



Home Office

Premises Licence Review

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**Spice of Life
8-12, Wellowgate
Grimsby
DN32 0RA**

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Outline of the Circumstances leading to the Review Application

Summary

- 1.1 On Friday 23rd August 2019, an Enforcement visit to Spice of Life, 8-12 Wellowgate, Grimsby DN32 0RA was conducted by Immigration and Compliance (ICE) officers following intelligence received that the business may be employing at least three illegal workers who work in the kitchens and live above the restaurant. The intelligence also stated that if Immigration visit the restaurant, they had been instructed to hide.
- 1.2 The premises had been visited by ICE officers on five previous occasions in 2008, 2012, and 2015. During the visits in 2012 and 2015, individuals were encountered working illegally with no right to reside in the UK and were arrested.
- 1.3 It should be noted that the manager of the restaurant, believed to be the owner's son was verbally aggressive to officers during a visit in 2015; and was disruptive to ICE officers again during the visit on 23rd August 2019.
- 1.4 Succeeding parts of this application explore relevant legislation and the statutory guidance and Home Office (Immigration Enforcement) ask the sub-committee to revoke the premises licence as a deterrent to others and the management/owner of this premises in particular
- 1.5 Copies of all the witness statements or pocket notebook (PNB) entries made by relevant immigration officers are appended; should the sub-committee wish to read these.

Occurrence

- 1.6 At 18:27 hours on Friday 23rd August 2019 an Immigration Enforcement visit was conducted to Spice of Life, 8-12, Wellowgate, Grimsby DN32 0RA.
- 1.7 The operation was conducted by a number of Immigration Compliance & Enforcement (ICE) officers. The team was led by Officer in Charge (OIC) [REDACTED] in company with Immigration Officers (IO's), [REDACTED], [REDACTED], and [REDACTED], and Assistant Immigration Officer (AIO) [REDACTED].

- 1.8 Prior to the visit, it was noted from the Home Office records that Immigration Officers have conducted intelligence led visits to this restaurant in relation to similar information in 2008, 2012 and 2015 with arrests made in 2015 and 2015 under the Immigration Act. It was also noted that the manager (owner's son) was verbally aggressive to officers during the visit in 2015.
- 1.9 At approx. 18:47hrs. OIC [REDACTED] entered the restaurant via the front door with IO's [REDACTED] and [REDACTED]. The rest of the team had been deployed to stand at the rear in case anyone tried to exit as per the intelligence. Upon entry OIC [REDACTED] observed a number of male waiters and none of them displayed an adverse reaction to officer presence.
- 1.10 OIC [REDACTED] approached a male believed to be a waiter as he was wearing white shirt and black trousers and asked to speak to the manager. The male stated that was him, now known to be [REDACTED] national. OIC [REDACTED] showed her warrant card and served the form Notice to Occupier on him.
- 1.11 OIC [REDACTED] also explained that the power of entry to the premises was under Section 179 of the Licensing Act. [REDACTED] said to OIC [REDACTED] he had not heard of it so OIC [REDACTED] began to provide further details of the entry power. [REDACTED] interrupted OIC [REDACTED] and said he was going to call his solicitor.
- 1.12 OIC [REDACTED] observed that [REDACTED] looked a bit shocked and walked away from her towards the rear of the restaurant. At this point IO [REDACTED] was in the kitchen and OIC [REDACTED] could hear radio messages stating two males had been seen running out the kitchen towards the rear yard.
- 1.13 Shortly afterwards, radio communication stated someone was possibly on the roof, so OIC [REDACTED] asked IO [REDACTED] to go and help.
- 1.14 OIC [REDACTED] stayed at the front of the restaurant and asked a female waitress the full name of the boss as she had not gathered it earlier. The female said that he was called [REDACTED] and his full name was [REDACTED]. OIC [REDACTED] said the female continued to state that he was the owner's son and that it was a family business and he was the manager.
- 1.15 Once OIC [REDACTED] was made aware via the radio that two males had been caught and arrested, and [REDACTED] had not come back to see her, she decided to make her way to the back to help. It was at this point that OIC [REDACTED] saw [REDACTED] again and now he was in the kitchen.

