

## APPENDIX B



Home Office

# Premises Licence Review

**Noble House Restaurant  
Mr Albert Ion-Chun Choi  
43 Osborne Road  
Portsmouth  
PO5 3LS**

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# Outline of the Circumstances leading to the Review Application

## 1. Summary

1.1. An Immigration enforcement visit by the [REDACTED] team was conducted on Saturday 23/10/2021 at approx. 20.30, to Noble House Restaurant, 43 Osborne Road, Portsmouth PO5 3LS. Entry was conducted under Section 179 of the Licensing Act 2003.

1.2. The premises had been visited before (following previous intelligence reporting) and three illegal workers had been found.

1.3. During the visit on 23/10/2021 a further three illegal workers were encountered. Mr Albert Ion-Chun Choi, who has held his licence since 8th November 2005, confirmed in a later interview with an Immigration officer that all three of the illegal workers encountered on 23/10/2021 lived in the upstairs flat.

1.4. Following the visit to the premises, a civil penalty notice was issued to Mr Albert Ion-Chun Choi.

## 2. Occurrence

2.1. On Saturday 23/10/2021 at approx. 20.30, [REDACTED] (an Immigration Officer based at the [REDACTED]) was joined by other Enforcement Officers in an Immigration Enforcement visit to Noble House Restaurant, 43 Osborne Road, Portsmouth PO5 3LS. [REDACTED] was the Officer in Charge of the visit and was accompanied by [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Entry was conducted under Sec 179 Licensing Act 2003.

2.2. [REDACTED] entered through the front door holding his warrant card in his hand. [REDACTED], [REDACTED] and [REDACTED] made their way directly into the kitchen on entry. A male, now know by [REDACTED] to be Mr Albert CHOI immediately started shouting that the IOs could not come in. [REDACTED] tried to explain that they were immigration Officers, the purpose of the visit and the power of entry but, Mr CHOI appeared not to hear, such was his aggression and hostility towards the IOs.

2.3. He attempted to block [REDACTED] as he made his way to the kitchen and he followed [REDACTED] and his colleagues through the busy restaurant, shouting and haranguing them as they moved to the kitchen, which was accessed via a doorway in the far right hand corner of a dining area.

2.4. CHOI then started shouting at his kitchen staff in a foreign language and shortly after ██████ learned that the staff were not engaging with Immigration Enforcement's telephone interpreters. ██████ continued to identify himself to CHOI as the Officer in Charge and serve the Notice to Occupier.

2.5. CHOI made various threats about how much trouble ██████ was going to be in, stating that he had powerful friends at Portsmouth City Council and also making comment regarding his lawyer who was going to take ██████ to court. ██████ observed CHOI mocking ██████. At one-point CHOI got out his mobile phone and started videoing the officers Collar numbers. ██████ invited CHOI to call the Police if he felt that Immigration Enforcement were illegally present on his premises.

2.6. There were three kitchen workers present and waiting staff who were coming in and out of the kitchen. Eventually Home Office checks revealed that all three of the kitchen staff were illegally present in the United Kingdom and had no permission to work in the UK.

- ██████ national born on ██████.
- ██████ national born on ██████
- ██████ national born on ██████.

2.7. At this point ██████ asked Mr CHOI to consider telling his customers that there would be no food that evening as his chefs were all under arrest. Only at this time did Mr CHOI begin to calm himself and ██████ instructed ██████ to conduct an illegal working interview with CHOI.

2.8. It was by now around forty minutes after the arrival of the Immigration Officers and the customers had all begun to leave. Officers began conducting interviews with the illegal workers but they still refused to give a place of abode. Over an hour went by before CHOI admitted that they all lived in a flat above the restaurant. Subsequently, all three gave a key back to Mr Choi for their room in the flat above the restaurant. At around 22.55, all Officers departed the restaurant and as ██████ left, he provided Mr Choi with a leaflet explaining the Home Office complaints procedure.

2.9. Previous visits had been conducted by Immigration officers to this premises The first, on 29/03/2012 led to one arrest and a visit on 21/06/2012 led to two arrests. On both visits there was clear indication that Mr Albert Ion-Chun Choi was the premises licence holder and would have been fully aware that these persons had no permission to work in the UK.

█████

2.10. At 23:22, with the help of a ██████ interpreter on the phone, the illegal working interview with ██████ was conducted by ██████ as follows:

█████ ██████: How long have you been working at the Noble House Chinese Restaurant?

