



Essex Police submission regarding review of the
Premises Licence for:

Maldon King Kebab

169 High Street, Maldon, Essex, CM9 5BS

Premises Licence Holder:

Mehmet GIGIL

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3.0 Outcome Sought

- 3.1 Essex Police 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 engaged in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally.
- 3.2 This submission and appended documents provide the licensing sub-committee 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 sub-committee 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 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, Essex Police 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 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 Essex Police 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 sub-committee 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 Essex Police 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.

4.0 Immigration Offences

- 4.1 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 the revocation/suspension of their premises licence.
- 4.2 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 4.3 checks, i.e. that they were duped by fake or forged documents.
- 4.3 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*".
- 4.4 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 persons did not have the right to work.
- 4.5 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 Essex position highlights this as relevant irrespective of whether a civil penalty is imposed, or a prosecution launched for employing an illegal worker.
- 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.
- 4.6 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 non-monetary reward (such as board and lodgings) is working illegally and is a criminal offence committed by the worker and facilitated by the 'employer'.

5.0 Steps to Avoid the Employment of an Illegal Worker

- 5.1 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 Essex Police 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.
- 5.2 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.
- 5.3 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.
- 5.4 The first few results on a Google search for "right to work checks UK" are links to the GOV.UK website.
- 5.5 One of these links (<https://www.gov.uk/check-job-applicant-right-to-work>) provides general advice around the right to work checks, as well as a checklist of steps to take in the employment process. There are also further links on the page to other relevant websites and guidance.

6.0 Relevance/Irrelevance of a Civil Penalty or Prosecution

- 6.1 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.
- 6.2 Where an illegal worker is detected a civil penalty may be 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.
- 6.3 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.
- 6.4 But where an employer has not bothered with the basics of return to work checks, placed an employee on 'the books', paid minimum wage or paid employer national insurance contributions – it become difficult to 'prove' the employment statement where the only evidence may be the word of an illegal worker who has since been detained or has 'moved on'.
- 6.5 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.
- 6.6 This does not however prevent the crime prevention objective being engaged as the premises licence holder has nonetheless 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 sub-committee is entitled to exercise common sense and its own judgement based on the life experiences of its members. The *East Lindsey* case (see section 8) provides that action (revocation) to prevent what is likely to happen in the future is legitimate.

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

7.1 In order to avoid punitive action, respondents to review hearing 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 is 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.

7.2 Essex Police 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.

7.3 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.

7.4 In particular; Essex Police 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).

7.5 *Paragraph 11.26*

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.

7.6 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 Brokenshine, Immigration Minister on the introduction of the 2016 Act).

7.7 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)*, [2016] EWHC 1265 (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.

7.8 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.

Essex Police 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.

7.9 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.

Essex Police considers this paragraph self-explanatory; where an enterprise employs illegal workers it is the duty of Essex Police to work with Immigration Enforcement to bring forward reviews and for the authority to consider revocation in the instance.

7.10 In support of this statement; Essex Police would draw the sub-committee'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"

7.11 Since the main cause 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.

7.12 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.

- 8.6 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.
- 8.7 This has some similarity with any argument that may be put forward in the case before the sub-committee 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 sub-committee despite the wording of the Guidance at paragraph 11.28.
- 8.8 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 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”*.
- 8.9 Essex Police contends that in the case before the sub-committee the facts are similar. In the cited case straightforward 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 inappropriate by Mrs Justice Slade for ‘those serious cases’ set out in the Guidance.
- 8.10 In the case before the sub-committee, 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.
- 8.11 *East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway)*, [2016] EWHC 1265 (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, Essex Police would argue, indistinguishable from the matter before the sub-committee.

- 8.12 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 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).

RESTRICTED (when complete)Continuation of Statement of: **Kate NAUNTON**

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Home Office records show that on 29th January 2023 Immigration Officers from this team including myself conducted an enforcement visit to these premises to execute a search warrant issued under Paragraph 17(2) Schedule 2 Immigration Act 1972 to look for Rahim GUGUS, a Turkish national born 05 February 1992. This warrant had been obtained following receipt of intelligence that persons were working illegally at the premises on a daily basis. Enquiries with Environmental health showed that a Rahim GOGUS was working at the premises. Home Office records showed only one trace of a Rahim GOGUS, a Turkish national born 05 February 1992 entering the UK illegally on 22 May 2014. GOGUS made a claim for asylum which was refused, and he was listed as an absconder on 26 November 2015, no trace of GOGUS leave the United Kingdom.

