

Notice of Appeal and the supporting documentation that the Appellant submitted with it. I say more about that in my conclusions below.

Legislative background

3. 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).
4. 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).
5. 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.*
6. 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.
7. The Respondent has published Licensing Standards and the version relevant to the Appellant’s appeal are those which were issued in October 2018 and which appear within the Respondent’s appeal bundle at Tab 3.
8. There are eight Licensing Standards set out in the October 2018 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
9. The Respondent conducts inspections of or otherwise reviews the circumstances 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. The Respondent has issued guidance to those taking decisions on its behalf as to, amongst other things, inspections; the taking of decisions and revoking licences. That guidance, the Licence Decision Policy issued on 8th February 2019, is at Tab 4 of the Respondent’s Appeal bundle. Paragraph 15 of the Licence Decision Policy sets out that if an inspection results in a score of 30 or above, the holders licence will usually be revoked although the decision maker may consider attaching additional licensing conditions (“ALC’s”) where it is proportionate to do so after considering the extent and nature of the holder’s non-compliance with the Licensing Standards.
10. 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.
11. 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 licensing conditions applied and enforced by the Respondent are designed to achieve that end and both to protect against exploitation or the potential for exploitation within the aforementioned sectors and compliance with relevant regulatory and statutory requirements.

The Appellant’s Licence

12. The Appellant was initially issued with a licence by the Respondent on 15th July 2009 which an expiry date of 14th July 2010. I do not have copies of any further correspondence with regard to renewal of the licence but I infer that it was renewed until the time that the Respondent determined that it should be revoked.
13. The original licence had ALC’s attached to it but those conditions are not pertinent to this appeal and the Respondent accepts that they were cleared from the licence in October 2009 in all events.

The revocation decision

14. By a letter dated 18th September 2019 the Respondent gave notice that it intended to revoke the Appellant’s licence without immediate effect on the basis of non-compliance with Licensing Standard 2.1. That followed, as I understand it, the Appellant’s own notification to the Respondent of financial difficulties and that he owed what transpired to be a substantial sum of money to HMRC with regard to VAT and

PAYE and that steps were being taken by HMRC to place the Appellant into relevant insolvency arrangements.

15. The grounds for that decision with reference to the applicable Licencing Standard can be found at Tab 6 of the Respondent's Appeal bundle. The relevant parts of the revocation decision letter said this:

“Non-compliance with Licencing Standard 2.1

Licensing Standard 2.1 requires:

A licence holder who employs workers under a contract of employment, contract of service, engages them under a contract for services or where the provisions of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 apply must:

.... accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HMRC in a timely manner

A licence holder who exceeds the AVT (sic) threshold must be registered with HMRC and charge and pay the correct amount if (sic) VAT in a timely manner

On 9 August 2019 you contacted the GLAA to advise that Farm Linc would be going into administration due to large debts owed by the business. You advised that £70,000 of the debt is owed to HMRC.

We have obtained information from HMRC and they have confirmed that you failed to comply with a time to pay arrangement around February 2018 and that as at 13 August 2019 Farm Linc owed a total debt of £71,155.38 in respect of PAYE and VAT.

From your email to the GLAA it is clear that you are unable to repay this HMRC debt. The fact that there is a debt in respect of PAYE and VAT contravenes the requirements of this standard.

Therefore, Standard 2.1 is failed. This is a critical standard with a score of 30 points.

Summary

Licence holders must score less than 30 points. Farm Linc has scored 30 points. Therefore, Farm Linc's licence is revoked.”

16. As I have already observed, paragraph 15 of the Licence Decision Policy sets out that a score of 30 will generally result in revocation of a licence.

17. The Appellant as an individual has now been made subject to a Bankruptcy Order. A copy of that document appears at Tab 11 of the Respondent's Appeal bundle.

The Appellant's position

18. I have considered the position of the Appellant carefully as set out in the Notice of Appeal and supporting documentation and, particularly, his accompanying appeal letter dated 11th October 2019.

19. The relevant parts of the appeal letter said this:

“The grounds upon which I base my appeal are: That HMRC were uncooperative in facilitating my attempts to pay overdue liabilities, resulting in an increase rather than a reduction in monies owed to them.

Detail:

Through problems with unsuitable staff in positions of responsibility in 2017 a debt to HMRC was accrued in the latter part of the year. HMRC visited my premises in February 2018 to discuss the debt at that point totalling approx. £36,000, I offered to enter into a payment plan paying off £1,000 per month to clear the debt whilst also maintaining future liabilities as they became due. HMRC rejected this and suggested they would allow 12 months for the debt to be cleared, which would involve a payment plan of around £3,000 per month, the alternative being that they would force bankruptcy. I felt I had no option at this point as my business is my life and I wasn't prepared to give up so I accepted the payment plan with the intention of trying my best to maintain it. Despite their claims to the contrary HMRC did not carry out an income and expenditure review to ensure the payment plan was affordable as this would clearly show that it was not. The self employed business is my only income and with the most profitable year showing a profit of around £35,000 but other years more typically showing profits of £15,000 to £20,000 which is before I take any form of wage or drawings to live on. It is very clear to even the untrained eye that a payment plan of £2,950 per month (£35,400 over the year) is not affordable.

