

Case Nos: 182/E/RV, 183/E/RV, 81/ER

IN THE MATTER OF AN APPEAL PURSUANT
TO REGULATION 6 OF THE GANGMASTERS
(APPEALS) REGULATIONS 2006

BETWEEN:-

Mrs Natalija Vincukova t/a NV Gangwork *1st Appellant*

Mr Janis Vincukovs t/a JN Gangwork *2nd Appellant*

NV Gangwork Limited *3rd Appellant*

V

GANGMASTERS LICENSING AUTHORITY *Respondent*

Heard at: Nottingham on 15^h – 17 March 2016
Reading in day 14 March 2016

APPOINTED PERSON: PWE BRITTON

Representation:

For the Appellant: Mr P Lawson – Solicitor and senior partner,
Chattertons

For the Respondent: Mr A Reynolds – Barrister-at-law

Approved interpreter: Anna Altukhova

Decision and Reasons of the Appointed Person, in relation to the above matter:

Decision

1. The appeal of Natalija Vincukova trading as NV Gangwork against the revocation of her Gangmasters Licence is dismissed.
2. The appeal of Janis Vincukovs trading as JN Gangwork against the revocation of his Gangmasters licence is dismissed.
3. The appeal of NV Gangwork Ltd against the refusal to grant it a Gangmasters Licence is dismissed .
4. I hereby order in the light of my decisions that Mrs Vincukova trading as NV Gangwork and Mr Janis Vincukovs trading as JN Gangwork will cease all activities in relation thereto by 7 days from the date hereof, for the avoidance of

doubt namely midnight 24 March 2016. An order to that effect was sent out under separate cover lest there be any misunderstanding, on 18 March 2016.

Reasons

Introduction

1. The first two Appellants appeal against the revocation of their licences as Gangmasters. They are Russian speaking Latvians. Those licences were revoked, subject to appeal, by the GLA on the 14 and 15 October 2014 by Charlotte Woodliffe, head of licensing¹. She reached her decision having considered the reports of Stephen Lea who is an Enforcement Officer with the GLA. The Third Appellant appeals against a refusal to grant it a licence, a decision made by the GLA on 11 November 2014. The grounds of appeal in relation to these three decisions were lodged on 19 February 2015 and are in bundle 1 of the 6 bundles as before me.

2. My remit for the purpose of determining appeals is the Gangmaster (Appeals) Regulations 2006 (the Regs). There are no published rules of procedure. The Regs simply provide at Regulation 2(1) that:-

"2.—(1) The overriding objective of these Regulations is to enable the appointed person to deal with appeals justly.

(2) Dealing with an appeal justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with the appeal in ways which are proportionate to the complexity or importance of the issues; and*
- (c) ensuring it is dealt with expeditiously and fairly."*

And at regulation 21 that:

(1) The appointed person shall allow or dismiss the Appeal.

(2) The decision of the appointed person shall be binding on the parties."

3. I gave extensive oral reasons for my decision at the conclusion of the Hearing before me. Thereafter it is provided at Rule 22 (b) that the decision :

Shall be recorded as soon as possible in a document which must also contain a statement of the reason (in summary form) for the decision and the date from which the decision is to take effect.....

¹ Statement plus supplementary in witness statement volume - they run to 34 pages. Similarly the statements of Mr Lee run to 47 pages.

4. But to deal with matters justly I have concluded that my decision should be sufficiently comprehensive so that it can be seen that I have covered the issues; made findings of fact and why, and thus made clear why I have reached the decision I have. To not do so would not be in accordance with my wider understanding as to what is meant by over-riding objective.

5. Essentially, the appeals of the First and Second Appellants are against the finding that they were not fit and proper persons to hold these licences. As the case has distilled before me it has essentially been based by Mr Lawson on the evidence supplied by those two Appellants post the decision to revoke the licences and which he submits would render it just for me to overturn the decision to revoke the licences.

6. The material events relate to the period when only the first Applicant held a Gangmasters Licence. Janis Vincukovs only applied for his licence on 11 December 2013, which is the day when the premises of the Appellants were raided by the Police and the GLA², them having obtained a search warrant. Very substantial documentation was taken away and subsequently closely considered by Mr Lea, who gave evidence before me and who I found credible and compelling, commencing 6 February 2014 and prior to the arrest of Mrs Vincukova and her interviews under caution on 3rd March 2014.

