history. Ms Wilson told the Tribunal in answer to cross examination that for her to take a different view to that expressed in her "minded to refuse" letter, she

expected to see "**an identification of where they went wrong previously and steps taken to rectify this and anything that they consider relevant, if they wanted to ring up we would have answered the question".** It was put to Ms Wilson that the letter could have been clearer and she replied" **possibly but I did not want to be prescriptive, it was meant to be an open process".** Ms Wilson told the Tribunal that what she had expected to see what "**exceptional circumstances as to why their application should be given consideration".**

11. The Appellant's were informed of the right to make written representations and their only submission, presented on their behalf by their solicitors, was that they had since engaged "**the professional services of advisers to assist in the reorganisation of its business practices to meet the requirements of the licensing standards**". No evidence was provided to support this submission and no explanation was provided to show that they would now be able to meet the licensing standards. Ms Wilson was taken to this response in cross examination and it was put to her that this was a "provisional" response and she replied "**it came across that they couldn't be bothered, this lack of evidence was the reason for my decision".** She stated that it was not for the GLA to tell people how they can comply and rectify their mistakes.

12. The respondent's decision was dated the 19 January 2015 to refuse the appellant's application for a license. The reasons for the revocation were set out in their letter at pages 5 to 7 of the bundle. The respondent stated that they concluded from the previous applications made by the appellant and the two previous revocations of his license, that he was not a fit and proper person to be granted a license and that it was proportionate to reach that decision. The reason given by the Respondent to refuse the application was that no evidence had been provided as to whom he had engaged and he had provided no explanation as to how he would ensure he would not exploit workers or breach licensing standards in the future.

13. The Respondent went on to state that the Appellant was considered not to be a fit and proper person due to the extent and nature of breaches of the licensing standards. When his license was revoked with immediate effect in 2012 the Appellant had scored highest number of points against his license was 320 against a threshold fail mark of 30 points. The Respondent concluded that having received no meaningful representations as to why the respondent should consider his application and on consideration of the evidence before them concluded that his application should be refused.

The obligation to carry out an inspection

14. The Respondent stated that they do not always carry out an inspection before granting a license but the full application fee is payable regardless of whether an inspection is carried out. They also stated that the automatic refusal decision was supported by their policy at 5.8 of the Licensing Standards where it stated that an automatic refusal is applicable in certain circumstances and, as they had previously found that the Appellant was not a fit and proper person, this supported their present decision. The Respondent stated that 5.8 of the Licensing standards is not a blanket

policy as it is qualified by the words "**usually**". The Respondent said in their response to the appeal that they considered all the evidence before them and concluded that the refusal without a full inspection was a proportionate and appropriate outcome and no "exceptional circumstances" had been demonstrated by the Appellants. The Respondent denied that they had prejudged the application. The Respondent stated in their appeal that they were not obliged to carry out an inspection, it is entitled to do so and it is within their discretion to decide whether it is necessary and proportionate to do so.

15. The decision not to carry out an inspection was taken by Ms Wilson who told the Tribunal that she had been aware of the issues in 2012 as she had worked on the revocation of the license and the subsequent appeal against that decision but denied that she had formed a view or closed her mind. Ms Wilson confirmed that licenses could be granted without an inspection and they inspected about 90% of those that submitted an application. Ms Wilson confirmed in re-examination that she was aware that in certain circumstances the inspection fee is refunded but this was not within her area of responsibility and the Appellant had not asked for a refund.

16. Ms Wilson was taken in cross examination to the decision report at page 659 of the bundle and it was put to her that the report was essentially "backward looking" and she accepted that it was. Ms Wilson was asked whether anyone else who had not been involved in the case could have considered the case and she replied that she had not made the decision in 2012 but was by this time she was Head of Licensing and she stated that she "**didn't bring any prejudice or bias"** and denied that her decision was **"predetermined".** It was put to Ms Wilson that perhaps she was a little too close due to her previous work on the case in 2012 and she replied "**absolutely not, this was a massive case with 40 lever arch files, to bring someone else into the case would be disproportionate"**

17. The appellant was informed of the right to seek a review but no review was submitted. Ms Wilson told the Tribunal that if the Appellant believed the facts referred to in the decision letter had been incorrect, he could have sought a review (which would be conducted by an independent person), but he chose not to avail himself of this opportunity.

