

Licensing Specialist Unit
Colchester Borough Council
PO Box 889
Rowan House
33 Sheepen Rd
Colchester
CO3 3WG



County Licensing Hub
Witham Police Station
PO Box 12306
Newland St
Witham
Essex
CM84AS
10/04/2017

LICENSING REVIEW APPLICATIONS

Licensing Act 2003 Sec 51. Essex Police are seeking a licensing review at the following premises:

Premises Licence No: 004785

RML, 11A Station Rd, Tiptree, Essex CO5 0AZ

Essex Police are seeking REVOCATION of these premises licence based on the following licensing objectives:

1 The Prevention of Crime and Disorder

The Premises Licence Holder has been informed.

Yours faithfully

6895 Stephen Sparrow
Essex Police County Licensing Officer



Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
You may wish to keep a copy of the completed form for your records.

I STEPHEN SPARROW 42006895 County Licensing Officer Essex Police

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Balti Raj (Trading as RML) 11A Station Rd	
Post town Tiptree, Essex	Post code CO5 0AZ

Name of premises licence holder or club holding club premises certificate (if known) Mr Mohibur Rahman 

Number of premises licence or club premises certificate (if known) 004785

Part 2 - Applicant details

I am

Please tick ✓ yes

- | | |
|--|-------------------------------------|
| 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below) | <input type="checkbox"/> |
| 2) a responsible authority (please complete (C) below) | <input checked="" type="checkbox"/> |
| 3) a member of the club to which this application relates (please complete (A) below) | <input type="checkbox"/> |

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

☐

**Current postal
address if
different from
premises address**

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address ESSEX POLICE COUNTY LICENSING HUB WITHAM POLICE STATION NEWLAND STREET WITHAM ESSEX CM8 2AS
Telephone number (if any) [REDACTED]
E-mail address (optional) Licensing.applications@essex.pnn.police.uk

This application to review relates to the following licensing objective(s)

- | | |
|---|---------------------------------|
| 1) the prevention of crime and disorder | Please tick one or more boxes ✓ |
| 2) public safety | x |
| 3) the prevention of public nuisance | |
| 4) the protection of children from harm | |

Please state the ground(s) for review (please read guidance note 2)

This premise has been granted a premises licence by Colchester Borough Council authorising the sale of alcohol on the premises Monday – Saturday 10:00 – 00:00, Sunday 12:00 – 23:30 and 10:00 – New Year's Eve until 23:00 New Years Day

The premises operates as an Indian Restaurant

The Premises Licence Holder is Mohibur RAHMAN

The current licence was granted by Colchester Borough Council on 5th October 2005

Following intelligence held by the Home Office Immigration Service, a Magistrates Court Warrant was obtained and this premise was visited on 23rd March 2017 at 17:34hrs by Immigration Officers GEAR, DENHAM, NEWALL, DAVIS, GAMBRILL and CLOUTING.

Upon arrival of Immigration Officers they encountered 3 males, all nationals of Bangladesh, none of these males had the right to work in the UK.

[REDACTED] because he has an outstanding appeal, was not arrested but was escorted off the Premises and conveyed to Kelvedon railway station to enable him to return to his home address in [REDACTED] (See Appendix A) statement and certified pocket notebook entries of CIO DAVIS.

[REDACTED] and [REDACTED] were arrested and taken to Chelmsford Police Station custody Police Station and then handed over to TASCOR who are a private sector provider of secure immigration detainee escorting and transferred to Gatwick Airport Detention Centre to await processing and removal from the UK. (See Appendices B & C) statements and pocket notebook entries of IO's GAMBRILL and CLOUTING

It is the contention of Essex Police that no right to work checks are being carried out at this premises, a lack of management control has been demonstrated and that the Prevention of Crime and Disorder Objective of the Licensing Act 2003 has been engaged.

SEC 182 HOME OFFICE GUIDANCE

This review application is respectfully submitted as relevant to the Licensing objective namely the prevention of crime and disorder

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to licensed premises but also to deter and prevent criminals from operating a premise under the auspices of a Premises Licence granted by the local authority.

Section 11.26 states that it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives.

Section 11.27 states that there is certain criminal activity which should be treated particularly seriously, one of these being knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that persons leave to enter.

(It is pertinent to note that the previous guidance issued under s.182 in October 2011 did not include this offence in paragraph 11.29. This indicates the offence has now become a particular concern.)

Section 11.28 states that *'where 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.'*

Please provide as much information as possible to support the application (please read guidance note 3)

Appendix A: Statement and certified pocket notebook of Chief Immigration Officer Justin Davis

Appendix B: Statement and certified pocket notebook of Immigration Officer Robert Gambrell

Appendix C: Statement and certified pocket notebook of Immigration Officer Emma Clouting

Appendix D: Statement of Essex Police Licensing Officer Alan Beckett

Appendix E: Case Citation East Lindsey District Council v Abu Hanif

Appendix F: Potential Criminal Offences

Appendix G: Desired Outcomes

Appendix H: Current Premises Licence

ESSEX POLICE FORCE OBJECTIVES

Currently Essex Police Force Objectives include: - Human Trafficking and Modern Day Slavery. It is felt that the employment of illegal workers in the UK infringes both of these Force objectives by encouraging unscrupulous persons to bring illegal workers, who have no employment rights and are often paid below minimum wage rates, into the UK for profit.

Essex Police treat the employment of illegal workers at licensed premises very seriously and is unacceptable. Positive action will be taken against those unscrupulous licensees who choose to engage in this practice.

CASE CITATION

I wish to cite the case East Lindsey District Council v Abu Hanif (See Appendix E) where a High Court Judge, Mr Justice Jay, certified this case for citation. In this case the judge determined that it is not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged. Therefore the judge upheld East Lindsey District Council appeal and the premises licence was revoked

Home Office Immigration is concerned with the apprehension, detention and management of persons illegally or unlawfully in the UK and as such their procedures and protocols are not directed towards supporting or promoting the Licensing Act and the licensing objectives, nor are they considered a responsible authority for the purposes of the legislation at this time.

The Immigration, Asylum and Nationality Act 2006 amends immigration, asylum and nationality acts in relation to appeals; entry; deportation and removal of persons. It also introduces legislation on employment of adults subject of immigration control; issue of employment penalty notices; associated employment offences; providing passenger, crew and freight information; a duty to share information; provide disclosure to other agencies and additional powers for searching, fingerprinting, examining and seizure of documents together with connected offences.

However, this particular legislation is ineffective in dealing with the specific issue of this review application and the consideration of this matter at a licensing hearing is therefore wholly appropriate.

Where an employer pays wages to illegal workers off record with no tax or national insurance deductions which are then deliberately omitted from an employers End of Tax Year P35 returns to HMRC, the employer may be dealt with by means of the Fraud Act 2006.

Similarly, the HMRC may take action as a civil proceedings case and raise a tax debt against the business. Such an Employer may also potentially breach further regulations in (See Appendix F).

Unfortunately any litigation or civil proceedings in relation to these offences is strictly confidential and the HMRC will not disclose any details in this respect to a public body, hence the specifics of this incident cannot be disclosed.

This is a delicate and sensitive area and HMRC would be unable to disclose details about its investigations if those details were to be revealed in a public forum like a Hearing as this would break the HMRC/Taxpayer confidentiality guidelines.

HMRC does publish details of serious tax defaulters on their website for the world to see, but the cases have to satisfy strict criteria. It is possible that some of the cases may find their way on to the Serious Defaulters Published list but the timing will rarely suit the timescale of Licensing Hearings. For example – HMRC, & Lincolnshire Police visited a premises in Horncastle with Home Office Immigration in September 2012 which resulted in revocation of the premises licence.

Licence Holders also have a responsibility to ensure the safety of those using their premises (Guidance to Licensing Act 2003 section 2.8).

There are obvious concerns in relation to public safety as to the competency and training of these staff with respect to matters of food preparation and levels of personal hygiene, even though this may be covered by other legislation.

