

**In the matter of:
The Gangmasters (Appeals) Regulations 2006**

BETWEEN

Consistent Factory Staff Limited

Appellant

- and -

Gangmasters Licensing Authority

Respondent

DECISION

Upon hearing counsel for both parties

IT IS HEREBY DECLARED AS FOLLOWS:

1. The appointed person has jurisdiction to adjudicate upon the validity of a revoked licence under appeal beyond the date when, but for the revocation, the licence would have required renewal;
2. By dint of regulation 5(3) of the Gangmasters (Appeals) Regulations 2006, the revoked licence of the Appellant continues to have effect until such date as the appointed person shall determine upon consideration of the Appellant's appeal notwithstanding:
 - a) The licence that was revoked was granted to the Appellant on 2 June 2006 for a period of one year;
 - b) That licence was revoked by the Respondent with effect from 5 April 2006 by letter dated 9 March 2007;
 - c) The Appellant lodged an appeal against revocation that was received by the Secretariat on 4 April 2007;
 - d) The Appellant has applied for a renewal of the revoked licence as from 2 June 2007; and

- e) The Respondent has not granted such renewal.

Paul Stewart - 1 June 2007

**Paul Stewart
Appointed Person**

DECISION SENT TO THE PARTIES ON

.....
AND ENTERED IN THE REGISTER

.....
FOR SECRETARIAT

In the matter of:
The Gangmasters (Appeals) Regulations 2006

BETWEEN

Consistent Factory Staff Limited

Appellant

- and -

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SUMMARY OF REASONS FOR DECISION

1. On 2 June 2006, the Respondent granted the Appellant a licence . After an inspection carried out on its behalf in February 2007, the Respondent revoked the licence with effect from 5 April 2007. On 3 April 2007, the Appellant lodged an appeal against revocation, the receipt of which was acknowledged the following day.
2. It is agreed between the parties that, upon the lodging of the appeal, Regulation 5(3) of the Gangmasters Appeal Regulations 2006 had immediate effect. That provides:
 - (3) *A licence which is the subject of an appeal against modification or revocation shall continue to have effect according to its original terms and conditions until such date as determined by the appointed person.*
3. The question dividing the parties is whether the licence continues to have effect beyond the renewal date (2 June 2007) for the unrevoked licence which would be 2 June 2007. The Respondent argues that Regulation 5(3) merely ensures that the licence e is permitted to continue to trade and is not deprived of their licence so to trade by reason of a decision which is disputed. However, once the renewal date is reached, then the reason for the licence e being without a licence ceases to be because the licence was revoked: rather, it is because the Respondent licensing authority has not renewed the licence.
4. The right to bring an appeal is given in respect of both a refusal to grant a licence and of a revocation of a licence. The renewal of an existing licence is not recognised as a separate category. Thus the decision on the part of the Respondent not to grant the Appellant a licence to commence on the anniversary of the licence that was revoked is regarded by the Respondent as being a decision against which the Appellant can appeal but one which falls outside the ambit of Regulation 5(3).

5. In argument, I was informed that there has developed a "fast-track" system for dealing with renewals of licences. An existing licence-holder who, during the currency of his licence, has done nothing to cause the Respondent to revise their initial judgment that he was a fit and proper person to hold a licence in the first place, will be reminded by the Respondent of the need for renewal. The licence holder who then applies for renewal is treated differently from a person applying for a licence for the first time. The Respondent does not carry out an inspection of the licence-holder triggered by the renewal application, whereas such an inspection is triggered by the application for a new licence. As a result of there being no inspection, the Respondent charges a lower fee for the job of renewing a licence as opposed to granting a licence.
6. I was informed that, in respect of those who apply for renewal of their licences, the number of licence holders against whom any complaint about their fitness to continue to hold a licence arises during the period from the reminder being sent out and the renewal date is very small. Such a complaint may come from a variety of sources. Such complaints have to be investigated and investigation takes time. If the investigation is not completed by the time of the renewal date, the policy adopted is to renew the licence but then, if the complaint upon conclusion of the investigation is shown to have sufficient substance, to revoke the renewed licence. It was said that some complaints came from authoritative sources, the police and investigative journalists being two examples that were quoted, and it has happened that this has led to the non-renewal of the licence.
7. I found the existence of the fast-track procedure helpful in understanding the scheme that had been created by the Respondent in The Gangmasters (Licensing Conditions) (No 2) Rules 2006. However, I concurred with the proposition expressed by counsel for the Appellant that the proper decision that fell to be taken by the Respondent in respect of any licence-holder who no longer satisfied the Respondent of his suitability to be a licence-holder was to revoke the licence. That an existing licence-holder should not have his licence renewed necessarily is a conclusion that must be reached during the currency of the existing licence. As I understand it, the same criteria are used to determine the fitness of a continuing licence-holder as are used to determine the fitness of a new applicant. Thus there can be no justification for delaying until the renewal date the pronouncement that an existing licence-holder no longer inspires the necessary degree of confidence in the Respondent.
8. Apart from anything else, the consequence of dressing up the loss of confidence as justifying a refusal to renew as opposed to revoking the existing licence is the disparity in rights afforded the appellant in each case. The person whose application for renewal is refused is denied (by dint of being treated as an applicant for a new licence) any protection against the economic consequences of the loss of such licence. In contrast, the appellant against revocation as Regulation 5(3).
9. In the Gangmasters (Appeals) Regulations 2006 at Regulation 2 at paragraph 1, the overriding objective of the Regulations is stated to be to enable the appointed person to deal with appeals justly. What dealing with an appeal justly means is set out at paragraph 2 while, at paragraph 3, the appointed person "shall seek to give effect to the overriding objective when he – (a) exercises powers given to him by these Regulations; and (b) interprets any provision."

