



IN THE MATTER OF THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN:

APPELLANT SureStaffing UK Ltd t/a Sure Logistics or Sure Group

RESPONDENT Gangmasters and Labour Abuse Authority

Appointed Person: Employment Judge Deeley

Heard at: Leeds Employment Tribunal (in chambers)

On: 13 January 2025 and 3 February 2025

Representation: N/A - parties were given the opportunity to provide written representations via their representatives

JUDGMENT

The Appeal against the Respondent's decision to attach an Additional Licence Condition (set out in the Respondent's letter dated 26 July 2024) is dismissed.

REASONS

BACKGROUND

1. The Appellant presented a Notice of Appeal dated 7 August 2024 by which it appealed against the decision of the Respondent in a letter dated 26 July 2024 to attach an Additional Licence Condition to its Gangmasters Licence.
2. Both parties requested that the appeal be dealt with in writing (i.e. without a hearing). The parties were provided with the opportunity to provide written representations for consideration at this hearing. The respondent provided a skeleton argument. The claimant did not provide any written representations.

3. Both parties provided documents with their appeal and response, including:
 - 3.1. the Appellant's detailed grounds of appeal, evidence of its payments under a Time to Pay arrangement with HMRC and copies of its bank statements relating to those payments; and
 - 3.2. the Respondent's reply and file of documents accompanying that reply. **References in this judgment to any numbered Documents are to the documents in the Respondent's file.**

Legislative background

4. The Gangmasters (Licensing) Act 2004 (the "**Act**") requires those acting as a 'Gangmaster' in the fields of agriculture and other certain sectors to hold a licence issued by the Respondent (see Section 6 of the Act).
5. The Act also provides for the circumstances when the Respondent is entitled to modify, revoke or transfer a licence issued in circumstances where a condition of the issued licence or any of the provisions of the Act have not been complied with by the person or entity holding that licence (see Section 9 of the Act).
6. The explanatory memorandum to the Gangmasters (Appeals) Regulations 2006 explained the policy background to the Act as follows (with my underlining for emphasis):

7.1 The Government supported Jim Sheridan's Private Member's Gangmasters (Licensing) Bill, introduced into Parliament in 2003 and intended to curb the exploitative activities of gangmasters operating in certain areas. While some gangmasters operating in this area run reputable businesses, it is clear that many operate illegally and exploit their workforce. The Bill attracted cross party support and received Royal Assent on 8 July 2004.

7.2 The Act introduces a licensing scheme for gangmasters supplying labour to agriculture, shellfish and closely related produce packing and processing sectors. The Gangmasters Licensing Authority is given responsibility for the introduction and operation of the new licensing arrangements. The Authority's licence standards will require licence holders to act in a "fit and proper" manner. To meet this test the licence holder must have no relevant previous convictions or outstanding charges against them. They will also be expected to operate their business legally and to ensure that the people they employ or supply are treated fairly. In particular they will be expected to ensure the proper payment of wages, national insurance, tax and VAT. Debt bondage, harsh treatment and victimisation of workers will be precluded. They will also be required to take steps to ensure safe working conditions. Secondary Government objectives are to:

- reduce exchequer fraud and various other forms of non-compliance often*

associated with abuse of workers by businesses in this sector

• increase exchequer revenues by promoting employment of legitimate workers

• promote fair competition amongst labour providers.

7. Regulation 8 of the Gangmasters (Licensing Authority) Regulations 2015 (the “**2015 Regulations**”) provides that:

(1) for the purposes of the exercise of the Respondent’s functions under Sections 1, 7, 8 and 9 of the 2004 Act and rules made under section 8, in determining

–

(a) the criteria for assessing the fitness of an applicant for a licence or a specified person, and

(b) the conditions of a licence and any modification of those conditions,

the Authority shall have regard to the principle that a person should be authorised to act as a gangmaster only if and in so far as his conduct, and the conduct of a specified person, comply with the requirements of paragraph (2).

(2) The requirements are -

(a) the avoidance of any exploitation of workers as respects their recruitment, use or supply; and

(b) compliance with any obligations imposed by or under any enactment in so far as they relate to, or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities.