- 1.16 [REDACTED] told OIC [REDACTED] which she believed to be in an aggressive manner that he had checked with his solicitor and we had no power to be there as we had no warrant. OIC [REDACTED] repeated that they did have a power and tried to explain again about Section 179, but Mr [REDACTED] swore at her and argued that they should leave as officers should not be there and had no power to do what they were doing.
- 1.17 OIC [REDACTED] informed [REDACTED] that they needed to stay as two men had been arrested. [REDACTED] pretended to know nothing about that and said the men must have come from the flat above.
- 1.18 OIC [REDACTED] remarks that [REDACTED] continually swore at her loudly in the kitchens; also swearing at other officers calling them names too and stating they should just f**k off.
- 1.19 There was nothing OIC [REDACTED] could say to him to calm him down. OIC [REDACTED] asked [REDACTED] to stop swearing but recalls [REDACTED] swearing back at her.
- 1.20 OIC [REDACTED] then told [REDACTED] to stop speaking to her as he was just being rude, and he clearly had nothing more to say to her.
- 1.21 OIC [REDACTED] states she observed [REDACTED] 'stomping' around the kitchen and at one point, she observed [REDACTED] cooking which she could only assume he was doing so as he'd lost two members of staff from the kitchen.
- 1.22 OIC [REDACTED] watched as IOs [REDACTED] and [REDACTED] were speaking to a male in the kitchen area and says how [REDACTED] interrupted a few times asking them what they were doing and telling them to hurry up and move out the way. When the officers tried to speak to another chef, [REDACTED] told them to wait and move out the way.
- 1.23 OIC [REDACTED] opinion is that [REDACTED] was purposely being verbally aggressive to officers to intimidate them and prevent them from doing their job. Once the checks on the two chefs were complete, OIC [REDACTED] decided to move officers out of the kitchen into the rear yard as she thought it was better to stay away from [REDACTED].
- 1.24 OIC [REDACTED] was now aware that IO [REDACTED] had arrested one male from [REDACTED] with no valid leave to remain the UK and no permission to work who had run out of the rear door, and IO [REDACTED] had arrested another male upstairs who had initially gone onto the roof. He was also from [REDACTED] and was illegally present in the UK.
- 1.25 While questioning of the two males was being conducted [REDACTED] appeared a few times at the rear yard and was seen by OIC [REDACTED] appearing to try and close the rear doors. Once questioning of both males

had been completed and she had obtained information from officers about what the men from [REDACTED] had said about working at the restaurant, OIC [REDACTED] asked IO [REDACTED] to come with her to speak to Mr [REDACTED] as she had to serve some more paperwork on him, and she did not feel safe enough to do it alone.

- 1.26 [REDACTED] was located cooking again in the kitchen. He told OIC [REDACTED] and IO [REDACTED] to move out the way and wait while he finished. OIC [REDACTED] and IO [REDACTED] waited to the side and then he came over. OIC [REDACTED] said she needed to take his details for Home Office records as she believed he was the employer and he said he wouldn't give them to her. [REDACTED] said he wasn't answering any questions.
- 1.27 OIC [REDACTED] said she needed to ask him about the two males that had been arrested and he said he would not answer anything. OIC [REDACTED] asked him several questions relating to their alleged employment at the restaurant anyway and he replied, 'no comment'.
- 1.28 OIC [REDACTED] served the requisite civil penalty paperwork on him and then all officers left the premises and he locked the back door behind them. When officers were trying to reverse the cellular vehicle out the back yard, a male believed to be a delivery driver tried to block them in.
- 1.29 OIC [REDACTED] recognised the male driver as someone she had seen inside the kitchen earlier. He was in his own car and blocking the only exit out to the main road.
- 1.30 IOs [REDACTED] and [REDACTED] asked him several times to move and after 5 minutes or so he eventually reversed his car very very slowly and officers left. Both males who were arrested stated they lived upstairs in the flats connected to the business.

[REDACTED]

- 1.31 IO [REDACTED] entered the front of the business with OIC [REDACTED] and IO [REDACTED]. OIC [REDACTED] engaged with the staff at the bar to establish who was in charge and explain the power of entry.
- 1.32 IO [REDACTED] then proceeded to the far end of the business where the kitchens were located. As he entered the kitchen IO [REDACTED] saw two men, later identified as: [REDACTED] born [REDACTED] and [REDACTED] born [REDACTED] both nationals of [REDACTED], fleeing through a door on the far wall.