7. As to the third appeal, essentially it stands and falls with the first two because the First Appellant is the principal director of the third Appellant. It follows that if I uphold the finding of the GLA that she is not a fit and proper person, then obviously the GLA would be duty bound to refuse an application made by her through the vehicle of a limited company.

8. As to the appeal of Janis Vincukovs, (and I am here with Mr Reynolds) for reasons that I shall come to, it stands and falls in terms of my findings of fact in relation to the First Appellant. That is because the two of them are so closely linked, both by reason of being husband and wife and because of the way in which the business was run and his involvement with the principal player behind all that happened in this case, which is Mr Ivars Mezals³.

9. As to whether the Appellants can deploy evidence not adduced prior to the decision to revoke to thereby succeed on appeal, if that evidence was not reasonably ascertainable at the time and is of credible content and provenance, I leave to one side at this stage and for reason which will become clear by the end of my findings of fact.

Findings of fact

10. Following a trial before a jury at Blackfriars Crown Court, Mr Mezals (along with a Mr Valujevs), was convicted on 17 December 2014 of acting as an unlicensed gangmaster. One of the counts of the indictment, which the jury found

² This was a combined operation known as Operation Endeavour. It appears to have been triggered by a BBC investigation into exploitation of Eastern European migrant workers in the Fens broadcast on BBC TV "Look East on 30 September 2013.

³ He was specifically mentioned in the BBC programme and arrested along with a Mr Valujevs in relation to those matters on 15 October 2013.

proved, was that in this respect he acted in that capacity in concert with NV Gangwork. Both received immediate custodial sentences.

11. In his sentencing remarks, (in particular as to which see page Bp 392A⁴), and which I am entitled to take account of, His Honour Judge Richards in dealing with a core issue as to whether Mr Mezals could be believed in saying that over £40,000 which he had admitted receiving from NV was "simply repayment of a personal loan" rather than relating to workers supplied as an unlicensed gangmaster, said: "*Your explanation for most of it was not credible*".

12. I note that although key documentation has been put before me by the Appellants relating to the alleged loan and which was not disclosed at any time to the Police or the GLA prior to the decision to revoke, that neither of them was called by Mr Mezals to give evidence on this crucial point before the jury. I have noted that before me it took repeated questioning of Mrs Vincukova for her to even accept that in the context of the loan (which I shall come to), and her and Jan's⁵ explanation for it, it was either a) a most charitable act by Mr Mezals, or b) that she really knew him at all. The picture I got was of somebody very evasive when it came to acknowledging any real involvement with Mr Mezals and which (for reasons which I will come to) flies in the face of the documentation that is before me. It follows that it goes hugely to her credibility. The same goes for Jan.

13. One matter that I cannot but take account of is the explanation eventually raised by the first and second Appellants via their solicitor (my educated guess is first really circa the beginning of May 2015) as to the loan from Mr Mezals and the circumstances in which it was received. As to the circumstances, £25,000 each in £20 notes was handed over by Mr Mezals to Jan in the presence of Mr Reynolds who gave evidence before me, on 10 January 2012. The handover took place in a car parked on the forecourt of a petrol station in Wisbech.

9. Mr Reynolds asks me to draw an adverse inference. What kind of legitimate business with a stated turnover of approx £900k and a legitimate relationship with Mr Mezals would accept, albeit, it is said to be a personal loan, £25,000 in this way?

On the same theme of the loan, I had Mrs Vincukova's tortuous explanation before me about how she came to have, and what she then did with, the all-important loan agreement with Mr Mezals relied upon. This is before me today in bundle 5 commencing at Bp 1981; the same applies to the document by which Mr Mezals is said to have acknowledged having received repayment of the entirety of this sum. This document dated 23 May 2013 is at Bp 1987.

15. Alongside those documents in the bundle are their translations from Latvian into English; this only took place on 29 July 2015 via Chattertons. In the very lengthy interviews of Mrs Vincukova under caution conducted by Mr Lea and a police officer on 3 March 2014⁶, whereat Mrs Vincukova had the assistance of an interpreter in Russian and an experienced registered duty solicitor, she never once raised the explanation about a £25,000 loan in January 2012 or what it was for. She is not unable to speak English. From time to time in those interviews,

⁴ Bp = bundle page in terms of the volumes before me followed by page number

⁵ The second appellant

⁶ Vol 4 p1671-1807

she broke free so to speak of her interpreter and was very full in giving various explanations. Before me, that happened at least once particularly on the issue of contact with Mr Mezals and telephone records. She was able with quite remarkable facility to remember all the telephone numbers concerned without having to resort to use of the interpreter.

