



Home Office

# **Premises Licence Review**

**MR ABUL JASHIM  
Tale of Spice  
9 North Street  
Pewsey  
SN9 5ES**

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# Outline of the Circumstances leading to the Review Application

## Summary

- 1.1 For the third time in 5 years, an immigration enforcement operation has discovered multiple persons working at these premises whilst they have no right to do so. All these operations have taken place whilst MR ABUL JASHIM has been the Premises Licence Holder.
- 1.2 This premise has previously been visited by Immigration Enforcement on two previous occasions; 16 April 2015 and 12 June 2015. A total of 8 arrests were made during these visits.
- 1.3 ABUL JASHIM has been the Premises Licence Holder (PLH) and the Designated Premises Supervisor (DPS) since October 2016.
- 1.4 On Friday 20<sup>th</sup> September 2019 Immigration Enforcement officers conducted a visit to the premises. Entry to the premises was gained under Section 179 of the Licensing Act 2003 (as amended).
- 1.5 During the visit nine employees were encountered five of whom were found to be immigration offenders with no permission to work in the UK.
- 1.6 As a result of employing illegal workers, the business received a £40,000 fine, served by the Civil Penalty Compliance Team.
- 1.7 Succeeding parts of this application explore relevant legislation and the statutory guidance and Home Office (Immigration Enforcement) ask the sub-committee to revoke the premises licence as a deterrent to others and the management/owner of this premises in particular.
- 1.8 Copies of all the witness statements or pocket notebook (PNB) entries made by relevant immigration officers are appended; should the sub-committee wish to read these.
- 1.9 Home Office (Immigration Enforcement) ask the subcommittee to consider the flagrant disregard for the legalities of employing responsibly, the failure to heed prior warnings and advice and ask that the subcommittee revoke the premises licence as a deterrent to others and the management/owner of this premises in particular.

## Occurrence

- 1.10 On Friday 20<sup>th</sup> September 2019 Immigration Enforcement officers conducted a visit to the premises.
- 1.11 The operation was conducted by a number of Immigration Compliance & Enforcement (ICE) officers. The team was led by Officer in Charge (OIC) [REDACTED] in company with Immigration Officer's (IO's) [REDACTED], [REDACTED], [REDACTED] and [REDACTED] and [REDACTED].
- 1.12 Entry to the premises was gained under Section 179 of the Licensing Act 2003 (as amended).
- 1.13 The premises and its management were already known to the immigration authorities because of the previous visits where illegal workers were discovered.
- 1.14 During a visit conducted on 18<sup>th</sup> August 2018, seven persons were encountered working on the premises. Five of the seven persons encountered were arrested as they had no permission to work in the UK. As a result of employing illegal workers, the business received a £20,000 fine, served by the Civil Penalty Compliance Team. The fine is still outstanding as the company was dissolved.
- 1.15 During a visit conducted on 4<sup>th</sup> April 2014, nine persons were encountered working on the premises. Six of the nine persons encountered were arrested as they had no permission to work in the UK. As a result of employing illegal workers, the business received a £15,000 fine, served by the Civil Penalty Compliance Team. The fine is still outstanding as the company was dissolved.
- 1.16 The ICE officers subsequently identified that five persons had been working illegally in the restaurant.
- 1.17 OIC [REDACTED] served the 'Notice to Occupier' form to an individual who identified himself as the duty manager.
- 1.18 During the visit, officers encountered five individuals had no permission to work in the UK. Three of the individuals were given continued immigration bail and reminded that their bail conditions prohibit them from working and the other two individuals were arrested.
- 1.19 The arresting officers advised the OIC that the arrested individuals indicated that their belongings were located at the staff house at [REDACTED], [REDACTED], [REDACTED]. OIC [REDACTED] directed officers to attend the address with the arrested individuals.

- 1.20 Entry was gained to the address under Paragraph 25A of Schedule 2 to the Immigration Act 1971 (as amended) using a key which was provided by the duty manager at the Tale of Spice restaurant in Pewsey.
- 1.21 The PLH and DPS MR ABUL JASIM was served with a notice of potential liability (NOPL) in respect of all the illegal workers on 21<sup>st</sup> September 2019 by post.
- 1.22 The situation regarding each of the illegal workers is described below.

