



**IN THE MATTER OF**

**THE GANGMASTERS (APPEALS) REGULATIONS 2006**

**BETWEEN**

**Appellant**

Go Solutions Limited

**and**

**Respondent**

Gangmasters and Labour Abuse Authority

Held on: 11<sup>th</sup> December 2018

At: Nottingham

Appointed Person: Employment Judge Heap

Representation: No appearance from the Appellant. Written representations considered.

For the GLLA: Ms. Lisa Gilligan – Counsel

## **JUDGMENT**

The appeal against the decision to revoke the Appellant's Licence as taken on 21<sup>st</sup> December 2017 is refused and the Appellant's Licence is revoked with immediate effect.

## **REASONS**

### **Background**

1. The Appellant, Go Solutions Limited, by way of a Notice of Appeal dated 24<sup>th</sup> January 2018, appeals against the decision of the GLLA (hereinafter "The Respondent") to revoke its Gangmasters licence. That decision was communicated to the Appellant by way of a letter from the Respondent of 21<sup>st</sup> December 2017 and followed on from a first inspection on 6<sup>th</sup> February 2017 and a second on 8<sup>th</sup> September 2017. The

decision maker on behalf of the GLLA was Nicole Baughan from whom I have heard sworn evidence.

2. The basis of the Appellant's challenge in his Notice of Appeal was unclear and the Respondent requested Further & Better Particulars which were provided by the Appellant on 6<sup>th</sup> February 2018. Thereafter, the Respondent filed their Response. I say more about those matters later.

### **The hearing and the evidence**

3. The appeal was listed for hearing over a five day period commencing on Monday, 10<sup>th</sup> December 2018. On 7<sup>th</sup> December 2018 Mr. Overton on behalf of the Appellant applied to postpone the appeal hearing on the basis that he had a Statement of Fitness for Work ("Fit Note") which covered the first day of the hearing as listed. Although the Appellant had previously been legally represented, by this stage Mr. Overton had taken up the mantle of representation in his capacity as a director of the Appellant and also as the Principle Authority under the Licence in question.
4. That application was refused, with written reasons given to the parties at the time but primarily on the basis that the Fit Note did not provide that Mr. Overton was unfit to attend the hearing, merely that he was unfit for work. The hearing was, however, later shortened to four days so that Mr. Overton need not attend on 10<sup>th</sup> December. Accordingly, I did not sit on 10<sup>th</sup> December 2018.
5. Late in the day on 10<sup>th</sup> December Mr. Overton made a further attempt to postpone the remaining days of hearing time as listed and submitted another Fit Note covering to the end of the hearing. The application was refused, again with written reasons sent to the parties at the time, on the basis that once again the Fit Note did not say that Mr. Overton was unfit to attend a hearing (merely that he was unfit to attend work which is not the same thing); given the date of the decision to which the appeal related there was a risk of the matter becoming stale and the cogency of the evidence compromised; that there was likely to be a considerable delay before the Appointed Person was able to hear the matter if it did not proceed and that accommodations could be made for Mr. Overton at the hearing itself including breaks and the ability for him to bring someone with him to assist with cross examination and submissions. It was made clear that non-attendance on behalf of the Appellant would result in the hearing continuing in their absence.
6. Further communications from the Appellant followed concerning the ability of Mr. Overton to attend the hearing. It was made clear by me that if the Appellant sought to renew the refused adjournment application then evidence must be provided by Mr. Overton to demonstrate that he was not fit to attend the hearing rather than not fit to attend work (something that he was reminded was raised at the point when his original postponement application was refused on 7<sup>th</sup> December) and that that must be received by no later than 12.00 noon on 11<sup>th</sup> December 2018. Mr. Overton did not comply with that Order. Instead, he submitted a revised Fit Note determining that he was not fit for work or to drive or travel as a result of an ongoing cough that was under investigation. The Fit Note was, contrary to what had been Ordered, entirely silent on the question of Mr. Overton's ability to attend the hearing.

