

Division/Station : Reading/ West Berkshire Licensing Dept

From : PC 5787 Simon Wheeler

To : West Berkshire Licensing Authority

Ref : Miahs Pangbourne, 26 Reading Road, Pangbourne

Date : 14th October 2018

Tel.No. 101

Subject :

Objection

I PC 5787 Simon Wheeler on behalf of the Chief Officer of Thames Valley Police wish to formally object to the proposed application to transfer a Premises Licence from Jamshed Miah to Mouadjul Miah, relating to Miahs Pangbourne, 26 Reading Road, Pangbourne, RG8 7LY (Premises licence 01429) under Section 42(6) of the Licensing Act 2003.

(See Appendix TVP1)

It is believed that the exceptional circumstance of this case is such that the granting of this application for transfer would undermine the crime prevention objective.

This premises licence is currently under review and awaits a hearing date having been discovered in June 2018 to have been employing three illegal workers by Home Office immigration enforcement officers.

(See Appendix TVP2)

This is further compounded by a number of failures to comply with licensing legislation and breaches of licence conditions discovered in a consequent inspection undertaken by Thames Valley Police.

Thames Valley Police believe that this transfer is an attempt to circumvent the legal process (review proceeding and potential revocation of the licence). We state that due to the close personal relationship existing between the applicant Mr Mouadjul Miah (whom is the son of the current Premises Licence Holder), and Mr Jamshed Miah, who presided over the failings that led to the review of the licence That if this application to transfer the premises licence is allowed to take place that it will undermine the crime prevention objective.

The current Section 182 Secretary of States Guidance provides the following:

8.101 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises.

Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers.

Paragraph 8.101 is quite specific when it states that objections although rare should be based on an exceptional circumstance where the chief officer of police believes the transfer may undermine the crime prevention objective, and where there is evidence that the individual seeking to hold the licence is linked to persons involved in crime or employing illegal workers.

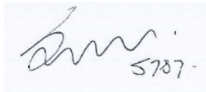
In this circumstance Mr Mouadjul Miah is directly linked to Mr Jamshed Miah, and Mr Jamshed Miah has been involved in employing illegal workers at three of his restaurants in Berkshire, which is also a criminal activity.

Thames Valley Police therefore strongly believe that on the balance of probabilities it is likely that the current applicant is applying for this licence transfer on behalf of the current premises licence holder, and that it is more than possible that he is applying for the role as purely a "figure head", with the objective of enabling a ruse to prevent sanction against the illegal activity carried out within the business.

In a recent recent appeal court judgement in June 2018 District Judge Julie Cooper at Camberwell Green Magistrates Court regarding Peckham Food & Wine v London Borough of Southwark upheld the decision of the London Borough of Southwark to revoke a convenience store's premises licence following allegations of illegal workers being employed.

The Council argued, in reliance on Griffiths LJ's observations in R v Knightsbridge Crown Court ex p International Sporting Club (London) Ltd [1982] 1 QB 304, **that it risks bringing the licensing regime into disrepute if reckless licence holders can avoid the consequences of their behaviour by simply transferring the licence into someone else's name or selling the business when they got caught and so, effectively, get away with it. The deterrent effect of licensing enforcement would be lost and licensing authorities are right to take a robust stance against such transfers, particularly those which appeared to be a ruse.**
(See Appendix TVP3)

In conclusion Thames Valley Police submit that this application in relation to Mouadjul Miah constitutes exceptional circumstances, and therefore invite the Sub-Committee to refuse this application as it may specifically undermine the licensing objective for the prevention of crime and disorder, and is unlikely to promote the licensing objectives as a whole.



PC 5787 Simon Wheeler

Appendices

APPENDIX TVP1 – Licensing Act 2003 Section 42

APPENDIX TVP2 – Thames Valley Police review representation Miah's Pangbourne
20/09/2018

APPENDIX TVP 3 – Camberwell Green Magistrates Appeal Court decision June 2018
(Peckham Food & Wine v London Borough of Southwark)

42 Application for transfer of premises licence

(1) Subject to this section, any person mentioned in section 16(1) (applicant for premises licence) may apply to the relevant licensing authority for the transfer of a premises licence to him.

(2) Where the applicant is an individual he must be aged 18 or over.

(2A) Where the applicant is an individual who is resident in the United Kingdom and the premises licence authorises premises to be used for a licensable activity within section 1(1)(a) or (d) he must also be entitled to work in the United Kingdom.

(3) Subsection (1) is subject to regulations under—

(a) section 54 (form etc. of applications etc.);

(b) section 55 (fees to accompany applications etc.).

(4) An application under this section must also be accompanied by the premises licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence.

(5) The relevant person must give notice of the application to the chief officer of police for the police area (or each police area) in which the premises are situated.

(5ZA) Where the premises licence authorises premises to be used for a licensable activity within section 1(1) (a) or (d), the relevant person must also give notice of the application to the Secretary of State.