[REDACTED]

- 1.23 IO [REDACTED] entered the premises at approximately 18:19 hours on 20<sup>th</sup> September 2019 and made their way to the kitchen, on the ground floor, to the rear of the premises, where they encountered an unknown male (Male 1) removing his apron. IO [REDACTED] directed him to the identified sterile area by the front door where he took a seat before IO [REDACTED] began questioning him.
- 1.24 Male 1 gave his name as [REDACTED], DOB [REDACTED] from [REDACTED], he provided a photograph of his passport and a visit visa on his mobile phone (JR001). Copies of identification documents were taken and recorded on PRONTO.
- 1.25 At approximately 18:41 [REDACTED] was arrested by IO [REDACTED] under Section 17 (1) of the Immigration Act 1971 as a suspected Worker in Breach of his visit visa which was issued on 25/04/2019 valid until 25/10/2019. The admin caution was explained to [REDACTED] and this encounter and arrest was recorded on PRONTO.
- 1.26 Following the arrest IO [REDACTED] continued to interview [REDACTED] in relation to his illegal working (Exhibit JR002). A mitigating Circumstances interview (Exhibit JR003) was also conducted and [REDACTED] was offered the opportunity to depart the UK voluntarily (Exhibit JR004).
- 1.27 IO [REDACTED] asked [REDACTED] the following questions;
- IO [REDACTED]: How long have you been working here?  
[REDACTED]: Two days
- IO [REDACTED]: What is your job role/what are your duties?  
[REDACTED]: Washing dishes.
- IO [REDACTED]: What days/hours do you work each week?  
[REDACTED]: Four hours each day.
- IO [REDACTED]: How much do you get paid?

██████████: I was going to be paid £220 per week and accommodation but I've only worked two days and not been paid.

IO ██████████: On 31st May, Police encountered you at the staff house at Slater Road, but you said you did not work at the restaurant. Is that true?

██████████: Yes, I wasn't working then.

IO ██████████: Did your employer ask you for documents when you started work?

██████████: He asked me, and I said I was a visitor but I would work voluntarily for him.

IO ██████████: What was your reason for coming to the UK?

RASHID: Business visit

IO ██████████: Did you have meetings pre-arranged?

██████████: No

IO ██████████: Who did you have business meetings with?

██████████: SLC in Northampton. I attended conference for one day.

IO ██████████: When do you intend to return to ██████████?

██████████: 24<sup>th</sup> October 2019, I already have my ticket.

IO ██████████: What do you intend to do between attending one day conference on 27 April and returning to ██████████ on 24 October 2019?

██████████: I intend to visit different areas of the UK for business.

IO ██████████: Which other towns have you visited?

██████████: Gillingham, Blandford, Swindon, Stratford and Pewsey.

IO ██████████: How did you get the job at the restaurant?

██████████: Mr Jashim said he needed help in restaurant because of carnival.

IO ██████████: How did you find the job?

██████████: Over the internet.

1.28 Under paragraph 25A of schedule 2 of the Immigration Act 1971 as amended, ██████████ was then taken to ██████████ to locate his passport. ██████████ admitted this was staff accommodation for the Tale of Spice. At the premises he voluntarily surrendered his passport. ██████████ was encouraged to pack a bag of personal belongings before being taken to police custody.

1.29 At custody IO ██████████ served Immigration papers on ██████████ whilst IO ██████████ completed "papers served" on PRONTO.

[REDACTED]

1.30 IO [REDACTED] arrived at the premises which appeared to be open for business with customers present and IO [REDACTED] entered the premises at approximately 18:20hrs after covering the side exit.

1.31 IO [REDACTED] was directed to speak with a male who was initially directed downstairs after he was serving customers. IO [REDACTED] found the male behind the bar pouring a range of drinks for customers and answering the restaurant phone.

1.32 IO [REDACTED] took a picture of the male in his uniform behind the bar (which is exhibited at IJ001)

1.33 Checks confirmed that the individual was [REDACTED], a [REDACTED] national born [REDACTED].

1.34 IO [REDACTED] conducted an illegal working interview in English with this individual.

IO [REDACTED]: How long have you been working here?