It should be quite apparent that there are potentially numerous criminal offences which may apply to the employment of illegal workers at this particular premise. (See Appendix F)

Disproportionate weight should not be placed upon whether there is sufficient evidence to determine whether the Licence Holder knowingly employed illegal workers as being the only relevant crime to this review.

The individuals working illegally are committing criminal acts in their own right, irrespective of whether the employer is aware or not.

Illegal working has harmful social and economic effects on the UK; It undercuts British businesses and their workers that stay within the Law and exploits migrant workers. As long as there are opportunities for illegal working the UK will be an attractive place for illegal migrants. This why it is imperative to put a stop to employers breaking the law by taking tough and robust action against those who do so.

There is evidence that some workers employed illegally are paid less than the minimum wage, do not pay tax and may be doing dangerous work that breaks health and safety regulations. Employers who use illegal workers may do so because they want to avoid providing minimum standards, such as the National Minimum Wage and paid holidays. This is harmful to the workers involved and enables dishonest employers to gain an unfair advantage over competitors who operate within the law.

There can be no doubt that the premises licence granted by the authority, offers the provision of licensable activities to be conducted at this venue and that employing illegal workers to facilitate this activity is to the employers financial benefit and to the detriment of law abiding competitors.

It is also obvious that illegal workers are prone to exploitation by their employers in that;

Illegal workers are unable to declare themselves to the authorities to claim any sort of financial support or benefits as this would render them liable to detention, and consequently they are more than likely poorly paid for the hours they are required to work and are not subject to the benefit of a minimum wage or restricted hours as prescribed in law.

They are not provided in most cases with anything other than the most basic of living accommodation nor are they afforded the benefit of the protections offered by UK employment legislation. Illegal Working in the United Kingdom and Essex is not merely a result of chance happening and should be considered in its true context.

Illegal workers are by nature transient and do not tend to remain in any location for any length of time in order to reduce their chances of detection. They do not put their name to any official documents and do not rent, lease or purchase property. They have no recourse to public funds and live beneath the radar to avoid detection by the Agencies.

In order to do this, there has to be a support network in place or they would all be encountered living in the streets and detected in that manner. The support network is provided in the main but not exclusively by Organised Crime Groups.

Essex Police have identified that illegal workers tend to be harboured and sheltered either in rudimentary accommodation on site or in property nearby, owned or operated by the Licence Holder or their associates.

These workers are predominantly paid below the minimum wage, if at all, as the employers know the worker cannot complain to any Authority. To this end, they are open to exploitation to the financial benefit of the employer.

Employment at licensed premises can represent the terminal point of organised human trafficking in some instances and in the exploitation of these workers. In other cases, it is the means of resort for persons whose legitimate right to remain in the UK has expired.

Responsible and caring employers do not employ illegal workers and take measures to ensure this. Large and well known branded restaurants' and takeaway operators (McDonalds and KFC for example) are not renowned for being identified as employing illegal workers for this very reason.

It is not credible that employers do not know or suspect that the persons they are employing are not entitled to work. These are not merely cases of mistakes or lack of knowledge but deliberate ignorance or actual knowledge of the fact.

At the very least, the employers should demonstrate responsibility and due diligence in determining that persons they employ are entitled to work under the auspices of a licence granted by the Licensing Authority.

Allowing this premise to continue to operate with the benefits of a premises licence will merely serve to perpetuate the criminal activity and human exploitation already apparent from the findings of these Immigration and Police visits, thereby undermining the licensing objective for the prevention of crime and disorder.

In this case 3 males were found to be working illegally at the premises. [REDACTED] admitted working in the kitchen and stated he was not paid and only ate rice. He had no passport or visa. [REDACTED] admitted he was an over stayer, he was not asked to provide right to work documents, he was paid to work and stated he was glad to be arrested and sent back to Bangladesh. [REDACTED] admitted that he had worked at the premises which he was paid cash in hand, he was not asked to provide right to work documents, he knew his student visa had expired. It has been established by Essex Police Licensing Officer Alan Beckett that the Designated Premises Supervisor and Premises Licence Holder, [REDACTED] is not even in the UK and is actually in Bangladesh. There is a clear lack of management control. (See Appendix D) Statement of Alan Beckett

It is the respectful submission as the representative of the Chief Constable of Essex that it is an **appropriate** step to revoke the premises licence in order to promote the licensing objectives and to act as a deterrent to others (See Appendix G) Desired outcomes.

Have you made an application for review relating to the premises before

Please tick ✓ yes ☐

If yes please state the date of that application

Day		Month		Year		
1	1	1	1	1	1	1

If you have made representations before relating to the premises please state what they were and when you made them

NONE

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate x
- I understand that if I do not comply with the above requirements my application will be rejected x

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature

Date 10 - 04 - 2017

Capacity for and on behalf of Chief Constable of Essex Police

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) STEPHEN SPARROW COUNTY LICENSING OFFICER WITHAM POLICE STATION NEWLAND STREET	
Post town WITHAM	Post Code CM8 2AS
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) Licensing.applications@essex.pnn.police.uk	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

RESTRICTED (when complete)**WITNESS STATEMENT**

(CJ Act 1967, s.9 MC Act 1980, ss.5A(3) (a) and 5B; MC Rules 1981, r.70)

URN

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Statement of: **JUSTIN DAVIS**.....Age if under 18: **OVER 18** . (If over 18 insert "over 18")Occupation: **CHIEF IMMIGRATION OFFICER**

This statement (consisting of 3 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature

Date: 23rd March 2017

20:10 hours J.D.

Tick if witness statement is visually recorded

☐

(supply witness details on rear)

On Thursday 23rd March 2017 I was on duty in company with Immigration Officers GEAR, GAMBRILL, CLOUTING, O'DOWD, DENHAM & NEWELL when we had cause to attend the premises of the restaurant known as "RML Indian Restaurant" located at 11 Station Road, Tiptree, Essex CO5 0AZ in order to execute a search warrant obtained under paragraph 17(2) of schedule 2 Immigration Act 1971 as amended.

On arrival at the premises at approximately 17:34 hours, I went in through the front door, to the right of which I noted a red sign which said "OPEN", on entry there was an IC4 male to my right at the bar service area. I followed IO GEAR, NEWELL & GAMBRILL through to the rear, where IO GAMBRILL and I entered through a door straight ahead of us into a kitchen area. To my right I saw an IC4 male, who IO GAMBRILL approached, to my left, standing between the food preparation counter and the cooking gas burners, a third IC4 male was standing; I approached him.

I was wearing body armour and clothing identifying me as member of IMMIGRATION ENFORCEMENT and I announced myself to the subject and showed my warrant card, stating "IMMIGRATION, CAN YOU TURN THE BURNERS OFF PLEASE". The man turned to switch the burner off whilst I moved a knife away from the preparation area and said to the man Q) "DO YOU HAVE A PASSPORT?", "NO". "ANY VISA?" "NO. CONSIDERATION" by this, I took him to mean that he had an outstanding application under consideration at the Home Office and by his demeanour and appearance I suspected that he was subject to immigration control and not entitled to work. At 17:35hrs I said "O.K. I'M DETAINING YOU AS A PERSON I BELIEVE LIABLE TO DETENTION". I then escorted him to a seat in the dining area and sat opposite him, at which pint he asked for his

Signature:

Signature Witnessed by:

RESTRICTED (when complete)Continuation of Statement of: **JUSTIN DAVIS**

Page 2

belongings in a Tesco bag in the kitchen, these were retrieved by IO GEAR. The male then stated "I REPORT TO LUTON POLICE STATION". At this point, IO NEWELL approached and having confirmed that the subject was detained under the Immigration Act 1971, proceeded to conduct an electronic fingerprint scan of his index fingers in order to identify him. This quickly returned a result to show that he was known as [REDACTED] a Bangladeshi national. I showed the unit to him and he looked at the screen and confirmed that it was him. I then asked [REDACTED] a series of questions which although he understood limited English, he answered nervously and I recorded in my pocket notebook.