16. It follows that I do not buy that Mrs Vincukova has difficulty in understanding what is being asked of her. I think she is actually both intelligent, with a good understanding of English, and a capable business person. In those interviews she was shown that substantial sums of money had gone out of the NV bank accounts to Mr Mezals, either direct or through inter alia a Mr Belka, and which could not possibly be wages due to Mr Mezals. Some of them are for £2,300 a week. According to the PAYE records Mr Mezals, who she explained then and also before me, was a tractor driver working for her from time to time⁷, in the relevant 2 years (2012/2013) he only earned £7,500 working for NV. I am well aware of how low paid the average agricultural casual land worker is, and I have got the records for those others recorded as being employed by NV during the period, and nobody ever gets above approximately £350 a week and most are well below that.

17. She sought to explain in those interviews that it had to do with the fact that Mr Mezals was the most prolifically proficient picker of flowers; able to fill enough boxes to get paid £2,000 in a week. But when she was shown her own records which she would be obliged to keep in accordance with GLA Licensing Standards as this was piecework, she backtracked and conceded it would be inconceivable that anything remotely approaching that kind of money would ever be earned by anybody working for her in this way.

18. In those interviews she did say that she and Jan received a loan from Mr Mezals of between £15,000 and £18,000 cash to buy an Isuzu. There is only one problem with that; the Isuzu was bought some 10 months after the traceable substantial payments to Mr Mezals started. I am with Mrs Woodliffe in terms of her statement⁸ echoing as she did the questioning of Mr Lea of the Claimant during these interviews, that it is nonsensical that somebody would start to pay back a loan sometimes in tranches of £2,000 months before even contemplating the purchase for which the money was allegedly borrowed. Furthermore, that Isuzu motorcar was never paid for in cash. When it was actually bought on 12 November 2012, the method of payment simply does not square. Primarily company bank account debit cards were used and the transaction appears to have gone through the books. It shows up as an asset for depreciation purposes.

19. So a loan that makes no sense and no reference to a £25k loan back in January 2012 or any reference made to any documentation recording the loan or its repayment whether it be for £25k or £18k or indeed both.

20. Before me under oath she says, Jan (and he corroborates this) hastened upstairs and found the document when she returned home from the interviews under caution. Intriguingly, when the very thorough search had been made by the GLA and the police force in the context of Operation Endeavour, and when

⁷ He also ran a garage and had built up a property portfolio but that has nothing to do with wages earned working for NV.

⁸ I had read all the witness statements beforehand on the reading in day, as matters developed before me it was agreed that she need not be called and that I could take her statement as read.

very substantial amounts of documentation were taken away, no loan documentation relating to Mr Mezals was found. It begs the question as to whether it then existed.

21. As it is, Mrs Vincukova first told me under oath than once Jan gave her the piece of paper, the next morning she rushed hotfoot to Chattertons (her solicitors who had been retained by her for some time) and gave it to Mr Lawson. This explanation was given at approximately 4 pm of the first day of her giving evidence before me. She was being quizzed by Mr Ryder as to why such a dynamite document, so to speak, otherwise was never disclosed to the GLA until after May 2015 and by which time this Judge had issued directions for the purposes of this hearing. Surely, its existence would be so crucial to the defence of not acting improperly with Mr Mezals; not in other words being by inference a launderer (my words) of monies for him or alternatively using him for unlawful labour, that it would be vital to disclose it immediately hopefully thereby to avoid the then possibility of criminal charges and given the presence of the GLA at the interview, the likely prospect of loss of the GLA licence? She knew at that stage she had to answer Police Bail on 31 March and so if not before, then that would be the time to disclose this evidence. And so she gave this answer. The question then becomes as to what did Mr Lawson do with it? Obvious there might be a possible embarrassment for Mr Lawson and Chattertons; hence the proceedings were adjourned early for him to get clarification overnight and indeed subject thereto instructions.