18. The Respondent stated that the decision to refuse was proportionate because the Respondent "**is concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances, unless such a non-compliance in (sic) critical in its own right".** It was the Respondent's view that the Appellant had persistently and systematically exploited workers and their license had been revoked for similar breaches in 2007 and in 2012 where the Appellant had failed 14 standards, seven of which were critical, including the physical and mental mistreatment of workers.

The evidence presented by the Appellant's in support of their case

19. The evidence presented by the Appellants to the Tribunal was by the AP and the ABR. Firstly it was noted that in Mr. Houghton's statement he

referred to his first license being "knocked back" (paragraph 15 of his statement) but he appeared to show no awareness of the breaches that had been identified and did not address in his statement how he had rectified these breaches. Mr. Houghton then covered the events of the inspection in 2012 but appeared to place the blame for the breaches identified on the person known as Mr. Mankevicius (paragraph 19-44 of his statement) but it was noted that he had been in business with this person since the year 2000 (paragraph 24 or in the years 2002/3 as in paragraph 20) but did not report any concerns to the police until about 18 months before the Inspection in 2012. Mr. Houghton blamed the police for taking no action. It was put to Mr. Houghton in cross examination that although he contended that Mr. Mankevicius blackmailed and threatened him this was not reflected in the report of the inspection in 2012 (pages 180-1 of the bundle) and he replied that he told them but they did not write it down.

20. The Tribunal did not find the evidence of Mr. Houghton credible, it was noted on the inspection report that he was asked about the influence that Mr. Mankevicius had on the business and the report reflected that he told the inspector that he "**just got workers for them from Lithuania and that they pay him for translating sometimes"** it was also noted that the report reflected that he told the inspectors that he "**was on bad terms with Mr. Mankevicius although they still did business with him. He stated that Mr. Mankevicius has told him that he could close his business if he wished to do so**" and that he had a **"violent argument 18 months ago and that everything is conducted through Jackie Judge. Darrell Houghton refused to say what the argument was about"**. It was also noted that at the date of the inspection, they were still conducting business with Mr. Mankevicius despite reference to a violent disagreement; this evidence ran counter to the evidence provided by the Appellants to the Tribunal. Mr. Houghton denied in cross examination that he had a professional, financial or business relationship with Mr. Mankevicius, however when he was taken to the inspection report in 2012 where Ms Judge stated that she paid Mr. Mankevicius £250 for every worker found (page 182 of the bundle), he stated that "**as far as I was concerned no money was paid, he was applying pressure"**, this was not supported on the facts of the report and his evidence was not found to be credible. When it was pointed out to Mr Houghton that Ms Judge was reported to have referred to this payment as a fee he replied "**I have no idea".** The Tribunal was surprised that as the PA of this business he either had no understanding of the financial arrangements entered into by his business or he was not being truthful as to the arrangements in place for sourcing Lithuanian workers.

21. Although Mr. Houghton stated that most of the problems were caused by Mr. Mankevicius, it was put to him in cross examination that this could not have caused the problems in relation to the deductions from wages and again he said "**no idea**", he gave the same answer when he was asked about the payslips and cheques. Mr. Houghton blamed the failure to deduct PAYE and NI down to the accountant and not to Mr. Mankevicius. He confirmed he did not blame Mr. Mankevicius for the poor quality of accommodation. Mr. Houghton told the Tribunal that he was ignorant of the suffering that was going on and therefore was not able to stop it and it was put to him in cross examination that he would still be unable to stop it

now and he replied "**we will become more transparent, we are by ourselves, and hindsight is a wonderful thing".** He was asked in cross examination how he would prevent this happening in future and he told the tribunal "**I will for a start not let a Lithuanian take over my business, I will not let him groom me..**". This did not appear to show that he had taken on board the responsibilities required of an AP to ensure that workers are not subjected to exploitation and that employment rights for the protection of those in the workplace are complied with.

22. Mr. Houghton was unable to explain the basis for payments made to his workers and how that complied with National Minimum Wage Regulations, he also confirmed that he did not pay travelling time and his evidence as to health and safety training and conducting risk assessments was vague and he appeared to have little understanding of the legal requirements. He appeared to exhibit no understanding of basic employment rights and responsibilities which the Appointed Person found surprising due to the fact that he had been through three application processes and had his license revoked twice and had held a license for 5 years. Even though the Appointed Person did not expect the Appellants to show a detailed knowledge of the law, it would not be unreasonable to expect Mr. Houghton to show an appreciation and understanding of the underlying principles of the licensing rules as it was noted that the GLA application form completed by Mr Houghton advised applicants to read the Guidance booklet before completing the form (see page 641).