7. Miss. Gilligan on behalf of the Respondent objected to the Appellant's renewed application to postpone the hearing. She submitted, amongst other things, that there had not been compliance with the requirement to produce appropriate medical evidence; the decision to which the appeal relates was taken almost 12 months ago and included significant breaches on the part of the Appellant, five of which were critical, and the Appellant continued to trade with the licence until the appeal was determined.
8. I refused the application and communicated that to the Respondent orally and to the Appellant (no one having attended at all) in writing. I indicated that my reasons would be included in this decision and I accordingly now set them out here.
9. Firstly, I took into account the fact that Mr. Overton had still, despite a number of opportunities, not complied with what he had been directed to do with regard to a sufficiency of medical evidence. There was no indication, other than the representations of Mr. Overton to that effect, that he is unfit to attend a hearing. It was medical confirmation that he was required to obtain and he had singularly failed to do so. One might perhaps draw an inference as to the reasons for that position.
10. Whilst Mr. Overton appears now to rely on an inability to drive or travel, it is difficult to see how a cough, even a persistent one, might render him unable to travel at all. The centre where this appeal was heard is situated directly opposite the main train station. It is clear that Mr. Overton has managed to undertake some travel of late in order to take himself to see his General practitioner to obtain a number of separate Fit Notes and there is no qualification within the latter as to what "travel" is said to be impossible. It may well be that the reference to "travel" is to travel abroad. I do not know, of course, the basis upon which the Fit Note was requested by Mr. Overton but clearly as I have outlined it makes no reference to any inability to attend a hearing. In terms of what Mr. Overton was required to provide to support his renewed application, the Fit Note is woefully insufficient.
11. Whilst Mr. Overton may not be able to drive, there is nothing to suggest that he could not obtain a door to door lift. The Appellant was calling two other witnesses in addition to Mr. Overton who would have needed to attend this hearing. At least one of them can drive as the evidence before me shows that they were attending the premises of clients of the Appellant in a van belonging to the Appellant.
12. Moreover, the matters that caused the Respondent to take the decision to revoke the Appellant's licence are very serious matters indeed. A number relate to the assertion of the exploitation of vulnerable workers and until this appeal is concluded the Appellant remains able to trade as a Gangmaster. It has now been a year since the decision was taken and as a minimum it would be likely to be a further six months until the appeal could be relisted and heard. It would not for all of those reasons be either in the interests of justice or the overriding objective to postpone or adjourn the appeal hearing and thus I continued with it in the absence of Mr. Overton or, indeed, anyone else on behalf of the Appellant. The Appellant was on notice that the matter may proceed in their absence. It is notable that even if, which I do not accept on the evidence, Mr. Overton was incapacitated from attendance, no one else, including any other witnesses, attended the hearing either.

13. I therefore proceeded in the absence of the Appellant. I had before me the witness statements served on behalf of the Appellant and I have taken those, the Notice of Appeal and all other documentation provided by the Appellant as written representations.
14. I have also considered the witness statements of each of the Respondent's witnesses – and indeed I have heard live evidence from each of them in turn – and the documentation submitted by the Respondent in support of their resistance of the appeal grounds. I have also heard and considered very helpful submissions from Miss. Gilligan on behalf of the Respondent and I am grateful to her for her assistance.

### **Legislative background**

15. The provisions of the Gangmasters (Licencing) Act 2004 ("The Act") provides for the requirement of those acting as a Gangmaster in the fields of agriculture and other certain sectors to hold a licence issued by the Respondent and that those who do not hold such a licence are prohibited from acting as a Gangmaster (see Section 6 of the Act).
16. The Act also provides for the circumstances when the Respondent is entitled to modify, revoke or transfer a licence issued in circumstances where a condition of the issued licence or any of the provisions of the Act have not been complied with by the person or entity holding that licence (see Section 9 of the Act).
17. Regulation 12 of the Gangmasters (Licencing Authority) Regulations 2005 provide that for the purposes of the exercise of the Respondent's functions under Sections 1, 7, 8 and 9 of the 2004 Act and rules made under section 8, in determining—
- (a) the criteria for assessing the fitness of an applicant for a licence or a specified person, and*
- (b) the conditions of a licence and any modification of those conditions,*
- the Respondent 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, and the conduct of a specified person, comply with the requirements for*
- (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 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.*
18. The Gangmasters (Licensing Conditions) Rules 2009 ("The Rules") set out the procedure for licensing gangmasters covered by the provisions of the Gangmasters (Licensing) Act 2004 and the conditions that will apply to the licences. Particularly, Rule 4 and the Schedule to the Rules specify the licence conditions that apply to licence holders.

19. The Respondent has published Licensing Standards and the version relevant to the Appellant's appeal are those which were issued in June 2017 and which appear within the appeal bundle at pages 77 to 109.
20. There are eight Licensing Standards set out in the July 2017 version issued by the Respondent which are as follows:
- Licensing Standard One: Fit and proper test
  - Licensing Standard Two: Pay and tax matters
  - Licensing Standard Three: Forced Labour and mistreatment of workers
  - Licensing Standard Four: Accommodation
  - Licensing Standard Five: Working Conditions
  - Licensing Standard Six: Health and safety
  - Licensing Standard Seven: Recruiting Workers and contractual arrangements
  - Licensing Standard Eight: Sub contracting and using other labour providers
21. The Respondent conducts inspections of licence holders intended to test against the eight relevant standards set out above. Each standard has an associated score and those which are deemed to be "critical" are worth 30 points. If an inspection score results in a score of 30 or above, the holders licence will usually be revoked.
22. Section 10 of the Act and the provisions of the Gangmasters (Appeal) Regulations 2006 govern the process by which an affected licence holder may seek to challenge the decision of the Respondent to refuse to issue or to modify or revoke a licence.
23. It is clear that the purpose of the Act and the role of the Respondent is to protect workers in agriculture, shellfish gathering and associated processing and packaging sectors from potential exploitation; to ensure that they are able to work within a safe environment and that they are appropriately remunerated and engaged under fair terms and conditions. The licencing conditions applied and enforced by the Respondent are designed to achieve that end and to protect against exploitation or the potential for exploitation within the aforementioned sectors.