[REDACTED]: Been here 1 day because of the carnival.

IO [REDACTED]: What is your job role/what are your duties?

[REDACTED]: Running the bar, phones for bookings and takeaways.

IO [REDACTED]: What are your start and finish times?

[REDACTED]: 18:00hrs start, finish 21:00hrs.

IO [REDACTED]: Who provided the uniform?

[REDACTED]: The manager

IO [REDACTED]: Who is the manager?

[REDACTED]: Jasim.

IO [REDACTED]: Who gave you this job?

[REDACTED]: Jasim.

IO [REDACTED]: When did you start work here?

[REDACTED]: Today

IO [REDACTED]: Who provides you with food, accommodation or any other payment?

[REDACTED]: Jasim provide accommodation, no money because I am going tomorrow. Free food eating here.

IO [REDACTED]: How are you paid?

[REDACTED]: Accommodation and free food. No money.

IO [REDACTED]: What name does the employer know you as?

[REDACTED]: [REDACTED].

IO [REDACTED]: Did you show any documents before being offered the job?

█: No, I'm just going to help him for a few hours. He knows me so it is not a problem.

IO █: Does your employer know that you are not allowed to work in the UK?

█: Yes, just to help as we know each other a long time.

█

1.35 IO █ was instructed to conduct an interview with the manager JASHIM ABUL.

IO █: What is the name of the business?

ABUL: Tale of Spice

IO █: How long have you been working here?

ABUL: 9 years.

IO █: Who employs the staff here?

ABUL: The owner Ullah.

IO █: Who pays the wages here?

ABUL: The owner.

IO █: How are wages paid?

ABUL: I don't know about everyone because the owner pays. Mine comes in to my bank.

IO █: What documents do you have in relation to workers here?

ABUL: Nothing on site the owner knows everything and will call me to tell me someone is coming to work

IO █: Do you know if the owner has documents?

ABUL: No.

IO █: What are the Companies House and VAT numbers of the business?

ABUL: 321929113

1.36 ABUL told IO █ that he was the manager of the premises but not responsible for employment.

1.37 Following the conclusion of the interview, IO █ allowed the manager to continue to operate his business.

█

1.38 IO █ was asked to speak with another male encountered by IO █ at the premises. Home Office checks confirmed this person as █.

1.39 IO █ conducted an illegal working interview with █ with the assistance of a █ interpreter.

1.40 IO █: How long have you been working here?



[REDACTED]: 2 days for the carnival.

IO [REDACTED]: What is your job role/what are your duties?

[REDACTED]: Yesterday outside helping at a stall the business has.

IO [REDACTED]: What are your start and finish times?

[REDACTED]: 18:00hrs until 22:00hrs at night.

IO [REDACTED]: What are your duties?

[REDACTED]: Serving food at the stall outside.

IO [REDACTED]: Who gave you the job here?

[REDACTED]: Nobody invited me, I know the carnival comes here

IO [REDACTED]: Who asked you to help out at the stall?

[REDACTED]: No one asked but the manager I know.

IO [REDACTED]: Is that Jasim?

[REDACTED]: Yes.

IO [REDACTED]: How are you paid?

[REDACTED]: No money.

IO [REDACTED]: Who allows you to stay and have food?

[REDACTED]: The manager Jasim.

IO [REDACTED]: Does your employer know that you are not allowed to work in the UK?

[REDACTED]: I don't think so.

IO [REDACTED]: Did Jasim ask to see any documents when you helped at the stall?

[REDACTED]: No

[REDACTED]

1.41 IO [REDACTED] entered the premises at 18:22hrs and was directed to speak to a male now known [REDACTED], I was told by a fellow IO that [REDACTED] was found in the kitchen preparing food.

1.42 [REDACTED] presented IO [REDACTED] with an Application Registration Card. IO [REDACTED] conducted checks on Home Office IT systems which confirmed that [REDACTED] had not been successful in any attempt to regularise his stay in the United Kingdom and [REDACTED] not have right to work in the United Kingdom.

1.43 IO [REDACTED] arrested [REDACTED] under Schedule 2, Paragraph 17(1) of the Immigration Act 1971 as amended. IO [REDACTED] explained the reasons in full to [REDACTED], who confirmed that he understood.