23. Mr. Houghton referred to a person called Matthew Cooney who would assist him with Health and safety matters in the future (were he granted a license) but there was no evidence of the qualifications and experience of this person and there was no reference to this in his statement. Mr. Houghton was taken to page 181 of the bundle which was part of the inspection report in 2012 where he was asked if he had knowledge of the Licensing Standards and a copy of the GLA regulations and he was reported to have said "**he admitted that he had not read the booklet. He stated that he had no real knowledge of the mechanisms and procedures required to run a business within the regulated sector. "I know how to catch chickens"",** he told the Tribunal that he did not know why it said that because he had read it, however on the balance of probabilities the Tribunal conclude that if he had read these documents at the time or before this Hearing, there was very little evidence that he had any understanding of the obligations placed upon his as a PA. He told the Tribunal that he felt he was fit to run his business but produced no credible evidence to support this.

24. Ms Judge also gave evidence to the tribunal; she was responsible for the administrative side of the business. She accepted that she paid workers by cheque and she was the sole signatory. She confirmed that Mr. Mankevicius had no control over what was written on the cheque. She was taken in cross examination to page 182 of the 2012 inspection report where she was reported to have said that she paid Mr. Mankevicius £250 for every worker provided and she stated that this was "correct to a degree". It was put to her that this money was deducted from workers pay at a rate of £50 per week and she denied this. She was then taken to the

evidence in the bundle at page 304 which showed a payslip dated the 23 September 2011 showing £216.63 and she was asked how much the wages cheque would be made out for and she replied that the worker may owe rent and sometimes "**they owed monies**". She told the Tribunal that they deducted £40 for rent. She was then taken to page 317 of the bundle which was a print out from the Moneyshop showing a cheque being cashed the following day (the 24 September 2011) for £126. She denied that she deducted £90 from this worker however the exercise was repeated for the payslips at page 305, 306 and 311 which all showed a £90 disparity between the payslip and the amount on the cheque. She accepted that she paid Mr. Mankevicius money for finding employees from the year 2000 from workers pay. She told the Tribunal that she stopped paying Mr. Mankevicius from workers pay in 2012.

25. It was then put to Ms Judge in cross examination that she had instructed her lawyers Clyde and Co (instructed to act for the Appellant's in connection with claims being pursued against them by 6 former workers) that no sums were paid to Mr. Mankevicius from workers wages and she replied "**I haven't checked, it is three years ago, I was intimidated at the time".** The Tribunal concludes that Ms Judge's evidence to the Tribunal lacked credibility and at times her answers were evasive. Her inability to explain why there was a disparity between the payslips and the amounts written on the pay cheques reflected the wholly unsatisfactory state of her evidence. The Tribunal conclude that this is because she was either unclear as to her obligations under license standard number 2 in respect of pay and tax matters or because she was not being entirely truthful, whichever is the case, it calls into question whether she was a fit and proper person.

26. Ms Judge was asked in cross examination how she converted the number of birds caught each week (which was the basis for he payments made to the workers) to a payment that complied with the National Minimum Wage and she replied that this was exercise was conducted by their accountants and they did "not do a very good job". It was Ms Judge's view that the GLA should have picked this up in 2010 and they should not have "**thrown the book at me**". It appeared to the Appointed Person that Ms Judge was not conversant with the Licensing Standards and appeared to blame others for her failure to comply. In re-examination Ms Judge told the Tribunal that she had now met with an HR professional and Health and Safety professionals and they had attended a meeting in Sheffield to get these people on board. She accepted that these meetings had only taken place within the last three weeks and there was no consistent evidence that any action had been taken to put procedures in place to comply with the licensing standards when they submitted their application in November 2014.

Closing Submissions – the Respondent made orally

27. I refer to paragraph 8 of my written submission where I pose two questions the first of which is whether the respondent has a discretion whether or not to carry out an inspection in general. It is clear from the evidence that we have, that the respondent has a policy of not carrying out inspections,

therefore, with regard to the first question; the issue is whether it is up to the Appointed Person to look behind the procedure? The usual outcome of the two revocations and the only question for the Tribunal is whether the policy was invoked reasonably. If it is for you to go behind the policy, it is perfectly proper to have a policy in place to deal with multiple applications, and it would be a waste of resources to carry out an inspection each time. Although there is a fee, the respondent must have trained inspectors, and if they are engaged on fruitless inspections, it would be a misuse of resources.