- 1.33 IO [REDACTED] recalled from a previous visit that the door led to a corridor which accessed the accommodation above the business. IO [REDACTED] went through the door [REDACTED] had turned right and was running towards the backdoor. IO [REDACTED] alerted officers on rear cover and observed IO [REDACTED] detain [REDACTED] as he attempted to escape from the backdoor.
- 1.34 IO [REDACTED] proceeded upstairs to search for [REDACTED]. There were around six to seven rooms upstairs, four to five were believed to be bedrooms.
- 1.35 An initial sweep did not locate [REDACTED], but the majority of the doors were locked. IO [REDACTED] who was positioned in the backyard, advised by radio that he could see a male on what appeared to be a neighbouring properties balcony.
- 1.36 It became apparent that [REDACTED] had climbed through a Velux window in the communal corridor and had attempted to set off across the roofs. He had however reached a dead-end.
- 1.37 IO [REDACTED] put his head through the Velux and observed that there was a drainage channel running beneath two ridges. IO [REDACTED] went to the rear yard and with IO [REDACTED] communicated with [REDACTED] and asked that if it was safe to do so, he should get back inside.
- 1.38 IO [REDACTED] returned to the corridor and waited at the Velux, [REDACTED] appeared but was very nervous about coming back in. IO [REDACTED] spoke to him at length to reassure him that irrespective of his immigration status he need not take the risk of trying to leave via the roof. [REDACTED] eventually dropped back inside where IO [REDACTED] and IO [REDACTED] assisted him back in.
- 1.39 IO [REDACTED] conducted the following interview with [REDACTED] using a Big Word interpreter in [REDACTED]
- IO [REDACTED]: When did your student visa expire?
Mr [REDACTED]: Maybe 2016.
IO [REDACTED]: What college were you supposed to attend?
Mr [REDACTED]: It was in Ilford. That was my second college, St. Andrew's. I can't remember the first one.
IO [REDACTED]: When did that college close?
Mr [REDACTED]: I studied there 70% attendance. I was there for four months. Then I went one day and there was a sign saying college closed down.
IO [REDACTED]: Where are you living?
Mr [REDACTED]: I'm living here.
IO [REDACTED]: The room you are indicating only has one bed and ID docs for a different man.
Mr [REDACTED]: I sleep on the floor.

IO [REDACTED]: How long staying here?
Mr [REDACTED]: Not long. About one year.
IO [REDACTED]: Are you working in the business downstairs?
Mr [REDACTED]: Yes, I had no choice. I needed to survive, and no one would give me a job.

- 1.40 Mr [REDACTED] admitted to officers which one was really his room and his passport was located that confirmed his identity. Checks showed that Mr [REDACTED]'s grant of Leave to Remain as a student was curtailed on 07 February 2015. His grant of leave had been due to expire on 29 February 2016.

IO [REDACTED]: How long have you been working here?
Mr [REDACTED]: I was working for a while and then left. And then I came back recently.
IO [REDACTED]: When first work here?
Mr [REDACTED]: I worked for 5 to 6 days then left. But no one would give me a job, so I came back here.
IO [REDACTED]: You said you'd been living here a year?
Mr [REDACTED]: I only came back for food. I work here and they give me free food.
IO [REDACTED]: But for how long have you been working here?
Mr [REDACTED]: About one year.
IO [REDACTED]: What is your job role, what are your duties?
Mr [REDACTED]: I do washing.
IO [REDACTED]: Only washing pots?
Mr [REDACTED]: Yes, and plates, peel potatoes, and pull the bin out.
IO [REDACTED]: What days/hours do you work each week?
Mr [REDACTED]: There is no timetable. When I'm hungry I go down. Maybe three days a week.
IO [REDACTED]: Who allows you to work?
Mr [REDACTED]: A friend who used to go to the same college brought me here.
IO [REDACTED]: But the boss must allow you to work. Who is the boss?
Mr [REDACTED]: I don't know. I just work for food.
IO [REDACTED]: What days have you worked this week?
Mr [REDACTED]: Tuesday, Wednesday, and today. Not Thursday.
IO [REDACTED]: What hours?
Mr [REDACTED]: It depends. They give me a task. I'll do it and if there's another task I'll do that.
IO [REDACTED]: How are you paid (money, accommodation, food)?
Mr [REDACTED]: Sometimes they give me money, so I save that so I'm ready for my flight.
IO [REDACTED]: And you also get the food and flat included with the job?
Mr [REDACTED]: Yes.
IO [REDACTED]: You pay no rent for your room?
Mr [REDACTED]: No.
IO [REDACTED]: Did the manager ask to see any documents when you started working here?

Mr [REDACTED]: My friend that brought me spoke to the manager. I didn't need to speak to him.

IO [REDACTED]: So, the manager did not ask for any documents?

Mr [REDACTED]: I have never spoken to the manager.

IO [REDACTED]: So, who pays you?

Mr [REDACTED]: There are quite a few of them here, so it depends.

1.41 Mr [REDACTED] signed IO [REDACTED] interview record to confirm it was accurate. He was arrested and detained under Schedule 2 of the Immigration Act 1971. He was escorted to the cell van.

