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Case No: CO/2801/2023,
AC-2023-LON-002308

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/01/2024

Before :

His Honour Judge Siddique sitting as a Deputy Judge of the High Court

Between :

THE KING
(on the application of SUPPORTING CARE
LIMITED)

Claimant

- and -

SECRETARY OF STATE FOR THE HOME
DEPARTMENT

Defendant

Zane Malik KC and Tahir Khan (instructed by **Law Lane Solicitors**) for the **Claimant**
Richard Evans (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 15 November 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 19th January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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His Honour Judge Siddique sitting as a Deputy Judge of the High Court:

Introduction

1. This case concerns the revocation on 26 June 2023 of an immigration sponsor licence that had been granted to the Claimant by the Secretary of State on 13 July 2021 (often referred to as a Tier 2 licence). The Claimant is a large domiciliary care provider registered with the Care Quality Commission. It has contracts with the NHS and local authorities allowing it to provide homecare to vulnerable and elderly individuals across several London Boroughs. Before revocation, the sponsor licence had enabled the Claimant to recruit and sponsor 68 skilled migrants, out of a total workforce of 162 employees.
2. On 31 March 2023, the Secretary of State’s Compliance Team notified the Claimant that it intended to carry out a visit. In broad terms it was explained that the purpose of the visit related to the Claimant’s sponsorship duties. The visit took place on 3 April 2023. Several individuals were interviewed, including Mr Abu Taher, the Claimant’s Managing Director and a Registered Social Worker, along with staff members.
3. On 11 May 2023, the Secretary of State suspended the Claimant’s sponsor licence citing contraventions of the conditions of the licence relating to six areas and invited submissions and supporting evidence. The Claimant made those submissions on 5 June 2023.
4. On 26 June 2023 (the decision letter is wrongly dated 26 July 2023), the Secretary of State revoked the sponsor licence, on the basis that there had been a breach in six areas of its published policy, ‘Workers and Temporary Workers: guidance for sponsors Part 3: Sponsor duties and compliance (version 03/23)’ (the “policy”). By the time of the substantive hearing on 15 November 2023, this had been whittled down to one area, relating solely to one employee, namely Ms Mahdia Ahmed Rima.
5. Ms Rima had been granted leave to remain in the United Kingdom following the Claimant’s decision to assign her a Certificate of Sponsorship (“CoS”) to work as a senior care worker. The Claimant’s contracts with the NHS led to its recruitment of 62 care workers and six senior care workers. Both roles have been in the “shortage occupation list” since January 2022, leading the Claimant to recruit and sponsor migrant workers to fulfil these posts.
6. Following its 3 April 2023 inspection visit, the Secretary of State was not satisfied that Ms Rima’s duties matched the job description on her CoS or that her role represented a genuine vacancy. The decision letter of 26 June 2023 justified revocation of the Claimant’s sponsor licence under two sections of the policy relating to Ms Rima. First, under Annex C1(s) of the policy a licence “will” be revoked where a worker’s duties did not “match” their CoS job description:

“The role undertaken by a worker you have sponsored does not match one or both of the following: • The occupation code stated on the CoS you assigned to them; • The job description on the CoS you assigned to them.”
7. Second, in accordance with Annex C1(z) of the policy, a licence “will” be revoked where it is considered a worker’s role is not genuine:

“We have reasonable grounds to believe the role for which you have assigned a CoS is not genuine – for example, because it: ... • Is a sham (including but not limited to where the CoS contains an exaggerated or incorrect job description to deliberately make it appear to meet the requirements of the route you assigned it under when it does not); or • Has been created mainly so the worker can apply for entry clearance or permission to stay.”