28. The Respondent is empowered to carry out an inspection and the policy itself is a proper lawful policy.

29. With regard to the second question posed in my written submission, which is whether the respondent was entitled to decline to inspect in this case the answer is obviously so. The case was crying out for the Appellant to persuade the respondent to carry out an inspection. They had a license revoked twice, first in 2007 and the revocation in that instance was not on trivial grounds, and I refer to your decision and then in 2012 the revocation when the appeal was withdrawn after they scored 320 points and were described as the worst gangmasters, they were very serious breaches.

30. What I suspect my Learned Friend would say is that they were ready to dismiss the application and the Appellant should have been asked to spell out their case but if the facts needed to be spelt out, then it showed he had not grasped the reason why he had his license revoked in the first place.

31. It is perfectly proper and appropriate to send an open letter asking for the Appellant to send in details, and in reply he said that further assistance had been sought. I invite you to read page 3 of the bundle as a challenge to the policy itself, it says please tell our client what to say. It deals with previous revocations which the Tribunal can deal with and how long the ban will apply. None of the evidence presented by the Appellants now and in oral evidence and in their statements were before the Respondent when they made their decision. Therefore, they are not matters you can take into account as they were not before the decision maker. The decision made to reject the license was entirely proper

32. I now turn to the merits of the case at page 11 of my submissions this is not said to be a matter taken into account by the respondent, but they are proper to you to take into account in your decision. The respondent handed up two cases to the Tribunal, CHRE v (1) NMC (2) Grant [2011] EWHC 927 and Yeong v GMC [2010] 1 WLR 548 and Black v GDC [2013] CSIH. These cases relate to areas of professional regulation resulting in disciplinary hearings. There is a 3 stage process is to be taken, which begins with the first stage, which is deciding the facts. The second stage is to decide whether on the facts the evidence amounts to misconduct and thirdly, whether or not the individual's fitness to practice is impaired. There is an obvious comparison here with the Respondent as to whether someone is a fit and proper person to hold a license. It is a backward looking exercise however, fitness to practice is decided in the present looking forward. The materials in these cases have reliance on past evidence, and in this present case, what happened in 2012. But the real issue is the protection of workers and whether the appellants are fit and

proper persons. I refer specifically to paragraph 51 of the CHRE case, which has an outline of the facts and in this case there was a review as to whether or not the previous decision makers had been unduly lenient, and I refer to paragraph 69 that case where it states as follows " **it is clear, notwithstanding the references in those passages to whether fitness to practice " has been" impaired, that the question is always whether it is impaired as at the date of the hearing, looking forward in the matter indicated by Silber J in his judgment. The question for this committee as at 21 April 2010 was therefore "is this registrant's current fitness to practice impaired?**"". I also so refer to paragraph 71 of that case, which stated that " **however, it is essential, when deciding whether fitness to practice is impaired, not to lose sight of the fundamental considerations emphasised at the outset of this section of his judgment, paragraph 62, namely the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession**". I refer to paragraph 74 this case, where it states that " **in determining whether a practitioner's fitness to practice is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if the finding of impairment was not made in the particular circumstances.".**

33. I say there are obvious parallels that can be drawn here in practical terms whether he should hold a license but whether public confidence in the process would be undermined if he were to be granted a license. What would the public think looking at the decision in 2012 and what would workers think? Would they be reassured, if someone who had lost their license on two previous occasions would be granted a license and what would other Gangmasters think if this applicant could simply reapply? It would not be setting a proper standard. Neither would it instill confidence in the Respondent.

34. I also refer to the case of Black v BDC; in this case the Applicant failed to have the appropriate indemnity insurance in place and as a result, his fitness to practice was impaired. There was no claim lodged against him at the time and by the time of the hearing he had taken out insurance and the public were fully protected as past risks were also covered in that policy. In that case it was held at paragraph 25 that it was necessary for the Committee in deciding whether the fitness to practice was impaired to have regard to the wider considerations than the consideration that the misconduct had been remedied and to consider whether there was little likelihood of repetition. It went on to state that "**the Committee required to have regard to the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession**".