1.42 When the liveried Immigration Enforcement vehicles attempted to leave the car park to the rear of the business a man in a car blocked the exit. IO [REDACTED] was advised he was the delivery driver at the business. IO's [REDACTED] and [REDACTED] had to speak to the man to ask him to allow us to leave, which he eventually did.

[REDACTED]

1.43 IO [REDACTED] was part of the Immigration Enforcement team that was deployed to Spice of Life on 23rd August 2019. The OIC (IO [REDACTED]) allocated IO [REDACTED] the role of covering the rear exits while she and the other officers entered the restaurant at the front.

1.44 IO [REDACTED] took up position at 18:49hrs outside an open fire exit to the right of the building. The door was open, and IO [REDACTED] could see a corridor about twenty feet long, leading to what appeared to be a kitchen or store room.

1.45 After several minutes IO [REDACTED] heard the sound of raised voices from within the kitchen area, and then an adult male wearing a brown chef's jacket and white chef's hat began to run towards him, looking over his shoulder, back into the kitchen area, he hadn't seen IO [REDACTED].

1.46 IO [REDACTED] suspected that his running away from IOs in uniform demonstrated a negative reaction to their presence and that he may therefore have been an immigration offender in the UK illegally and/or working illegally.

1.47 When the male emerged from the doorway, still running at full speed, IO [REDACTED] grabbed hold of him and immediately arrested him on suspicion of being in the UK illegally. This knocked the wind out of him and after a brief struggle IO [REDACTED] managed to apply rigid handcuffs in the front stack position, at which point he ceased any further attempts at escape and became compliant. The male spoke English and gave his name as [REDACTED]

- 1.48 IO [REDACTED] then interviewed him, and he stated that he had come to the UK as a Working Holidaymaker more than ten years previously and had never applied to the Home Office to legalise his presence in the UK. He stated that he had a wife and child in [REDACTED] that he slept at the restaurant and that he had lost his passport. He had no interest in returning to [REDACTED] voluntarily.
- 1.49 IO [REDACTED] then conducted checks into [REDACTED]'s immigration status via telephone, this showed that he had been granted a Working Holiday maker visa which was valid from 21/5/2009 to 21/5/2011, and that as there was no evidence of any attempt to obtain further leave to remain in the UK he was an overstayer as defined by Section 10 of the 1971 Immigration Act, a decision ratified and authorised by Chief Immigration Officer [REDACTED].
- 1.50 IO [REDACTED] believed [REDACTED]'s attire indicated that he had been working at the restaurant, and as he had no valid leave to be in the UK, he may have been doing so illegally. IO [REDACTED] therefore took a photo of him in his chef's uniform and interviewed him about his suspected employment.
- 1.51 [REDACTED] stated that he had worked as a Tandoori Chef at the restaurant for three or four weeks and that he worked Monday to Friday from 1700hrs.
- 1.52 [REDACTED] stated that he had been given the job by a friend who had since left the restaurant and that he had not shown a passport or any other evidence that he was allowed to work in the UK.
- 1.53 [REDACTED] stated that he was paid in cash, paid no Income Tax or National Insurance and that he earned £40-50 per day and was paid by "[REDACTED]", who he described as the son of the owner of the restaurant.
- 1.54 [REDACTED] said that although he stayed a few nights a week at the restaurant, the accommodation was not provided in exchange for working there.
- 1.55 At this point IO [REDACTED] had to terminate the interview for reasons of officer and public safety, as he was by now aware that another male had escaped and was believed to be on the roof.
- 1.56 In addition to this, a male who IO [REDACTED] believed to be the manager was shouting and swearing at IO [REDACTED] in the kitchen and in the car park, and a white male IO [REDACTED] believed to be a delivery driver was wandering around demonstrating extremely angry and aggressive body language, so IO [REDACTED] felt the need to be ready to protect colleagues if needed.
- 1.57 The delivery driver left in his vehicle and came back a few minutes later with a young female passenger approximately 16 or 17 years old. This time he used his car to deliberately block in the marked Immigration Enforcement cell van parked in the car park, before leaving to make a delivery.

- 1.58 IO [REDACTED] escorted [REDACTED] to the van and put him in the rear then waited until IO [REDACTED] had finished serving paperwork to the manager in connection with the visit.

As the Immigration Officers tried to leave, the delivery driver had by now returned and again deliberately blocked the cell van in with his car, refusing to move it at all initially and then only a few inches at a time, before several IOs approached him and offered some words of advice and the Immigration Officers were able to drive away.