1.44 IO [REDACTED] conducted an illegal working interview with [REDACTED]

IO [REDACTED]: How long have you been working here?

[REDACTED]: 2 or 3 months.

IO [REDACTED]: What is your role?  
[REDACTED]: Kitchen worker.  
IO [REDACTED]: What are your duties?  
[REDACTED]: Cutting veg in the kitchen.  
IO [REDACTED]: What days do you work each week?  
[REDACTED]: 2 or 3 days.  
IO [REDACTED]: How many hours do you work each week?  
[REDACTED]: 2 or 3 hours.  
IO [REDACTED]: Do you work the same hours and days each week?  
[REDACTED]: Yes every week the same.  
IO [REDACTED]: Who gave you this job?  
[REDACTED]: Friends of friends, I don't know their names.  
IO [REDACTED]: Who tells you what days to work?  
[REDACTED]: The manager tells me.  
IO [REDACTED]: Who tells you what tasks to do each day?  
[REDACTED]: The manager tells me.  
IO [REDACTED]: How are you paid?  
[REDACTED]: Money, food and accommodation.  
IO [REDACTED]: How much money do you receive?  
[REDACTED]: £50 - £60 a week.  
IO [REDACTED]: Who pays you?  
[REDACTED]: The manager.  
IO [REDACTED]: Do you pay income tax or have a NI number?  
[REDACTED]: No, I am paid in cash.  
IO [REDACTED]: What name does the employer know you as?  
[REDACTED]: [REDACTED].  
IO [REDACTED]: Did you show documents before being offered the job?  
[REDACTED]: Didn't show ID.  
IO [REDACTED]: Does your employer know you're not allowed to work in the UK?  
[REDACTED]: I don't know.  
IO [REDACTED]: Who else works here?  
[REDACTED]: Just the people here now.

1.45 [REDACTED] was taken to the cell van and transported to his home address accompanied by IO [REDACTED], IO [REDACTED] and IO [REDACTED].

## Reasons for Review

- 2.1 Whether by negligence or wilful blindness illegal workers were engaged in activity on the premises, yet it is a simple process for an employer to ascertain what documents they should check before a person is allowed to work. It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case.
- 2.2 The case of *East Lindsey District Council v Hanif* (see 8.11) determined that in such circumstances, even without a prosecution, the crime prevention objective is engaged. The statutory Guidance issued under the Licensing Act provides that certain criminal activity (in particular employing illegal workers) should be treated particularly seriously and it is envisaged that the police will use the review procedures effectively to deter such activities and crime.
- 2.3 Home Office (Immigration Enforcement) submits that for commercial reasons those engaged in the management of the premises employed illegal workers and a warning or other activity falling short of a review is inappropriate; this is why Home Office (Immigration Enforcement) has proceeded straight to review.

## Outcome Sought

- 3.1 Home Office (Immigration Enforcement) asks that the premises licence is revoked. Merely remedying the existing situation (for instance by the imposition of additional conditions or a suspension) is insufficient to act as a deterrent to the licence holder and other premises' licence holders from engaging in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally.
- 3.2 This submission and appended documents provide the licensing subcommittee with background arguments and information pertinent to that contention. These provide the sub-committee with a sound and defensible rationale as to why it should revoke the licence.
- 3.3 It is in such circumstances as this review application that a respondent may suggest that conditions are imposed which would prevent a reoccurrence of the employment of illegal workers in the future; an argument that the subcommittee should take remedial and not punitive action.
- 3.4 However, since 2006 (with the introduction of the Immigration, Asylum and Nationality Act 2006) employers have had a duty to conduct checks to

ensure employees and potential employees are not disqualified from working. Only by completing the required checks and maintaining records of such checks can an employer demonstrate a 'statutory excuse' and evade liability for a civil penalty issued by Home Office (Immigration Enforcement). In order to protect themselves, reputable employers have been conducting these checks since 1996 when it first became a criminal offence to employ illegal workers.