### **The revocation decision**

24. By a letter dated 21<sup>st</sup> December 2017 the Respondent gave notice that it intended to revoke the Appellant's licence without immediate effect on the basis of non-compliance with a significant number of the Licencing Standards.
25. The grounds for that decision with reference to the applicable Licencing Standards can be found at pages 1 to 11 of the Appeal bundle. In brief terms, those were as follows:

#### **Licensing Standard 1.1: Fit and proper test**

The Respondent set out that following inspections it found the following:

- Mr. Gavin Overton, as Principle Authority of the Appellant was not found to be in day to day control of the business but rather that a Ricky Guttonson and Ian Tebbs were running the business. The Respondent relied on the fact that during

inspections Mr. Overton could not access computer systems, had no knowledge of the business, could not locate things in the office and could not provide bank details.

#### Licensing Standard 1.2: Principle Authority Competency Test

The Respondent set out that it did not consider that Mr. Overton met this standard on the basis that he had not demonstrated an understanding of the GLAA Licensing Standards required of a competent and capable Principle Authority.

The Respondent set out at paragraphs 29 to 37 of the decision the evidential basis on which it relied in making a determination that this Licensing Standard had been breached. This is a critical standard which applied a points score of 30.

#### Licensing Standard 1.4: Change in details

The Respondent set out that it did not consider that this standard was met on the basis that the Appellant had changed business addresses in April 2017 but the Respondent had not been notified within 20 working days as required by standard 1.4.

Mr. Overton was said to have failed to meet this standard on the basis that he had not demonstrated an understanding of the GLAA Licensing Standards required of a competent and capable Principle Authority.

The Respondent set out at paragraph 41 of the decision the evidential basis on which it relied in making a determination that this Licensing Standard had been breached. This is a non-critical standard which applied a points score of 8.

#### Licensing Standard 2.1: PAYE, NI and VAT

The Respondent set out that the Appellant had persisted in maintaining and treating the status of staff to be that of self employed rather than workers despite being informed by HMRC to the contrary on at least three occasions and that it had accrued PAYE and VAT debts; the latter resulting from inaccurate VAT returns being submitted.

The Respondent set out at paragraphs 44 to 49 of the decision the evidential basis on which it relied in making a determination that this Licensing Standard had been breached. This is a critical standard which applied a points score of 30.

#### Licensing Standard 2.2: Paying wages

The Respondent set out that the Appellant had failed to keep sufficient records to demonstrate payment in accordance with the National Minimum Wage and that that information which was available demonstrated underpayments for five workers and that no determination could be made in respect of a further 12 workers.

The Respondent set out at paragraphs 50 to 54 of the decision the evidential basis on which it relied in making a determination that this Licensing Standard had been breached. This is a critical standard which applied a points score of 30.

Licencing Standard 2.3: Benefits

The Respondent set out that the Appellant had failed to maintain records to show that workers had received paid annual leave, maternity, paternity and adoption pay and that there was no mention of any such benefits in the self employed contract that the Appellant had provided and under which workers were at that time remunerated.

The Respondent set out at paragraphs 58 to 59 of the decision the evidential basis on which it relied in making a determination that this Licencing Standard had been breached. This is a non critical standard which applied a points score of 8.

Licencing Standard 2.4: Payslips

The Respondent set out that the Appellant had failed to provide itemised payslips and although that had been addressed, it still persisted that only a limited number were provided at inspection and not all workers received the itemised payslips to which they were entitled as required by this standard.

This is a non critical standard which applied a points score of 8.

Licencing Standard 3.3: Withholding wages

The Respondent set out that the Appellant had failed to make payment of holiday pay to which workers were entitled or that they had accrued but remained untaken upon termination of employment.

This is a critical standard which applied a points score of 30.

Licencing Standard 6.1: Assigning responsibility and assessing risk

The Respondent set out that the Appellant had failed to demonstrate that responsibility for risk had been assigned and, particularly, that there was uncertainty as to who was responsible for health and safety; there had been no discussion about it with Labour Users, Mr. Overton did not know what the contracts said about the situation and he was unaware of the existence of any risk assessments.

This is a non critical standard which applied a points score of 8.

Licencing Standard 6.2: Instruction and training

The Respondent set out that the Appellant had failed to demonstrate compliance with this standard as at the first inspection he could not say if there had been any training or induction and there were no records to evidence that. By the second inspection there was an induction checklist. The document was in English only whilst the majority of the workers were Eastern European and spoke no or little English. For training that had been done, Mr. Overton was unaware of the qualifications and experience of those providing it nor whether this time should be paid or not. There were no arrangements in place with the Labour User about responsibility for competing training and inductions.