8. The Gangmasters (Licensing Conditions) Rules 2009 (the “**Rules**”) set out the procedure for licensing gangmasters covered by the provisions of the Gangmasters (Licensing) Act 2004 and the conditions that will apply to the licences. Rule 4 and the Schedule to the Rules set out the licence conditions that apply to licence holders.

9. The Respondent has published Licensing Standards and the version relevant to the Appellant’s appeal are those which were issued January 2020 (Document 1) (the “2020 Licensing Standards”). There are eight GLAA licensing standards, set out at Part 2 of that document:

9.1. Licensing Standard One: Fit and proper test;

9.2. Licensing Standard Two: Pay and tax matters;

9.3. Licensing Standard Three: Forced labour and mistreatment of workers;

9.4. Licensing Standard Four: Accommodation;

9.5. Licensing Standard Five: Working conditions;

9.6. Licensing Standard Six: Health and safety;

9.7. Licensing Standard Seven: Recruiting workers and contractual arrangements;

9.8. Licensing Standard Eight: Sub-contracting and using other labour providers.

10. Licensing Standard 2 (Pay and tax matters) at Part 2 of the 2020 Licensing Standards includes the following critical standards relating to VAT and Holiday Pay:

2.1 Critical: PAYE, NI and VAT

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

- be registered with HMRC and have a valid PAYE number, and
- accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HMRC in a timely manner.

• A licence holder who exceeds the VAT threshold must be registered with HMRC and charge and pay the correct amount of VAT in a timely manner.

Please note

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

[...]

2.5 Critical: Holiday pay

• A licence holder must maintain records to show that a worker receives paid annual leave to which they are legally entitled (8 points)

• A worker must be paid any holiday pay to which they are legally entitled during the course of their engagement (30 points)

• Where a worker's engagement is terminated during the course of a leave year a licence holder must give them payment in lieu of any accrued and unused holiday entitlement (30 points)

• A licence holder must not illegally prevent a worker from taking annual leave (30 points)

Please note

Non-compliance with this standard will contribute a maximum of 30 points to a licensing standard compliance score.

Failure against this standard will lead to the licence being revoked without

immediate effect.

11. “Revoked without immediate effect” is defined by paragraph 4.14 of the 2020 Licensing Standards as:

Any revocation will be with or without immediate effect depending on which standards are failed. If a licence is revoked, the licence holder will be notified of whether trading may continue, usually until the outcome of any appeal is determined, or whether they should cease trading immediately.

12. Paragraph 4.10 of Part 1 of the 2020 Licensing Standards sets out the scores for breaches of certain standards, including a score of 30 points for failure to meet any ‘critical’ licensing standards:

The inspection will test the relevant licensing standards, which will result in an overall score. Each standard has an associated score. Standards designated as ‘critical’ are worth 30 points. All other standards are worth 8 points, except Licensing Standard 1.4 which can score up to 16 points and Licensing Standard 2.5 which can score 8 or 30 points depending on the breach.

13. Paragraph 4.12 of Part 1 of the 2020 Licensing Standards states that where an inspection score is below 30 points:

Additional Licence Conditions (ALCs) will be attached to the licence. An ALC is a specific requirement which a licence holder must comply with. Usually, ALCs will be against individual non-critical standards where non-compliances have been identified. The licence will become conditional on those non-compliances being corrected. The decision letter will explain what measures need to be taken to rectify identified non-compliances.

14. The Respondent conducts inspections of or otherwise reviews the circumstances of licence holders intended to test against the eight relevant standards set out above. Each standard has an associated score and those which are deemed to be “critical” are worth 30 points. Paragraph 4.13 of Part 1 of the 2020 Licensing Standards states that if an inspection score is 30 points or more:

The application or licence will usually be refused or revoked. However, the GLAA may consider attaching ALCs [Additional Licence Conditions] where it is proportionate to do so after considering the extent and nature of the non-compliance.

15. The Respondent has also issued guidance to those taking decisions on its behalf including in relation to conducting inspections, taking decisions and revoking licences. This guidance is contained in the Respondent’s Licence Decision Policy, the relevant version of which was issued on 8 December 2022 (the “**Policy**”). Paragraphs 25 and 26 of the Policy also contain guidance on Proportionality in Decision Making:

“25. The GLAA adopts a proportionate approach when applying the licensing standards. The GLAA is concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances, unless such a non-compliance is “critical” in its own right.

