



Home Office

Premises Licence Review

**Mr Abdul Mannan Shabul Ali
Akbar Dynasty
Sadberge, Darlington
Cleveland
DL2 1SZ**

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Outline of the Circumstances leading to the Review Application

Summary

- 1.1 On Thursday 2nd May 2019 an intelligence led Immigration Enforcement operation took place at the Akbar Dynasty restaurant situated at Sadberge, Darlington, Cleveland, DL2 1SZ. The premises are run as a Bengali cuisine restaurant.
- 1.2 At the time of the operation the premises were operating under a premises licence issued to Mr ABDUL MANNAN SHABUL ALI. This has been the case since 23/06/2009.
- 1.3 The operation was conducted by several Immigration Compliance & Enforcement (ICE) officers. The team was led by Officer in Charge (OIC) [REDACTED] in company with Immigration Officer (IO) [REDACTED], IO [REDACTED], IO [REDACTED], IO [REDACTED] and IO [REDACTED].
- 1.4 Information had been received stating that a named [REDACTED] male aged [REDACTED] years old, [REDACTED] inches tall, of [REDACTED] build with [REDACTED] hair had overstayed his visa in the United Kingdom (UK) and was working illegally as a chef at Akbar Dynasty.
- 1.5 According to our records there has now been more than one visit where civil penalties have been issued. A civil penalty was issued on 24/07/2019 to Brand Style Ltd of £20,000 who were the liable party. The director responsible at the time was [REDACTED].
- 1.6 Following another compliance visit on 15/02/2020, where another illegal worker was identified. A further civil penalty of £15,000 was issued to Asma Star Ltd on 27/02/2020. Director responsible for this penalty is ABDUL MANNAN SHABUL ALI. Further to recent checks on our Home Office systems, both of these civil penalties still remain outstanding, and are appeal rights exhausted.

Occurrence

- 1.7 On the 02/05/2019 at approximately 18:20 hours an Immigration Enforcement team of seven officers arrived at Akbar Dynasty with three officers taking up positions at the rear and side exits of the premises.
- 1.8 OIC [REDACTED] and IO [REDACTED] was granted entry at the main entrance under Section 28CA Immigration Act 1971 and asked to speak to the person in charge. A female stated she will get [REDACTED].
- 1.9 A male then approaches and states to be the manager. Although he was reluctant to give his name he was referred to by staff as "[REDACTED]".
- 1.10 OIC [REDACTED] identifies himself and explains to the manager that officers from Immigration Enforcement had come to investigate an allegation that had been made of an alleged person working illegally.
- 1.11 OIC [REDACTED] gave the manager the name of the person and the manager stated he does not work here, and he doesn't know him. OIC [REDACTED] explains he still needs to investigate the allegation and attempts to gain fully informed consent to be on the premises to speak to staff.
- 1.12 The manager stated he is very busy. OIC [REDACTED] states that approximately six customer tables were occupied, with the majority of the premises being empty. OIC [REDACTED] tells the manager that they do not want to interfere with his business but as previously stated they must investigate the allegation made.
- 1.13 OIC [REDACTED] suggests speaking to staff at the rear kitchen door one by one to minimise any disruption. The manager asks for the paper to say officers can come into the premises. OIC [REDACTED] explains to the manager the notice to occupier form and the manager asks if he has to allow officers to come in. OIC [REDACTED] tells the manager he has the right to refuse officers entry to his business.
- 1.14 The manager states he does not want officers to speak to his staff and wants officers to leave. He does not ask officers to come back at a different time or date.