Reasons for Review

- 2.1 Whether by negligence or wilful blindness illegal workers were engaged in activity on the premises, yet it is a simple process for an employer to ascertain what documents they should check before a person is allowed to work. It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case.
- 2.2 The case of *East Lindsey District Council v Hanif* (see 8.11) determined that in such circumstances, even without a prosecution, the crime prevention objective is engaged. The statutory Guidance issued under the Licensing Act provides that certain criminal activity (in particular employing illegal workers) should be treated particularly seriously and it is envisaged that the police will use the review procedures effectively to deter such activities and crime.
- 2.3 Home Office (Immigration Enforcement) submits that for commercial reasons those engaged in the management of the premises employed illegal workers and a warning or other activity falling short of a review is inappropriate; this is why Home Office (Immigration Enforcement) has proceeded straight to review.

Outcome Sought

- 3.1 Home Office (Immigration Enforcement) asks that the premises licence is revoked. Merely remedying the existing situation (for instance by the imposition of additional conditions or a suspension) is insufficient to act as a deterrent to the licence holder and other premises' licence holders from engaging in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally.

- 3.2 This submission and appended documents provide the licensing subcommittee with background arguments and information pertinent to that contention. These provide the sub-committee with a sound and defensible rationale as to why it should revoke the licence.
- 3.3 It is in such circumstances as this review application that a respondent may suggest that conditions are imposed which would prevent a reoccurrence of the employment of illegal workers in the future; an argument that the subcommittee should take remedial and not punitive action.
- 3.4 However, since 2006 (with the introduction of the Immigration, Asylum and Nationality Act 2006) employers have had a duty to conduct checks to ensure employees and potential employees are not disqualified from working. Only by completing the required checks and maintaining records of such checks can an employer demonstrate a 'statutory excuse' and evade liability for a civil penalty issued by Home Office (Immigration Enforcement). In order to protect themselves, reputable employers have been conducting these checks since 1996 when it first became a criminal offence to employ illegal workers.
- 3.5 The 2006 Act already imposes duties and responsibilities on a company or individual seeking to employ a person—whether in the licensed trade or otherwise - to conduct right to work checks
- 3.6 In seeking revocation, Home Office (Immigration Enforcement) has considered and rejected conditions as an alternative, in part because this is specifically addressed paragraph 1.16 of the Guidance, viz: "(...) Licence conditions should not duplicate other statutory requirements or other duties, or responsibilities placed on the employer (my emphasis) by other legislation".
- 3.7 Conditions requiring an employer (or its agent) to undertake checks that are already mandated and where advice is readily available and clearly set out for employers, keep copies of documentation and to restrict employment until these checks are made etc. replicate the requirements of the 2006 Act and should be discounted.
- 3.8 Home Office (Immigration Enforcement) contends that a licence holder who has himself or through his agents negligently or deliberately failed to conduct right to work checks which have been a requirement since 2006 should not be afforded an opportunity to do so until caught and then merely be asked to do what they should have been doing already. Deterrence and not mere remedy is appropriate and is supported by case law (as set out within section 8 of this submission).
- 3.9 Respondents who fail to convince a subcommittee that the imposition of conditions to undertake proper right to work checks is a suitable alternative

to a deterrent outcome often point to the option of suspension of a licence; pointing out that this may be a suitable punitive response instead which will deter others.

- 3.10 Often this will include claims that the business has 'learnt its lesson' and that since its criminal activity has been discovered it has reconsidered its position, brought in new procedures, 'parachuted in' consultants and new managers etc. On occasion it is hinted that the respondent will 'accept' a suspension as an alternative to revocation, assuaging an authority's concern that an appeal may otherwise be launched. This is not a deterrent - a suspension merely warns other potential perpetrators that they may trade illegally until caught and then suffer only a brief hiatus in carrying out licensable activity before continuing with it. The risk of being caught is low so the consequence of being caught must be stiff in order to qualify as deterrence.
- 3.11 Home Office (Immigration Enforcement) would counter such claims and point to the continuing changes made to both immigration law and the Guidance (paragraphs 11.26 — 11.28) which point to a requirement to send a clear message to potential illegal immigrants that UK authorities will do all they can to prevent them finding illegal employment and a similar message to employers that those employing illegal workers will face severe disruption and penalties. There are simple processes (set out in section 5 of this submission) to avoid the hire of illegal workers and the legislative thrust is in avoiding the occurrence in the first place—not remedying the situation once discovered.
- 3.12 If it were not for criminally minded or complicit employers; illegal workers would not be able to obtain a settled lifestyle and deprive legitimate workers of employment. The use of illegal labour provides an unfair competitive edge and deprives the UK economy of tax revenue. Illegal workers are often paid below the minimum wage (itself an offence) and National Insurance payments are not paid. The main draw for illegal immigration is work and low-skilled migrants are increasingly vulnerable to exploitation by criminal enterprises; finding themselves in appalling accommodation and toiling in poor working conditions for long hours for little remuneration.
- 3.13 A firm response to this criminal behaviour is required to ensure that the licence holder and/or its agents are not allowed to repeat the exercise and in particular, in the interests of the wider community to support responsible businesses and the jobs of both UK citizens and lawful migrants. It is also required to act as a deterrent to others who would otherwise seek to seek an unfair competitive advantage, exploit workers and deny work to the local community, evade the payment of income tax and (unlawfully) inflate their profits to the expense of others.