Q) WHAT ARE YOU DOING HERE?

A) WORKING IN KITCHEN

Q) BEING PAID?

A) NO

Q) WHEN DID YOU COME HERE?

A) LAST NIGHT

Q) DO YOU COME HERE TO WORK OFTEN?

A) NO. MY FRIEND JUST ASKED. BENGALI COMMUNITY, JUST EAT RICE.

Q) WHAT'S YOUR ADDRESS?

A) [REDACTED]

Q) DO YOU HAVE A PASSPORT?

A) NO PASSPORT

Q) WHO DO YOU LIVE WITH?

A) MY FRIENDS AND BROTHER IN LAW

Q) DO YOU HAVE FAMILY IN THE UK?

A) UNCLE

Q) DO YOU HAVE ANY MEDICAL PROBLEMS?

A) NO

Q) DO YOU TAKE MEDICINES?

Signatur
2004/05(1)

..... Signature Witnessed by:

RESTRICTED (when complete)Continuation of Statement of: **JUSTIN DAVIS**

Page 3

A) NOT FROM DR. NO.

Q) DO YOU HAVE ANY INJURIES?

A) MENTAL PROBLEM, MY FATHER IS DEAD, I HAVE NO FAMILY IN BANGLADESH. ASYLUM.

Q) WHERE DID YOU STAY LAST NIGHT?

A) He didn't reply but pointed in the general direction of down the road and I was aware of the fact that the staff accommodation was located along the road and the male who was seated next to him, who was being questioned by IO GAMBRILL, interjected and said [REDACTED]

At 17:50hrs IO NEWELL advised that the subject was known on Home Office records and had an outstanding appeal hearing, he was on temporary release conditions which prohibited employment and he was supposed to be living in [REDACTED]

I then escorted [REDACTED] to the awaiting van and along with two other males who had been detained, took him to the stated home address, [REDACTED]. In due course I accompanied him into the flat where he packed a small suitcase and then took him to a waiting vehicle where IO GEAER, GAMBRILL and I then escorted him to Kelvedon railway station so that he could return to [REDACTED] having shown me his return ticket.

I produce a certified copy of my pocket book pages 19 to 23 as my exhibit JDA/1

Signature: Signature Witnessed by:
2004/05(1)

~~① Given by [unclear] for~~
~~following CV to [unclear]~~
~~the all [unclear] only gives part~~
~~of [unclear] [unclear] of~~
~~other [unclear] [unclear] of~~
~~accuracy [unclear] [unclear]~~
~~[unclear]~~
~~Stop @ station & "SPAR"~~
~~& BP.~~
~~1644 Arrive. [unclear] [unclear]~~
~~1644 [unclear] [unclear] [unclear]~~
~~1630 @ Telco. Malden. Raps Debrief~~
~~1705 brief by DEN. Second job.~~
~~GSD team as before.~~
~~TS31EV/1090~~
~~RMI Indian Restaurant~~
~~11 Station Rd Treehouse Cos @ AZ~~
 (W) - 17(2), 21/03.
 AI w/GAM
 (1) [REDACTED]

19

E Deceptive Ver	
E Deceptive Doc	
E Entry Without	
Entry or Breach	
Fail To Comply T	
OS	
WIB	
CIB	
Harbouring	
Facilitation	
Obstruction	
Liable to be det	
Under Para 16 o	

Certified to be a true Copy of my pocket
 note book pages 19-23 inclusive, which
 I produce as my exhibit JDA/1,
 consisting of 3 A4 pages.

DAVIS
 22⁰³/2017 20:12 hour.

Allegedly working & living
illegally. Agat 20's Asian
Male. Alleged ops from 2009.
1734 Enter through front door
"OPEN" Sign. 1x IC4 @ bar.
1x IC1 customer. Into kitchen.
2x IC4 both in Scruff. 1x Male
on left @ work in kitchen.
Turn - I.D & show U.C &
ask if he has ppt? No
Any other? No.
No Consideration. (Para 16)
1735 O.K. I'm detaining you as a
person I believe liable to detain.
1740 Out to restaurant. I.D's Telco
bag in kitchen. Galk recovered.
Male stated "I report to
Police Station".
RapID by Newell.
Md Sahin KHAN 05.05.1984
Confirmed - photo.

BGD WMD/4898574

- Q) What do here?
A) Working in kitchen
Q) Being paid?
A) No
Q) When come here?
A) Last night
Q) Come here often?
A) No
Q) My friend just asked?
Bengali Community just eat
rice.
Q) What's your address?
A) [REDACTED]
Q) Pot?
A) No ppt.
Q) Who live with?
A) Friends / brother in law
Q) Family in U.K?
A) Uncle.

Q) Medical problems? 22

A) No

Q) Take medicine?

A) Not from Dr. No.

Q) Any injuries

A) Mental problem. My father is dead. No family in BGD. Asylum seek.

Q) Where stay last night

[REDACTED] (As provided by other DP with 10 GAMBRILL)

Subject with control by crawling on hand that hit wall down the road. Becam. addresses for staff it down the road.

1750 Newell advised that DP [REDACTED] had no permission to work but if not ALE & if repairing so not detachable.

1755 At CEO re DP Male @ bar.

[REDACTED] 01011971 BGD

o/s since 30042016 Not served. Auth serve. Debn & Search under ISA 1A1971 of [REDACTED].

1800 Out to Van with DP.

1805 Into address w/ GAT & Sweep.

1807 back to van.

1810 back into flat w/ DP.

Collect Cales, broilers & cont. Cales to be packed.

1813 DP advised he no longer under debn and can call his brother to collect him but must not go back to restaurants.

1820 Out of flat w/ DP who requests lift to station @ Keshedon.

Out to AVA w/ GAT & GAM.

1836 @ Keshedon rail stn. DP dropped off.

WITNESS STATEMENT

Criminal Procedure Rules, r 27.2: Criminal Justice Act 1967, s.9: Magistrates' Court Act 1980, s.5B

Statement of Robert Andrew GAMBRILL

URN:

Age if under 18 Over 18

(if over 18 insert 'over 18') Occupation: Immigration Officer

This statement (consisting of: 1..... pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature

Date: THURSDAY 23RD MARCH 2017

Tick if witness

1



(supply witness details on rear)