26. In reviewing information gathered by an inspection, from a request by the Licensing Team or other source, the Licensing Team seek to make sure that there is sufficient and reliable evidence to demonstrate that there is a reasonable likelihood of systematic failure with the standard. Therefore, isolated incidences of non-compliance with non-critical standards may be discounted from the final licensing standards Score. In addition, the Licensing Team will review the failed standards to ensure that there is no “double counting”, where two or more standards may have been failed for the same reasons.”

16. Section 10 of the Act and the provisions of the Gangmasters (Appeal) Regulations 2006 govern the process by which an affected licence holder may seek to challenge the decision of the Respondent to refuse to issue or to modify or revoke a licence. I note that there is no higher level court authority that has considered the nature of a GLAA appeal. However, I note paragraphs 18 and 19 of the respondent’s skeleton argument submits that:

“the most common approach taken by APs in determining appeals against decisions of the GLAA is that set out in Gary Cook t/a Gary’s Labour Agency v GLA (now GLAA) (2017) (189/E/R) [Tab 5], to treat an appeal under the 2006 Regulations as a rehearing.

This approach was set out at paragraph 19 of the AP’s judgement in the matter of Angels Care Agency Ltd t/a Angels Recruitment v GLAA (2023) (213/E/RV) (“Angels Care Agency”) [Tab 6], the appeal most recently determined in a hearing by an AP, as follows:

“19. In taking the approach set out above and making those preliminary decisions, I do not dissent from, and in fact agree with an [sic] adopt, the approach taken by the appointed person in Gary Cook t/a Gary’s Labour Agency v the Respondent (198/E/R) [sic (189/E/R)] which is that:

(a) An appeal under the Appeal Regs is a rehearing;

(b) I should have regard to the intentions underpinning the regulatory regime under the Act;

(c) I should pay careful attention to the reasons given in this case by the respondent’s decision maker for refusing the application for the licence [sic – revoking the licence];

(d) I should apply the regulatory regime as if I was standing in the shoes of the respondent's decision maker;

(e) Whether the Appellant was compliant with the relevant Licensing Standards has to be determined at the date of the decision (in this case to revoke the licence); and

(f) Evidence after that decision date will usually be inadmissible (unless it falls within Ladd v Marshall."

17. I am not bound by the approach taken by the Appointed Persons on previous appeals. However, I accept the respondent's submission that consistency in judicial approach to these appeals is in accordance with the overriding objective set out in Regulation 2 of the 2006 Regulations. I have therefore approached this appeal in line with the approach taken by the Appointed Persons in the GLAA appeals cited above.

The Appellant's Licence and Additional Licence Condition Decision

18. The Appellant was first issued with a Licence by the Respondent on 14 September 2016, renewed annually. The Respondent inspected the Appellant on 16 April 2024 and provided a copy of the reissued licence dated 26 July 2024. The reissued licence contained the Additional Licence Condition that is the subject of this appeal.

19. The Respondent inspected the Appellant in response to allegations sent to the Respondent regarding non-compliance with the Licensing Standards relating to holiday pay. The inspection included PAYE and VAT matters. The Respondent wrote to the Appellant on 26 July 2024, stating that they had decided to modify the Appellant's licence by attaching an Additional Licence Condition ("**ALC**"). The letter stated:

This ALC is a specific requirement which your licence is now conditional upon. You must comply with the ALC by 31 January 2025 otherwise your licence may be revoked. Please be aware that other regulatory authorities with a responsibility for these requirements may also conduct their own investigation.

Licence holders subject to ALCs are still required to comply with the Authority's Licensing Standards and the requirements in the Gangmasters (Licensing Conditions) Rules 2009.

Non-compliance with Licensing Standard 2.1 – PAYE, NI and VAT

Licensing Standard 2.1 requires:

A licence holder who employs workers under a contract of employment, contract of service, engages them under a contract for services or where the provisions

of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 apply must:

...