22. At the start of the hearing the following morning Mr Lawson appeared to indicate that on a balance of probabilities, she might be right. I accept that he may not have been in full possession at that stage of his own files. As it is, the Appellant at the resumption of her evidence changed it. At first she said that on 31 March when she and Mr Ellis (another partner at Chattertons) met outside the Boston Police Station before answering to the Part 4, the understanding was that there was to be a further interview⁹, she had with her a bag of additional documents including the loan documents which she gave him. I note that none of those documents were actually ever given to the GLA until post the revocation; some of them have only been disclosed very close to this hearing such as statements of financial accounts.

23. Then she backtracked because this Judge raised some obvious points, first that surely Mr Ellis (if he was acting as a competent solicitor should) before going into any such interview would have seen her in his offices (particularly as he was being privately paid) and gone through the documents with her to identify what might be significant. I bear in mind that as this case has developed that the duty solicitor who was present at the first interviews had promptly thereafter, as I would have expected her to, provided a letter to Mrs Vincukova setting out what had transpired during the interviews and the way forward. Obviously she would do that as part of her duty solicitor obligations. That letter was given to Chattertons by the shortly after she received it and thus in advance of the planned interviews on the 31st.

24. By the time of the Police/GLA interviews of the Appellant, the Boston Police Station (which is a substantial building) had state of the art interview

⁹ As it is one did not take place and a few days later the Claimant was informed that she was no longer a criminal suspect.

technology which includes a triple DVD recording system. It follows that the Duty Solicitor would have gone away with one set. In my experience for a long time prior to the introduction of DVD recording, the double police tape recording system had meant that the suspect or their solicitor was always asked if they wanted a copy of the tape recorded interview and given a copy there and then if they did. Chattertons never asked for the DVDs of the Duty Solicitor. Only months before later did they ask of them of the GLA. The point of course being that if Mr Ellis had got the DVD recordings and listened to them, then he would have known the significance of the loan and thus if the Appellant had given him the loan documents on the 31st, then he would immediately have grasped their significance and ensured copies were given post haste to the GLA. So obviously competency was now under discussion. The implication of her evidence so far was therefore that Chattertons had failed to act on her instructions. But had they? Mr Lawson was by now able to indicate that the files ruled our disclosure of the loan agreement on the 31st and thus at least by inference, as the file was otherwise silent in terms of any attendance note, prior thereto

25. Suffice it to say that as this particular line of enquiry developed before me¹⁰, and going back to the Appellant's evidence, she moved yet again. In answer to my question as to whether it was that Chattertons did not disclose the document before they did because they had not got it, she said: "*You are probably right because when we sent it to Chattertons, they wanted a certified translation.*" That is where we get to. The certified translation as we all now know was circa 25 May 2015.

26. Clearly the credibility of the Appellant, Mrs Vincukova, on this issue is shot through.

27. But it goes further than that and which I shall now address. Before I do, as to Janis Vincukovs, I do not think that Janis is the ignorant person abroad as he attempts to make out before me. I think he is a capable man. The number of phone calls that passed between him and Mr Mezals simply does not square with somebody who is not on the closest possible terms with Mr Mezals; and strangers do not meet in order for £25,000 to be handed over.

28. I shall never know the whole story in this case; all I can safely conclude (as Mr Reynolds has pointed out to me) is that the relationship between Mr and Mrs Vincukovs and Mr Mezals is far deeper and more extensive than either makes out.

29. I cannot but note that several of the people who worked for them and who are listed in Mr Lea's witness statement (and which is corroborated by the source data all of which was put to Mrs Vincukova in interview under caution) lived in one or another of Mr Mezals's properties, which appear to have been almost wholly used for the purposes of accommodating primarily Latvian agricultural workers sometimes several to a room¹¹.

31. The other thing I found astonishing is the explanation that was given by Mrs Vincukova under caution and then to Mr Reynolds under cross examination that Mr Mezals also lent them money to buy cars to be used by staff. I cannot but

¹⁰ The Claimant had waived privilege

¹¹ See interview of Elina Mogilevceva during Operation Endeavour Bp 1523-1649

note that those vehicles are people carriers. Why would they buy a people carrier for a sole worker to drive to and from his work? Mrs Vincukova told me it was because she could not afford to insure people carriers herself for her workers.