35. I emphasise that these are not cases within the Respondent's jurisdiction, and such issues have not been raised before but my obvious inference these principles must apply here. We say the appeal should be dismissed.

36. Finally, we look at the evidence for what it is worth. There has been sufficient evidence of dishonesty, if not considerable obfuscation. Mr. Houghton said he was not in business with Mr. Mankevicius and Ms Judge said he was and was paid £250 for each worker from their wages, which is a breach of the licensing rules. The defence that Ms Judge put forward in respect of the workers' civil claim was that no payment was made from wages.

37. Also, we heard that no deduction was made from pay and I took Ms Judge to pay slips and evidence from the Money Shop, the evidence is cogently there whether you make express findings of dishonesty this says an awful lot about the reason for the revocation of the license in 2012. Mostly, the appellants are angry and blame others, including the respondent, their accountants, human resources, Mr. Mankevicius and others.

38. You've also seen that they had place huge reliance upon external agencies to do tasks such as payroll and human resources, health and safety, this is also fatal to their case.

39. The Appellant runs an HR business, the fact that they need outside help to carry out their tasks shows that they are not fit and proper people. Even if Mr. Houghton is an expert chicken catcher, he has to go to outside experts to show he is capable of being a Gangmaster. These matters were not before the Respondent, and we have only heard that they have visited experts in the last week prior to this Hearing. If the respondent had carried out an inspection, there would have been nothing to inspect at the time. These were merely stated intentions; there was no evidence that Mr Houghton was able to run a compliant business.

40. Finally, with regard to Mr. Mankevicius, the appellants say that most of the transgressions are down to him however the respondent does not accept this. The stoppages from wages are down to Ms Judge, even if Mr. Mankevicius was really this malignant person, this was by no means an end to it. There was no evidence that they would not be influenced by others again, the explanation that they would not provide accommodation would possibly open up the workers to more exploitation. This appeal should be dismissed.

The Appellant's reply

41. On three occasions you intervened about the rules of engagement in this case, we were not there to consider the 2012 appeal. That is true. What is in play and what is not in play?

42. If the license holder has a license revoked in January, if they put this in order in July, they can ask for the appeal not to take place, but the authorities say no. It must be on the evidence before them. I'm not looking at the situation going forward on 19 January. What was before the respondent and what was taken into account?

43. You have heard a lot about the 2012 inspection, the appellants are painted in a demonic way. However, that misses the issue. Looking at the decision on 19 December, the respondent had extensive inspection powers, they

encompass speaking to a wide range of people and looking at documents and that tends to take place at the organisation being inspected.

44. We know a lot can happen in two years, which I will refer to the prohibition period, which must be there for a reason. It is not arbitrary, there must be an expectation, by which one might put ones stall back in order, but I have no authority for that.

45. When the application was submitted, it was in bland form, which is on page 631 of the bundle; it is essentially a tick box exercise that takes us to the "minded to refuse" letter. Looking at it from an Employment Tribunal point of view, it is like a judge having heard half of the case and saying my strong view is that the claim fails and this is a dangerous part of the process, before hearing anything from you my mind is to refuse the application. If this was part of the process, they need to be pretty clear how this presumption should be rebutted. If there is an expectation, they work in partnership. Ms Wilson accepted she should have been clearer.

46. Again, a practice adopted in the Employment Tribunal for example, if you presided over an investigation, it is not appropriate to make a determination in respect of subsequent conduct. I refer to page 659 in the license decision report, where Ms Wilson states that she had worked extensively on the case in 2012.

47. The inspection could have included them sitting down with Mr. Houghton and ask him where his business plan is and how is it going to take into account health and safety and accountancy issues. One would expect this to be part of an inspection. You have paid your fee, we have come out and you have been put through your paces and you have not satisfied us and here is our thought process and decision as to why you cannot pursue your business. This should have happened, led by the respondent but it didn't.

48. I have taken you to the "minded to refuse" letter and from the perspective of the appellants; this had serious ramifications in relation to his livelihood. I refer to page 3 of the bundle, and if you take that in a strict, commonsense meaning, he wants details as to how it was reached and shouldn't the response explain the basis of the decision and how it was reached and shouldn't it engage with the solicitor who thought he was making provisional representations?