- A licence holder who exceeds the VAT threshold must be registered with HMRC and charge and pay the correct amount of VAT in a timely manner.*

SureStaffing have a Time to Pay arrangement in place with HM Revenue and Customs ("HMRC") to pay an outstanding VAT debt. This arrangement requires you to pay £36,140.90 monthly from 17/04/2024 until 17/01/2025. As at 09/07/2024, HMRC confirm that the total VAT debt is £235,148.72.

As SureStaffing have tax debts outstanding at the time of the application, you have failed to comply with Licensing Standard 2.1.

Failure against this critical licensing standard results in an inspection score of 30 points against the Licensing Standards. This score would usually result in your licence being revoked. However, the GLAA has decided that the proportionate approach is to add an ALC to SureStaffing's licence against Licensing Standard 2.1.

What you should do now

To comply with this ALC you will be required to provide evidence to the GLAA which confirms that SureStaffing has complied with the Time to Pay arrangement by clearing the debt. This can be in the form of bank statements, proof of payments or confirmation from HMRC.

You are required to provide evidence to the GLAA that you have cleared the tax debt by 31 January 2025 otherwise your licence may be revoked.

APPELLANT'S APPEAL

20. I have considered the position of the Appellant carefully as set out in the Notice of Appeal dated 7 August 2024 and supporting documentation. The Appellant's documents included:

- 20.1. a copy of its Time to Pay Agreement with HMRC dated 25 March 2024, regarding VAT owed of £361,409.03 (including interest). This stated that monthly payments of £36,140.90 would be collected from 17 April 2024 to 17 December 2024, with a final payment of £36,140.93 to be collected on 17 January 2025; and

- 20.2. copies of its bank statements for April 2024, May 2024 and June 2024. These showed monthly direct debit payments to HMRC of £36,140.90 made on each of 17 April, 17 May and 17 June 2024.

RESPONDENT'S REPLY

21. The Respondent stated by way of background that:

- 21.1. it conducted a compliance inspection of the Appellant on 16 April 2024, following allegations of non-compliance with the Licensing Standards in early 2024 relating to non-payment of holiday pay due to workers. These allegations were admitted by the Appellant, albeit that the Appellant stated that a former finance director was responsible for those non-payments. The holiday payments were subsequently rectified;
- 21.2. as part of this inspection, the Respondent carried out background checks into the Appellant's compliance with its HMRC obligations. HMRC advised that as of 20 March 2024 the Appellant had accrued a VAT debt of £431,566.85 and a PAYE debt of £88,204.13;
- 21.3. when Senior Compliance Inspectors met with Mr Charles Draper (the Appellant's Principal Authority named on their Licence), the Respondent states:

"At SCI Blandford's prompting, the PA [Principal Authority, i.e. Mr Draper] disclosed at the inspection that the Appellant had cleared its PAYE debt in full and had partially paid down its VAT debt. The PA also advised that in respect of the remainder of its VAT debt – £361,409.03 – the Appellant had agreed a Time to Pay Arrangement ("a TTPA") with HMRC on 25 March 2024."

22. Document 2 (a note of HMRC's systems showing the Appellant's VAT and PAYE debts as at 20 March 2024) shows that:

- 22.1. the Appellant had existing PAYE and VAT debts owed to HMRC. The VAT debt totalled £431,566.85 as at 20 March 2024. The VAT debt included VAT Return Late Payment Penalties, Charges and Interest amounting to £15,950.62;
- 22.2. the Appellant had failed to make a payment on 13 March 2024 relating to a previous Time to Pay arrangement agreed on 13 February 2024 relating to the Appellant's PAYE debt;

23. Document 18 (a HMRC report dated 25 September 2024) confirms that the information set out below was provided by HMRC to the Respondent on 9 July 2024:

- 23.1. the Appellant had cleared its PAYE debt on 21 March 2024 and the only outstanding PAYE debt was not due for payment until 22 July 2024; and
- 23.2. the Appellant had agreed a new Time to Pay arrangement with HMRC on 22 March 2024;
- 23.3. as at 9 July 2024, HMRC confirmed that the Appellant's outstanding VAT debt was £235,148.72. HMRC also confirmed that the Appellant had made all payments due under their new Time to Pay arrangement as at 9 July 2024.