This is a non critical standard which applied a points score of 8.

Licencing Standard 6.3: Safety at Work

The Respondent set out that the Appellant had failed to demonstrate compliance with this standard as at the first inspection he could not say who provided first aid, whether there were toilet or water facilities at the Labour Users premises, how accidents were recorded or what to do in the event of an accident. The Respondent set out that no arrangements in that regard had been made by the time of the second inspection.

if there had been any training or induction and there were no records to evidence that. By the second inspection there was an induction checklist. The document was in English only whilst the majority of the workers were Eastern European and spoke no or little English. For training that had been done, Mr. Overton was unaware of the qualifications and experience of those providing it nor whether this time should be paid or not. There were no arrangements in place with the Labour User about responsibility for competing training and inductions.

This is a non critical standard which applied a points score of 8.

Licencing Standard 7.3: Contractual arrangements and records

The Respondent set out that the Appellant had engaged workers between September 2016 and September 2017 on a self employed contract despite being informed by HMRC that the workers would not be considered to be self employed. The contract provided was not compliant with the standard in that it contained no undertaking to pay the workers regardless of whether the Appellant was paid by the Labour User, made no mention of any entitlement to annual leave or to the notice requirements to be given or received. Although the majority of workers had been placed onto a complaint contract by the time of the second inspection, a number had not.

This is a non critical standard which applied a points score of 8.

26. Cumulatively, when applying all breaches the Appellant scored 206 points. As I have already observed, a score of 30 will generally result in revocation of a licence.

**Conclusions on the evidence**

27. I deal with each of the identified breaches, all of which are disputed by the Appellant, in turn.

28. Other than to say that the allegations which led to revocation were unfair and wrong, the Appellant, acting by Mr. Overton, did not engage in the Notice of Appeal with the basis upon which it was said that the decision to revoke should not have been taken. As a result, Further & Better Particulars were sought by the Respondent. The Appellant provided those Particulars and I have considered all that Mr. Overton said on behalf of the Appellant in that regard. I have similarly considered the Respondent's reply thereto.

29. I should note as a general point that whilst the Appellant via Mr. Overton says that a number of the allegations raised by the Respondent are incorrect or untrue, no one



has appeared in order to challenge the evidence adduced by any of the witnesses from whom I have heard. Had Mr. Overton genuinely not been able to attend – a matter which I was far from convinced of – the Appellant was able to send someone else to represent it. It did not do so and the evidence of the Respondent stood unchallenged. Nothing that I have seen has led me to doubt the accounts of any of the Respondent’s witnesses as set out within their statements and I have heard live evidence from each of them in order to confirm the content.

30. That said, I have considered all that the Appellant has said, including by way of the Further & Better Particulars and witness statements, to see if that provides an answer to some or all of the breaches that were found by the Respondent to be made out and for which the licence was revoked.

Licensing Standard 1.1

31. It is clear from the inspection report and the evidence that I have heard from the Respondent that Mr. Overton had very little understanding of a number of key aspects of the Appellant’s business. There are a multitude of examples of this but a few can be summarised as follows:

- He repeatedly asserted that Messrs. Tebbs and Gutterson were engaged on self-employed contracts, when in fact to the contrary was the case (see page 306 of the appeal bundle);
- He could not provide details about what either of those individuals role involved and, particularly, this was vague to the extreme in the case of Mr. Tebbs who Mr. Overton believed might be a “helper” or responsible for “fetching sick workers”. If that was the case, then Mr. Tebbs’s remuneration was certainly out of kilter with such involvement;
- He did not know the surname of one of his members of staff;
- He had carried out no checks to verify if his “self-employed” staff were registered as self-employed;
- He was not aware that he himself was in fact paid as an employee of the Appellant;
- That he was unable to provide anything other than vague indications as to what a contract with a Labour User might contain or where such documents would be kept (see pages 161 to 162 of the appeal bundle);
- I accept the evidence of the Respondent that the Appellant could not access computer systems in the office nor provide bank details or access online accounts because he did not have the details for the same;
- I accept the evidence of the Respondent that HMRC recording showed that Mr. Overton had been assisted by “Ian” to access the Appellant’s records and that that was more than likely Ian Tebbs who held the security information to the account rather than Mr. Overton. That account given by the Appellant on that matter to the Respondent was less than candid;
- I accept the evidence of the Respondent that Mr. Overton could not locate personnel records without a relatively extensive search and reference to Mr. Tebbs being able to better assist in that regard. For a Principle Authority in day to day control of the Appellant, it is inconceivable that he could not navigate his way around the records of the business;
- Mr. Tebbs was communicating with the Respondent as regards queries as if he was the employer (see page 304 of the hearing bundle). He refers particularly to “two of my ex employees” and that “I had to let my farm manager go”. Whilst he was added

to licence after the first inspection, I would expect such contact would fall to Mr. Overton as Principle Authority and would not expect an employee to refer to staff in such terms;