8. The impact of the revocation means that all 68 migrant workers will be required to find another sponsor or be required to leave the United Kingdom within 60 days of notice from the Secretary of State. The Claimant will no longer be able to retain any skilled migrant. Whilst this is not a bar on the Claimant’s right to continue to trade, this would likely undermine its operations and ability to fulfil its contracts within an industry involving vulnerable individuals. This impact must be balanced against the underlying principle behind the scheme, namely that the Secretary of State entrusts those holding a sponsor licence to act in a manner that maintains proper immigration control. This is because the capacity for damage to the national interest in the maintenance of proper immigration control is substantial if sponsors are not assiduous in meeting their responsibilities. As of the date of the substantive hearing, 15 November 2023, the Secretary of State has not served such notice, deciding to await the outcome of these proceedings.

The Grounds

9. There are four grounds of Judicial Review, which I will deal with in turn.
10. First, the Secretary of State acted in a procedurally unfair manner in relation to the interviews of Ms Rima and Mr Abu Taher.
11. Second, the Secretary of State failed to ask herself the correct question or make reasoned findings on material issues.
12. Third, the Secretary of State misconstrued the guidance and CoS description, and moreover, arrived at an irrational or inadequately reasoned conclusion.
13. Fourth, the Secretary of State failed to conduct an adequately reasoned global assessment of all relevant considerations in deciding whether to revoke or downgrade the sponsor licence.

Ground 1: Procedural unfairness relating to the interviews of Ms Rima and Mr Abu Taher

Submissions

14. The Claimant submits that the Secretary of State’s allegations include dishonesty and such allegations are so serious that they ought to have been fully and clearly brought to the Claimant’s attention in advance of the interviews that took place and before any decision was made. The Claimant further submits that such advance disclosure did not take place and this resulted in an unfair investigative process where the Claimant was not afforded a fair opportunity to make representations and provide evidence that may have materially affected the outcome of the Secretary of State’s factual findings.

15. The Defendant denies that there was any procedural unfairness at the interview stage and submits that even if there was, the opportunity to make representations and provide evidence before the final revocation decision that was made on 26 June 2023, remedied any apparent unfairness. Both parties cite the same evidence in support of their respective positions, although the burden of proof remains on the Claimant to prove the unlawfulness alleged on the balance of probabilities.

Findings

16. At the hearing, on behalf of the Secretary of State, Mr Evans accepted that the allegations (and indeed the findings) amounted to dishonesty, given paragraph 21 of the 26 June 2023 decision letter:

“We continue to believe that the role of senior carer undertaken by Ms RIMA does not represent a genuine vacancy within your organisation and has been exaggerated in order to facilitate her stay in the UK.”

17. Mr Evans explained that the reference to “exaggeration” clearly demonstrated that the Claimant had acted “deliberately” and thus the revocation was consistent with Annex C1(z) of the policy that referred to a CoS as not being “genuine”, being a “sham” , or “contain[ing] an exaggerated or incorrect job description to deliberately make it appear to meet the requirements of the route you assigned it under when it does not.”
18. To this extent, it was accepted by Mr Evans that there had been allegations and findings of dishonesty. When pressed on the factual matrix for such a finding, Mr Evans submitted that dishonesty could properly be inferred from first, the difference between Ms Rima’s 3 April 2023 interview account and her CoS job description, and second, the absence of sufficient evidence having been provided by the Claimant that rebutted the interview account when given the opportunity to do so (both of these matters are respectively dealt with further when dealing with grounds two and three below).
19. Given the allegations of dishonesty, the Claimant submits that more should and could have been done by the Secretary of State in order to ensure a fair process and that what was done was ultimately unfair. Specifically, the Claimant submits that neither allegations ((1) Ms Rima’s role was not a genuine vacancy; and (2) her duties did not match her CoS job description) were put in interview to either Ms Rima or Mr Abu Taher. The Claimant relies on several authorities that would support a finding of procedural unfairness in such circumstances, including *Balajigari v SSHD* [2019] EWCA Civ 673; [2019] 1 WLR 4647, *Bank Mellat v HM Treasury* [2013] UKSC 39; [2014] AC 700, *Mushtaq v ECO* [2015] UKUT 224 (IAC) and *Anjum v ECO* [2017] UKUT 406 (IAC).
20. Had those allegations been put in interview (or had advance disclosure been made of the allegations) the Claimant submits that it would have been able to demonstrate that Ms Rima’s role was a genuine vacancy and that her duties matched her CoS job description, pointing to eight witness statements included at Tab C of the Bundle by way of supporting evidence.
21. In my judgment these submissions miss the mark. In respect of the first broad complaint that the allegations were not put in interview or disclosed in advance, this fails to recognise that the interviews did not take place due to a suspicion of or investigation