I am an Immigration Officer currently based at the ICE EAST OF ENGLAND SUFFOLK & NORTH EAST ESSEX, CUSTOM HOUSE, VIEWPOINT ROAD, FELIXSTOWE, SUFFOLK, IP11 3RF. Whilst on duty on Thursday the 23rd of March 2017 at 17:05 hours, I attended a briefing held by Officer in Charge IO James DENHAM. An enforcement visit was to be carried out by execution of a paragraph 17(2) Schedule 2 warrant at RML INDIAN RESTAURANT, TIPTREE, ESSEX, CO5 0AZ following an allegation of illegal working. I was allocated the role of an arresting officer with CIO Justin DAVIS acting as my cover. At approximately 17:40 hours, I arrived at the target address and entered via the customer entrance and headed straight to the kitchen where I encountered two persons preparing food. I displayed my Home Office identification and explained that I was there to investigate reports of illegal working. I directed one of the males to a designated area within the restaurant as chosen by IO DENHAM. I began my investigation by speaking with the male. "WHAT IS YOUR NAME?" I said, [REDACTED] he said. "WHAT IS YOUR DATE OF BIRTH AND NATIONALITY?" I asked, [REDACTED] he replied. It was evident that [REDACTED] understanding of English was good enough to continue. "WHAT IS YOUR STATUS IN THE UNITED KINGDOM?" I asked, "OVERSTAYER, I'AM HAPPY YOU ARE HERE I WANT TO GO BACK TO BANGLADESH AS SOON AS POSSIBLE, TAKE ME" he replied. "WHAT IS YOUR HOME ADDRESS?" I asked, [REDACTED] he replied. I contacted CIO Graham BOOTH via telephone to conduct a status check. Checks were conducted on Home Office and VISA systems which revealed [REDACTED] entered the United Kingdom on a student VISA valid until the 31st December 2012, however this was curtailed with No Right Of Appeal to expire on the 28th July 2012. [REDACTED] had failed to regularise his stay by submitting an application for leave to remain and also failed to leave the United Kingdom. From this information and the admission from [REDACTED] I said "I AM AN IMMIGRATION OFFICER. I AM ARRESTING YOU ON SUSPICION THAT YOU ARE A PERSON LIABLE TO IMMIGRATION DETENTION. THIS IS BECAUSE YOU HAVE OVERSTAYED BEYOND THE TIME YOU WERE GRANTED IN THE UNITED KINGDOM. THIS IS NOT A CRIMINAL OFFENCE. DO YOU UNDERSTAND?" to which [REDACTED] replied "YES". The arrest was made under 17(1) of Schedule 2 of The Immigration Act 1971 as amended for the offence of overstaying under section 24(1)(b)(i) of The Immigration Act 1971 as amended. "HOW LONG HAVE YOU WORKED HERE?" I asked, "ONE YEAR" he replied. "WHO GAVE YOU THE JOB?" I asked, "THE BOSS-HE NOW LIVES IN BANGLADESH" he replied. "DID THE BOSS ASK YOU FOR DOCUMENTS TO PROVE YOU HAD THE RIGHT TO WORK IN THE UK?" I asked, "NO" he replied. "HOW MUCH ARE YOU PAID PER WEEK?" I asked, "£250 PER WEEK INTO MY BANK ACCOUNT BUT SOMETIMES ITS CASH IN HAND" he replied. [REDACTED] stated that he was single with no children and no family in the United Kingdom. [REDACTED] said that he didn't suffer from any illness or injury and was not taking any medication. [REDACTED] said that he wanted to return to Bangladesh as soon as possible. At 17:50 hours, I referred the case to CIO Graham BOOTH who authorised service of papers and detention of the subject. CIO BOOTH also authorised a 25A search of [REDACTED] home address of [REDACTED] to locate his valid passport which he stated was there. At 18:10 hours, [REDACTED] valid until 20th May 2020 was discovered and retained by myself. I assigned [REDACTED] to control of IO Edward O'DOWD-JAMES and IO Rebecca NEWELL to convey to Chelmsford Police Station to place into custody. [REDACTED] details were added to the referral for a civil penalty completed by IO DENHAM. I have completed this statement at my home station in FELIXSTOWE on Thursday the 23rd of March 2017 at 22:30 hours referring to notes I made in my pocket notebook numbered IE004470 on pages 37-41 on scene and my recollection of events.

Signature:

Signature witnessed by:

NA

2. GAMBRILL
TS3ICVY1090
23/03/2017

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1420 Thursday 23rd March 2017

Custom House Felixstowe

Officers present: —

C3 RG - R. GAMBRILL - ED19 —

A2 RN - R. NEWELL - ED18 —

A1 EOT - E. O'DOWD JAMES - ED20 —

OIC JNE - J. DENHAM - ED21 —

C2 EC - E. CLOUTING - ED22 —

A3 JDA - J. DAVIS - ED07 —

~~TS3ICVY1072, CIM6-MGEAR~~

GOLD - M. LEWIS —

SILVER - G. BOOTH —

~~• Latchingdon Service~~

~~Station, 14 The Street~~

~~Latchingdon, Maldon~~

~~Essex, CM3 9JP.~~

~~• 17(2) warrant to enter~~

~~• Arjan SR1, 28051994~~

~~• no trace on any~~

~~system visit to~~

~~establish navigation~~

~~status.~~

~~• will be positioned at~~

~~the front keeping~~

~~customers from taking~~

~~more fuel.~~

~~16:01 Arrived~~

~~16:11 Stand down left~~

~~premises~~

17:05 Brief for second visit.

Tesco Maldon.

• TS3ICVY1090 —

• RML Indian restaurant

11 Station Rd, Tiptree

CO5 0AZ —

• 17(2) warrant to enter

• I will be AI with —

JDA as my cover —

• ~~[REDACTED]~~

alleged to be in
20's overstayed
VISA - visit to confirm
status. Previous 4
arrest on premises.

Q Name?

A [REDACTED]

Q D.O.B.

A [REDACTED]

Q Nationality?

A BGD

Q Address

A [REDACTED]

Q Status

A I'm an overstayer

Q Admin arrest, understand

A Yes

Q How long working
here

A 1 year

Q who gave you the
job?

A Boss in BGD

Q Did the boss ask
for documents for
right to work

A No

Q How much you paid
a week

A £250 per week in
bank account sometimes
cash in hand

Q Are you in relationship

A No

Q medication

A I don't need it but
take stuff for
gastric problems
nothing serious

A NO family in BGD-

Q Do you want to go -
to BGD

A Yes I want to go -
tomorrow

ppt at home address.
expires 2020.

17:48 Check with SILVER -
leave expired 2012 -
curtailed with NFOIA

17:50 BEO/5044560 created -
papers/detention/search
authorised by SILVER -
at 17:53 on PNB page 50.

18:10 Passport located - bags
packed - wants flight
to Dhaka.

EOJ and R.N convey -
to Chelmsford Police -
custody.

Return to office
to complete file and
return ^{RS} refer to DAK.

• Subject arrested? -

17/1) Sch 2

• Offence 24(1)(b)(i) Immigration
Act 1971 as amended

• Search of address: -

25A Sch 2

① R. Gambini 23/03/2017

(R)

WITNESS STATEMENT

Criminal Procedure Rules, r 27.2: Criminal Justice Act 1967, s.9: Magistrates' Court Act 1980, s.5B

Statement of Emma Grace Clouting URN:

Age if under 18 Over 18 (if over 18 insert 'over 18') Occupation: Assistant Immigration Officer (AIO)

This statement (consisting of: 2..... pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature:

Thursday 23 March 2017

Date:

Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

On THURSDAY 23RD MARCH 2017, whilst in full uniform and personal protective equipment I attended, along with colleagues from FELIXSTOWE, RML INDIAN RESTAURANT, 11 STATION ROAD, TIPTREE, CO5 0AZ. IO J. DENHAM 15115 was the Officer in Charge (OIC) of this visit. A Schedule 2 17(2) Warrant was obtained at South East Essex Court and would assist in our entry to the premises.

At 17:35hrs, I entered the front of the premises with IO GEAR, IO DENHAM, IO NEWELL, IO DAVIS AND IO GAMBRILL. The main restaurant was empty of customers and staff apart from one male who was behind the bar situated to the right hand side as you entered the premises front doors. This male was wearing a waiter type outfit which consisted of black trousers and shoes, a white shirt and a black tie. All officers made their way through to the kitchen and I remained within the main restaurant with IO DENHAM. The OIC executed the warrant upon entry on the male behind the bar. I spoke with this male, introduced myself and showed my warrant card. I asked him for his name and she stated that his name was [REDACTED] and his date of birth was [REDACTED]. He stated that he was a national of Bangladesh. I asked him if he had a visa to be in the UK and he stated that he did. I asked him what visa this was and he stated that it was a student one. I asked him when this was valid to and he paused, hesitated as if he was thinking but was unable to give me an answer. I asked him if it was still valid and he said 'no.' I confirmed with him that he was telling me that his student visa has expired and he said 'yes.'

At 17:37hrs I arrested [REDACTED] under Paragraph 17(1) Schedule 2 as a person liable to be detained. I explained to him that based on the information he had just given me and his admission that he no longer has leave in the UK that he was under arrest. I asked him if he understood this and the reasons for it and he stated that he did. An interpreter was not used throughout my encounter with [REDACTED] as he spoke good English and informed me that he could understand me.