- I am still none the wiser as to what function Mr. Overton in fact plays for the Appellant. On the available evidence he is not visible on the ground; he does not do site visits nor liaise with Labour Users; he does not deal with payroll; he is not responsible for making payments; he has little or no idea about personnel matters. All of those matters appear to fall to Messrs. Tebbs and Gutterson;
- Both Messrs. Tebbs and Gutterson receive payments of not insubstantial bonuses but Mr. Overton was not able to specify what those payments represented – other than the rather vague notion that they might be for “flowers and going out” - and how they had been calculated nor, as above, was he even able to provide any reasonable degree of specificity about what either individual did for the Appellant on a daily basis; and
- I accept the Respondent’s evidence that Mr. Overton could not access basic records such as payroll records. Even if another member of staff is responsible for payroll, it is inconceivable that a Director and Principle Authority of the Appellant would not be able to access those records on even a basic level.

32. The Appellant has submitted no evidence to demonstrate any degree of involvement, let alone day to day control, by Mr. Overton either at the time of the inspections or for the purposes of this appeal. The available evidence points squarely to Messrs. Tebbs and Gutterson having de facto control over the Appellant business. Mr. Gutterson has previously been refused a licence in his own right (see pages 110 to 112 of the appeal bundle). Whilst both Messrs. Tebbs and Gutterson have provided witness statements on behalf of the Appellant neither attended the appeal hearing (and neither has suggested that they were somehow incapacitated from doing so) and their accounts in their statements are vague at best. They add little or nothing and certainly are not sufficient to counter the clear evidence of breach to which I have referred above.

33. I accept, therefore, that Mr. Overton has not been acting in accordance with his obligations as a Principle Authority in his dealings with the Appellant and his representations to the contrary were designed to subvert the reality of the situation that Messrs. Gutterson and Tebbs are the de facto principle.

34. Moreover, I accept the evidence of the respondent that Mr. Overton was not truthful and candid when asked about the matter of a second Lloyds Bank account that he had failed to disclose and that he has provided no reasonable explanation for that apparent oversight.

35. It follows that I accept that the Respondent was entitled to conclude on inspection a breach of this standard and to impose a points score of 30.

36. On a breach of this standard alone the Respondent was entitled to revoke the Appellant’s licence.

#### Licensing Standard 1.2: Principle Authority Competency Test

37. It is no answer for Mr. Overton to say, as he appears to suggest, that as he was granted a licence it must be the case that he remains competent.

38. Indeed, there is a plethora of evidence before me to demonstrate that Mr. Overton had in reality little or no understanding of the Licensing Standards or management processes. I accept the Respondent's evidence in particular of the following failings of Mr. Overton in this regard:

- That he had little or no understanding of employment or worker status and appeared to be under the impression that status was determined by whatever was more profitable and/or the wishes of one party or another (see pages 161 and 312 to 313 of the appeal bundle) and had unilaterally altered, without any basis to do so, the employment status of workers after the Appellant ceased to use an accountant for payroll purposes;
- That as a result of that lack of understanding/unilateral action, the Appellant had ceased to account for PAYE and National Insurance contributions in respect of workers for whom such payments should have been made;
- That he was not prepared to take guidance on the above issue from HMRC and persisted in his ill advised assessment of worker/employment status;
- That he did not undertake any site visits, did not know if any risk assessments had been carried out or provide any induction or training for workers and that he had commented that he had "no idea" that he had to undertake any of that despite an asserted knowledge of the Licensing Standards;
- That he had not completed VAT invoices correctly and continued to persist in that insufficiency of paperwork even after advice from HMRC;
- That he displayed no understanding of the difference between National Living Wage and National Minimum Wage and that he was unable to provide accurate information about payment of the former (see page 313 of the appeal bundle);
- That he displayed little or no understanding of Data Protection issues; and
- That he did not know how to check whether a visa was valid for right to work purposes (see page 319 of the appeal bundle) and that he only completed visual checks without copies of such documentation being obtained and retained.

39. The Appellant's vague and unsupported contention that the allegation is false is not accepted and it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 30.

40. It is clear from the evidence that Mr. Overton had little or no understanding of the Appellant's business. His reliance on the fact that he was entitled to delegate tasks to others – namely Mr. Tebbs and Mr. Gutterson – does not obviate him of the responsibility as Principle Authority to understand and display compliance with the Licensing Standards. Some aspects of his failure in this regard could properly be described as farcical. It leaves his workers open to exploitation and an inability to be assured that they are receiving the remuneration, benefits and basic levels of health and safety to which they are legitimately entitled and which the standards are designed to ensure. Mr. Overton appears either oblivious or unconcerned about those matters.