10. I bear that injunction in mind in seeking to deal with the problem presented to me. Rule 7 of the Gangmasters (Licensing Conditions)(No.2) Rules 2006 states:

(1) *A licence shall last for one year and shall then expire, unless rule 6 applies or the licence is revoked by the Authority.*

11. I regard the period over which the licence is stated to last as being one year unless it is revoked. I do not see it as a long stop as contended for by counsel for the Respondent – that it expires on its anniversary and is no more. The revocation can lead to the licence being shorter than one year. However, the revocation may be delayed beyond the date fixed for revocation by the submission of an appeal.

12. An appeal once submitted might be withdrawn. Regulation 5(5) provided for a procedure to be followed on withdrawal of the appeal. If the withdrawal of the appeal was not effected until the day before the anniversary date of the licence and the Secretariat comply with the requirement placed upon it by Regulation 5(5) of notifying the parties that the appeal has been withdrawn that same day, then the disputed decision:

... shall take effect on the later of the following dates –

(a) *the date specified in the original decision document as the date when the disputed decision was to take effect; or*

(b) *the sixth working day after the date of the document sent by the Secretariat to the parties notifying them of the withdrawal.*

13. Thus, the Appeal Regulations can lead to the licence being continued until some 5 or possibly 6 days after the expiry of the period set by the Respondent under its Rules for the currency of the licence. This suggests to me that the submission that Rule 7(1) should be regarded as being a long-stop has failings.

14. In argument, the cases of two hypothetical licence-holders were compared. The first one had his licence revoked in month 3 of the currency of the licence he had been granted, the second one had his licence revoked in month 11. On the assumptions that both appealed against the revocations and that the appeal process in each case took not more than 9 months to reach a conclusion, the first individual would be allowed to trade pending the resolution of the disputed grounds for revocation by dint of Regulation 5(3). However, the second individual would, if the Respondent's interpretation is correct, have a period of 8 months or so wherein any continued trading would be unlawful.

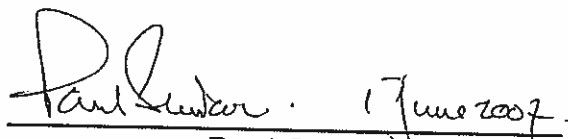
15. Given that the appeal in each case might result in a reversal of the revocation, I could see no justice in interpreting the regulations in such manner as to visit on the second licence-holder the economic consequences of a cessation in trade that the first licence-holder escaped simply because the revocation of his licence occurred at a earlier point in the currency of his licence than did the revocation in the second licence-holder's case.

16. For the Respondent it was argued that continuance of the effect of the licence by Regulation 5(3) ...

... according to its original terms and conditions until such date as determined by the appointed person.

meant that the word "terms" should be read as including a reference to the actual term of the licence such that the licence shall continue to have effect according to the term of the lease of one year, after which it expires.

17. I was not persuaded by this argument. In the first place, the Rules do not refer to the period of the currency of the licence as the "term" of the licence. The Gangmasters (Licensing) Act 2004 at section 7(2) refers the grant of the licence as being "for such period as the Authority (Respondent) thinks fit." Secondly, the Rules provide at Rule 4 for a number of conditions to be met by the licence holder. No such provision exists for terms. Thirdly, I am cognizant that the expression "terms and conditions" can be used as a blanket expression to avoid any argument about whether a particular requirement of a contract properly should be interpreted as a term or a condition. An obvious example of this is the long-standing statutory requirement that an employer provide an employee at the outset of the employment with a written statement of the main terms and conditions of the employment. I do not suppose there are many people, even employment lawyers, who approach such a statement with any appreciation of whether any particular provided for therein denotes a term or a condition.
18. This is a summary of the reasons why I have determined that I, as the appointed person, had jurisdiction to adjudicate upon the validity of a revoked licence under appeal beyond the date when, but for the revocation, the licence would have required renewal and why I further have made the declaration of the continuing validity of the licence under appeal in the manner I have done.
19. I should finally state that, in retrospect, the arguments of both parties appeared to me to be predicated on the basis that I had jurisdiction to determine the substantive issue before me. Each side then attempted to persuade me to determine it their way.


Paul Stewart
Appointed Person

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