(5A) In subsections (5) and (5ZA), “relevant person” means—

(a) the relevant licensing authority, in a case where the applicant submitted the application to the relevant licensing authority by means of a relevant electronic facility;

(b) the applicant, in any other case.

(6) Where a chief officer of police notified under subsection (5) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.

(7) The chief officer of police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under subsection (5).

(8) Where the Secretary of State is given notice under subsection (5ZA) and is satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the relevant licensing authority a notice stating the reasons for being so satisfied.

(9) The Secretary of State must give that notice within the period of 14 days beginning with the day on which the Secretary of State is notified of the application under subsection (5ZA).

Division/Station :Reading Licensing Dept

From : PC 5787 Simon Wheeler

To : West Berkshire Licensing Authority

Ref : Miah's Of Pangbourne (01492)

Date : 20 September 2018

Tel.No.

Subject :

Supportive review representation

Thames Valley Police (TVP) are providing this representation in support of the review process relating to Miah's Of Pangbourne, 26 Reading Road, Pangbourne, Reading, RG8 7LY.

Thames Valley Police were made aware that on the 26th June 2018 during a Home Office Immigration inspection at the premises that three males were found working within the premises that were found to be illegal workers.

The employment of illegal workers is a criminal activity which constitutes as serious offence that can in its most severe form relate to modern day slavery. At the very minimum employing illegal workers often involves exploitation through a failure to pay the minimum wage and little adherence towards workers rights.

The Immigration Act 2016 amended Section 21 of the Immigration, Asylum and Nationality Act 2006 and is the relevant legislation that deals with the employment of illegal workers. It states: 1)

A person commits an offence if he employs another ("the employee") knowing that the employee is [disqualified from employment by reason of the employee's immigration status].

(1A) A person commits an offence if the person—

- (a) employs another person ("the employee") who is disqualified from employment by reason of the employee's immigration status, and
- (b) has reasonable cause to believe that the employee is disqualified from employment by reason of the employee's immigration status.

(1B) For the purposes of subsections (1) and (1A) a person is disqualified from employment by reason of the person's immigration status if the person is an adult subject to immigration control and—

- (a) the person has not been granted leave to enter or remain in the United Kingdom, or
- (b) the person's leave to enter or remain in the United Kingdom—
 - (i) is invalid,
 - (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
 - (iii) is subject to a condition preventing the person from accepting the employment.]

(2) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding [five] years,
 - (ii) to a fine, or
 - (iii) to both

The Immigration Act 2016 also inserted paragraph 24B into the Immigration Act 1971 which states:

(1) A person ("P") who is subject to immigration control commits an offence if—

- (a) P works at a time when P is disqualified from working by reason of P's immigration status, and
- (b) at that time P knows or has reasonable cause to believe that P is disqualified from working by reason of P's immigration status.

(2) For the purposes of subsection (1) a person is disqualified from working by reason of the person's immigration status if—

- (a) the person has not been granted leave to enter or remain in the United Kingdom, or
- (b) the person's leave to enter or remain in the United Kingdom—
 - (i) is invalid,
 - (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or

- (iii) is subject to a condition preventing the person from doing work of that kind.

With regards to the review of licensed premises the current Secretary of States Section 182 Guidance provides the following statements which have direct implications regarding the employment of illegal workers:-

“11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- *for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*
- *for the sale and distribution of illegal firearms;*
- *for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*
- *for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people; for prostitution or the sale of unlawful pornography;*
- *by organised groups of paedophiles to groom children;*
- *as the base for the organisation of criminal activity, particularly by gangs;*
- *for the organisation of racist activity or the promotion of racist attacks;*
- ***for employing a person who is disqualified from that work by reason of their immigration status in the UK;***
- *for unlawful gambling; and*
- *for the sale or storage of smuggled tobacco and alcohol.*

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.”

Furthermore, on Sunday 16th September 2018 a Section 59 licensing inspection was carried out at the premises by Thames Valley Police.

During the inspection a number of failures were identified that had negative implications in relation to the adherence of the Designated Premises Supervisor and Premises Licence Holder to comply with the conditions of their licence.

The following outlines the issues identified during the inspection:

- 1) Failure to comply or show due diligence in relation to any licence condition.
- 2) DPS did not know any of the four licensing objectives.
- 3) Part A and B of the Licence not available as per legislative requirements.
- 4) Age verification policy not in place, promoted or actively operated.
- 5) No staff training was available.
- 6) No written authorisation for the sale of alcohol was available.
- 7) No section 57 notice was in place.
- 8) No right to work documentation was available for staff at work during the inspection.

(Please see Appendix TVP/1 and TVP/2)

The majority of the outlined issues discovered during the police inspection are offences within their own right, and when these are coupled with the employment of multiple illegal workers we suggest that the only conclusion which can be drawn from this is that this premises is undermining rather than promoting the licensing objectives.