41. On a breach of this standard alone the Respondent was entitled to revoke the Appellant's licence.

Licencing Standard 1.4: Change in details

42. The Respondent set out that it did not consider that this standard was met on the basis that the Appellant had changed business addresses in April 2017 but the Respondent had not been notified within 20 working days as required by standard 1.4.
43. It is the Appellant's case that the office referred to in this regard was merely used for storage and thus, presumably, there was no requirement to notify the Respondent about a change in address.
44. I do not accept that position. There is nothing submitted by the Appellant to demonstrate that the previous address remained in use and I accept the evidence of the Respondent that the signage, equipment in the office and existence of a landline (the number for which was one given by the Appellant to the Respondent as a number for Mr. Tebbs when seeking to add him to the licence) was indicative of the fact that this was the office address for the Appellant Company.
45. I find it unlikely that the equipment was simply left by an ex-tenant of the premises and that the signage was to attract passing trade. I find it more likely that Mr. Overton, unfamiliar as he appears to be with the Licensing Standards, simply failed to comply with this requirement.
46. It was reasonable and correct on the evidence for the Respondent to apply a score of 8 points in respect of a clear breach of this standard.

Licencing Standard 2.1: PAYE, NI and VAT

47. As indicated above, it is clear that the Appellant, without any justification or rational basis whatsoever, unilaterally altered the status of workers to self employed following dispensing with the services of their accountant for pay roll purposes. That persisted despite the guidance from HMRC to which I have already referred above and, indeed, even at the date of the second inspection there continued to be an assertion for some individuals as to self employed status with no more justification than it was more profitable of that some individuals may wish to remain self employed. As above, that completely belies any understanding of employment status which a Principle Authority should hold.
48. The result was that the Appellant has not properly accounted to HMRC and has accrued debts, which I accept from the evidence of Nicole Baughan were not paid in a timely manner as required by the Licensing Standards. Similarly, I accept her evidence that the Appellant had not made adequate VAT returns and has accumulated further debts to HMRC in this regard which have clearly not been paid in a timely manner given the presentation of a winding up petition against the Appellant Company (see page 312 of the appeal bundle).
49. The Appellant has not submitted any documentation or evidence, other than a general assertion to that effect, that the position of the Respondent on this issue is "untrue" as Mr. Overton contends in his Further & Better Particulars or practically identical witness statement.

50. It follows that I accept that the Respondent was entitled to conclude on inspection a breach of this standard and to impose a points score of 30.

51. On a breach of this standard alone the Respondent was entitled to revoke the Appellant's licence.

Licencing Standard 2.2: Paying wages

52. The Respondent set out that the Appellant had failed to keep sufficient records to demonstrate payment in accordance with the National Minimum Wage and that that information which was available demonstrated underpayments for five workers and that no determination could be made in respect of a further 12 workers.

53. The Appellant's reply to this is vague to say the least. No records to support compliance have been provided by the Appellant. Plainly, there is a duty under the National Minimum Wages Regulations to keep adequate records demonstrating compliance for all workers with the payment of the National Minimum Wage and such records should be retained for a period of three years. The Appellant suggests that workers have been paid the National Minimum Wage but again has provided no evidence to substantiate that as should have been available from their own records.

54. The Appellant appears to also suggest that the workers themselves should have notified the Respondent of any underpayment. Quite aside from the fact that it is the Appellant's duty to ensure compliance with a legal requirement to pay workers the minimum sums to which they are entitled and to keep records to evidence that position, the fact that there was a lack of information provided to workers – many of whom in all events speak little English – about how their wages had been calculated would tend to suggest that few if any would be able to understand that they had been underpaid let alone how to seek redress. That is the reason for the imposition of the Licencing Standards so as to ensure that workers are not and cannot be exploited.

55. The Appellant's vague and unsupported contention that the allegation is false is not accepted and it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 30.

56. On a breach of this standard alone the Respondent was entitled to revoke the Appellant's licence.

Licencing Standard 2.3: Benefits

57. The Respondent set out that the Appellant had failed to maintain records to show that workers had received paid annual leave, maternity, paternity and adoption pay and that there was no mention of any such benefits in the self employed contract that the Appellant had provided and under which workers were at that time remunerated.

58. The Appellant maintains that proof could have been provided had he been asked to confirm payment of holiday pay, maternity pay, paternity pay or adoption pay. It is perhaps curious then that despite his assertion as to the existence of these records, none have been provided by the Appellant for the purposes of this appeal.

59. If they were genuinely in existence, I find it highly unlikely that they would not have been supplied and conclude that no such records were kept by the Appellant as the Respondent maintains.