CONCLUSIONS ON THE EVIDENCE

24. There is no dispute that at the time of the inspection on 16 April 2024:

- 24.1. the Appellant was an existing licence holder;
- 24.2. as at 20 March 2024, the Appellant had existing PAYE and VAT debts owed to HMRC. The VAT debt totalled £431,566.85 at that time and included a penalties, charges and interest amounting to £15,950.62;
- 24.3. the Appellant cleared its PAYE debt on 21 March 2024; and
- 24.4. the Appellant agreed a new Time to Pay arrangement with HMRC on 22 March 2024 relating to its VAT debt;
- 24.5. the Respondent concluded that the Appellant was in breach of Licensing Standard 2.1. This is a critical licensing standard and the Respondent scored the Appellant 30 points for that breach;

25. There is also no dispute that:

- 25.1. as at 9 July 2024, HMRC confirmed that the Appellant's outstanding VAT debt was £235,148.72 and that they had no PAYE debt (other than that relating to the most recent bill, payment of which was due on 22 July 2024). HMRC also confirmed that the Appellant had made all payments due under their new Time to Pay Agreement as at 9 July 2024;
- 25.2. the Respondent concluded on 24 July 2024 that it would not be proportionate to revoke the Appellant's Licence. However, the Respondent decided that to attach an ALC relating to repayment of the VAT debt to the Appellant's existing licence under Licensing Standard 2.1. The Respondent wrote to the Appellant to confirm its decision on 26 July 2024; and
- 25.3. the Appellant appealed against the Respondent's decision in accordance with the relevant procedures.

26. Neither party provided any guidance regarding the status of HMRC's Time to Pay arrangements. However, I have taken judicial notice of the guidance on the

government website regarding the payment of debts to HMRC under a Time to Pay arrangement (published on 20 January 2020 and updated on 4 November 2021 at <https://www.gov.uk/guidance/find-out-how-to-pay-a-debt-to-hmrc-with-a-time-to-pay-arrangement>). This states that:

Guidance

How to pay a debt to HMRC with a Time to Pay arrangement

Get help to make a Time to Pay arrangement if you are an individual or business who owes a debt to HMRC.

Contents

1. [How we work out debt repayments](#)
2. [How to contact HMRC to discuss a Time to Pay arrangement](#)
3. [How we work out what you can afford to pay](#)
4. [How assets are treated when we agree a Time to Pay arrangement](#)
5. [Debts that can be included in a Time to Pay arrangement](#)
6. [Interest charged on Time to Pay arrangements](#)
7. [After a Time to Pay arrangement has been agreed](#)

Debt can be owed to HMRC for a variety of reasons, the best payment solution is different for each individual and business.

HMRC takes its responsibility seriously to make sure that individuals and businesses who can pay, do so on time. We provide extra, bespoke support to those facing financial hardship or who have personal difficulties.

If you're finding it difficult to make a tax payment you should ask us about affordable monthly payment options, called a Time to Pay arrangement. We'll always try to work with you to negotiate time to pay what you owe based on your income and expenditure.

Time to Pay arrangements are based on the specific financial circumstances of whoever owes a debt, so there is no 'standard' Time to Pay arrangement. We look at what you can afford to pay and then use that to work out how much time you need to pay.

A Time to Pay arrangement can cover all outstanding amounts overdue, including penalties and interest. Check [HMRC interest rates for late and early payments](#).

The arrangement is designed to be flexible and is not a fixed, formal contract. It can be amended over time, so it can be shortened if your earnings rise or if you receive a cash windfall (for example, an inheritance). It can also be lengthened if your essential expenses increase, or your income reduces.

Over 90% of our Time to Pay arrangements are completed successfully.

How we work out debt repayments

Individuals

[...]

Businesses

Business finances are often complex, so we'll ask you to tell us what you think the business can afford to pay.

After we have looked at your proposal, we'll ask you questions about it to make sure it's affordable and pays off the debt as quickly as possible.

The length of the arrangement will depend on:

- *how much your business owes*
- *the business' financial circumstances*

The arrangement will be reviewed regularly and can be adjusted over time.