Immigration Offences

- 3.14 Illegal workers are those subject to immigration control who either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them taking up the work in question. It is an employer's responsibility to be aware of their obligations and ensure they understand the immigration landscape to avoid the risk of prosecution, the imposition of a civil penalty or their vocation/suspension of their premises licence.
- 3.15 Since 1996 it has been unlawful to employ a person who is disqualified from employment because of their immigration status. A statutory excuse exists where the employer can demonstrate they correctly carried out document checks, i.e. that they were duped by fake or forged documents.
- 3.16 The Immigration Act 2016 came into force in July 2016 and its explanatory notes state that *"these offences were broadened to capture, in particular, employers who deliberately did not undertake right to work checks in order that they could not have the specific intent required to 'knowingly' employ an illegal worker"*.
- 3.17 Since 2016 an employer may be prosecuted not only if they knew their employee was disqualified from working but also if they had reasonable cause to believe that an employee did not have the right to work: what might be described as wilful ignorance where either no documents are requested, or none are presented despite a request. This means an offence is committed when an employer 'ought to have known' the person did not have the right to work.
- 3.18 Since 2016 it has also been an offence to work when disqualified from doing so. It is obvious that without a negligent or wilfully ignorant employer, an illegal worker cannot work. Such an employer facilitates a criminal offence and Home Office (Immigration Enforcement) highlights this as relevant irrespective of whether a civil penalty is imposed, or a prosecution launched for employing an illegal worker.
- 3.19 In this context, under section 3(1)(C)(i) Immigration Act 1971 (as amended by the 2016 Act) restrictions are not limited simply to employment (i.e. paid work) but now includes all work.
- 3.20 Thus, an individual with no right to work in the UK commits offences if they undertake paid or unpaid work, paid or unpaid work placements undertaken as part of a course etc. are self-employed or engage in business or professional activity. For instance, undertaking an unpaid work trial or working in exchange for a nonmonetary reward (such as board and lodging) is working illegally and is a criminal offence committed by the worker and facilitated by the 'employer'.

Steps to Avoid the Employment of an Illegal Worker

- 3.21 It is a straightforward process for any employer, no matter how small, to prevent themselves employing an illegal worker. If an employer has failed to take even the most basic steps then Home Office (Immigration Enforcement) contends they have chosen to remain ignorant of the immigration status of their workforce and no amount of potential imposed conditions is sufficient, in our opinion, to avoid the legitimacy of revocation in proving a deterrent to others to the employment of illegal workers.
- 3.22 The Home Office has made checklists widely available which set out what a responsible employer should ask for ahead of employing any person in order to demonstrate 'due diligence' and avoid liability for inadvertently employing an illegal worker.
- 3.23 Since April 2017 these checklists have been embedded in the statutory applications for personal licences and premises licences, the transfer of premises licences and designated premises supervisor variations.
- 3.24 The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.
- 3.25 The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) details general advice, checking the documents, taking a copy of the documents, what if the job applicant can't show their documents and provides details of an employers' telephone helpline. This page has a direct link to what documents are acceptable proofs of a right to work in the UK and also allows an employer to fill out an online enquiry about a named individual they are considering offering employment to.
- 3.26 Appendix A sets the above out in some detail.

Relevance/irrelevance of a Civil Penalty or Prosecution

- 3.27 An employer found to have 'employed' an illegal worker may, dependent on culpability and the evidence available, be issued with a civil penalty or prosecuted or indeed neither.
- 3.28 Where an illegal worker is detected a civil penalty maybe issued against the employer in accordance with the Home Office Code of Practice on Preventing Illegal Working (May 2014). In the case of a civil penalty the

balance of probabilities test applies where as a prosecution requires a higher burden of proof.