32. Mr Lawson submits that I ought not to take account of the accounts stuck at the back of volume 5. But the Appellants have put them in. I observe this in passing. In the 2 years we are talking about (2012 and 2013), and I realised the Appellant has not been asked about it as Mr Reynolds has understandably confined his cross-examination principally to the loan agreement issues and the relationship with Mr Mezals, how can £45,000 be spent on travel? Mr and Mrs Vincukovs only had one car each. How come over £9,000 has been spent on insurance?

33. I then note that the Judge in the sentencing remarks in relation to Mr Mezals pointed out that vehicles were being used to transport workers which only had personal insurance for the driver. In other words, it would not cover transportation of workers.

34. I make no finding as such but it all goes to a deeply unsatisfactory state of affairs. Mr Lea of course did not know all of that because he did not see the accounts at the material time.

35. What do I then have? I have a Mr Mezals who has given over, on the face of it from the various data before me, £40,000, possibly £45,000, in one shape or form to Mr and Mrs Vincukovs. Money has been paid back to him either directly or through Mr Belka purporting to be wages when it is not. Those monies from the interviews under caution and the documentation in the trial bundle have been used by Mr and Mrs Vincukovs primarily to indulge themselves: a Lexus convertible and then later on a new Isuzu.

36. But before me Mr and Mrs Vincukovs told me that the real explanation for the £25,000 borrowed in January 2012 was because Jan's brother needed an operation on his knee in Latvia which was going to cost £25,000.

37. I observe simply this. By 2012, Latvia was a member of the European Union. I learned through the evidence of Mrs Vincukova that the brother regularly came to England to work for her. Would that not have been a most suitable way to arrange for his healthcare - working in the United Kingdom and on the face of it available to him the National Health Service?

38. The second point I found totally unbelievable was that albeit the amount of money that needed to actually be spent on his medical care reduced to circa £8,500, Jan needed to go to Latvia to give him this money to his brother in cash in the presence of a notary. Why? If it being said because otherwise there might be a suspicion that this could be money laundering, then I observe that it is most unlikely that any compliance body would challenge, if payment was made direct to the hospital by way of bank transfer, consequent upon a medical bill. Hospitals are not in my knowledge in the nature of the money laundering business. What do I not have? I do not have a medical bill at all. What I do know is that in relation to the explanation put before me about the £25,000, and which brings me back to my indulgence point, that Jan and Mrs Vincukova, have said that they used £9,800 of it to buy a Lexus convertible in March 2012

because she was without a motor car following the write-off of her BMW in December 2011.

39. But it was not paid for in cash. There was no deposit of cash made into the bank account to balance out the expenditure. The £9.8k was actually primarily paid for on bank debit cards: So, money coming out of the Vincukovs's bank accounts; no cash coming in from Mr Mezals.

40. That returns me to the Isuzu; £15,000 to £18,000 spent out later in the year. Again, as to the payment for the vehicle which was by a variety of means - £1,000 in cash, some by way of a cheque, some by way of 2 bank cards - none of it remotely goes near a £15,000 tranche of cash from Mr Mezals and there is no corresponding deposit in any of these bank accounts.

41. I then observe that Mr Mezals is not in the same position, as the Appellants have sought to say, for lowly workers who may have problems with a bank account because they do not have enough money for one or they have run up an overdraft hence they need to be paid in cash. During the period under consideration Mr Mezals had 4 bank accounts. That does not square with a man who cannot get a bank account. Yet he wants money paid to him in cash, on occasions through such as Mr Belka, because he has problems with the bank - why? The inference is because he needs alternative means to distribute his crooked gains under the radar of the banks. I use the words crook as has Mr Reynolds given the conviction and the reason for the prison sentence handed down to Mr Mezals. I also observe that the Appellants have not called him to support their explanation.

42. Finally I find it quite astonishing that these two Appellants, having been treated on their evidence so charitably by Mr Mezals the good Samaritan, when Mr Vincukova is put on the witness list for him, did not approach his solicitors to say look we have got the loan documents; that would have been an extremely favourable piece of evidence to Mr Mezals.

43. What does it mean to me? There is an inference to be drawn that the Appellants distanced themselves because they knew they were otherwise at risk themselves of putting their necks in the proverbial noose.