██████████: Because of Covid I went to help two and a half weeks ago.  
██████████: What is your job role/ what are your duties?  
██████████: I just helped to wash the dishes when busy.  
██████████: What days/ hours do you work each week at the Noble House?  
██████████: I only worked Friday and Saturdays  
██████████: How many hours did you work Friday and Saturdays?  
██████████: 3 hours  
██████████: Who supplies the uniform you were wearing when officers entered the kitchen?  
██████████: Mr ██████████  
██████████: Who gave you this job at the Noble House?  
██████████: I asked Mr ██████████ the boss if I could work for food and accommodation  
██████████: Who tells you what days/ hours to work?  
██████████: I was just asked to work when busy by Mr ██████████  
██████████: Who tells you what tasks/ duties to do each day?  
██████████: Mr ██████████  
██████████: How are you paid (money, accommodation, food)?  
██████████: I do not get paid any money, but I get food and accommodation for which I do not pay.  
██████████: What name does the employer know you as?  
██████████: ██████████.  
██████████: Did you show documents before being offered the job? If so, what?  
██████████: No, I do not have a Passport, it was stolen  
██████████: Does your employer know you're not allowed to work in the UK?  
██████████: I do not think he knew that I could not work  
██████████: Did Mr ██████████ ask for if you were allowed to work in the UK?  
██████████: No.  
██████████: When I entered the kitchen, you were dressed in a white chef's jackets, if you only wash dishes why do you wear a chef's uniform?  
██████████: For food safety  
██████████: Who supplies the uniform?  
██████████: Mr ██████████ the boss

The interview with ██████████ concluded at: 23:53

## Albert CHOI

2.11. At 21:24 without the help of a ██████████ interpreter the illegal working interview with ALBERT CHOI was conducted by ██████████ as follows:

██████████: What is the name of the business?  
**ALBERT CHOI:** Noble House Restaurant.

██████████: What are the Companies House and VAT numbers of the business?

**ALBERT CHOI:** VAT reg number ██████████

██████████: What is your position at Noble House Restaurant?

**ALBERT CHOI:** Director of the company.

██████████: How long have you been working here?

**ALBERT CHOI:** Only recently, the company and staff have just started.

██████████: 3 subjects encountered working in the kitchen are suspected of Working illegally in The United Kingdom. Did you check the status of the 3 subjects, regarding their right to work in The United kingdom.

**ALBERT CHOI:** Yes. I asked for copies of their papers, and passports

██████████: did you keep copies of the papers presented?

**ALBERT CHOI:** I am waiting for copies from the 3 subjects, they don't live local.

██████████: would you understand what papers, that would be presented to you to confirm the status to work in the United Kingdom.

**ALBERT CHOI:** Yes, I suspect so, it would be stamped in the passport.

██████████: of the 3 subjects. Mr ██████ is being interviewed by ██████████, How long has he worked here at Noble House restaurant?

**ALBERT CHOI:** 2 weeks approximately.

██████████: what are Mr ██████ duties in the Noble House restaurant?

**ALBERT CHOI:** He is a chef.

██████████: how much would you pay Mr ██████ for his work here at Noble House Restaurant?

**ALBERT CHOI:** £9 per hour times the hours worked.

██████████: does Mr ██████ get paid weekly for his duties at Noble House Restaurant?

**ALBERT CHOI:** He will get paid monthly.

██████████: How many hours does Mr ██████ work here at Noble House Restaurant?

**ALBERT CHOI:** 30 hours a week.

██████████: these questions are pertinent to the subject being interviewed by ██████████ subject is Mr ██████.

**ALBERT CHOI:** Ok.

██████████: How long has Mr ██████ worked here at Noble House restaurant?

**ALBERT CHOI:** They all arrived together about 2 weeks ago.

██████████: what duties are Mr ██████ here at Noble house restaurant?

**ALBERT CHOI:** They are all chefs; they work in the kitchen.

██████████: how much will Mr ██████ be paid here at Noble house restaurant?

**ALBERT CHOI:** The same, all £9.00 an hour.

██████████: How many hours will Mr ██████ work here at Noble House Restaurant?

**ALBERT CHOI:** The same ...30 hours.

██████████: these questions are pertinent to the subject being interviewed by ██████████. Mrs ██████████.

**ALBERT CHOI:** Ok, I understand.

██████████: How long has Mrs ██████████ been working here at Noble house

Restaurant?

**ALBERT CHOI:** As I said, 2 weeks, they all arrived together.

██████████: As before, what are the duties of Mrs ██████████?

**ALBERT CHOI:** She is a washer up in the kitchen, she is still employed.

██████████: how much is Mrs ██████████ paid to work here at Noble house Restaurant?

**ALBERT CHOI:** All the same, £9.00 an hour.

██████████: how many hours working would you expect to pay Mrs ██████████ Per week?

**ALBERT CHOI:** The same, about 30 hours a week.

██████████: who would tell each of the staff being interviewed what their duties at the Noble House restaurant?

**ALBERT CHOI:** I employ them as kitchen workers, they work in the kitchen only.

Interview concluded with Mr Albert Choi at: 22:18.