- 3.29 However, to issue a civil penalty under section 15 Immigration, Asylum and Nationality Act 2006 the Home Office Code of Practice requires some proof that not only was an illegal worker working at the premises, but they were 'employed'. Usually this is taken as meaning the illegal worker was under a contract of service or apprenticeship, whether express or implied and whether oral or written.
- 3.30 But where an employee has not bothered with the basics of return to work checks, placed an employee on 'the books', paid the minimum wage or paid employer national insurance contributions - it becomes difficult to 'prove' the employment statement where the only evidence maybe the word of an illegal worker who has since been detained or who has 'moved on'.
- 3.31 In such cases where paid employment cannot be demonstrated, a civil penalty may not be issued even where the premises licence holder or his agent has facilitated a disqualified person committing an offence under section 24B Immigration Act 1971 (as amended by Immigration Act 2016) of working illegally.
- 3.32 This does not however prevent the crime prevention objective being engaged with as the premises licence holder has none the less facilitated a criminal offence taking place and the lack of checks suggests that in the past (and is likely in the future) has employed illegal workers. In drawing its conclusion, the subcommittee is entitled to exercise common sense and its own judgment based on the life experience so fits members. The East Lindsey case (see section 8) provides that action (revocation) to prevent what is likely to happen in the future is legitimate.

Appendix A – Right to Work checks

The first 4 'hits' on a Google search for "right to work" are links to employer check lists and information on the GOV.UK website.

The second link is to the Home Office document; "An Employer's Guide to Right to Work Checks" (published 16th May 2014 last updated 16th August 2017).

Another link provides a site (<https://www.gov.uk/employee-immigration-employment-status>) which guides an employer through the process AND allows an employer to make an online submission to the Home Office to check if the proposed employee is prohibited from working as well as providing a telephone helpline.

Specifically, the first link (<https://www.gov.uk/check-job-applicant-right-to-work>) provides as follows:

General Advice

- You must see the applicant's original documents;
- You must check that the documents are valid with the applicant present; and
- You must make and keep copies of the documents and record the date you made the check.

Checking the Documents

In relation to checking the documents it also adds that an employer needs to check that:

- the documents are genuine, original and unchanged and belong to the person who has given them to you;
- The dates for the applicant's right to work in the UK haven't expired;
- Photos are the same across all documents and look like the applicant;
- Dates of birth are the same across all documents;
- The applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work);
- For students you see evidence of their study and vacation times; and
- If 2 documents give different names, the applicant has supporting documents showing why they're different, e.g. a marriage certificate or divorce decree

Taking a copy of the documents

When you copy the documents:

- Make a copy that can't be changed, e.g. a photocopy

- for passports, copy any page with the expiry date and applicant's details (e.g. nationality, date of birth and photograph) including endorsements, e.g. a work visa
- for biometric residence permits and residence cards (biometric format), copy both sides
- for all other documents you must make a complete copy
- keep copies during the applicant's employment and for 2 years after they stop working for you
- record the date the check was made

If the job applicant can't show their documents

You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- you're reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office;
 - they have an Application Registration Card; or
 - they have a Certificate of Application that is less than 6 months old
- Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.

The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

Acceptable Documents

A list of acceptable documents can be found via the link to

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf

Appendix B – Statutory Guidance & Caselaw

Statutory Guidance (s182 LA 2003) and the Authority's Licensing Policy

- 3.33 In order to avoid punitive action, respondents to review hearings sometimes refer to both the statutory guidance issued under section 182 Licensing Act 2003 and those parts of the Authority's own policy which replicate paragraph 11.10 of that Guidance, viz:

Where authorised persons and responsible authorities have concerns about problems identified at premises, it/s good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps, they need to take to address those concerns.

- 3.34 Home Office (Immigration Enforcement) submits that in the particular circumstances of cases where Immigration Compliance and Enforcement receive intelligence concerning the employment of illegal workers and act upon it; such warnings are inappropriate.
- 3.35 Not only would advance warning of enforcement activity prevent the detention of persons committing crimes and the securing of evidence; a warning after the event to comply with immigration legislation serves as no deterrent.
- 3.36 In particular; Home Office (Immigration Enforcement) submits that paragraph 11 .10 of the Guidance must be read in conjunction with the more specific paragraphs relating to reviews arising in connection with crime (paras. 11.24 — 11.29).
- 3.37 Paragraph 77.26

Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. (...). The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the

interests of the wider community and not those of the individual licence holder.

3.38 Thus the financial hardship occasioned by the suspension or revocation of the premises licence should not sway the sub-committee but instead it should look at what is appropriate to promote the objective within the wider business and local community given "illegal labour exploits workers, denies work to UK citizens and legal migrants and drives down wages" (Rt. Hon James Brokenshire, Immigration Minister on the introduction of the 2016 Act).

3.39 In particular; the sub-committee are asked to consider (below) the cases of *R (Bassetlaw District Council) v Worksop Magistrates' Court*; [2008] WLR (D)

350 and East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2076] EWHC1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime.