Home Office records show that Immigration Officers entered the premises and executed the search warrant at approximately 14:18 hours on 29 January 2023. Officers' contemporaneous notes recorded and time and location stamped electronically, show that on entry there were five persons in the premises. All male of dark European appearance three of which were behind the till and counter kitchen area. Two of the males were located in a rear outside storage building linked to the premises.

Of those encountered, KIRMIZI a 19-year-old male, national of Turkey was arrested. Home Office records show KIRMIZI arrived on 9 July 2020 illegally and made a claim for asylum on the same date, this was refused on 15th August 2022. KIRMIZI lodged an appeal against this refusal on 18th August 2022 which is still pending. KIRMIZI has never been granted permission to work in the United Kingdom. KIRMIZI when encountered was wearing a Maldon King Kebab branded shirt and was found in the kitchen / food preparation area. KIRMIZI was released on Immigration bail after encounter on 29th January 2023. KIRMIZI admitted that he was working at the business, that on the day of his arrest he had been brought to work by the owner who he identified as GILGIL and that he was not paid in money but in cigarettes and food.

CELIK, a 22-year-old male, national of Turkey was arrested. Home Office Records show no

Signature: K. NAUNTON Signature Witnessed by:
2004/05(1)

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trace of lawful entry into the United Kingdom, as a national of turkey he would require a visa or entry clearance to enter the United Kingdom. CELIK made a claim for asylum when encountered on 29th January 2023 and was subsequently released on immigration bail.

CELIK has never had permission to work in the United Kingdom. CELIK when encountered on 29th January 2023 was wearing a Maldon King Kebab branded shirt and in the kitchen food preparation area.

Also arrested was GOGUS, a 23-year-old male, national of Turkey. Home Office records show GOGUS arrived illegally into the United Kingdom by small boat on 1st May 2022 and made a claim for asylum on the same date, this claim remains outstanding. GOGUS was encountered in the storeroom on entry to premises. GOGUS has no permission to work in the United Kingdom. GOGUS was released on immigration bail on 29th January 2023.

MERNEZ a 23-year-old male, national of Turkey was arrested. Home Office Records show no trace of lawful entry into the United Kingdom, as a national of Turkey he would require a visa or entry clearance to enter the United Kingdom. MERNEZ has no permission to work in the United Kingdom, on encounter he was wearing a Maldon King Kebab top and in the kitchen preparation area. GOGUS was released on immigration bail on 29th January 2023 as he as no document to assist with removal from the United Kingdom.

During the course of the execution of the search warrant and arrest of staff, the owner Mehmet GILGIL arrived on the premises and identified himself and immediately attempted to interfere with question of subjects and was very clearly hostile to officers present. GILGIL attempted to converse with arrested persons in Turkish. I escorted GILGIL from away from the premises to speak to him and explain what was happening, but he only became more hostile and refused to engage in conversation with me. GILGIL then re-entered the premises and again attempted to interfere with officers' question of arrested persons. Th decision was made to leave the premises due to GILGIL's hostile and angry behaviour..

Home Office records show that GILGIL was encountered himself on 31 July 2014 working

Signature: K. NAUNTON Signature Witnessed by:
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illegally at Maldon King Kebab 169 High Street, Maldon Essex, CM9 5BS he was served as an overstayer in United Kingdom. GILGIL is subject to immigration control and has leave to remain in the United Kingdom until 29 May 2023.

I make this statement of my own free will from records that I have seen and accessed today, 1st February 2023. I am willing to attend court or any other judicial or review hearing if necessary.

Signature: **K. NAUNTON** Signature Witnessed by:
2004/05(1)



Immigration Enforcement

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Thursday 16th February 2023

In the case of Maldon King Kebab, 169 High Street, Maldon, Essex, CM95BS

Home Office Immigration Enforcement (HOIE) have worked closely with Essex Police to instigate Licensing Act 2003 proceedings. Essex Police are leading on this case and HOIE have provided evidence support of these proceedings. The fact that Essex Police lead on such cases reflects that those Responsible Authorities are often best placed to make applications in regards the prevention of crime and disorder (including the prevention of illegal working) within their local area. In this case, Essex Police are the appropriate Responsible Authority to take enforcement action.

HOIE's work with Essex Police includes sharing data under the Licensing Act 2003. Section 185 of the Act provides that Responsible Authorities may share data with each other for these purposes.

The absence of specific HOIE representations on such a case does not mean that HOIE is not supporting Essex Police. It reflects the fact that we work closely with Essex Police to identify people who are working illegally.

Yours sincerely

Alcohol & LNR Licensing Team
Home Office