- 3.5 The 2006 Act already imposes duties and responsibilities on a company or individual seeking to employ a person—whether in the licensed trade or otherwise - to conduct right to work checks
- 3.6 In seeking revocation, Home Office (Immigration Enforcement) has considered and rejected conditions as an alternative, in part because this is specifically addressed paragraph 1.16 of the Guidance, viz: "(...) Licence conditions should not duplicate other statutory requirements or other duties, or responsibilities placed on the employer (my emphasis) by other legislation".
- 3.7 Conditions requiring an employer (or its agent) to undertake checks that are already mandated and where advice is readily available and clearly set out for employers, keep copies of documentation and to restrict employment until these checks are made etc. replicate the requirements of the 2006 Act and should be discounted.
- 3.8 Home Office (Immigration Enforcement) contends that a licence holder who has himself or through his agents negligently or deliberately failed to conduct right to work checks which have been a requirement since 2006 should not be afforded an opportunity to do so until caught and then merely be asked to do what they should have been doing already. Deterrence and not mere remedy is appropriate and is supported by case law (as set out within section 8 of this submission).
- 3.9 Respondents who fail to convince a subcommittee that the imposition of conditions to undertake proper right to work checks is a suitable alternative to a deterrent outcome often point to the option of suspension of a licence; pointing out that this may be a suitable punitive response instead which will deter others.
- 3.10 Often this will include claims that the business has 'learnt its lesson' and that since its criminal activity has been discovered it has reconsidered its position, brought in new procedures, 'parachuted in' consultants and new managers etc. On occasion it is hinted that the respondent will 'accept' a suspension as an alternative to revocation, assuaging an authority's concern that an appeal may otherwise be launched. This is not a deterrent - a suspension merely warns other potential perpetrators that they may trade illegally until caught and then suffer only a brief hiatus in carrying out licensable activity before continuing with it. The risk of being caught is low

so the consequence of being caught must be stiff in order to qualify as deterrence.

- 3.11 Home Office (Immigration Enforcement) would counter such claims and point to the continuing changes made to both immigration law and the Guidance (paragraphs 11 .26 — 11 .28) which point to a requirement to send a clear message to potential illegal immigrants that UK authorities will do all they can to prevent them finding illegal employment and a similar message to employers that those employing illegal workers will face severe disruption and penalties. There are simple processes (set out in section 5 of this submission) to avoid the hire of illegal workers and the legislative thrust is in avoiding the occurrence in the first place—not remedying the situation once discovered.
- 3.12 If it were not for criminally minded or complicit employers; illegal workers would not be able to obtain a settled lifestyle and deprive legitimate workers of employment. The use of illegal labour provides an unfair competitive edge and deprives the UK economy of tax revenue. Illegal workers are often paid below the minimum wage (itself an offence) and National Insurance payments are not paid. The main draw for illegal immigration is work and low-skilled migrants are increasingly vulnerable to exploitation by criminal enterprises; finding themselves in appalling accommodation and toiling in poor working conditions for long hours for little remuneration.
- 3.13 A firm response to this criminal behaviour is required to ensure that the licence holder and/or its agents are not allowed to repeat the exercise and in particular, in the interests of the wider community to support responsible businesses and the jobs of both UK citizens and lawful migrants. It is also required to act as a deterrent to others who would otherwise seek to seek an unfair competitive advantage, exploit workers and deny work to the local community, evade the payment of income tax and(unlawfully) inflate their profits to the expense of others.

## Immigration Offences

- 3.14 Illegal workers are those subject to immigration control who either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them taking up the work in question. It is an employer's responsibility to be aware of their obligations and ensure they understand the immigration landscape to avoid the risk of prosecution, the imposition of a civil penalty or their vocation/suspension of their premises licence.
- 3.15 Since 1996 it has been unlawful to employ a person who is disqualified from employment because of their immigration status. A statutory excuse

exists where the employer can demonstrate they correctly carried out document checks, i.e. that they were duped by fake or forged documents.