44. What do I therefore make of Mr Prutcikovs's evidence? Yes he came across as credible. But plausible witnesses are not necessarily truthful. All I know is his evidence just does not make sense if this was all legitimate. I do not accept, without evidence from an expert, that in Eastern Europe (and Latvia in particular) there is the culture whereby a good Samaritan so to speak will lend a substantial sum of money to another Latvian out of the kindness of his heart for nothing in return and with no security. And if so why in £20 notes on a garage forecourt in Wisbech with Mr Prutcikovs sitting in the back of the car whilst the money was handed over? It follows that I am not persuaded by his evidence that this was a loan.

Conclusion on the evidence

45. It follows that I conclude from my findings of fact, and the deeply unsatisfactory explanation for the very late disclosure of the loan documents, that I do not believe the Appellants in their explanations. I go further: I conclude that

they are not telling the truth. It follows that I find nothing in what they have put before me that would undermine the decision of Charlotte Woodliffe for the GLA, preceded by the conclusions of Mr Lea in his investigation report, to revoke both licences in particular concluding that the first standard (that is not fit and proper as per the licensing standards) had been so badly failed as to warrant a maximum score of 30, which in itself would entitle her to revoke the licence.

46. The second ground for her revoking the licence (which I will call 1.2) which has to do more with records and matters of that nature, is no longer pursued by the GLA.

47. The third ground for revocation in effect was that the association with Mr Mezals was by way of an illegal subcontractor relationship and in the way it was conducted was in itself in breach of the GLA Rules. Of course given my upholding the first findings, that conclusion inevitably stands up. Thus meaning the award of a further 30 points is also upheld.

48. It follows that I dismiss the appeals. Thus it logically follows that I dismiss the appeal of the Third Appellant (NV Gangwork Ltd) because of the finding that the Director of it is "not fit and proper".

The law: obiter observations

49. What if I had found the loan documents credible and been given a satisfactory reason for their late disclosure, could they be deployed to enable me to uphold the appeals given my remit to deal with the Appeals justly?

50. I am with Mr Reynolds, despite the valiant efforts of Mr Lawson. An appeal is from a decision maker. Usually, for instance in an employment tribunal when an employer for example is bringing a claim for unfair dismissal, the employment tribunal is seized with determining whether the employer acted unfairly because for example it failed to take into account evidence that was reasonably available for the purposes of reaching the conclusion to dismiss.

51. Health and safety appeals are the only other remit of the tribunal in terms of a jurisdiction to review by way of appeal an executive based decision by a Government agency. *Sarah Jane Hague (one of Her Majesty's Inspectors of Health and Safety) -v- Rotary Yorkshire Ltd [2005] EWCA Civ 696*, and as per Laws LJ, is the first judgment at senior court level into how to approach these kind of appeals. I realise (as Mr Lawson points out) that the factual basis in that case is different. But it does not matter to me because what Lord Justice Laws was having to deal with the argument that, with the benefit of hindsight, in other words looking at matters subsequent to that inspector's decision to issue a prohibition notice, that those subsequently discovered matters could be looked at in order to review the decision made which had led to the appeal. He explored the jurisprudence that might assist him commencing at paragraph 27.

52. He drew two critical conclusions. They are at paragraphs 31 and 34. In the first paragraph he referred with approval to the judgment of Mr Justice Charles in *Chilcott v Thermal Transfer Limited [2009] EWHC Admin 2086* as to which see paragraph 27 of Laws LJ's judgment. Thus:-

"... such a question must surely be determined by an appraisal of the facts which were known or ought to have been known to the inspector at the time of the decision ..."

At paragraph 34 he therefore said:-

"... The primary question for the Employment Tribunal is whether the issue of the notice was justified when it was done. ..."

53. In so far as it assists me, another appointed person has addressed the issue, albeit obiter, as to which see paragraph 10 of the judgment of Mr R F Aston in the **All Staff Solutions (UK) Ltd [34/E/R]** before me in volume 1 Bp 59. Particularly paragraph 10 at Bp 62:-

"In the absence of any authority, I accept that the question of whether the Appellant was compliant with the licensing standard has to be determined as the date of the inspection not some later date."

54. I would add to that, or rather I would amend it to read, "has to be determined at the date of the decision to revoke".