49. If we look at the evidence that emerged today, let's look at the timing as at today's date. Mr. Houghton and his partner had the decision not to accede to the application. Whatever happens it will inevitably involve costs whatever they do, it is irrelevant to the decision now looking at this point in time. The appellants are committed to writing the wrongs committed and to seek the advice of professionals. Do all gang masters have to have an encyclopedic knowledge, no that is not delegating their responsibility.

50. I refer to the respondent's list of issues, at paragraph 15. It is accepted that the respondent does have the discretion, but it also has a fundamental obligation to act proportionally and fairly. How can it do that knowing it holds information and criterion that is not communicated?

Doesn't that prove the point that they did not act in a reasonable and appropriate way.

51. The cases referred to by the respondent, they are trying to draw an analogy that my learned friend referred to paragraph 71 and 74 of the above case. No one would disagree that this is an integral part, if due process is followed for the person to state their case and this is what is absent in this matter. I do not fundamentally disagree importing these two decisions into this case.

52. I also refer to the bundle to page 31, which is the respondent's appeal, at paragraph 55 where they state that if the appeal were allowed the appellants would face a full inspection and I completely endorse that. The outcome of this appeal should not result in the license being granted and the Respondent makes no assurances. If it transpires the inspection is then carried out, the appellants put through their paces and they fail to show that they are capable and appropriate, so be it. Failing that, they are potentially likely to have been treated unfairly based upon a concern on the part of the respondent that from a political perspective they are the worst points scorers encountered.

Decision

The decision of the Appointed Person is as follows:

53. The Gangmaster Licensing Act 2004 was introduced to protect workers in certain sectors to prevent them from exploitation and unsafe and dangerous working conditions. The Respondent organisation was set up in 2005 to ensure that the Act is followed and to establish and regulate the licensing procedure. The focus of the licensing procedures is on the rights and protections of workers and is considered to be a "reasonable range of measures that should be in place in any well run business". Those applying for a license must show that they fit and proper people and can comply with the requirements set down by the licensing standards. This was a requirement that was in the public interest as well as necessary to protect those who may be vulnerable in their places of work.

54. It was not disputed that the appellants had worked in this sector since the year 2000 with the individual called Mr. Mankevicius and had held a license since 2007 which was subsequently revoked, and his appeal against revocation was dismissed. Written reasons were given for the decision therefore, the appellants could have been in no doubt as to why his license had been revoked.

55. Mr. Houghton then held a license from 2007 until 2012. The Inspection report was produced out of a joint operation with the police in 2012 which led to the immediate revocation of the license. The Respondent's appeal response stated at paragraph 11 (page 23 of the bundle) that "**as a result of the operation thirty eight of D J Houghton's workers were referred, with their consent, into the National Referral Mechanism ("NRM") for Human Trafficking. All thirty eight workers were formally determined to have been the victims of human trafficking by the UK Human Trafficking Centre" ("UKHTC").** These were facts that have not been

overturned on appeal and were before the Respondent at the time of the Appellant's application for this present license. The Appellants can have been in no doubt as to why the license was revoked. An appeal was presented with the assistance of his solicitors, which was subsequently withdrawn. The inspection led to the score of 320 against a possible fail score of 30 which the Tribunal have heard was the highest score ever recorded. Although the Appellants' representative has said that this demonises them, it is an escapable fact that was before the Respondent and goes to the very heart of the reason why licensing is necessary in this area and why it needs to be vigorously applied. It was noted by the Appointed Person that the Appellant's score had increased from a fail score of 110 in 2007 up to 320 in 2012 thus leading the Appointed Person to conclude that the severity of the breaches had increased and by 2012 had reached a critical level in respect of seven standards. There was no evidence that the Appellants had sought to improve their knowledge of the licensing standards and the only conclusion that can be reached from this evidence was that they paid scant regard to the licensing provisions. The oral evidence given by the Appellants further corroborated their continuing unfamiliarity with the licensing provisions.