I would make the point that a few years earlier a similar situation occurred and the HMRC representative at the time carried out an income and expenditure review with me, we agreed a payment plan that was affordable which meant a lower monthly payment over a longer period but ultimately resulted in the HMRC debt being cleared in full. I started this business around 15 years ago with a significant debt to my name and money has always been tight with little margin for error but I have always worked hard to try and pay everything I owe in full, have never shied away from debts. All HMRC VAT and PAYE forms and returns have been submitted on time ensuring that whilst there have been delays in payments at times the situation has always been clear transparent and up to date with nothing to hide.

I managed to maintain the payments (£2,950 per month) during 2018 for around 8 months as well as maintaining the current liabilities, this unfortunately meant that other creditors suffered and put additional pressure on the business which meant that through the latter part of 2018 I got behind with current HMRC liabilities and the debt grew. HMRC visited again in January 2019 to further discuss the debt (now in the region of £48,000), on this occasion they refused to consider any form of payment plan and confirmed they would pass my case on to the “winding up team” and would look to force bankruptcy.

I took advice from a range of professional bodies, friends, family, colleagues, charities and decided to propose an IVA (Individual Voluntary Arrangement) which would involve committing long term to a monthly payment plan, which would clear an agreed percentage of my overall debt with the rest being written off. This was the last option I had to try and keep the business going and pay off what I could of the debts. The IVA proposal submitted would have returned all creditors around 34% (34p in the £) of all the monies they were owed over a five year period. ALL creditors voted to accept the IVA with the exception of HMRC who voted to reject it. As HMRC was the larger proportion of the debt (60% of the overall debt) their vote meant the IVA was not successful.

My point is that I have tried everything I can to resolve the situation, clear the debt and move forward with the business and I feel that had I been given the opportunity to agree a realistic, affordable payment plan for the HMRC debt in 2018 I would have been able to work my way out of it and would not be in the position I am now.

My points to the GLAA when considering my situation and the suitability of me as a licence holder were as follows:

- The debt stems mainly from a historic debt from the family farm many years ago and the pressure that has put on me over the years rather than being solely accrued through poor management of a labour supply business or by any improper business practices.*
- I have made every possible attempt to clear the debts*
- Returns have always been submitted on time and I have been open, honest and transparent with HMRC and welcomes discussion to manage the debt.*
- I am a Sole Trader with a small turnover, my business is my life and I have everything to lose.*
- In terms of labour supply and the prevention of abuse and mistreatment of workers (the GLAA's primary objective) my business represents exceptionally low risk, I employ only a very small number of people (in labour supply terms) with a maximum of approx. 30 staff employed in peak season for around 10 to 12 weeks max, dropping to virtually none or only single figures for the rest of the year. Almost all of these staff are skilled and experienced tractor drivers and machine operators, over 95% of them are English, they are all paid over and above national minimum wage including overtime pay (time and a half) for hours over 8 hours per day and 40 hours per week and all the relevant holiday pay etc where appropriate. Staff wages are paid weekly directly into their bank account and all staff are paid in full on time and up to date. Wages are always negotiated between both parties as the type of people I deal with would not work for low wages, they would find work elsewhere. Staff all get to work under their own steam and we place them at locations within travelling distance of their own homes as much as possible. I do not get involved in the provision of transport or accommodation for staff, nor do I make any other deductions from their wages for anything other than the legally required tax and national insurance contributions and the government auto-enrolment pension scheme where appropriate.*

- *The staff I employ are extremely difficult to find and therefore difficult to replace, they are not just unskilled manual labourers, my customers rely very heavily on the service I provide, a small number of skilled but critical staff.*

I believe all of the above makes me a very low risk GLAA licence holder and some bad luck has contributed to my financial difficulties which have been further compounded by a hard line reluctance of HMRC to assist in allowing me the opportunity to repay their liabilities in an affordable manner.”

20. Essentially, the Appellant's position is that he acknowledges that there are outstanding monies owed to HMRC (and he does not appear to suggest that that is not a breach of the applicable Licensing Standard) but that there are mitigating circumstances that the Respondent should have taken into account; that there is no issue surrounding the exploitation or mistreatment of his small workforce and that he therefore represents a low risk as a licence holder.
21. Along with the Notice of Appeal and letter of appeal, the Appellant submitted supporting evidence in the form of emails between himself and the Respondent and relevant profit and loss accounts with regard to the affordability of the £2,950.00 per month repayment plan put into place by HMRC. I have considered those documents carefully alongside the rest of the evidence before me.