into dishonesty. The interviews formed part of a routine inspection visit, as recorded in the Compliance Team's notification letter dated 31 March 2023. Following the visit on 3 April 2023 a Compliance Report was prepared, in which the allegations first appear. That report is dated 24 April 2023, which in turn led the Secretary of State to suspend the Claimant's licence by letter dated 11 May 2023. The authorities cited do not therefore assist the Claimant, as the allegations only arose after the interviews in question.

22. Secondly, whilst it might be said that Ms Rima and others were not asked specific questions that compared the CoS job description with Ms Rima's duties, the interview record does demonstrate that questions were nevertheless asked about matters such as Ms Rima's day to day duties, training she had been provided, hours worked, salary and work locations. Moreover, it is clear to me that the allegations were fully put at paragraphs 3, and 5 to 12, of the 11 May 2023 suspension letter.
23. Mr Malik KC, on behalf of the Claimant, submits that the suspension letter indicates that the Secretary of State had effectively already decided the issue given paragraph 7 which reads, "Therefore we are not satisfied that the role of senior carer undertaken by Ms Rima and Ms Karim represent genuine vacancies within your organisation." He cites Sachs LJ in *Sinfield v London Transport Executive* [1970] Ch 550, 558, approved at paragraph 60 in *R (Balajigari) v Home Secretary (CA)* [2019] 1 WLR, as authority for the proposition that the Secretary of State had become "unduly fixed."
24. However, paragraph 7 of the suspension letter must be read together with paragraphs 46 onwards, under the section 'Next Steps', where it is clear that at that stage the sponsor licence had only been suspended and the Claimant was entitled to submit further representations and evidence before a final decision would be reached. Indeed on 5 June 2023, the Claimant did make such representations and provided some accompanying evidence, before the revocation decision was made on 26 June 2023 based on those representations and the totality of the evidence. That was the time that the eight witness statements included in the Bundle could and should have been provided. The only explanation put forward by Mr Malik KC as to why those statements were not provided along with the 5 June 2023 representations, was because it was believed that what had been provided was good enough. However, that was a decision made by the Claimant and its legal team for which no criticism can be placed at the feet of the Secretary of State.
25. For all of the above reasons, in my judgement, the Claimant has not demonstrated to me that there has been any procedural unfairness and I therefore dismiss this first ground.

Ground 2: Whether the Secretary of State failed to ask the correct question or make reasoned findings on material issues

Submissions

26. There are two broad submissions here. First, in order to decide whether there was dishonesty, the Claimant submits that the Secretary of State was required to first decide whether the Claimant's failings were deliberate. The Claimant submits this was not done and therefore the Secretary of State "failed to ask the correct question or make reasoned findings on material issues." Second, the corollary of this is said to be that

there was no finding of dishonesty and even if there was, it was unreasoned and without rational foundation.

27. In response, the Secretary of State submits the decision letter demonstrates that a decision on dishonesty was reached, that it encompassed a finding that the Claimant acted deliberately, and such a finding had a proper factual foundation.

Findings

28. In respect of the first submission (whether the correct question was asked), both parties refer to the decision letter dated 26 June 2023 in support of their respective positions. Paragraph 21 of the letter reads:

“However, you have failed to provide evidence to support your claim that Ms RIMA is fulfilling the full range of duties outlined on her CoS. We continue to believe that the role of senior carer undertaken by Ms RIMA *does not represent a genuine vacancy* within your organisation and has been *exaggerated* in order to facilitate her stay in the UK. Therefore, this issue has not been addressed.”