I conducted checks on home office systems and these confirmed that [REDACTED] student visa expired on

Signature:

Signature witnessed by: N/A

Continuation of Statement of Emma Clouting

30/04/2016 and he has made no further applications since the expiry of this leave.

I then asked [REDACTED] series of questions about his employment at RML Indian Restaurant.

Q. WHEN DID YOU START WOKING HERE?

A. LAST WEEK.

Q. WHEN YOU STARTED WORKING DID YOU SHOW THE MANAGER ANYTHING TO SHOW THAT YOU HAVE THE RIGHT TO WORK?

A. NO

Q. HOW OFTEN DO YOU WORK?

A. THURSDAY AND FRIDAY

Q. HOW MUCH DO YOU GET PAID?

A. £100 CASH IN HAND.

I then asked [REDACTED] If he had any medical conditions or anthing he was taking medication for. He stated that he was fit and healthy and not taking any medication. He stated that he has a brother that lives in [REDACTED] and a sister who lives in [REDACTED]. He stated that he is single.

The service of papers on the subject as an overstayer and the initial detention of the subject was authorised by CIO J. DAVIS based on my referral of the above information.

All officers left the premises at 17:59hrs. I escorted [REDACTED] the awaiting cell van.

A 25A Schedule 2 house search was completed at [REDACTED] to search for the subjects passport. No passport was located.

I then passed [REDACTED] to IO NEWELL so she could book him into custody. He was escorted by IO O'DOWD and IO NEWELL to Chelmsford Police Station.

This statement was compiled with reference to my personal issued note book number IE004474, pages 69, 70, 71 & 72.

Signature:

Signature witnessed by:

N/A

TS31CVY1090
10 E. CLOUTING 15114

① [REDACTED] 20/05/1994

Nationality [REDACTED]

No Trace

License officer attended

with [REDACTED]

Reviewed, [REDACTED]

Recommendation [REDACTED]

Country Road [REDACTED]

checked by [REDACTED]

for [REDACTED]

Spoke shop attached to patrol

station

② No Trace on HQ systems

Arrived at premises

premises [REDACTED]

called in by [REDACTED]

Reviewed cover for [REDACTED]

He also spoke to [REDACTED]

main [REDACTED]

who is [REDACTED]

All officers left premises

Briefing held at Maldon

tesco's w/ same officers

as before, same DIC and

C.I structure

TS31CVY1090

RML Indian Restaurant, 11

Station Road, Tiptree CO5 0A2

17(2) Sch 2 Warrant

I was assigned H2 w/ NEW

as cover

① [REDACTED] also

known [REDACTED]

[REDACTED]

Alleged he works at RML

No Trace on HQ systems

4x males encountered and

arrested on previous visit in

2008.

17:35 Arrived at premises male

behind counter/bar

[REDACTED] Student visa —
 17:37 stated student visa has —
 expired. Arrested under Para
 17(1) Sch 7. Admin caution given
 sub states he understands. —
 Student EC until 30/04/2016
 To study at college. —
 Checks w/ 10 CLARK —
 FEL/5044559. —
 Valid ppt until Aug 2017. —
 Q When did you start working?
 A Last week. —
 Q When you started working
 did you show anything to
 show you have RTN —
 A No. —
 Q How often do you work? —
 A Thursday + Friday —
 Q How much do you get —

paid? —
 A £100 cash in hand —
 Q What is manager called?
 I don't know. —
 No medical conditions. —
 Sister and brother in UK —
 Brother in [REDACTED] Sister —
 [REDACTED]
 Single male.
 Male signed to state that
 all Q's + A's are correct. —
 [REDACTED]

17:55 Service of papers, initial —
 detention and 25A search —
 authorised by CIO J. DAVIS. —
 17:59 All officers leave premises w/
 3 detained persons —
 H/A search —
 [REDACTED]

18:08 Attended H/A and began —

search. No passport retrieved.
18:27 All officers leave premises. —
Pass custody of subject to
10 NEVELL to transfer to custody.
18:33 Return to office. —
10 E. CLOUTING 15114

APPENDIX D

RESTRICTED (when complete)

MG11 (Interactive)

Page 1 of 2

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

--	--	--	--

Statement of: Alan BECKETT

Age if under 18: over 18

(if over 18 insert 'over 18')

Occupation: Divisional Licensing Officer 75984

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it an ... false, or do not believe to be true.

Signature:.....

..... (witness) Date: 10/04/2017

About 17.45 hours on Wednesday 6th April 2017 as a result of information received from Mr Steve SPARROW (County Licensing Officer) I attended RML Indian Cuisine situated at 11 Station Road Tiptree CO5 0AZ. The Essex Police Licensing system (BACCHUS) has this premises recorded as the Balti Raj. The visit being prompted by a visit by Her Majesty's Immigration Service to the premises on 23/03/2017.

On my arrival I met a male person who I presumed was in charge of front of house, introduced myself and explained that I would like to see what "right to work checks" were carried out. This male stated he was unable to help me but did give me a mobile number [REDACTED] and said that was the boss.

Prior to me leaving the venue I left my contact details in the form of a business card which contains my direct phone number and my e mail address.

About 18.30 hours the same day I rang the mobile number I had been given from my own mobile and spoke to a male who stated to me that he was [REDACTED] that he was the son of the Designated Premises Supervisor. He went on to explain that his father was in Bangladesh with some health issues.

I explained that I would like to see the right to work documentation held by the restaurant on behalf of its staff.

[REDACTED] stated that he would be in contact with his father and then contact me back by Friday (07/04/2017) at the latest.

I dictated my direct phone number to [REDACTED] (he also has my mobile number)

Signature:

Signature witnessed by:

2013

CTED (when complete)

RESTRICTED (when complete)

MG11 (Interactive)

Page 2 of 2

About 07.15 hours on Monday 10th April 2017 I was at my desk in Colchester Police Station when I checked my e mails and found that I did not have any from [REDACTED] and nor did I have any voicemail messages. I also checked my mobile phone and found no evidence of any missed calls or left voicemails.

Statement made as original notes, commenced Friday 7th April 2017 approx. 10:05 hours and finished 07:20 hours Monday 10th April 2017

Signature:

Signature witnessed by:

2010/11

RESTRICTED (when complete)

Appendix E

Neutral Citation Number: [2016] EWHC 1265 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

CO/345/2016

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 14 April 2016

B e f o r e:

MR JUSTICE JAY

Between:

EAST LINDSEY DISTRICT COUNCIL_

Appellant

v

ABU HANIF
(TRADING AS ZARA'S RESTAURANT AND TAKEAWAY)_

Respondent

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited trading as DTI
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr P Kolvin QC & Mr D Dadds (instructed by David Dadds LLP) appeared on behalf of the
Appellant

The **Respondent** did not appear and was not represented

J U D G M E N T
(Approved)