56. The Appellants' defence was that they had been "groomed" and intimidated by a person known as Mr. Mankevicius, who is now the subject of an international arrest warrant. I have to accept the respondent's submission that the appellants' reliance upon this line of defence strongly suggested that they are not fit and proper people to hold a license as they had admitted to have been influenced by this person. It was also of concern that Mr. Houghton's evidence as to his dealings with Mr. Mankevicius appeared to be less than candid and honest and he did not admit to having a business relationship with this person. However, Ms Judge accepted that she had regularly paid him a sum of money in respect of a finder's fee for each worker out of their wages, even though this was contrary to the licensing standards. Mr. Houghton also appeared to have little or no knowledge of the licensing standards in relation to pay slips, health and safety, National Minimum wages, Working Time Regulations or holiday pay and in response to some of these questions; he merely replied "**no idea**". The Appellant's evidence therefore did not seem to be honest and open and they displayed little or no understanding of the licensing conditions or of their obligations as Principal Authorities responsible to the respondent in meeting those obligations. Their evidence reflected a complete lack of understanding of the importance of the licensing provisions or of their significant past failings.

57. It was noted that the Appellants were asked in cross examination how they would comply with the licensing requirements in future and they made reference to instructing HR professionals and health and safety experts. However, it was noted that there was no evidence that the Appellants had gained any further insights or knowledge as to their personal responsibilities and liabilities under Gangmaster Licensing Provisions, and it was evident that they were again going to place the responsibility of their legal obligations into the hands of others. The appellants did not appear to accept any responsibility for the previous comprehensive failures of their licensing obligations, choosing instead to blame others, including the respondent for the previous revocations of their licenses. This evidence must be considered to be highly relevant in the conclusions reached by

this tribunal in deciding whether the Appellants are fit and proper people. It has been put to the Tribunal in closing submissions on behalf of the Appellants that a lot can happen in 2 years however on the evidence of the Appellants they appeared to have acquired little or no better understanding of their obligations as a Gangmaster or of the their obligations to the Respondent as the licensing body. What was also significant they did not appear to accept any responsibilities for their past failures or show any understanding of the importance of the licensing rules.

58. It has been submitted on behalf the Respondent that there can be a comparison made between the field of Professional Regulation when considering the issue of fitness to practice and in the area of Gangmaster appeals. This comparison is not challenged by the Appellants' Counsel who accepts that there is some comparison to be drawn between the two. It has been submitted by the Respondent that although fitness to practice is essentially forward-looking, that is not the end of the story, because what must be taken into account is the public perception and the need for the public to have confidence in the professionals that are so regulated. The Respondent states that it is necessary in this case, to uphold proper standards of conduct and behaviour in order to the public to have confidence in the process and for workers to be protected as envisaged by the licensing provisions. The Appellants' representative does not disagree with the analogies to be drawn by the Respondent, however, he states that, what is lacking in the present case, is the ability for the Appellants to be heard, and in order to do justice to the case this is what should happen and they have effectively been denied this by being denied an inspection.

59. Having taken into account both submissions, I conclude that the principles outlined in the cases on Professional Regulation are relevant to the issues in the present case. The GLA was established to protect workers in particular sectors from exploitation and abuse, where they had been identified in previous years to have been the poorly protected. The public quite rightly should expect that these standards should be maintained and upheld vigorously as failure to do so is likely to lead to exploitation, trafficking mistreatment and in extreme circumstances death. The conduct of the Appellants should be judged not only on the facts of the case but also in the light of the important principles that underpin the Regulations and the need to protect those who are vulnerable in the workplace. That calls for not only a forward looking approach but also account must be taken of the previous conduct of the Appellants both in their dealings with the Respondent and in respect of their previous conduct as license holders and on all the evidence before me the Respondents had sufficient grounds to conclude that the Appellants were not fit and proper persons to hold a license.

60. Now turning to the specific issues identified in this case, I first wish to answer a question posed by the Respondent in their oral submission namely whether the Appointed Person has discretion to look behind the procedure and I have to conclude that I have no such power. It has not been argued that the policy is in some way inconsistent with or exceeds the powers set down in the Act or the Regulations and in the absence of any such evidence I conclude that I have no power to look behind the

procedure. Although it was noted that the Appellants' solicitors letter at page 3 of the bundle challenged the procedure followed by the Respondent and asked for further particulars of decision making process behind this decision, it has been found as a fact that the Respondent has a wide discretion to regulate its own processes and procedures (see above at paragraph 9) and under 5.8 (see above also at paragraph 9) has a discretion to refuse to grant a license if it is proportionate to do so. There is no evidence that the Respondent acted outside of their powers or in any way fettered their discretion or acted in an arbitrary or capricious way in the operation of this discretion. The evidence of Ms Wilson was consistent and credible and provided evidence to show that she reached a provisional view and the Appellants had a right to submit any representations before a decision was taken.

