

Kathryn Miller

Subject: FW: Mediate re [REDACTED]

From: GOSLING Gareth 2551 [REDACTED]
Sent: 04 December 2024 09:11
To: [REDACTED]
Cc: Kathryn Miller [REDACTED]
Subject: RE: Mediate re [REDACTED]

Thank you for the below.

I acknowledge the below points and I can understand the perspective of your client in seeking a warning and additional conditions as a remedy to this Review process.

It will ultimately be for the sub-committee members to decide upon the final outcome and given the clear guidance around the employment of illegal workers, it is not for me to undermine the Home Office Guidance in this regard.

It is not relevant to compare the requirements for objecting to a new premises licence as you have done below as there are clear guidelines for both and licensees are afforded the 'benefit of the doubt' when applying for a new licence and the guidance reflects such an approach. In cases where a licensee's conduct falls below the standards that are expected, there is a different culpability standard applied on the basis that there is an implied responsibility that is associated with holding a premises licence which requires that the licensing objectives are consistently upheld.

[REDACTED] should result in an individual taking all necessary steps to avoid the same issues recurring in the future. It is clear that your client has failed to apply appropriate judgment in employing his employees and this has been identified during the most recent Immigration visit. It will be for your client to persuade the members of the sub-committee that they should be trusted to deliver the business despite having come to the attention of the authorities on two occasions for the same concerns.

If you have any further proposals, please let me know as soon as possible in advance of the hearing.

Regards,
Gareth



**DORSET
POLICE**

Gareth Gosling 2551

Police Sergeant
[REDACTED]

Drug & Alcohol Harm Reduction Team

Bournemouth Divisional Headquarters, 5 Madeira Road, Bournemouth, Dorset, BH1 1QQ

From: [REDACTED]
Sent: Tuesday, December 3, 2024 8:44 PM
To: GOSLING Gareth 2551 [REDACTED]
Subject: Re: Mediate re [REDACTED]

Good Day Sgt Gosling

Thank you for your reply re the Review Application for Weymouth Tandoori.

I can confirm that the conditions that you have kindly framed in useable and unambiguous form express the frame work to prevent a repeat of the recent failings, as identified in the review application.

The conditions will clarify the processes required to unequivocally prove the right to work status and will eliminate entirely the possibility of a further offence.

██████████ did undertake a flawed process to satisfy himself of the legality of the individuals work status, ██████████ realizes the shortcomings and now has all the information and support to ensure the " right to work" status, ██████████ is committed to ensure that no person is employed unless they have proven permission to do so.

██████████ is, and has been fully aware of the consequences of employing those without rights to work, 9 years is testament to that, In context if this was a new application it would not hit the Home triage for objection, if it was the CPS considering a prosecution, the offence would not be considered in making that decision.

The Home Office, (general instructions) for taking a premises to review, alludes to 3 contraventions in three years and that the interventions by the ICE team had been unsuccessful.

The ICE team acting on intelligence, found no evidence supporting the intelligence information that they were investigating, that the premises was not being used to further crimes or promote criminal activity.

██████████ did make errors in his " checks"

He checked an immigration card of a person permitted to work, as a skilled worker such a person is permitted to work for more than one employer, as a skilled worker, one of the listed skilled work categories is Chef/Cook not unreasonably ██████████ thought that he had permission to work, training and auditing will eliminate that type of error.

The flawed checking and the 9 years, ██████████, is an indicator of poor administration rather than criminal intent.

██████████ operation of the premises has not otherwise caused concern to any of the responsible authorities, it is a small bussines that has survived the pressures of the previous few years of Inflation, fuel cost and the pandemic, the revocation of the premises would place the business in an untenable position, facing closure, causing financial hardship to the owner, also loss of the 5 current employees jobs.

I would suggest the proportionate route would be the imposition of conditions, as suggested and a warning as to future conduct from the licensing committee.

The Licensing committee are guided

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17

The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement - either orally or in writing

- that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should

into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption) 10;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;

- revoke the licence.

11.20 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 ,

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders 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. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. 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.

In seeking a proportionate and effective review outcome that supports the licensing objectives and eliminates the cause of this review, I trust you may support my suggestion of conditions and a warning.

Regards

Sent from my iPhone

On Nov 28, 2024, at 12:39 PM, GOSLING Gareth 2551 [REDACTED] wrote:

Good Afternoon [REDACTED],

Thanks for this, and yes, I think that the proposal would potentially be a good start towards ensuring that there are appropriate safeguards in place if the members of the Sub-Committee are inclined to allow the premises to retain its licence.