- 3.16 The Immigration Act 2016 came into force in July 2016 and its explanatory notes state that *“these offences were broadened to capture, in particular, employers who deliberately did not undertake right to work checks in order that they could not have the specific intent required to ‘knowingly’ employ an illegal worker”*.
- 3.17 Since 2016 an employer may be prosecuted not only if they knew their employee was disqualified from working but also if they had reasonable cause to believe that an employee did not have the right to work: what might be described as wilful ignorance where either no documents are requested, or none are presented despite a request. This means an offence is committed when an employer ‘ought to have known’ the person did not have the right to work.
- 3.18 Since 2016 it has also been an offence to work when disqualified from doing so. It is obvious that without a negligent or wilfully ignorant employer, an illegal worker cannot work. Such an employer facilitates a criminal offence and Home Office (Immigration Enforcement) highlights this as relevant irrespective of whether a civil penalty is imposed, or a prosecution launched for employing an illegal worker.
- 3.19 In this context, under section 3(1)(C)(i) Immigration Act 1971 (as amended by the 2016 Act) restrictions are not limited simply to employment (i.e. paid work) but now includes all work.
- 3.20 Thus, an individual with no right to work in the UK commits offences if they undertake paid or unpaid work, paid or unpaid work placements undertaken as part of a course etc. are self-employed or engage in business or professional activity. For instance, undertaking an unpaid work trial or working in exchange for a nonmonetary reward (such as board and lodging) is working illegally and is a criminal offence committed by the worker and facilitated by the ‘employer’.

## Steps to Avoid the Employment of an Illegal Worker

- 3.21 It is a straightforward process for any employer, no matter how small, to prevent themselves employing an illegal worker. If an employer has failed to take even the most basic steps then Home Office (Immigration Enforcement) contends they have chosen to remain ignorant of the immigration status of their workforce and no amount of potential imposed conditions is sufficient, in our opinion, to avoid the legitimacy of revocation in proving a deterrent to others to the employment of illegal workers.
- 3.22 The Home Office has made checklists widely available which set out what a responsible employer should ask for ahead of employing any person in order to demonstrate 'due diligence' and avoid liability for inadvertently employing an illegal worker.
- 3.23 Since April 2017 these checklists have been embedded in the statutory applications for personal licences and premises licences, the transfer of premises licences and designated premises supervisor variations.
- 3.24 The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.
- 3.25 The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) details general advice, checking the documents, taking a copy of the documents, what if the job applicant can't show their documents and provides details of an employers' telephone helpline. This page has a direct link to what documents are acceptable proofs of a right to work in the UK and also allows an employer to fill out an online enquiry about a named individual they are considering offering employment to.
- 3.26 Appendix A sets the above out in some detail.

## Relevance/irrelevance of a Civil Penalty or Prosecution

- 3.27 An employer found to have 'employed' an illegal worker may, dependent on culpability and the evidence available, be issued with a civil penalty or prosecuted or indeed neither.
- 3.28 Where an illegal worker is detected a civil penalty maybe issued against the employer in accordance with the Home Office Code of Practice on Preventing Illegal Working (May 2014). In the case of a civil penalty the balance of probabilities test applies where as a prosecution requires a higher burden of proof.

- 3.29 However, to issue a civil penalty under section 15 Immigration, Asylum and Nationality Act 2006 the Home Office Code of Practice requires some proof that not only was an illegal worker working at the premises, but they were 'employed'. Usually this is taken as meaning the illegal worker was under a contract of service or apprenticeship, whether express or implied and whether oral or written.
- 3.30 But where an employee has not bothered with the basics of return to work checks, placed an employee on 'the books', paid the minimum wage or paid employer national insurance contributions - it becomes difficult to 'prove' the employment statement where the only evidence maybe the word of an illegal worker who has since been detained or who has 'moved on'.
- 3.31 In such cases where paid employment cannot be demonstrated, a civil penalty may not be issued even where the premises licence holder or his agent has facilitated a disqualified person committing an offence under section 24B Immigration Act 1971 (as amended by Immigration Act 2016) of working illegally.
- 3.32 This does not however prevent the crime prevention objective being engaged with as the premises licence holder has none the less facilitated a criminal offence taking place and the lack of checks suggests that in the past (and is likely in the future) has employed illegal workers. In drawing its conclusion, the subcommittee is entitled to exercise common sense and its own judgment based on the life experience so fits members. The East Lindsey case (see section 8) provides that action (revocation) to prevent what is likely to happen in the future is legitimate.