60. It follows that it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 8.

Licencing Standard 2.4: Payslips

61. The Appellant contends that the conclusion of the Respondent in respect of this breach is untrue. Again, the Appellant has provided no supporting evidence by way of copy pay slips issued throughout the period of the licence to support that assertion. Again, if they were genuinely in existence, I find it highly unlikely that they would not have been supplied and I take into account the evidence of Penny Taylor that Mr. Overton told her that he did not provide payslips, rather a receipt for wages paid (see paragraph 12 of Mrs. Taylor's witness statement).

62. The fact that the Appellant later began to issue payslips when found to be deficient at the first inspection is not an answer to this breach. The Appellant is expected to maintain Licencing Standards at all times and not simply act retrospectively when a breach is identified by the Respondent.

63. It follows that it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 8.

Licencing Standard 3.3: Withholding wages

64. The Respondent set out that the Appellant had failed to make payment of holiday pay to which workers were entitled or that they had accrued but remained untaken upon termination of employment.

65. The Appellant maintains that his answers given to deal with the question of holiday pay were correct or he would not have been granted a licence. It is no answer for Mr. Overton to say that as he was granted a licence it must be the case that any assertion of a breach on his part after the granting of that licence must be either erroneous or untrue. That is the purpose of the inspection process and the ability to modify or revoke a licence.

66. The Appellant also contends that *"to my attention, all employees that have left the business have been paid holiday pay that they are entitled too"* [sic]. That is plainly not the case given that Mr. Overton represented to the Respondent during the inspection that he understood the responsibility for paying accrued holiday pay on termination fell to the next employer of the worker in question (see page 318 of the appeal bundle). That is clearly an absolute nonsense given the provisions of Regulation 14 Working Time Regulations 1998 and, moreover, the Appellant has once again failed to supply any evidence of such payment. Those sums should be easily identifiable on a final payslip but no such evidence has been supplied by the Appellant. The entitlement to holiday pay and other such statutory entitlements is a fundamental matter. All those who are classed as workers are entitled to such sums and again the

failure to pay and evidence payment of holiday pay is a matter that concerns me greatly. It smacks of the exploitation of workers.

67. The Appellant's vague and unsupported contention that the allegation is false is not accepted and it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 30.

68. On a breach of this standard alone the Respondent was entitled to revoke the Appellant's licence.

Licensing Standard 6.1: Assigning responsibility and assessing risk

69. Mr. Overton maintains that his comments at inspection had been "misconstrued" although it is perhaps noteworthy that he does not give an account of what he says he actually said in this regard.

70. I accept the evidence of the Respondent that the position of Mr. Overton when asked about these matters was that he "presumed" that he was responsible for health and safety; had never spoken to Labour Users about the same and did not know what any contractual terms said about the matter. That is consistent with Mr. Overton's general lack of understanding of the specifics of much, if indeed anything, of the Appellant business. Moreover, the evidence of the Respondent's witnesses in this regard has not been challenged. Mr. Overton furthermore had no awareness of any risk assessments and there was no assignation of responsibility in respect of those matters as between the Appellant and Labour Users nor, even now, has the Appellant produced any evidence to suggest to the contrary other than Mr. Overton's rather vague and unsupported contentions in his witness statement and Further & Better Particulars.

71. It follows that it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 8.

Licensing Standard 6.2: Instruction and training

72. I accept the evidence of the Respondent that at the first inspection Mr. Overton could not say if there had been any training or induction in respect of the workers and there were no records to evidence that any had taken place. It is perhaps notable that there are still no such records.

73. By the time of the second inspection there was an induction checklist but I accept that that document was in English only despite the fact that the vast majority of the Appellant's workers were Eastern European and spoke no or little English. There is nothing, other than a vague assertion by Mr. Overton, to demonstrate the communication of the content of that document to workers and, in all events, that document appears to place the responsibility for training on lifting upon the worker.

74. Moreover, I accept the evidence of the Respondent that for any training that had been done, Mr. Overton was unaware of the qualifications and experience of those providing it nor whether this time should be paid or not and that there were no arrangements in place with the Labour User about responsibility for competing training

and inductions. Whilst Mr. Overton represents now that the Labour User undertakes training in the “1%” of cases where he deems that that is necessary, there is no documentation to demonstrate that process or which workers have been trained and what that entails.

75. Rather concerningly, Mr. Overton also represents that “99%” of the workers are experienced and do not need any training or induction. Given the rigours and potential dangers of agricultural work, I find that generalisation a particularly concerning one and one which simply is demonstrative of a general disregard for procedural requirements of the Licensing Standards. Moreover, again aside from a general assertion by Mr. Overton, there is no evidence at all as to the previous skills and experience of the workers or risk assessments conducted to understand what training or induction might be required by an individual.

76. It follows that it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 8.

#### Licensing Standard 6.3: Safety at Work

77. The Respondent set out that the Appellant had failed to demonstrate compliance with this standard as at the first inspection he could not say who provided first aid, whether there were toilet or water facilities at the Labour Users premises, how accidents were recorded or what to do in the event of an accident. The Respondent set out that no arrangements in that regard had been made by the time of the second inspection.