29. The Claimant essentially submits that an exaggeration may be intentional or unintentional and hence the word “deliberate” should have preceded “exaggerated.” This would be consistent with Annex C1(z) of the policy which provides for an example of a sham CoS as one that “contains an *exaggerated* or incorrect job description to *deliberately* make it appear to meet the requirements of the route you assigned it under when it does not.”
30. Whilst I am not persuaded by Mr Evans’ submission that a reference to “exaggerated” is to be read as being synonymous with “deliberate”, I am satisfied that when read conjunctively with paragraph 23 and with the word “genuine” which appears in both paragraphs 21 and 23, a proper construction of the decision letter is that the Secretary of State decided that Ms Rima’s role did not represent a genuine vacancy, that it had been deliberately exaggerated and that this amounted to a finding of dishonesty.
31. In respect of the second submission that there was an insufficiently reasoned or rational basis for a finding of dishonesty, the Claimant submits that as the Secretary of State found that Ms Rima was performing six out of eight duties listed in her CoS, this demonstrates that her role existed. Further, in the absence of any other evidence it was unreasonable and / or irrational to conclude that there was dishonesty merely because Ms Rima was not performing all of the listed duties at all times. Additionally, the Claimant submits that when assessing dishonesty, the Secretary of State wrongly reversed the burden of proof at paragraph 21 of the decision letter when stating: “...you have failed to provide evidence to support your claim”, leading to an irrational basis for a finding of dishonesty. By way of support, the Claimant relies upon paragraph 43 of *Balajigari v SSHD*, where the Court approved the following passage of Martin Spencer J from *Shahbaz Khan* [2018] UKUT 384 (IAC):

“In approaching that fact-finding task, the Secretary of State should remind herself that, although the standard of proof is the ‘balance of probability’, a finding that a person has been deceitful and dishonest in relation to his tax affairs with the consequence that he is denied settlement in this country is a very serious finding with serious consequences.”

32. In my judgement, this passage merely cites well established principles. It is not inconsistent with the Secretary of State's position that dishonesty could properly be inferred from first, the difference between Ms Rima's 3 April 2023 interview account and her CoS job description, and second, the absence of sufficient evidence having been provided by the Claimant that rebutted the interview account when given the opportunity to do so. Moreover, that position adopted by the Secretary of State is consistent with the preceding paragraph 42 in *Balajigari v SSHD*, which reads:
- “Although Martin Spencer J clearly makes the point that the Secretary of State must carefully consider any case advanced that the discrepancy is the result of carelessness rather than dishonesty, there is in our view a danger that his “starting-point” mis-states the position. A discrepancy between the earnings declared to HMRC and to the Home Office may justifiably give rise to a suspicion that it is the result of dishonesty but it does not by itself justify a conclusion to that effect. What it does is to call for an explanation. If an explanation once sought is not forthcoming, or is unconvincing, it may at that point be legitimate for the Secretary of State to *infer* dishonesty; but even in that case the position is not that there is a legal burden on the applicant to disprove dishonesty. The Secretary of State must simply decide, *considering the discrepancy in the light of the explanation (or lack of it), whether he is satisfied that the applicant has been dishonest.*”
33. Before reaching the finding of dishonesty at paragraph 21 of the decision letter, the Secretary of State provided reasons and an evidential basis at paragraphs 15 to 20. This included the discrepancy between Ms Rima's 3 April 2023 interview account and her CoS job description, together with the additional evidence and representations submitted by the Claimant on 5 June 2023. As explained at paragraph 17 of the decision letter, other than an additional statement from Ms Rima the only other evidence that demonstrated Ms Rima's work was a screenshot of a care report showing Ms Rima had prompted a client to take medication. No evidence was provided to corroborate Ms Rima's additional statement that she allocated shifts and rotas or carried out administrative duties such as care plans; the latter being a duty that she expressly stated she did not carry out when interviewed on 3 April 2023.
34. In my judgment, given the content of Ms Rima's interview and its discrepancy with her duties as appearing on her CoS, an explanation was called for. The content of the Claimant's response was minimal particularly when compared with the evidence it has since retrospectively produced and seeks to rely upon in respect of its first ground relating to procedural unfairness. In those circumstances it is not unreasonable that the Secretary of State remained unconvinced and inferred dishonesty (although equally it is not difficult to think of stronger cases of dishonesty). Moreover, as illustrated at paragraph 42 of *Balajigari v SSHD*, such an approach does not place a legal burden on the Claimant to disprove dishonesty. Indeed, *Balajigari v SSHD* demonstrates that in the circumstances the Secretary of State was entitled to infer dishonesty given the discrepancy (between Ms Rima's 3 April 2023 interview account and her CoS duties) was not adequately explained nor rebutted by the Claimant when given a fair opportunity to do so. Whilst submissions were not made by either party, in my judgment such an approach is consistent with the test of dishonesty as restated in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67; [2018] AC 391.
35. For the above reasons, I am not satisfied that the Secretary of State failed to ask the correct question when deciding upon the issue of dishonesty. Nor am I satisfied that