[...]

Debts that can be included in a Time to Pay arrangement

Any tax, duty, penalties or surcharges that you cannot afford to pay can be included.

Interest charged on Time to Pay arrangements

Interest accrues from the due date to the end of the Time to Pay arrangement.

The interest payable will be included in overall debt covered by the arrangement.

You can find out information about interest payable on tax debts and charges in [HMRC interest rates for late and early payments](#).

After a Time to Pay arrangement has been agreed

If payment instalments are made on time

No further action will be needed and future time to pay requests will be considered.

[...]

CONCLUSIONS ON THE APPEAL

27. The question raised by the Appellant's appeal is whether or not the Respondent should have attached the ALC to its existing licence under those circumstances. This requires consideration of three key issues:

27.1. Did the Appellant breach Licensing Standard 2.1?

27.2. Was the Respondent required to take into account the *Hampton Principles* (as referred to by the Appellant) when exercising that discretion to attach an ALC to the licence? If so, did it do so?

27.3. Alternatively, did the Respondent adopt a 'proportionate approach' in attaching an ALC to the licence, as required by the Policy?

28. As set out in the section of this document headed 'Legislative background', Regulation 8(1) and 8(2) of the 2015 Regulations requires the Respondent to have regard to compliance with any obligations imposed by or under any enactment relating to the conduct of the licence. These include the Licensing Standards issued by the Respondent, under the Rules.

Did the Appellant breach Licensing Standard 2.1?

29. Licensing Standard 2.1 (in the January 2020 version) states:

2.1 Critical: PAYE, NI and VAT

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

- be registered with HMRC and have a valid PAYE number, and*
- accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HMRC in a timely manner.*

• A licence holder who exceeds the VAT threshold must be registered with HMRC and charge and pay the correct amount of VAT in a timely manner.

Please note

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

30. The Respondent conducts inspections of or otherwise reviews the circumstances of licence holders intended to test against the eight relevant standards set out

above. Each standard has an associated score and those which are deemed to be “critical” are worth 30 points. Paragraph 4.13 of Part 1 of the 2020 Licensing Standards states that if an inspection score is 30 points or more:

The application or licence will usually be refused or revoked. However, the GLAA may consider attaching ALCs [Additional Licence Conditions] where it is proportionate to do so after considering the extent and nature of the non-compliance.

31. Paragraph 14 of the Policy refers to ALCs and states:

“Additional Licence Conditions (ALCs) will be attached to the licence. An ALC is a specific requirement which a licence holder must comply with. Usually, ALCs will be against individual non-critical standards where non-compliances have been identified. The licence will become conditional on those non-compliances being corrected. The decision letter will explain what measures need to be taken to rectify identified non-compliances.”

32. The Appellant submits that:

- 32.1. at the time of the inspection, the Appellant had agreed a Time to Pay arrangement with HMRC and had *“made every single payment to HMRC outlined in the agreement on time (therefore in a timely manner) and continues to do so”*;
- 32.2. payments to HMRC are therefore being made in a timely manner in accordance with Licensing Standard 2.1. Licensing Standard 2.1 does not state that a Time to Pay arrangement with HMRC is a breach of that standard; and
- 32.3. there is no requirement for a licence holder to inform the Respondent of a Time to Pay arrangement, therefore only a minority of licence holders who are inspected by the Respondent will have such an ALC attached to their licence.

33. The Respondent submits that:

- 33.1. a breach of Licensing Standard 2.1 crystallises when a licence holder fails to make a payment relating to PAYE or VAT owed to HMRC by the deadline set by HMRC;
- 33.2. there is no ‘fault-based’ element to Licensing Standard 2.1, i.e. the Respondent does not have to consider whether or not an Appellant deliberately tried to avoid paying its HMRC debts;
- 33.3. the Respondent is entitled to revoke a Licence where there are existing HMRC debts, regardless of whether or not a licence holder has agreed a

Time to Pay arrangement with HMRC. The Respondent relied on the decisions of the Appointed Persons in previous appeals in support of its position, including *Adam Clayton t/a Farm Linc v GLAA* (2020) 206/E/RV and *Soma Recruitment Ltd v GLA (now GLAA)* (2009) 78/E/RV;

- 33.4. Licensing Standard 2.1 does not refer to any action that could be taken by the licence holder to 'cure' a prima facie breach. By way of contrast, other Licensing Standard (including 1.1, 1.4, 5.4, 6.4, 7.2 and 8.1) permit a degree of flexibility in their wording such as:

"This standard will not be failed if the licence holder can provide a reasonable explanation for why they have not notified the GLAA within the timescale required."