78. To some degree, the Appellant had addressed some of these matters by the time of the second inspection as the aforementioned checklist dealt with the provision of water and toilet facilities (albeit in relatively vague terms and not tailored to an individual assignment or specific place of work) and with regard to PPE, albeit again in rather vague terms.

79. However, I find it deeply concerning that Mr. Overton had “no idea” (and I accept the Respondent’s evidence that this was what he told them) about who provided first aid or what to do if there was an accident. Mr. Overton’s witness statement again deals with this issue in rather vague terms and there is no documentary evidence provided as to the procedure adopted in this regard. That is of considerable concern given the conclusions that I have reached as to Mr. Overton and the Appellant’s compliance with procedural requirements and Licensing standards in other areas. The vagaries over accident reporting and responsibility persisted even after the first inspection and, some efforts as to water, toileting and PPE notwithstanding, it is of little surprise to me that the Respondent found there to have been a continuing breach.

80. It follows that it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 8.

#### Licensing Standard 7.3: Contractual arrangements and records

81. The Respondent set out that the Appellant had engaged workers between September 2016 and September 2017 on a self employed contract despite being informed by HMRC that the workers would not be considered to be self employed. The contract



provided was not compliant with the standards in that it contained no undertaking to pay the workers regardless of whether the Appellant was paid by the Labour User, made no mention of any entitlement to annual leave or to the notice requirements to be given or received. Although the majority of workers had been placed onto a complaint contract by the time of the second inspection, a number had not.

82. The Appellant's answer to this breach is unclear and, with respect, makes very little sense. It certainly provides for a complete misunderstanding of employment and worker status. The Appellant has provided no answer to how it apparently determines who is a worker, who is an employee and who is self employed. It also provides no answer as to why those who had clearly been identified by HMRC as workers continued to be treated as self employed under a contract for services. The account of Mr. Overton at inspection that that was more beneficial to him is no basis upon which to assign self employed status.
83. It frankly beggars belief that a Principle Authority could properly believe that the Appellant was entitled to categorise the status of a worker as self employed simply because that was a more beneficial arrangement or, for that matter, that payment of accrued holiday pay upon termination of employment was a matter for a new employer. That shows a complete lack of understanding of basic employment rights and principles.
84. The Appellant has produced no evidence whatsoever to demonstrate, or even begin to suggest, that the findings of the Respondent were untrue as Mr. Overton contends and it follows that it was perfectly proper for the Respondent to conclude on inspection a breach of this standard and to impose a points score of 8.

### **Overall conclusions**

85. It is concerning that in a number of areas – for example with regard to the status of workers and in respect of standard 6.3, the Appellant continued to exhibit breaches despite those matters being drawn to Mr. Overton's attention. Of particular concern is the persistence in categorising workers as "self employed" despite advice and guidance from HMRC and there being no proper basis whatsoever upon which to designate workers as "self employed" other than the fact that it was more financially beneficial to the Appellant. Similarly, the failure to address breaches of standards in respect of basic health and safety matters with regard to standard 6.3 by the time of the second inspection and despite those matters being identified at the first inspection is a clear indicator of the worth attached to adherence to standards by the Appellant.
86. The Appellant's workers might properly be classed as vulnerable workers given that the majority are Eastern European with little or no grasp of the English language. The lack of affording to them of basic rights as workers such as the right to be paid at the rate of the National Minimum Wage (which the Appellant has failed to demonstrate in a number of cases by, amongst other things, a deficiency in records) and to ensure that they are paid the holiday pay to which they are entitled is demonstrative of an exploitation of those workers. It is no answer, as the Appellant suggests, to say that if there was to be exploitation of workers their first port of call would be the Respondent (see page 26 of the appeal bundle). Vulnerable workers with little or no command of the English language and perhaps little knowledge of their rights or how to enforce

them cannot be expected to oversee the Appellant's practices and to identify and bring to the attention of the Respondent any purported breach. That is the purpose of the Respondent and the role that it plays under the Act.

87. It is fair to say that there is perhaps some degree of overlap with regard to a number of findings of breaches of the standards. For example, the findings to support breaches of standards 2.2 and 3.3. However, a breach of either of those standards would be a breach of a critical standard and would entitle the Respondent to revoke the Appellant's licence. Any amount of "double counting" in that regard therefore does not affect the validity of the decision to revoke the Appellant's licence given that, for the reasons set out above, I accept that it was in breach of more than one of the critical standards.
88. For all of those reasons, the Respondent was entitled to find the breaches that it did. The Appellant scored well in excess of the 30 points that would justify the revocation of its Licence and it follows that the appeal is dismissed and the Appellant's Licence is revoked with effect from the date of this decision.



Employment Judge Heap  
Appointed Person  
Midlands (East) Employment Tribunal  
15<sup>th</sup> January 2019