the Secretary of State unreasonably and / or irrationally decided that Ms Rima's role did not represent a genuine vacancy and had been deliberated exaggerated (and that therefore there was dishonesty). I therefore dismiss this ground of claim.

Ground 3: Whether the Secretary of State misconstrued the guidance and CoS description, and arrived at an irrational or inadequately reasoned conclusion

Submissions

36. This ground revolves around Annex C1(s) of the policy, which provides that a licence will be revoked where the role undertaken by a worker "does not match one or both of the following: ...The job description on the CoS you assigned to them."
37. The job duties as stated on Ms Rima's CoS are as follows:
- "i. Working together with the care team [to] ensure that all residents' care needs [are met].
 - ii. Be aware of and deliver the physical care appropriate to each resident whilst at all times ensuring dignity, privacy and choice, to be aware of and deliver and meet the emotional and psychological needs of each resident whilst at all times ensuring dignity, privacy and choice.
 - iii. To participate in the keyworker system as directed by the Home Manager.
 - iv. To undertake some administrative duties eg. care plans.
 - v. To exercise responsibilities under H&S at work and to monitor residence condition by regularly taking temperatures, pulse, BP, & weight.
 - vi. To communicate adequately through both verbal and written means with other members of the care team.
 - vii. To ensure that all residents care needs are catered for by liaising with team managers and carrying out care plans for residents, and be responsible for shifts and rotas.
 - viii. To escort residents as necessary."
38. The parties were in agreement that duties (iv) and (vii) were those in issue, with the Secretary of State having found (at paragraphs 16, 17 and 21 of the decision letter) that these duties were not being carried out by Ms Rima. Therefore, the key issue for me to decide in respect of this ground was whether this meant it was irrational for the Secretary of State to conclude that Ms Rima's role did not "match" her CoS job description.
39. On behalf of the Secretary of State, Mr Evans invited me to adopt a narrower interpretation on the basis that Ms Rima had not been carrying out such duties. On behalf of the Claimant, Mr Malik KC brought my attention to passages from two authorities in support of his submission that "match" should be interpreted broadly. Firstly, *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd and another intervening)* [2012] UKSC 13, at paragraph 18 where Lord Reed JSC stated:

“On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.”

40. Secondly, *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59; [2015] 1 WLR 4546, where Lord Wilson JSC stated at paragraph 31:

“So the search is for the proper interpretation of the process instruction, no more and no less. Indeed in that regard it is now clear that its interpretation is a matter of law which the court must therefore decide for itself: *R (SK (Zimbabwe)) v Secretary of State for the Home Department (Bail for Immigration Detainees intervening)* [2011] 1 WLR 1299, para 36, Lord Hope of Craighead DPSC). Previous suggestions that the courts should adopt the Secretary of State’s own interpretation of her immigration policies unless it is unreasonable, made for example in *Gangadeen and Jurawan v Secretary of State for the Home Department* [1998] Imm AR 106, 115, are therefore inaccurate.”