Conclusions on the evidence

22. The Gangmasters (Licensing) Act 2004 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). That includes circumstances where it appears to the Respondent that a condition of the licence has not been complied with (Section 9(1)(b) of the Act).
23. The Appellant's licence, common to all licences issued by the Respondent, specially sets out that it a requirement of the licence that the Appellant complies with the applicable Licensing Standards.
24. There is no dispute on the evidence that the Appellant owed substantial sums of money to HMRC by reason of the failure to account for PAYE deductions and VAT nor that arrangements that had been entered into (however impracticable they are now said to have been) for repayment of those sums to HMRC were not met by the Appellant.
25. There also does not appear to be any dispute from the Appellant that that situation represented a breach of Licensing Standard 2.1 but to any extent that that is in dispute, I am satisfied that there was such a breach.

26. I have had regard in that respect to the Licensing Standards themselves which appear at Tab 3 of the Respondent's Appeal bundle. The relevant part of Licensing Standard 2.1 is set out at page 13 of that document and it says this:

“Critical: PAYE, NI and VAT

• A licence holder who employs workers under a contract of employment, contract of service, engages them under a contract for services or where the provisions of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 apply must:

- be registered with HMRC and have a valid PAYE number, and*
- accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HMRC in a timely manner.*
- A licence holder who exceeds the VAT threshold must be registered with HMRC and charge and pay the correct amount of VAT in a timely manner.*

Please note

Failure against this standard will lead to the licence being revoked without immediate effect.”

27. Therefore, it is not only clear that the Standard requires the licence holder to accurately and correctly pay tax and national insurance deductions and VAT sums to HMRC in a “timely manner” but that this is a critical standard and that failure to adhere will lead to the licence being revoked. That is crystal clear and the Appellant should, as a licence holder, have been fully conversant with the Licensing Standards and the implications of a failure to comply with them.

28. Paragraph 15 of the Licence Decision Policy sets out that if a licence holder accrues a score of 30 or above (which a breach of a critical standard attracts), then the holders licence will usually be revoked¹.

29. Therefore, it is clear that a breach of a critical standard had occurred and that the Respondent was entitled, both in accordance with Section 9 of the Act and its own Licence Decision Policy, to revoke the Appellant's licence.

30. Whilst I have considered carefully the points made by the Appellant and that there is a low risk of his continuing to hold a licence given that there is no suggestion that he exploits his workers, I am nevertheless satisfied that Licensing Standard 2.1 is a critical standard for a reason. The payment of sums deducted by way of tax and national insurance contributions and sums collected by way of VAT charged on service to HMRC is an essential requirement for reasons of public policy.

31. The Appellant's commendable dedication to his workforce does not displace that nor do the difficulties that he describes in persuading HMRC to adopt what he might see as a more practicable repayment arrangement. That overlooks the fact that the relevant Licensing Standard required the Appellant not to operate in a way which would have necessitated any arrangement at all because all sums should have been

¹Although I consider further below whether ALC's should have been imposed.

paid to HMRC in a “timely manner”. The Appellant’s varying explanations as to why a state of affairs has come about whereby such payments have not been made as they should have are not relevant to the fact that there has been a significant breach of a critical Licensing Standard.

32. I have considered the position as to whether the Respondent could and should have attached ALC’s to the Appellant’s licence. I cannot say that it was unreasonable or unfair for them to have failed to do so. As I have already set out above, the wording of the relevant part of Licensing Standard 2.1 as set out at page 13 of the Licensing Standards document is crystal clear that failure will lead to the licence being revoked. The Appellant cannot therefore have been under any misunderstandings about that.
33. Whilst paragraph 15 of the Licence Decision Policy sets out that a decision maker may consider attaching ALC’s where it is proportionate to do so after considering the extent and nature of the holder’s non-compliance with the Licensing Standards, that is not a mandatory requirement. It is a discretionary one and it cannot be said (insofar as it may be argued by the Appellant) that it was unreasonable not to exercise that discretion. The standard which was breached is a critical standard which makes plain that breach will result in revocation. Moreover, the Appellant owed a substantial sum of money to HMRC without, in reality, any realistic likelihood of the situation improving. Indeed, the position was and is clear that the IVA arrangement had eschewed by HMRC and therefore was not going ahead and that HMRC were referring the Appellant to their “winding up team”. The Appellant as an individual is of course now subject to a Bankruptcy Order as a result of the outstanding debt to HMRC.
34. For all of those reasons, the Respondent was entitled to find the breach that it did. That was a breach of a critical standard which attracted the 30 points that would justify the revocation of the Appellant’s Licence. The decision not to impose ALC’s was neither unreasonable nor unfair and, in all events, would not have had any apparently positive result.
35. It follows that the appeal is dismissed and the Appellant’s License is revoked with effect from the date that this decision is sent to the parties.



Employment Judge Heap
Appointed Person
Midlands (East) Employment Tribunal
10th March 2020

JUDGMENT SENT TO THE PARTIES ON

.....11 March 2020.....

A handwritten signature in black ink, appearing to read 'J. M. ...', is written over a faint, circular watermark or seal.

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FOR THE TRIBUNAL OFFICE