- 1.15 While OIC [REDACTED] was speaking to the manager, IO [REDACTED] who was standing by the rear kitchen door, radios through that since their arrival she has witnessed several kitchen staff taking off their aprons and chef's whites and are leaving the kitchen.
- 1.16 IO [REDACTED] identifies a [REDACTED] male seen in the kitchen matching the description of the suspected immigration offender. He is identified as wearing a black and white jumper.
- 1.17 IO [REDACTED] who was standing at the side of the business by a glass door, radios through that he has witnessed a [REDACTED] male in a black and white jumper come into the customer area and sit down at a table. On seeing IO [REDACTED] by the glass door, the manager closes the blind on the door, obscuring IO [REDACTED] view inside.
- 1.18 OIC [REDACTED] and IO [REDACTED] leave the business and OIC [REDACTED] goes to the rear door and speaks to IO [REDACTED]. IO [REDACTED] states that on their arrival she counted five males working in the kitchen, but upon seeing immigration officers at the rear door, three males have taken off their aprons and left the kitchen. The kitchen door had then been closed and locked by staff.
- 1.19 Due to the adverse reaction shown by the kitchen staff to their presence and the reluctance of the manager to allow officers to enter the premises, Immigration Compliance & Enforcement (ICE) officers believe immigration offenders to be working at Akbar Dynasty in line with the intelligence received.
- 1.20 At 18:28hrs OIC [REDACTED] contacts Acting Director (AD) [REDACTED] by phone. The circumstances of the visit are explained, and OIC [REDACTED] asks AD [REDACTED] to authorise entry under Section 28CA of the Immigration Act 1971 (as amended by section 153 of the Nationality, Immigration and Asylum Act 2002).
- 1.21 AD [REDACTED] authorises entry under Section 28CA of the Immigration Act 1971 (as amended by section 153 of the Nationality, Immigration and Asylum Act 2002).
- 1.22 OIC [REDACTED] re-enters the premises and explains to the manager that he has sought and been given permission to enter the premises under Section 28CA of the Immigration Act 1971. OIC [REDACTED] gives the manager a notice to occupier form with the power they are using to enter the premises.

OIC [REDACTED] also explains that he will deliver the formal letter showing their power of entry tomorrow (exhibit A). OIC [REDACTED] asks the manager if the premises are closed can he post the letter, which the manager agrees to.

- 1.23 Officers enter the premises. OIC [REDACTED] goes to the kitchen area and notices a room to the side with a store room and staff toilet. OIC [REDACTED] goes into this room and notices the toilet door is ajar. OIC [REDACTED] enters the toilet and finds a male hiding behind the toilet door. OIC [REDACTED] summons IO [REDACTED] who takes the male from the kitchen to the sterile area in the conservatory area away from customers.
- 1.24 IO [REDACTED] encounters two males in the kitchen area. Home Office checks showed the males to be British Citizens through Naturalisation.
- 1.25 During questioning the manager is constantly talking to four male staff members in a language believed to be [REDACTED]. The manager is told several times not to interfere with officers questioning and not to speak to the men unless it is in English, so officers are aware of what is being said. The manager ignores officers and continues to talk to the men in [REDACTED]. OIC [REDACTED] warns the manager to stop obstructing officers while carrying out their lawful duties.
- 1.26 Checks show that the four staff encountered including the man hiding in the staff toilet were immigration offenders with no permission to work and were subsequently arrested.
- 1.27 IO [REDACTED] spoke to the manager about the employment of the four arrested males. All four males are taken into custody at [REDACTED] Police Stations.
- 1.28 Before leaving the premises OIC [REDACTED] witnesses that an employee first encountered working as a waiter on arrival is now cooking food in the kitchen. Also, that a male seen delivering food to the premises when officers arrived has also started to cut food in the kitchen.
- 1.29 On 03/05/2019, OIC [REDACTED] and IO [REDACTED] attended the business to deliver the AD letter of authority. The business was closed. OIC [REDACTED] posted the AD letter in an envelope through the letterbox.
- 1.30 The immigration enforcement operation identified that four illegal workers were employed at the Akbar Dynasty Restaurant on 02/05/2019.

- 1.31 Further to this visit, another compliance visit was conducted on 15/02/2020 to Akbar Dynasty Restaurant. This visit consisted of several Immigration Officers entering the premises under Section 179 Licensing Act 2003 at approximately 19:56hrs. One waiter was identified as [REDACTED], a [REDACTED] male born on [REDACTED]. This individual was identified as having no permission to work.
- 1.32 During the enforcement visit that took place on 15/02/2020, the licence holder, ABDUL MANNAN SHABUL ALI was present at the premises. Immigration Officers conducted an interview with him and following this a referral notice was served. A civil penalty of £15,000 was issued on 27/02/2020.
- 1.33 The situation regarding each of the illegal workers from both visits is described below. Along with the interviews with the manager of the 2019 visit and the licence holder present on the 2020 visit.