██████████

2.12. At 23:11 with the help of a ██████████ interpreter the illegal working interview with ██████████ was conducted by ██████████ as follows:

██████████: Mr A CHOI was interviewed earlier and has told me you and the other 2 subjects arrested at Noble House restaurant have been employed for 2 weeks, what do you have to say about that?

██████████: I only came to the noble house restaurant yesterday with my husband.

██████████: How long have you worked at the Noble house restaurant?

██████████: I only came here yesterday with my husband to help out.

██████████: What are your duties at the noble house restaurant?

██████████: I give them a hand, whatever they want, wash dishes, clean the floor whatever.

██████████: how many hours do you work at the Noble house restaurant per week?

██████████: 10 hours a week.

██████████: how many weeks have you been working at the Noble house Restaurant?

██████████: I only came yesterday.

██████████: Mr A CHOI, the director of the company, was present all-night while you were being interviewed at the Noble house restaurant, do you know this man?

██████████: I have never spoken to him, my husband deals with him, I know the bald-headed man (Mr A CHOI) is the boss people say he is the boss, but I'm not sure.

██████████: how much was you paid to 'help out' at Noble house restaurant?

██████████: Whatever they paid me, £10, £20

██████████: who tells her what to do at the restaurant?

██████████: No one particularly. I just do what needs doing.

██████████: can you confirm the amount of money you are paid for working at the Noble house restaurant?

██████████: I have no idea, my husband deals with that.

██████████: Did you show documents before being offered the job? at the noble house restaurant If so, what?

██████████: I do not know, ask my husband.

██████████: do you have a passport?

██████████: Lost it, I don't know where.

██████████

2.13. At 21:28 with the help of a ██████████ interpreter, the illegal working interview with ██████████ was conducted by ██████████ as follows:

██████████: What is your job role/ what are your duties?

██████████: I work in the kitchen; I help with everything.

██████████: Do you choose to work here, are you here of your own free will?

██████████: I work here for free, voluntary work.

I have to work to get food and accommodation. I do not have a salary.

██████████: So, what do you receive for working?

██████████: The only thing I received today was food.

██████████: What days/ hours do you work each week?

██████████: I am not working here; I only help. For this I receive food. Today is my first day.

██████████: When officers walked in was, he cooking on the range at Noble House?

██████████: Yes, I was helping on the range.

██████████: Who gives him the tasks, who tells him what to do?

██████████: No one told him what to do.

██████████: Who told him he could come and help?

██████████: ██████████. He was here, they left earlier.

██████████: During the visit we have been speaking to Mr Choi, do you know Mr CHOI?

██████████: Not answering the question. I can't understand. (Mr Choi is sat at the table listening to question).

██████████: What is your full address?

██████████: It is in London; I cannot say the full address it is an English word.

██████████: How were you planning on getting home tonight?

██████████: My friend was going to pick me up and take me home.

██████████: If you don't know your address, where do you receive letters and post?

██████████: It is in the UK; I do not know the address.

██████████: Did you show ██████████ any documents?

██████████: No, we are friends, why would I let him see.

██████████: Do you have any proof of your address on your mobile?



██████████: No.

██████████: Who provided the uniform you are wearing?

██████████: These are my own clothes, no one gave them to me.

██████████: Did the man I am pointing at (Albert CHOI) give him access to the kitchen or tell you your duties?

██████████: No.

██████████: Who told you that you would only receive food for your work?

██████████: ██████████ told me before I came it would be for food.

Interview concluded with ██████████ at 11:17

### 3. Reasons for Review

3.1. 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.

3.2 The case of East Lindsey District Council v Hanif (see Annex B) 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.

3.3. 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.

### 4. Outcome Sought

4.0. 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.

4.1. 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.

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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".

4.6. 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.

4.7. 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 Annex B of this submission).

4.8. 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.

4.9. 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.

4.10. 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 6 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.

4.11. 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.

4.12. 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.

## 5. Immigration Offences

5.1. 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.

5.2. 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.

5.3. 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”*.

5.4. 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.

5.5. 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.

5.6. 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.

5.7. 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’.

## **6. Steps to Avoid the Employment of an Illegal Worker**

6.1. 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.

6.2. 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.

6.3. 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.

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

6.5. 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. Appendix A sets the above out in some detail.

## 7. Relevance/irrelevance of a Civil Penalty or Prosecution

7.1. 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.

7.2. 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 whereas a prosecution requires a higher burden of proof.

7.3. 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.

7.4. 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'.

7.5. 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.

7.6. 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 Annex B) 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 16<sup>th</sup> May 2014 last updated 16<sup>th</sup> 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](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

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.*

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.

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.

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).

### 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.*

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).

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.*

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.

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.

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) [April2017] 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".*

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.

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

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.

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.*

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.

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.*

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."*

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.

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.

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"*.

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.

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.

*East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2016] 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.

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)

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