# Appendix A – Right to Work checks

The first 4 'hits' on a Google search for "right to work" are links to employer check lists and information on the GOV.UK website.

The second link is to the Home Office document; "An Employer's Guide to Right to Work Checks" (published 16<sup>th</sup> May 2014 last updated 16<sup>th</sup> August 2017).

Another link provides a site (<https://www.gov.uk/employee-immigration-employment-status>) which guides an employer through the process AND allows an employer to make an online submission to the Home Office to check if the proposed employee is prohibited from working as well as providing a telephone helpline.

Specifically, the first link (<https://www.gov.uk/check-job-applicant-right-to-work>) provides as follows:

## General Advice

- You must see the applicant's original documents;
- You must check that the documents are valid with the applicant present; and
- You must make and keep copies of the documents and record the date you made the check.

## Checking the Documents

In relation to checking the documents it also adds that an employer needs to check that:

- the documents are genuine, original and unchanged and belong to the person who has given them to you;
- The dates for the applicant's right to work in the UK haven't expired;
- Photos are the same across all documents and look like the applicant;
- Dates of birth are the same across all documents;
- The applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work);
- For students you see evidence of their study and vacation times; and
- If 2 documents give different names, the applicant has supporting documents showing why they're different, e.g. a marriage certificate or divorce decree

## Taking a copy of the documents

When you copy the documents:

- Make a copy that can't be changed, e.g. a photocopy

- for passports, copy any page with the expiry date and applicant's details (e.g. nationality, date of birth and photograph) including endorsements, e.g. a work visa
- for biometric residence permits and residence cards (biometric format), copy both sides
- for all other documents you must make a complete copy
- keep copies during the applicant's employment and for 2 years after they stop working for you
- record the date the check was made

### **If the job applicant can't show their documents**

You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- you're reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office;
- they have an Application Registration Card; or
- they have a Certificate of Application that is less than 6 months old  
Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.

The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

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### **Acceptable Documents**

A list of acceptable documents can be found via the link to

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/441957/employers\\_guide\\_to\\_acceptable\\_right\\_to\\_work\\_documents\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf)

# Appendix B – Statutory Guidance & Caselaw

## Statutory Guidance (s182 LA 2003) and the Authority's Licensing Policy

3.33 In order to avoid punitive action, respondents to review hearings sometimes refer to both the statutory guidance issued under section 182 Licensing Act 2003 and those parts of the Authority's own policy which replicate paragraph 11.10 of that Guidance, viz:

*Where authorised persons and responsible authorities have concerns about problems identified at premises, it/s good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns.*

3.34 Home Office (Immigration Enforcement) submits that in the particular circumstances of cases where Immigration Compliance and Enforcement receive intelligence concerning the employment of illegal workers and act upon it; such warnings are inappropriate.

3.35 Not only would advance warning of enforcement activity prevent the detention of persons committing crimes and the securing of evidence; a warning after the event to comply with immigration legislation serves as no deterrent.

3.36 In particular; Home Office (Immigration Enforcement) submits that paragraph 11 .10 of the Guidance must be read in conjunction with the more specific paragraphs relating to reviews arising in connection with crime (paras. 11.24 — 11.29).

3.37 Paragraph 77.26

*Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. (...). The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the*

*interests of the wider community and not those of the individual licence holder.*

3.38 Thus the financial hardship occasioned by the suspension or revocation of the premises licence should not sway the sub-committee but instead it should look at what is appropriate to promote the objective within the wider business and local community given "illegal labour exploits workers, denies work to UK citizens and legal migrants and drives down wages" (Rt. Hon James Brokenshire, Immigration Minister on the introduction of the 2016 Act).

3.39 In particular; the sub-committee are asked to consider (below) the cases of R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D)

*350 and East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2016] EWHC1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime.*

3.40 Paragraph 11.27 of the Guidance states:

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*There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises(...)for employing a person who is disqualified from that work by reason of their immigration status in the UK.*

Home Office (Immigration Enforcement) would draw the sub-committee's attention to the change in wording of this paragraph following the April 2017 revision of the guidance, where the previous reference to 'knowingly employing' was removed.