"The GLAA will take a proportionate view in deciding on whether to fail this standard for minor infringements or easily fixable issues."

- 33.5. the position of other licence holders relating to their repayment of any VAT debts is irrelevant because this appeal relates to the Appellant's licence only.

34. There is no dispute that:

- 34.1. the Appellant owed a substantial sum of money to HMRC by reason for the failure to account for VAT of around £361,409.03 as at the inspection in March 2024;
- 34.2. the Appellant agreed a further Time to Pay arrangement with HMRC relating to its VAT debt on 22 March 2024. Part of the VAT debt was repaid under the Time to Pay arrangement as at 9 July 2024, leaving a balance to pay of £235,148.72 at that date.

35. I have concluded that the Appellant failed to pay its VAT debt due to HMRC in a 'timely manner' as required by Licensing Standard 2.1 because:

- 35.1. the Appellant failed to pay the debt to HMRC by the due date and incurred penalties, charges and interest as a result. The reasons for that failure are not relevant to the question of whether or not the Licensing Standards were breached because those reasons do not form part of Licensing Standard 2.1. By way of contrast, other Licensing Standards provide a greater degree of flexibility (e.g. by permitting the licence holder to provide a 'reasonable explanation' to the Respondent);
- 35.2. the Appellant contacted HMRC to agree a Time to Pay arrangement in early 2024. However, the VAT debt (together with the penalties, charges and interest relating to the VAT debt) was outstanding at this point in time. This is emphasised by the fact that HMRC's guidance (as set out above) states

that *“Interest accrues from the due date to the end of the Time to Pay arrangement. The interest payable will be included in overall debt covered by the arrangement”*;

35.3. the Appellant may have had a competitive advantage over other licence holders who had paid the correct amount of VAT to HMRC when it feel due, because they retained access to greater capital during this period. I note that the objectives of the Act included ensuring ‘proper payment’ of tax and VAT and ‘fair competition’ amongst labour providers (see the Explanatory Memorandum to the Gangmasters (Appeals) Regulations 2006) and

35.4. the fact that the Appellant agreed a Time to Pay arrangement with HMRC does not mean that the VAT debt was not due at the original payment date. The Time to Pay arrangement is in effect a repayment plan with the Appellant for payments of the VAT debt (including penalties, charges and interest) by instalments from April 2024 to January 2025.

36. I have therefore concluded that the Appellant had breached Licensing Standard 2.1 because they had failed to pay their VAT debt to HMRC at the time that it was due to be paid.

Did the Respondent exercise its discretion to attach an ALC to the Appellant’s Licence properly?

37. The Respondent could have chosen to revoke the Appellant’s Licence as a result of its failure to pay its HMRC debts in a timely manner. The Respondent instead chose to attach an ALC to the Appellant’s Licence. The Appellant disputes the Respondent’s decision and states that the decision was not made in accordance with the Hampton Principles.

Hampton Principles

38. The Appellant quoted the Hampton Principles in its Notice of Appeal together with extracts that appear to be taken from various paragraphs of the 2007 Code. The Appellant submitted:

We believe that the GLAA are being totally disproportionate in their response with our company as we have an arrangement in place, agreed by HMRC, are making timely payments to HMRC and by intervening in such a way is blatantly against the Hampton Principles whereby you should consider if any regulatory intervention will have an impact on economic progress and the perceptions of fairness of regulation.

As a regulator within government, the GLAA are bound to adhere to the Hampton Principles and having reviewed said principles, we believe that on this occasion, the GLAA are imposing an unnecessary burden which will indeed stifle enterprise and undermine economic progress.

...