Your client should be mindful that the Section 182 Guidance on this activity is clear at 11.27 where it states that *“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”* amongst other serious offences.

Your client should also be aware that the statutory guidance states at 11.28 that *“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.**”*

One of the most significant challenges that we have in this matter is that this is not the first occasion that [REDACTED] has become concerned in Immigration offences. This negates the suggestion that [REDACTED] was unaware of what he was doing, however, I accept that the Review process has perhaps enhanced his concern that his business may be significantly impacted by this determination.

My understanding of your proposal, in clear and unambiguous terms is as follows and I would be grateful if you could confirm that my understanding is correct –

1. [REDACTED] has taken steps towards ‘tightening’ his existing ‘Right to Work’ checks
2. Policy being created for training and auditing for matters relating to immigration and this will be managed by an external contractor.
3. Document all personal details relating to employees which will be available to authorities upon request.
4. External contractor to oversee the appointment of non-UK employees and to maintain oversight during employment.
5. Acceptance of the impact that employing those with no right to work has on the local economy.

The outcomes available to members of the Sub-Committee are as follows –

1. Do Nothing
2. Suspend the Licence (up to 6 months)
3. Add / Amend conditions
4. Alter operating hours
5. Remove / Change the DPS
6. Remove licensable activity
7. Revoke the licence

When considering the proposal that you have put forward, the contents of your proposal sits mostly within the option to add/amend conditions, albeit that I’m not certain how those conditions would be able to link sufficiently with the provision by retail of alcohol, which is the licensable activity that [REDACTED] currently offers.

Alternatively, the members of the Sub-Committee may be inclined to ‘do nothing’ on the basis that [REDACTED] has implemented or is soon to implement your proposal. My contention against the ‘do nothing’ option is that the Guidance (highlighted above) is clear and ‘expects’ the members to consider revocation of the premises licence, even in the first instance. We know that this is not the first instance that [REDACTED] has been concerned in this activity and I suspect that revocation is a credible option.

My view at this stage is that whilst mediation will also be welcomed, I believe that [REDACTED] will need to re-visit the proposal and consider additional measures/changes that might deflect the members from taking the option that is ‘expected’ of them. I do not believe that a change of the DPS would be sufficient due to nature of the concern.

I will be happy to provide my view of those proposals and, where appropriate, support them if we consider that they will sufficiently address the concerns.

Regards,
Gareth

Gareth Gosling 2551

Police Sergeant

<image001.png>

Drug & Alcohol Harm Reduction Team

Bournemouth Divisional Headquarters, 5 Madeira Road, Bournemouth, Dorset, BH1 1QQ

From: [REDACTED] >
Sent: Wednesday, November 27, 2024 11:30 AM
To: GOSLING Gareth 2551 [REDACTED] >
Subject: Fwd: Mediate re [REDACTED]

Morning Sgt Gosling

have you had a moment to consider my email of the 23rd re mediation, I fully understand the weekend is a busy time for licensing enforcement, just concerned you may not have received my note.

Kind regards

[REDACTED]

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: November 23, 2024 at 1:08:35 PM GMT
To: GOSLING Gareth 2551 [REDACTED]
Subject: Mediate re [REDACTED]

Good Morning Sgt Gosling

Thank you for offering to engage in meditation re. license Review application lodged by Dorset Police.

My thought is that we may persue the process, involving Dorset Police (yourself) and [REDACTED] (myself) alone or alternatively, the Licensing Authority might be requested to guide the mediation. May I leave that to you to decide?

[REDACTED] has already taken steps to " tighten" his existing " right to work" checks and is formulating a policy specifically for his business, the construction, training and auditing will be done by an Immigration employment specialist or other appropriate sub contractor.

It is the intention that all employees employment status, identification records, and addresses are kept in one document, that will be, instantly, available to the Police, licensing authority and immigration officers on request.

The sub contracted auditor with [REDACTED], will scrutinise each applicants right to work, prior to the start of employment and at intervals appropriate to the permissions given to each employee.

[REDACTED] understands that the employment of those with no " right to work" undermines the Prevention of Crime and Disorder objective, in that it potentially exposes the local community to criminal activity, is not fair trading, deprives the government of taxes, the employee their statutory employment rights and safeguarding.

I hope this might give us a starting point in the mediation process.

Regards

[REDACTED]

Sent from my iPhone

Sent from my iPhone

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