3.41 Paragraph 11.28 of the Guidance states:

*It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise, and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance - should be seriously considered.*

Home Office (Immigration Enforcement) considers this paragraph self-explanatory; where an enterprise employs illegal workers, it is the duty of Home Office (Immigration Enforcement) to bring forward reviews and for the authority to consider revocation in the first instance.

- 3.42 In support of this statement; Home Office (Immigration Enforcement) would draw the subcommittee's attention to the "Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales" (Home Office) [April2017] where at section 4.1 it states;

*"It is envisaged that licensing authorities, the police, Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter illegal working".*

- 3.43 Since the main draw for illegal migration is work, and since low-skilled migrants are increasingly vulnerable to exploitation at the hand of criminal enterprises, the government has strengthened enforcement measures and the statutory Guidance to deter illegal workers and those that employ them.
- 3.44 Deterrence is a key element of the UK government's strategy to reduce illegal working and is supported by both the Guidance and Case Law.

## Case Law

- 3.45 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.
- 3.46 *R (Bassetlaw District Council) v Worksop Magistrates' Court*; [2008] WLR (D) 350.

*This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority. The premises licence holder argued that they had a policy in place for checking the age of customers, but this was not a perfect policy and had not been adhered to and that rather than revoke the licence, instead stringent conditions on proof of age should instead be imposed on the licence.*

- 3.47 Issues relevant to the case before today's sub-committee which were considered in the *Bassetlaw* judgement included whether a licensing authority was restricted to remedial action (as opposed to punitive action such as revocation); and the precedence of wider considerations than those relating to an individual holder of a premises licence when certain criminal activities (as specified in the Guidance) took place.
- 3.48 It specifically examined (and set aside in the case of 'certain activities') those parts of the Guidance now contained within paragraph 11 .20 and 11 .23, viz:

*In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises.*

- 3.49 In her judgement, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

*"Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by*

*the Secretary of State. (...) However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable.”*

- 3.50 Having confirmed the legitimacy of punitive measures (suspension/revocation) for offences listed in what is now contained within paragraph 11.27 of the Guidance, Mrs Justice Slade concerned herself with another aspect of the appeal—namely the imposition of conditions which were already present but not properly implemented (paragraph 34.1). In this case the appellant was suggesting that proof of age conditions (rather than revocation) could be imposed to ensure that the legal requirement not to sell alcohol to those under 18 years of age was met by him and his staff.
- 3.51 This has some similarity with any argument that may be put forward in the case before the subcommittee today that the imposition of conditions to check immigration status either directly or through an agency (*essentially a requirement since 2006 under the Immigration, Asylum and Immigration Act 2006*) would serve as sufficient remedy for the employment of illegal workers and negate a deterrent (suspension/revocation) being imposed by the subcommittee despite the wording of the Guidance at paragraph 11.28.
- 3.52 Mrs Justice Slade stated: *“The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However, it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14-year-old girls”.*
- 3.53 Home Office (Immigration Enforcement) contends that in the case before the subcommittee the facts are similar. In the cited case straight forward, sensible enquiries could have been made as to the age of the children and the imposition of additional conditions as a form of remedy was considered in appropriate by Mrs Justice Slade for ‘those serious cases’ set out in the Guidance.
- 3.54 In the case before the subcommittee, simple steps (set out at Appendix A) were available to prevent the employment of illegal workers -none were taken; the imposition of conditions to remedy this situation is inconsistent with the section 182 Guidance and this case citation. A negligent employer should expect revocation in the first instance.
- 3.55 *East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway)*, [2076] EWHC 7265 (Admin)

This is a recent High Court decision (published April 2016) which has similarities with the one before the sub-committee in that it related to the employment of an illegal worker and where a prosecution for such had not been instigated.

Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for the employment of an illegal worker was not in place. Whilst the initial hearing may have suggested several illegal workers being employed, the High Court appeal and decision related to the employment of one individual and is therefore, Home Office (Immigration Enforcement) would argue, indistinguishable from the matter before the subcommittee today.

- 3.56 The case reaffirms the principle that responsible authorities need not wait for the licensing objectives to actually be undermined; that crucially in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor. It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee. Mr Justice Jay stated: *"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required."* (Paragraph 18)
- Mr Justice Jay added: "Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked."* (Paragraph 23)