Furthermore, also under the Hampton principles, we believe that the GLAA has failed to communicate the issue with entering into a Time to Pay Arrangement and the implication being that should you do so, you will be subject to a failure of Licensing Standard 2.1. Again, under the Hampton principles, there is a duty as a regulator to have informed licensing entities of this in your policy...

...

We believe that there are significant inconsistencies within the decision-making process within the GLAA in respect to how the GLAA has dealt with companies with Time to Pay Arrangements in place.

39. The Appellant then said that they would request information relating to other licence holders who have Time to Pay arrangements. However, the Appellant did not provide details of any such licence holder as part of this appeal.

40. The Respondent submitted that:

40.1. the Hampton Principles relate to the ten recommendations set out in the government-commissioned Report titled *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton dated March 2005). The Respondent states that these recommendations were incorporated into the Regulators' Compliance Code issued initially on 17 December 2007 (the "**2007 Code**"). The Respondent notes that the 2007 Code was later updated in a shorter Regulators' Code issued in April 2014), pursuant to the Legislative and Regulatory Reform Act 2006.

40.2. the Respondent states that in any event, the duty to have regard to the provisions of the Regulators' Code is not relevant in the circumstances of this Appeal because as set out at paragraph 2.3 of the 2007 Code, it is only engaged when regulators are:

40.2.1. determining general policies and operational procedures guiding their regulatory activities; and

40.2.2. setting standards or giving general guidance which will guide regulatory activities.

41. I have concluded that the Hampton Principles quoted by the Appellant are not relevant to the determination of this appeal. The appeal relates to the Respondent's decision to attach an ALC to the Appellant's licence only and not to determining general policies or procedures, setting standards or providing general guidance for the Respondent's regulatory activities (which would be subject to the Regulators' Code). The Hampton Principles may be relevant, for example, to the determination of the Policy and Licensing Standards which govern the Respondent's general policies, procedures, guidance and standards.

Respondent's Policy guidance

42. The question remains then whether the Respondent's decision to attach the ALC to the Appellant's Licence was made in line with the Respondent's Policy.

43. Paragraphs 25 and 26 of the Policy contain guidance on Proportionality in Decision Making:

25. The GLAA [the Respondent] adopts a proportionate approach when applying the licensing standards. The GLAA is concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances, unless such a non-compliance is "critical" in its own right.

26. In reviewing information gathered by an inspection, from a request by the Licensing Team or other source, the Licensing Team seek to make sure that there is sufficient and reliable evidence to demonstrate that there is a reasonable likelihood of systematic failure with the standard. Therefore, isolated incidences of non-compliance with non-critical standards may be discounted from the final licensing standards Score. In addition, the Licensing Team will review the failed standards to ensure that there is no "double counting", where two or more standards may have been failed for the same reasons.

44. I note that the Appellant's failure to pay its VAT debt when it fell due was a 'critical' breach of Licensing Standard 2.1. Therefore the guidance set out above does not apply because it relates to 'non-critical' Licensing Standards.

45. I have concluded in any event that the Respondent adopted a proportionate approach in imposing an ALC on the Appellant's Licence. The key reasons for this conclusion are:

45.1. the Respondent could have decided to revoke the Appellant's Licence. They did not do so and instead decided on the lesser sanction of imposing an ALC;

45.2. the VAT debt owed by the Appellant was a significant sum and included penalties, charges and interest;

45.3. HMRC systems showed that the Appellant had previously defaulted on the Time to Pay arrangement agreed on 13 February 2024 by failing to make a payment on 13 March 2024. (Although, I also note that the PAYE debt was subsequently repaid by the end of March 2024); and

45.4. the decision to attach an ALC to the Appellant's Licence is in accordance with the legislative objectives include ensuring payment of tax and VAT to the government and ensuring fair competition between labour providers.

46. The Appellant's appeal therefore fails and is dismissed.

Appeal Number: 21/E/C

Employment Judge Deeley

Employment Judge Deeley (Appointed Person)

Dated: 3 February 2025

JUDGMENT SENT TO THE PARTIES ON

Lisa Ashworth

LISA ASHWORTH

FOR THE TRIBUNAL OFFICE

10 February 2025