

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.

Appendices

TVP/1 – Miah’s Pangbourne inspection check sheet.

TVP/2 – Miah’s inspection letter.

TVP/3 – Miah’s Spencers Wood review

TVP/4 – Miah’s Garden of Gulab review

TVP/5 – Case Law (East Lindsey District Council V Abu Hanif