3.40 Paragraph 11.27 of the Guidance states:

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 employing a person who is disqualified from that work by reason of their immigration status in the UK.

Home Office (Immigration Enforcement) would draw the sub-committee's attention to the change in wording of this paragraph following the April 2017 revision of the guidance, where the previous reference to 'knowingly employing' was removed.

3.41 Paragraph 11.28 of the Guidance states:

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.

Home Office (Immigration Enforcement) considers this paragraph self-explanatory; where an enterprise employs illegal workers, it is the duty of Home Office (Immigration Enforcement) to bring forward reviews and for the authority to consider revocation in the first instance.

- 3.42 In support of this statement; Home Office (Immigration Enforcement) would draw the subcommittee's attention to the "Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales" (Home Office) [April 2017] where at section 4.1 it states;

"It is envisaged that licensing authorities, the police, Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter illegal working".

- 3.43 Since the main draw for illegal migration is work, and since low-skilled migrants are increasingly vulnerable to exploitation at the hand of criminal enterprises, the government has strengthened enforcement measures and the statutory Guidance to deter illegal workers and those that employ them.
- 3.44 Deterrence is a key element of the UK government's strategy to reduce illegal working and is supported by both the Guidance and Case Law.

Case Law

- 3.45 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.
- 3.46 *R (Bassetlaw District Council) v Worksop Magistrates' Court*; [2008] WLR (D) 350.

This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority. The premises licence holder argued that they had a policy in place for checking the age of customers, but this was not a perfect policy and had not been adhered to and that rather than revoke the licence, instead stringent conditions on proof of age should instead be imposed on the licence.

- 3.47 Issues relevant to the case before today's sub-committee which were considered in the *Bassetlaw* judgement included whether a licensing authority was restricted to remedial action (as opposed to punitive action

such as revocation); and the precedence of wider considerations than those relating to an individual holder of a premises licence when certain criminal activities (as specified in the Guidance) took place.

- 3.48 It specifically examined (and set aside in the case of 'certain activities') those parts of the Guidance now contained within paragraph 11.20 and 11.23, viz:

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises.

- 3.49 In her judgement, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

"Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State. (...) However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable."

- 3.50 Having confirmed the legitimacy of punitive measures (suspension/revocation) for offences listed in what is now contained within paragraph 11.27 of the Guidance, Mrs Justice Slade concerned herself with another aspect of the appeal—namely the imposition of conditions which were already present but not properly implemented (paragraph 34.1). In this case the appellant was suggesting that proof of age conditions (rather than revocation) could be imposed to ensure that the legal requirement not to sell alcohol to those under 18 years of age was met by him and his staff.

- 3.51 This has some similarity with any argument that may be put forward in the case before the subcommittee today that the imposition of conditions to check immigration status either directly or through an agency (*essentially a requirement since 2006 under the Immigration, Asylum and Immigration Act 2006*) would serve as sufficient remedy for the employment of illegal workers and negate a deterrent (suspension/revocation) being imposed by the subcommittee despite the wording of the Guidance at paragraph 11.28.

- 3.52 Mrs Justice Slade stated: *"The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However, it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14-year-old girls".*
- 3.53 Home Office (Immigration Enforcement) contends that in the case before the subcommittee the facts are similar. In the cited case straight forward, sensible enquiries could have been made as to the age of the children and the imposition of additional conditions as a form of remedy was considered in appropriate by Mrs Justice Slade for 'those serious cases' set out in the Guidance.
- 3.54 In the case before the subcommittee, simple steps (set out at Appendix A) were available to prevent the employment of illegal workers -none were taken; the imposition of conditions to remedy this situation is inconsistent with the section 182 Guidance and this case citation. A negligent employer should expect revocation in the first instance.
- 3.55 *East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway)*, [2076] EWHC 7265 (Admin)
This is a recent High Court decision (published April 2016) which has similarities with the one before the sub-committee in that it related to the employment of an illegal worker and where a prosecution for such had not been instigated.
Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for the employment of an illegal worker was not in place. Whilst the initial hearing may have suggested several illegal workers being employed, the High Court appeal and decision related to the employment of one individual and is therefore, Home Office (Immigration Enforcement) would argue, indistinguishable from the matter before the subcommittee today.
- 3.56 The case reaffirms the principle that responsible authorities need not wait for the licensing objectives to actually be undermined; that crucially in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor. It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee. Mr Justice Jay stated: *"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. In any event, I agree with Mr Kolvin that criminal convictions are not required.” (Paragraph 18)

Mr Justice Jay added: “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.” (Paragraph 23)

Appendix C – Supporting Evidence

Witness statements have been attached separately to this pack.