[REDACTED]

1.34 IO [REDACTED] encountered and arrested [REDACTED], [REDACTED] male for working illegally in the UK under 17 (1) Immigration Act 1971 as a section 10 Overstayer on the visit conducted on 02/05/2019.

1.35 IO [REDACTED] asked [REDACTED] the following questions using a [REDACTED] interpreter in relation to his illegal working.

IO [REDACTED]: Why are you at the restaurant?
[REDACTED]: I came today from [REDACTED] and they were busy, so I decided to put some chapati on. I was waiting for someone to come and take me back to [REDACTED].

IO [REDACTED]: Have you been working in the restaurant?
[REDACTED]: I wasn't working I rolled a chapati but that's all.

IO [REDACTED]: So where are you staying tonight and why come all the way from [REDACTED] and then go straight back?
[REDACTED]: I came to see a friend.

IO [REDACTED]: How did you travel here?
[REDACTED]: One of my friends brought me and I am waiting for someone to pick me up.

IO [REDACTED]: Who is your friend you came to see?
[REDACTED]: A friend in [REDACTED] he is coming here to see me

IO [REDACTED]: Are you aware of your immigration status?
[REDACTED]: I had an application, but I don't know what it is

1.36 Checks with the Home Office show that [REDACTED] was granted a visit visa on appeal in 2010. He then claimed asylum in the UK in 2011 which was withdrawn as [REDACTED] absconded. He then put in a fresh claim in 2013 and again absconded. [REDACTED] [REDACTED] is therefore considered an overstayer in the UK and has no valid leave.

RESTAURANT MANAGER

1.37 IO [REDACTED] questioned the manager about the premises and the illegal workers encountered. The manager refused to provide officers with his name and kept referring to the company name and address but was not willing to provide his own name.

IO [REDACTED] conducted an interview with the manager of Akbar Dynasty

IO [REDACTED]: What is your position here?

MANAGER: Manager Akbar Dynasty Ltd own the business

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

MANAGER: 8 years as manager

IO [REDACTED]: What are the companies house and VAT numbers of the business?

MANAGER: I don't have that to hand. I can provide those details they are in the office.

IO [REDACTED]: What's the Ltd company address?

MANAGER: This is the main premises?

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

MANAGER: All four have been here one week.

IO [REDACTED]: What are their roles here?

MANAGER: They clean, wash up dishes, clean kitchen and front of house.

IO [REDACTED]: What hours do they work.

MANAGER: They start at 17:45 and work until 21:00 - 22:00 depending how busy we are.

IO [REDACTED]: What days do they work?

MANAGER: They come once a week on a Thursday and prepare for the next day.

IO [REDACTED]: Did they provide any documents to show they could work in the UK?

MANAGER: Yes, I've got all the documents to provide they can work. The documents are in my office in [REDACTED]. The boss has access to that.

IO [REDACTED]: What's the bosses telephone number?

MANAGER: I don't have it.

IO [REDACTED]: Do they get paid?

MANAGER: Yes. I don't do wages. The boss pays them through their banks on a Sunday on a weekly basis. They don't live here!

IO [REDACTED]: Do they get food/drink for working here?

MANAGER: Yes. Everything is provided for them.

[REDACTED]

1.38 IO [REDACTED] was tasked with speaking to [REDACTED] after he was caught hiding within a store cupboard. Checks on Home Office systems indicated that [REDACTED] was a failed asylum seeker and had no right to work in the UK. With the assistance of a Big Word interpreter [REDACTED] an illegal working interview was conducted.

1.39 IO [REDACTED] conducted an interview with [REDACTED] who was also encountered on the visit on 02/05/2019.

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

[REDACTED]: I'm not working I came here with my friend to visit

IO [REDACTED]: Why is your top stained with curry?

[REDACTED]: I was standing next to the chef when they were serving food and it splashed.

IO [REDACTED]: Show me your hands, why are they red?

[REDACTED]: I touched something that turned it that colour

IO [REDACTED]: What did you touch?

[REDACTED]: I touched a dish, it had something red in it.

IO [REDACTED]: What was the dish and how long had you touched this for as your hands are heavily stained?

[REDACTED]: Just before we arrived, I had Tikka Masala for tea.

IO [REDACTED]: What is your job here?

[REDACTED]: I came here with my friend to see people, social gathering as we see each other every so often.

IO [REDACTED]: Who did you travel with?