Crown copyright©

1. MR JUSTICE JAY: This is an appeal by way of case stated from the decision of the Lincoln Magistrates' Court, District Judge Veits, given on 23 June 2015, whereby he allowed an appeal from the revocation of a premises licence by the licensing authority.
2. The appellant, the East Lindsey District Council, is the licensing authority. The Magistrates' Court in the usual way is not a party to these proceedings. The respondent, Mr Abu Hanif, trading as Zara's Restaurant and Takeaway, is the licence holder. He through a licensing consultant has submitted correspondence making various limited points, but indicating that he would not be taking any part in these proceedings.
3. The premises in question are Zara's Restaurant and Takeaway situated in North Summercoates on the Lincolnshire coast. They are licensed to sell alcohol ancillary to the supply of food. The restaurant is owned and managed by the licensee, Mr Hanif. On 29 April 2014, the premises were the subject of a joint visit by the police and immigration officers, and it was discovered that Mr Miah was working in the kitchen as a chef. It was common ground that Mr Miah had no current entitlement to remain in the UK, let alone to work. I was told that he arrived here illegally some years ago. Furthermore, it was also accepted by the respondent that he (i) employed Mr Miah without paperwork showing a right to work in the United Kingdom; (ii) paid Mr Miah cash in hand; (iii) paid Mr Miah less than the minimum wage; (iv) did not keep or maintain PAYE records; (v) purported to deduct tax from Mr Miah's salary; and (vi) did not account to HMRC for the tax deducted.
4. The police then applied for a review of the respondent's licence under section 51 of the Licensing Act 2003 and the matter came before the appellant's subcommittee on 30 June 2014. The subcommittee decided to revoke the respondent's licence. Its reasons were as follows:
 5. "The subcommittee were satisfied that Mr Hanif did not take the appropriate checks of staff members having knowledge that there were problems previously at the other premises with overstayers, and that he continued to allow staff to work at Zara's restaurant without making appropriate checks.
 6. The subcommittee were satisfied that Mr Hanif had not undertaken the relevant checks to ensure the employee concerned was eligible to work in the United Kingdom. Instead of not allowing employees to work if they had not provided the correct documentation he allowed them to work and paid cash in hand. With all this in mind the subcommittee were satisfied that Mr Hanif had knowingly employed person/s unlawfully in the United Kingdom.

7. The subcommittee considered the evidence by Mr Kheng on behalf of Mr Hanif and the Home Office section 182 Guidance to Licensing Authorities. The subcommittee were of the view that the premises licence should be revoked and that revocation was an appropriate step with a view to promoting the crime prevention licensing objective."
8. The respondent then appealed to the Magistrates' Court. There was a hearing on 27 March 2015, and on 23 June the district judge decided to allow the respondent's appeal. On 1 September 2015, the district judge determined the issue of costs and on 7 January 2016 he stated the case. The appeal to the district judge was de novo, but he accepted that he could only allow the appeal if the subcommittee's decision was "wrong", the burden being on the appellant before him to establish that.
9. Looking now at the stated case, the district judge noted that the respondent had received a civil penalty for employing an illegal worker under section 15 of the Immigration, Asylum and Nationality Act 2006. An immigration officer gave evidence to the effect that although by virtue of section 21 a criminal offence was committed, such proceedings were rarely brought. The district judge also noted that the police and the Council's licensing officer were no longer saying that the respondent was a serial offender, but a redacted report which was placed before the subcommittee still gave the impression that he "was in a much worse position than he actually was". As for the failure to pay the minimum wage, the district judge said this:
 - A. "In his evidence before me Mr Hanif accepted that he had not paid the minimum wage and this in itself can be a criminal offence. I found that this was not the main basis of the subcommittee's decision however and again there was no evidence that he had been reported for that alleged offence. It would appear from their reasons that the subcommittee used the evidence of paying cash in hand as justification for the finding that he knowingly employed Mr Miah. The prosecuting authority however appear to have taken a different view in offering the civil penalty."
10. The district judge's core reasoning was that no crime had been committed. As he put it:
 - A. "It appeared to me that no crime had been committed as a result of the visit to the premises in April of last year. A civil penalty had been imposed rather than

prosecution for the section 21 offence and no other crime had been reported in relation to not paying the minimum wage."

11. In the district judge's view, the crime prevention objective was not engaged.
12. The district judge also criticised the subcommittee for adopting an inconsistent approach because in other similar cases only warnings were issued. Finally, he considered that the subcommittee may have been influenced by comments in the police report, leading them to believe that they were dealing with a serial offender.
13. At the conclusion of the stated case, the district judge posed two questions for my determination. I will address these at the end of my judgment.
14. I was taken by Mr Philip Kolvin QC to various provisions of the Licensing Act 2003 as amended. Under section 4(1) and (2) a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives, which include "the prevention of crime and disorder". The provisions dealing with the review application brought by the police are contained in sections 51 and 52. Under section 52(3), the licensing authority (and on appeal the Magistrates' Court):
 - A. "... must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives."
15. The epithet "appropriate" was introduced by amendment in 2011. Previously the test had been stricter. In my judgment, it imports by necessary implication the concepts of proportionality and relevance.
16. Mr Kolvin submitted that the district judge erred in a number of respects. First, he wrongly held that, given that criminal proceedings were never brought, the crime prevention objective (see section 4(2)) was not engaged. The statute is concerned with the prevention rather than the fact of crime. Secondly, and in any event, the interested party had committed criminal offences in relation to tax evasion, the employment of an illegal worker, and employing an individual at remuneration below the minimum wage. As for the employment of an illegal worker, Mr Kolvin accepted that this requires knowledge on the part of the employer, and he also accepted that it is not altogether clear whether the district judge found as a fact that the respondent possessed the requisite knowledge. However, the core question is the promotion of the licensing objectives, not

the fact of anterior criminal activity, and in this regard a deterrence approach is appropriate.

17. Thirdly, Mr Kolvin submitted that there was no evidence of an inconsistent approach by the subcommittee in giving warnings in some cases because all cases turn on their own facts. Finally, Mr Kolvin submitted that there was no basis for the district judge's conclusion that the subcommittee may have been influenced by a suggestion that the respondent was a serial offender.
18. I accept Mr Kolvin's submissions. In my view the district judge clearly erred. 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. The district judge's erroneous analysis of the law precluded any proper consideration of that issue. In any event, I agree with Mr Kolvin that criminal convictions are not required.
19. To the extent that the analysis must be retrospective, the issue is whether, in the opinion of the relevant court seized of the appeal, criminal offences have been committed. In the instant case they clearly had been: in relation to tax evasion (see the common law offence of cheating the Revenue and the offence of fraudulent evasion of tax contrary to section 106A of the Taxes and Management Act 1970); and the employment of Mr Miah at remuneration below the minimum wage (see section 31 of the National Minimum Wage Act 1998). Moreover, given the evidence that Mr Miah never provided the relevant paperwork, notwithstanding apparent requests, the obvious inference to be drawn is that the respondent well knew that he could not, and that no tax code and National Insurance number had been issued. The corollary inference in my judgment is that the respondent well knew that Mr Miah could not provide the relevant paperwork because he was here illegally.
20. I also accept Mr Kolvin's submission that each case must turn on its own facts. As a matter of law, unless it could be said that some sort of estoppel or related abuse of process arose in the light of warnings given in other cases, the alleged inconsistent approach led nowhere. In my judgment, it could not be so said.
21. Finally, I agree with Mr Kolvin that there is nothing in the point that the subcommittee could have been misled about the interested party being a serial offender. The point that

the subcommittee was making was the fact that the respondent had worked at premises where illegal workers were also employed meant that he should have been vigilant to the issue.

22. Thus the answer to the district judge's two questions are as follows:

A. Q. "Was I correct to conclude that the crime prevention objective was not engaged as no crimes had been proceeded with, the appellant only receiving a civil penalty?"

B. No.

C. Q. "Was I correct in concluding that the respondent had been inconsistent in similar decisions in not revoking the licence [sic]?"

D. No.

23. Having identified errors of law in the district judge's decision, the next issue which arises is whether I should remit this case for determination in the light of my ruling or whether I have sufficient material to decide the issue for myself. I should only adopt the latter course if satisfied that the issue is so obvious that no useful purpose would be served by remission. I am so satisfied. 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. Another way of putting the matter is that the district judge had no proper basis for overturning the subcommittee's assessment of the merits.

24. It follows in my judgment that the only conclusion open to the district judge in the present case was to uphold the revocation of the respondent's licence. This appeal must be allowed and the respondent's licence must be revoked.