55. There is a caveat: **Ladd -v- Marshall [1954] EWCA Civ 1** per Denning LJ, might ride to the rescue as to late evidence being capable of being deployed at appeal¹² But the following are the principles:-

"A party seeking to introduce new evidence must show that

- the evidence sought to be introduced could not with reasonable diligence have been obtained for use before the tribunal (for which read before the decision of the GLA was made).*
- the evidence is so relevant that it would probably have had an important influence on the result of the case, although it need not be decisive in itself, and the evidence is apparently credible although it need not be incontrovertible."*

56. But of course in this case, given my findings of fact, none of that assists the appellants. The Appellant had the document in her hands on the night of 3 March 2014.

57. There is one caveat to that. She says that a letter that she got from Mr Lea misled her. This letter dated 2 April 2014 is at volume 1 Bp 284. It is after the Appellant went along with Mr Ellis (and to which I have referred) to the Boston Police Station to answer part 4 bail on 31 March.

58. That did not go ahead. I believe Mr Lea when he tells me that he had asked the police to inform Mrs Vincukova that she did not need to attend because the police and the GLA were not ready to make a decision, particularly on the criminal front. It may be the police force never informed her - these things happen. I have already then dealt with her meeting with Mr Ellis outside Boston Police station. All that needs to be said that it may be, on a balance of

¹² See for further commentary the Employment Tribunals Practice and Procedure IDS Employment Law Handbook of May 2014 PARA 18.35

probabilities, that Mrs Vincukova may have told him about the document, although I am not necessarily satisfied about that. More important I have already concluded, doing the best I can on the evidence, that this Appellant chose not to actually produce the document to Mr Lawson and his firm until some time around the beginning of May 2015. Is that because she was misled by Mr Lea's letter? What does it say?

"I am writing to inform you that enquiries are currently underway to determine whether you have complied with all of the GLA Licensing Standards. This is in addition to the criminal investigation that is taking place in relation to allegations that you have entered into arrangements with unlicensed gangmasters.

Please be aware that these are 2 separate matters, being dealt with independently of one another, although information you provide may be used in evidence for either enquiry.

You may recall that during the interview under caution at Boston Police Station on 3 March 2014, you were asked a series of questions that related to the manner in which you ran your GLA licensed business, NV Gangwork. The answers to those question, in conjunction with documentation obtained from your business premises on 11 December 2013, will form part of the evidential package that will be sent to the GLA Licensing Team for review.

In order to afford you the opportunity to respond to specific compliance issues relating to your GLA licence, I shall be requesting you to produce certain documentation in the near future. I would be grateful if you could respond in full in order for the Licensing Team to make an informed decision.

Please do not hesitate to contact me directly should you have any queries."

59. Mr Lea has explained that this reference to further enquiries was not to do with the issues relating to the loan or Mr Mezals. They were follow up lines of enquiry as to the circumstances of various workers for NV, and in terms of control of them by Mezals and then tracing back through the books to see if they had been properly paid.

60. Once the decision was taken not to prosecute Mrs Vincukova on 29 April (and which had to do with there are time limits for the potential offence she could have been charged with, them being summary only, and the time limit for prosecuting her having expired) for proportionality reasons the need for further enquiries of her was not pursued. To turn it around another way, Mr Lea thought he had got enough. Self evidently given my findings he had, in terms of ruling the Appellants not to be fit and proper.

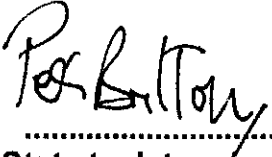
61. Was the Appellant really lulled into a false sense of security by that letter? She had already post the search immediately taken steps to protect the position by applying for a licence in Jan's name. Thereafter she was about setting up the limited company inter alia because it could apply for a licence and was in fact putting invoices through that company on the assumption that she could do so

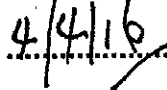
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before it was licensed, when she could not. She also became embroiled in matters VAT in that respect. So these are all steps to protect the position

62. In those circumstances, I am not convinced at all, given the careful wording of this letter, and which Chatterons saw contemporaneously, that Mrs Vincukova would have been so lulled into a false state of understanding.

63. It follows that if had needed to deal with this matter adopting this alternative approach, then applying *Ladd -v- Marshall* I would have excluded from my consideration these documents because they could have been supplied by the Appellants to the GLA well before the decision to revoke.

Signed: .....(Person appointed by the
Secretary of State to determine appeals under the Gangmasters (Appeals)
Regulations 2006.

Dated: .....