Thames Valley Police are also aware that of the three Miah restaurants included within the local Bekshire chain that currently all of them have been found employing illegal workers within a four month period in 2018, and all premises licences are currently now under review.

(Please see Appendix TVP/3 and TVP/4)

We understand that you must consider the elements of this case singularly on its own merit, but we believe that it is pertinent for you to understand that the employment of illegal workers and poor compliance with the Licensing Act 2003 legislation is endemic of this Premises Licence Holder Mr Miah's premises.

It is therefore extremely difficult to foresee how any option other than revocation of this premises licence can ensure that this criminal activity does not continue and the licensing objectives are not further undermined.

We recommend that replacing the Designated Premises Supervisor is not a sufficient measure to address our concerns at this premises.

We also recommend that adding or amending the licence conditions shall not resolve these concerns, as currently the Premises Licence Holder is failing to ensure that the current licence conditions are complied with, and this suggests that further conditions are very likely to also not be adhered to.

The final option for your consideration would be a period of suspension of the premises licence, but again we would argue that the evidence suggests that to allow this premises to retain its licence will likely lead to the further future undermining of the licensing objectives.

The case of East Lindsey District Council V Abu Hanif is relevant in this situation and may prove useful for the sub-committee in this matter (Please see Appendix TVP/5)

The offences in this review application are some of the most serious outlined in the Licensing Act 2003. The employment of illegal workers and their possible exploitation for financial gain is clearly an extremely serious criminal offence and one that the Licensing Act has identified as one where the revocation of the licence should – even in the first instance – be seriously considered. There are no acceptable excuses or justification that can be offered for this. A licence holder and responsible employer should, as a bare minimum, be checking that their potential employees are eligible to reside and work in the UK. This also applies to the licensing breaches encountered at the premises which are, in themselves, criminal offences that pose a substantial risk to public safety and seriously undermine the promotion of the licensing objectives.

Allowing this premises to continue to operate with the benefit of a premises licence will merely serve to perpetuate the criminal activity and human exploitation already apparent from the findings of the Thames Valley Police and colleagues in Immigration Enforcement.

It is Thames Valley Police respectful submission that the only appropriate and proportionate step to promote the licensing objectives and safeguard the public as a whole, is for the licence to be revoked.

Appeal Court upholds revocation of Premises Licence following “modern slavery” review June 2018 (Peckham Food & Wine v London Borough of Southwark)

District Judge Julie Cooper, sitting at Camberwell Green Magistrates’ Court, has upheld the decision of the London Borough of Southwark to revoke a convenience store’s premises licence following allegations of illegal workers being employed in conditions akin to “modern slavery”. Peckham Food and Wine had been found, on six separate occasions, to be employing illegal immigrant workers. A broom cupboard was being used as sleeping quarters for two workers who slept on a filthy mattress with only a small electric fan for ventilation. They were being paid a salary well below the minimum wage.

Super strength Polish lager was being sold at a price so low it must have been smuggled alcohol where duty had been evaded. Numerous breaches of the licence conditions were found.

A review application was made by Bill Masini on behalf of Southwark Trading Standards. Prior to the review hearing, an application to transfer the licence was received by the council and objected to by police. The transferee was a Mr Safer Shah who claimed to be untainted by the past behaviour and pledged to turn around the operation. Following questioning it turned out Mr Shah was the estranged husband of the premises licence holder and related to the other directors of the operating company. The licensing sub-committee refused the transfer and revoked the premises licence.

On appeal Mr Shah argued that it was wrong to judge him by his family relationships. He was his own “autonomous” individual and had demonstrated his commitment to promote the licensing objectives. Under cross-examination it became apparent that Mr Shah had been involved in the running of the business prior to the review application. It was also revealed that two of his current employees had worked at the venue when the litany of transgressions had taken place. One was, and continued to be, an illegal worker. On inspection visits prior to the appeal hearing further breaches of the licence had been found and, under Mr Shah’s stewardship, the premises had failed a test purchase exercise by selling alcohol to a 17 year old.

The Council submitted that not only was Mr Shah properly to be tainted by the previous operation, but he had failed to demonstrate the promised turn around of the operation since he took over. The judge found him to be a discredited witness.

The Council also argued, in reliance on Griffiths LJ’s observations in R v Knightsbridge Crown Court ex p International Sporting Club (London) Ltd [1982] 1

QB 304, that it risks bringing the licensing regime into disrepute if reckless licence holders can avoid the consequences of their behaviour by simply transferring the licence into someone else's name or selling the business when they got caught and so, effectively, get away with it. The deterrent effect of licensing enforcement would be lost and licensing authorities are right to take a robust stance against such transfers, particularly those which appeared to be a ruse.

In refusing the appeals on 28 June 2018, DJ Cooper awarded the Council its costs of over £11,000.