61. I now turn to the scope of the appeal, which is whether the Respondent had a discretion to fail to carry out the inspection. It is noted in the Licensing Decision Policy (see above at paragraph 9) that the respondent "may" conduct an inspection and this may include visiting clients' place of work. The Tribunal heard evidence from Ms Wilson, who the Tribunal found to be an honest and straightforward witness who stated that it was her honest and unbiased view that an inspection was not necessary in this case, because she had before her the application form completed by Mr. Houghton and the detailed history of his license holding. There was considerable evidence before her to support her view that, in this case, an inspection was not deemed to be appropriate. The Tribunal concludes that this decision was a proportionate and fair one to reach in all the circumstances.

62. Ms Wilson also considered the two-year policy and concluded that the previous license had been revoked two years and one day prior to the date of his application and concluded that this entitled her to conclude that his application for a license should be refused in the absence of any other evidence to the contrary. However at this time, this was only a provisional view. The Appellant was invited to provide representations in writing before a final decision was reached. Ms Wilson candidly accepted that perhaps her "Minded to Refuse" letter should have included more detail but the Appointed Person concludes that this letter was clear and set out all the matters that had been considered by the Respondent in reaching this provisional view and invited the Appellants to respond giving reasons why the application should not be automatically refused. The Appellant had an opportunity to make relevant representations before a final decision was reached therefore this was an opportunity for the Appellant to put forward their case.

63. The substantive response submitted by the Appellant is referred to above in the finding of fact above at paragraph 11. No mention was made in this letter of the previous revocations or how steps had been put in place to put their house in order to ensure that their business was compliant. The Respondent was entitled to conclude that this response was inadequate and the Respondent felt that this reflected the appellants' dismissive attitude towards the Respondent. Although this brief letter was taken into consideration, the Respondent was entitled on the evidence before them to conclude that the application should be refused on the grounds that the

appellants were considered not to be fit and proper persons. This decision was consistent with the facts and one that was reasonable to take. On the evidence before me the Appellants failed to engage in the process and the Respondent was entitled to conclude that the Appellants had failed to show exceptional circumstances.

64. The respondent was entitled on the evidence before them to conclude that an inspection was not required. There was no evidence that this discretion was fettered in any way and no evidence that they applied a blanket rule not to inspect. The evidence of Ms Wilson corroborated that licenses were granted without an inspection in 10% of cases reflecting the fact that the duty to inspect was considered on a case by case basis and Ms Wilson's decision not to inspect was proportionate and legitimate taking into account all the evidence before her. The proportionality argument was expressed cogently by Ms Wilson when she stated that she had a wealth of evidence about the previous license history of the Appellants (see above at paragraph 16) and they had provided no evidence to show that in this case an inspection was necessary. Had the Appellants reasonably believed that an inspection was proportionate and was necessary for their application to be dealt with fairly and justly, this was a matter that could have been raised by their solicitors, they did not do so at the appropriate time and neither was this submission made by way of review.

65. The Respondent was also entitled on the evidence before them, to dismiss the license application using the procedure at paragraph 5.8 of the Licensing Standards. There was a wealth of historical evidence to support the view that the Appellants were not fit and proper persons to hold a license. There was no consistent or credible evidence before the Tribunal to support the Appellants' view that the Respondent had acted in an arbitrary or uninformed way, they had a wealth of evidence before them from which to draw these conclusions as have been referred to above. There was also no consistent evidence before the Tribunal to support the Appellants' contention, put in closing submissions, that Ms Wilson predetermined the case or was bias. The Respondent's view of the history of this case was reinforced by the lack of engagement by the Appellant's and their solicitors during the licensing application process and their failure to provide supporting evidence to show that their past breaches would not be repeated in future. The Respondent was therefore entitled on the evidence to refuse the application.

66. I conclude that the respondent was entitled on the evidence before them to refuse the application for a license without the need for an inspection and to do so using the procedure set down at paragraph 5.8 of the Licensing Standards. I also conclude that on all the evidence before me and taking into account the wider public policy considerations in this case for the protection of workers, I conclude that the Appellants have failed to show to the Tribunal that they are fit and proper persons to hold a license.

67. I therefore dismiss the appeal

Employment Judge **SAGE**

Date

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

24th November 2015

FOR GANGMASTERS LICENSING APPEALS