[REDACTED]: A friend, he's not here now

1.40 IO [REDACTED] arrested [REDACTED] with a full administrative caution at approximately 19:06hrs and completed a Section 28b search. IO [REDACTED] escorted [REDACTED] to the cell vehicle and departed the scene at 19:26hrs.

[REDACTED]

1.41 IO [REDACTED] conducted an interview with [REDACTED], who was encountered on the visit carried out on 15/02/2020.

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

[REDACTED]: One week

IO [REDACTED]: What is your job role and what are your duties?
[REDACTED]: I do takeaway packing and serve drinks to customers
IO [REDACTED]: What days hours do you work each week?
[REDACTED]: I worked Friday last week and this week I have worked Monday and Thursday. I start at 7:30pm until 10:30pm
IO [REDACTED]: Who tells you what days hours to work?
[REDACTED]: My friend [REDACTED]. I can't remember his full name.
IO [REDACTED]: Who tells you what duties to do each day?
[REDACTED]:
IO [REDACTED]: What time did you get here today?
[REDACTED]: 5pm I go here
IO [REDACTED]: How did you get here from [REDACTED] ?
[REDACTED]: [REDACTED] picked me up from [REDACTED] train station and brought me to the restaurant.
IO [REDACTED]: Who else did he pick up?
[REDACTED]: I am not sure.
IO [REDACTED]: How are you paid?
[REDACTED]: Food, whatever is left at the end of the night. [REDACTED] gives a friend that works here also, he isn't allowed to work either but, he is not here tonight.
IO [REDACTED]: Do you have a national insurance number?
[REDACTED]: No
IO [REDACTED]: What names does the employer know you as?
[REDACTED]: He calls me [REDACTED].
IO [REDACTED]: Did you show him documents before being offered the job? If so, what?
[REDACTED]: No as I just started last week, and he said at first, you're just helping me and then give me documents later.
IO [REDACTED]: Who do you know in here?
[REDACTED]: One of my friends, he is called [REDACTED], but he is not here tonight though.
IO [REDACTED]: Do you realise that you are not allowed to work?
[REDACTED]: I do, I am only helping here.

1.42 Further to [REDACTED] being interviewed he was advised that he had no right to work in the UK. He was told to vacate the premises or cease what he was doing immediately. He agreed and was taken back to the station.

ABDUL MANNAN SHABUL ALI

1.43 IO [REDACTED] conducted an interview with ABDUL MANNAN SHABUL ALI, who had been identified as being the premises licence holder on the visit carried out on 15/02/2020.

IO [REDACTED]: What is the name of your business?

ALI: Asma Star LTD.

IO [REDACTED]: What are the Companies House and VAT numbers of the business?

ALI: No.

IO [REDACTED]: What are the Companies House and VAT numbers of the business?

ALI: No.

IO [REDACTED]: We have identified that your employee [REDACTED] does not have permission to work in the UK. Are you aware of this?

ALI: I am not.

IO [REDACTED]: How long has he been working here?

ALI: Just started this Tuesday.

IO [REDACTED]: How many hours a week does he work?

ALI: He is under a trial, it is not fixed he is under a trial. He is looking for 24 hours full time.

IO [REDACTED]: Did you ask him to provide evidence that he can work in the UK?

ALI: Yes, I have asked him to bring his ID. My brother took him on Tuesday.

IO [REDACTED]: How many hours has he worked this week?

ALI: 10 hours this week. 5 hours on Tuesday and 5 today.

IO [REDACTED]: How much will you pay him?

ALI: Minimum wage.

IO [REDACTED]: How did your brother recruit him?

ALI: He phoned up for a job on Monday, decide to give him a try.

IO [REDACTED]: Why did you not check he could work legally before his trial started?

ALI: I was not sure if I would give him a job.

IO [REDACTED]: What job is he doing during his trial?

ALI: Looking to work in the restaurant.

IO [REDACTED]: Have you given him a contract?

ALI: I haven't, no.

IO [REDACTED]: How will you pay him?

ALI: Bank account but cash during trial.

ABDUL MANNAN SHABUL ALI then signed the record to state he understood all the questions and that the details are true and correct.

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 can 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 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 in appropriate; therefore, 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 16th May 2014 last updated 16th 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.

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

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), [2076] 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:

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)

Appendix C – Supporting Evidence