25. MR KOLVIN: My Lord, I'm very grateful. Can I deal with the question of costs, both here and below.
26. MR JUSTICE JAY: Yes.
27. MR KOLVIN: Should I start with here.
28. MR JUSTICE JAY: Yes.
29. MR KOLVIN: My Lord, we would ask for the costs before this court. I just want to pray in aid four very brief points. The first is the result. The second is that the district judge's approach was expressly urged on him by the respondent's legal team. Thirdly, that the respondent was expressly urged to concede this appeal to stop costs running, he was given that opportunity at pages 42 and 43 of the bundle. Fourthly, perhaps a little bit tugging at the heart strings, but there's no reason why the Council Tax payers of East Lindsey should bear the cost of establishing what has been established in this court. So we would ask for the costs up here.
30. There is a schedule and the schedule has been served upon Mr Hanif by letter dated 16 March of 2016. I don't know whether the schedule has found its way to my Lord, if not I can hand up a copy.
31. MR JUSTICE JAY: It has.
32. MR KOLVIN: It has. My Lord, I can see that VAT has been added on. It doesn't need to be because of course the Council can retrieve the VAT, so my application is for £16,185. I know there's not a lot of explanation around my fee, but it was taken on a single fee for all work involved in relation to the case stated: advice, the skeleton argument and attendance today, so it's one single --
33. MR JUSTICE JAY: What about your junior's fees?
34. MR KOLVIN: My learned junior is also my instructing solicitor, he wears two hats.
35. MR JUSTICE JAY: I see.
36. MR KOLVIN: He has his own firm which is Dadds LLP, and he is also a member of the bar, so although he has appeared as my junior, his fee is wrapped up in the solicitors' fees set out in the schedule.
37. MR JUSTICE JAY: Okay. What about the costs below?
38. MR KOLVIN: My Lord, I'm just trying to ascertain what the position is.

39. MR JUSTICE JAY: I thought there was no order for costs below.

40. MR KOLVIN: There was no order for costs below, that was on the basis that the appeal had been allowed. The situation in relation to costs of licensing appeals are set out in section 181 of the Act, which enables the court to make such order as it thinks fit. Normally when appeals are dismissed there is no real question about it, costs follow the event. When appeals are allowed, some further considerations come into play, which are expressed by the Master of the Rolls in a case which you may have come across called City of Bradford v Booth, which is the case where the Master of the Rolls said that local authorities shouldn't be put off from trying to make honest and reasonable decisions in the public interest. And so one has to take account additionally of the means of the parties and their conduct in relation to the dispute, but in this case of course the appeal has now been dismissed, and so we would say that the ordinary rule is that the costs should follow the event, the appeal having failed. I'm just trying to ascertain whether schedules were ever served below, in the light of the way the case came out. (Pause)

41. My Lord, I'm really sorry that we don't actually have the schedule here, apparently it was £15,000. If you were minded to order costs below the options are either I suppose to wait and we will have the thing emailed up, or to say, "Look, it was below, it's a little bit more complex, they should be assessed if not agreed."

42. MR JUSTICE JAY: This is going to wipe him out, isn't it?

43. MR KOLVIN: Well he has already said, I have to say, I'm just telling you frankly what I've been told this morning, that when the bundles and the schedules were served on him, he had clearly read them, but he said, "If you win in the High Court and get costs against me, then I'm just going to declare myself bankrupt." So there may well be a bit of football(?) about this, but nonetheless it was his appeal, his team raised a point which in retrospect was very surprising, and caused an awful lot of costs to be incurred.

44. MR JUSTICE JAY: Yes. Well I am going to assess the costs here in the round figure of £15,000.

45. MR KOLVIN: Thank you.

46. MR JUSTICE JAY: If there was a schedule, which you tell me there was, below, it is proportionate that I assess those costs rather than put you to the trouble of a detailed assessment, so if you could have that emailed to my clerk in due course, I will assess the costs below.

47. MR KOLVIN: Thank you, my Lord.

48. MR JUSTICE JAY: On the basis of that schedule.

49. MR KOLVIN: We're not trying to be too ambitious, but we would like to see what we can --
50. MR JUSTICE JAY: I'll take a broad brush approach to that.
51. MR KOLVIN: Thank you.
52. My Lord, the only other thing to mention is that this isn't the only case which is kicking around the east of England where licensing subcommittees are being urged to take no action because there has been no prosecution in these immigration cases. Although I appreciate that this is hardly stellar law making, it's an application of pretty well established legal principles to the facts, I'm asking whether my Lord would be minded to certify this so that we can adduce the authority in other cases, because it's a clear statement of the law that there doesn't need to have been a prosecution. So with the practice direction in mind, would my Lord be minded to --
53. MR JUSTICE JAY: Just remind me of the practice direction.
54. MR KOLVIN: Yes, can I hand it up?
55. MR JUSTICE JAY: Yes. (Handed)
56. MR KOLVIN: If Mr Hanif had come I wouldn't need to make the application. It's paragraph 6.1. The judgment has to clearly indicate that it purports to establish a new principle or extends the present law and that has to take the form of an express statement to that effect, and then 6.2 says what categories of judgment we're dealing with, which include applications attended by one party only.
57. So that's the situation we're in. In reality these judgments get around anyway, because we're dealing with administrative tribunals and not courts, but sometimes the point is taken, "Ah yes, but the court didn't certify".
58. MR JUSTICE JAY: But where's the new principle I've established?
59. MR KOLVIN: My Lord, what you have said clearly, which hasn't been said before, by dint of the fact that not many licensing cases reach the lofty heights of this building, is that there does not need to have been a prosecution in order for the crime to have --
60. MR JUSTICE JAY: Oh, I see. Well that's so obvious it almost goes without saying, that's why it hasn't been said before.
61. MR KOLVIN: My Lord, it was obvious to everyone except the district judge, the appellant and other licensees in the east of England.

62. MR JUSTICE JAY: Okay.

63. In terms of the logistics, if you want a copy of the judgment, don't you have to pay for it?

64. MR KOLVIN: We may have to, and we would be obviously very pleased to do so.

65. MR JUSTICE JAY: Because I'm not sure that all judgments are, in the Administrative Court, they're not all transcribed and published.

66. MR KOLVIN: That is correct, and I have no doubt that my client would be -- this isn't a matter about the costs of the judgment.

67. MR JUSTICE JAY: No, fortunately it doesn't cost that much. But I will give the certification. I have never been asked to do so before, I must confess.

68. MR KOLVIN: Yes.

69. MR JUSTICE JAY: Because these cases are referred to almost willy nilly, if they're available on Lawtel or wherever.

70. MR KOLVIN: Yes, they are.

71. MR JUSTICE JAY: Then they're just provided.

72. MR KOLVIN: They get into the textbooks and they --

73. MR JUSTICE JAY: No-one objects.

74. MR KOLVIN: Yes. It has happened once before, in relation to the meaning of the Court of Appeal judgment in Hope and Glory, and Lindblom J, as he then was, was asked repeatedly would he certify in relation to the meaning of Hope and Glory, which is an important test, and he was pretty engaged in the practice direction. But since then that judgment, there's always an argument in court about whether it can be cited or not. The difference between licensing and some other fields of law is that very few cases reach here, so when they do, the judgments of High Court judges are gold dust.

75. MR JUSTICE JAY: Yes, well I'm happy to make the certification.

76. MR KOLVIN: Thank you very much indeed.

77. MR JUSTICE JAY: We wouldn't want this point to be taken again successfully.

78. MR KOLVIN: No.

79. MR JUSTICE JAY: Now as a matter of courtesy, is the judgment, once available, sent to the district judge, or is it something that I should do informally?

80. MR KOLVIN: I don't know, my Lord, what the normal practice is. I don't think that I have previously been on a legal team which has sent judgments, but we're very happy to undertake to do so.

81. MR JUSTICE JAY: Yes, I think if you're going to get a copy, obviously you're going to send it to the respondent --

82. MR KOLVIN: Indeed.

83. MR JUSTICE JAY: -- so he can ingest it. I think you should send it to the district judge, just saying that the judge directed that out of courtesy he should see it.

84. MR KOLVIN: We're very happy to do that. Thank you very much indeed.

85. MR JUSTICE JAY: Thank you very much.

Appendix F

The Income Tax (Pay As You Earn) Regulations 2003, (SI 2003 No. 2682)

Regulations 8, 21 - deduction and repayment of tax under the appropriate code.

