

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of the appeal against a decision made by the Gangmasters Licensing Authority (Ref 78/E/RV)

**Soma Recruitment Ltd
(Appellant)**

V

**The Gangmasters Licensing Authority
(Respondent)**

Appointed Person

J.Blackwell

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

Decision

The appeal be refused. The Decision is to take effect on 14th Oct 2009.

Summary statement of reasons

1. The Appellant operated under a licence granted by the Respondents
2. The GLA revoked that Licence with effect from 30th July 2009
3. On 29th July 2009 the Respondent appealed against that decision. I have seen and taken into account that appeal and supporting documents, The GLAs Response and the Appellants reply to that Response and subsequent correspondence.
4. The Parties have agreed pursuant to Regulation 15 that the Appeal will be determined on the basis of those documents and without a Hearing.
5. The GLAs decision is based upon The Appellant accumulating 128 penalty points following an inspection in April 2009. The methodology is explained in the document "Licensing Standards" issued by The GLA. A score exceeding 30 points will lead to revocation of a Licence. The Appellant does not take exception to the prin

principles set out in that document but to the way they have been applied.

6. The first 30 points were deducted because firstly because The Appellant did not disclose that he had been convicted of a drink/driving offence and secondly because he had not informed The GLA that he was providing accommodation to his workers. As to the first point The Appellant accepts that he did not disclose the conviction but did not do so because he did not think that such was criminal activity as defined in the application form. As to the second matter again The Appellant accepts that he did not inform The GLA but says that it related to only 3 workers and for a period of only 3 weeks. In summary he pleads extenuating circumstances. In my view neither is sufficient to overrule The GLA's decision. It is disingenuous to say that a drink/driving offence is not a criminal activity given that it can lead to imprisonment. As to the second point the admitted infraction is not in my view de minimis.

7. The second 30 points were deducted because The Appellant accepted that he had fallen into arrears with VAT payments to the tune of some £4000. Again he pleads extenuating circumstances in that it was the first time and that HMRC had accepted his proposals for dealing with the arrears and further had not levied a penalty. Again in my view those circumstances are insufficient to displace The GLA's decision because the offence is not to pay in a timely manner and The Appellant remains in debt to HMRC.

8. The next 30 points relate to a number of failures to pay either The National Minimum Wage (NMW) or The Agricultural Minimum Wage (AMW). Though there is some factual dispute as to whether the AMW applies, The Appellant does accept, firstly that he deducted transport charges which had the effect of breaching the requirement and secondly in respect of the 3 workers he provided accommodation to referred to above he had deducted more than the Statutory set off charge. These admissions alone are more than sufficient to justify the GLA's decision without going into the other matters complained of under this heading.

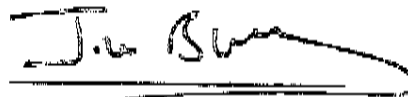
9. The next 8 points were deducted because the 3 workers provided with accommodation did not have a tenancy agreement. Again The Appellant accepts that no tenancy agreement was provided but repeats that it related to only 3 workers for 3 weeks. For the same reasons as given above I reject that argument as sufficient extenuating circumstances.

10. The final 30 points were deducted because The GLA say that the 2 vehicles used for the transport of workers were not fully insured. I have seen both policies which have similar terms in that both cover use in connection with The Appellant's business, save that use for hire is not covered. Because charging workers for transport to and from work is a form of hire The GLA say there is no cover. Letters obtained by The Appellant from both insurers only serve to confirm that view. The Appellant seems to be arguing that he was misled by an Agent or Employee of one of the insurers and that he was covered at all times though he provides no evidence in support. I find it hard to believe that any agent or employee of an insurer, had they been told that workers were being charged for transport, would have led The Appellant to believe that his policy was effective for that use. Again The GLA's position is eminently reasonable. Uninsured vehicles are a very serious matter.

11. In conclusion this is an Appeal with which I have little or no sympathy. The Appellants explanations have, at times, been inconsistent and have been less than frank. The GLAs decision, particularly when viewing the admitted infractions cumulatively was eminently reasonable.

Decision

On the basis of the written representations the Appeal is refused because The GLA acted reasonably in revoking the Licence for the reasons set out above.



J Blackwell
Appointed Person

DECISION SENT TO THE PARTIES ON AND ENTERED
IN THE REGISTER

FOR SECRETARAT