- Regulations 22, 23, 28, 29, 31 - calculation and making of deduction or repayment.
- Regulations 9, 46, 47, 48, 49, 58 - employee for whom code not known.
- Regulation 66 - deductions working sheet (DWS).
- Regulations 68, 69 - payment of tax monthly by employer.
- Regulations 70 - payment of tax quarterly by employer.
- Regulation 97 - retention of employer's records.

Social Security Contributions and Benefits Act 1992

- Section 3 and paragraph 2 of Schedule 1 - earnings and earnings periods.
- Section 6 - liability to pay Class 1 NICs.
- Sections 8 & 9 - calculation of primary and secondary Class 1 NICs.
- Paragraph 3 of Schedule 1 - method of paying Class 1 NICs.
- Paragraph 3B of Schedule 1 - transferring secondary NIC liability to an employee.
- Paragraph 6 of Schedule 1 - power to combine collection of NICs with income tax.
- Paragraph 7 & 7A of Schedule 1 - penalties in the case of returns.
- Paragraph 7B & 7BZA of Schedule 1 - collection of NICs otherwise than through the PAYE system.

Social Security (Contributions) Regulations 2001, (SI 2001 No 1004)

- Regulations 2 -31 - assessment of Class 1 NICs.
- Regulation 67 and Schedule 4 - makes provision for Class 1 NICs to be paid, accounted for and recovered in a like manner as PAYE.
- Paragraphs 6 & 7(13) of Schedule 4 - prepare and maintain a DWS.
- Paragraph 7 of Schedule 4 - calculation of Class 1 NICs deductions.
- Paragraph 10 of Schedule 4 - payment of NICs monthly by employer.
- Paragraph 11 of Schedule 4 - payment of NICs quarterly by employer.
- Paragraph 11A of Schedule 4 - payment of NICs in respect of retrospective earnings.
- Paragraph 22 of Schedule 4 - end of year returns.
- Regulation 26 of Schedule 4 - retention of employer's records.

Appendix G

DESIRED OUTCOMES:

The desired outcomes Essex Police are seeking are:

- The REVOCATION of the premises licence: OR
- Suspension of the premises licence for a period determined by the licensing committee

The Colchester Licensing Sub-committee may consider imposing conditions to the premises licence of Atremis.

Essex Police contention is that conditions are not suitable to be applied to premises licence in the case of the employment of illegal workers.

To assist the sub-committee I will use this example: The following conditions have been determined by a licensing sub-committee at a licensing review of a premise employing an illegal worker in Essex during 2016. Essex Police comments are in ***bold italics***

1. The Premises Licence holder will operate a full digital or paper HR management system where all relevant documents are stored for each individual member of staff. Relevant documents must include the Home Office Right to Work Checklist and other required documents.

This condition is a duplication of existing Immigration Legislation i.e. The Immigration, Asylum and Nationality Act 2006 which clearly states right to work checks must be carried out and recorded

2. The Premises Licence holder will work at the premises will work with an appropriate agency e.g. People Force International and carry out checks on the Home Office website to verify identification, visa and right to work documents

This is surely a natural responsibility of a Premises Licence holder in the promotion of the Crime and Disorder Licensing Objective. Guidance is freely available on the GOV.UK website and should be followed as a matter of course

3. No new member of staff will be able to work at any type premises (including any trial period) unless they have provided satisfactory proof of identification and right to work

This is a duplication of point 1 above, is not relevant and is a lawful requirement of the 2006 Act

4. All documents for members of staff will be retained for a period of 12 months post termination of employment and will be available on the premises at all times to police, immigration or licensing officers upon request

This condition contradicts Home Office Guidance May 2015 published in "An employer's guide to acceptable right to work documents" Page 5 Step 3 Retaining evidence: states that the copies of employees documents should be kept for a two year period after they have stopped working. Licensing conditions should not override government guidance and is an unnecessary duplication

Appendix H



Colchester Borough Council

Premises Licence

Granted under the Licensing Act 2003 s18

Colchester Borough Council
Licensing Team
PO Box 889
Town Hall
Colchester CO1 1FL

Premises licence number: 004785

PART 1 - PREMISES DETAILS

The Balti Raj
11A Station Road
Tiptree

Post town: Colchester

Post code: CO5 0AZ

Telephone number at premises: 01621 819819

Date Licence Granted: 3rd October 2005

Annual Fee Date: 2nd October 2009

Regulated Activities authorised by this licence:

Performance of Plays	
Film Exhibitions	
Indoor Sporting Events	
Boxing or Wrestling Entertainment	
Performance of Live Music	
Playing of Recorded Music	
Performance of Dance	
Other Music or Dance Entertainment (see Schedule)	
Facilities for Making Music	
Facilities for Dancing	
Other Facilities for Music & Dance	
Late Night Refreshment	
Sale by Retail of Alcohol	Licensed


The times the licence authorises the carrying out of licensable activities:		
a) The sale by retail of alcohol :-		
Monday	10.00 to 0.00	
Tuesday	10.00 to 0.00	
Wednesday	10.00 to 0.00	
Thursday	10.00 to 0.00	
Friday	10.00 to 0.00	
Saturday	10.00 to 0.00	
Sunday	12.00 to 23.30	
Seasonal Variations		
Non-Standard Times	From 10.00 New Year's Eve until 23.00 New Year's Day	
b) The provision of regulated entertainment and entertainment facilities: -		
	Performance of Plays	Exhibition of Films
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Seasonal Variations		
Non-Standard Times		
	Indoor Sporting Events	Boxing or Wrestling Entertainment
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Seasonal Variations		
Non-Standard Times		
	Performance of Live Music	Playing of Recorded Music
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Seasonal Variations		
Non-Standard Times		

	Performance of Dance	Other Music or Dance Entertainment
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Seasonal Variations		
Non-Standard Times		
	Facilities for Making Music	Facilities for Dancing
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Seasonal Variations		
Non-Standard Times		
	Other Facilities for Music & Dance	Late Night Refreshment
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Seasonal Variations		
Non-Standard Times		


The Opening Hours of the Premises	
Monday	10.00 to 0.30
Tuesday	10.00 to 0.30
Wednesday	10.00 to 0.30
Thursday	10.00 to 0.30
Friday	10.00 to 0.30
Saturday	10.00 to 0.30
Sunday	12.00 to 23.30
Seasonal Variations	
Non-Standard Times	

Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:

Alcohol may be served ON the premises

PART 2	
Name, (registered) address, telephone number and e-mail (where relevant) of holder(s) of premises licence	
Licence Holder 1	Licence Holder 2
Mr Mohibur Rahman 	Tel: E-mail:

Registered number of holder; for example, company number, charity number (where applicable):

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:
Mr Mohibur Rahman 
Tel:

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises the supply of alcohol:
05/00991 Chelmsford BC



Simon Harvey
Licensing Manager

23rd January 2009
Date of issue

Annex 1 – Mandatory Conditions

Alcohol

1. No sale/supply of alcohol shall be made when there is no Designated Premises Supervisor in respect of the Premises Licence.

2. No sale/supply of alcohol shall be made when the Designated Premises Supervisor does not hold a Personal Licence or when his/her Personal Licence is suspended.

3. Every sale/supply of alcohol under the Premises Licence shall be made, or authorised by a person who holds a Personal Licence.

Door Supervision

Where a premises licence includes a condition that at specified times one or more individuals must be present at the premises to carry out a security activity, they must be licensed by the Security Industry Authority

Annex 2 – Embedded Restrictions

Annex 3 – Conditions Carried Forward on Conversion

1. This licence is granted subject to the condition that intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.
2. Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals served in the licensed premises.

Annex 4 – Conditions Consistent with the Operating Schedule

Annex 5 – Conditions Attached after a Hearing by the Licensing Authority