Findings

41. Consistent with these judgements, in order to arrive at a proper interpretation it is necessary to scrutinize the language contained within the policy and interpret it in the context in which the policy was drafted. I therefore take account that Annex C1(s) provides that a licence “will” be revoked in situations where a worker’s role did not “match” their CoS job description. This is a severe measure that would likely have far reaching consequences for the Claimant, its employees and families, and conceivably to a wider industry involving vulnerable individuals. Therefore, an interpretation that adopted a purely literal and strict approach may be considered to be unjust and unintended where a licence was revoked for very minor or meaningless discrepancies or variances between the work undertaken and the job description.
42. On the other hand an interpretation that was too broad and allowed for substantial or significant variances would fail to meet the underlying principle behind a scheme based around trust and an expectation that those holding a sponsor licence will act in a manner that maintains proper immigration control. Where an interpretation was too broad proper immigration control would be undermined and the national interest damaged.
43. In the context of this case Ms Rima was fulfilling six out of eight duties. It might fairly be said that she was carrying out the majority of the CoS duties. On the other hand, she was not fulfilling the full range of those duties. In my judgement the question of whether the role undertaken by Ms Rima “matched” her CoS cannot be properly decided simply by counting off from the CoS list of duties, but instead requires a qualitative assessment of the duties. Such an approach is consistent with the principles derived from the Supreme Court decisions of *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd and another intervening)* and *Mandalia v Secretary of State for the Home Department*.
44. The two duties which the Secretary of State found were not being carried out by Ms Rima included first, liaison with team managers and carrying out care plans for residents, and second, allocating shifts and rotas. In my judgment an objectively

undertaken qualitative assessment of such duties could not realistically conclude that they are very minor or meaningless. Instead, such work can fairly and properly be described as substantial and / or significant. I am not therefore satisfied that the Secretary of State misconstrued the policy, or arrived at an irrational or inadequately reasoned conclusion, when deciding that Ms Rima's role did not "match" her CoS on the basis of these two discrepancies.

Ground 4: Whether the Secretary of State failed to conduct an adequately reasoned global assessment of all relevant considerations in deciding whether to revoke or downgrade the sponsor licence

Submissions

45. This ground centres around the impact of revocation and whether this was adequately considered before the revocation decision was made. The Claimant highlights that the Claimant's 68 migrant workers and families will be required to leave the United Kingdom (unless they qualify on some other basis), that there will be consequential distress suffered by them and the vulnerable individuals under their care, and that there would likely be an adverse impact to the Claimant's services and its ability to fulfil its contracts thereby jeopardising its entire operation. In the Claimant's submission these factors were not adequately considered by the Secretary of State before deciding to revoke the Claimant's sponsor licence.

46. Whilst the Claimant does not take issue with provisions in the policy that provide for mandatory revocation in circumstances where there have been findings of dishonesty (Annex C1(z)) or where a worker's role did not match their CoS list of duties (Annex C1(s)), the Claimant avers that public law principles nevertheless require a discretion to be properly exercised. In support, reliance was placed on *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, where the Supreme Court stated as follows at paragraph 31:

"But, in his judgment in the *WL (Congo)* case, Lord Dyson JSC had articulated two qualifications. He had said, at para 21: 'it is a well established principle of public law that a policy should not be so rigid as to amount to a fetter on the discretion of decision-makers'... Lord Dyson JSC had also said, at para 26, 'a decision-maker must follow his published policy . . . unless there are good reasons for not doing so.'"

47. Mr Evans responds that the Secretary of State did consider whether it was appropriate to downgrade the Claimant's licence and issue an action plan, but properly decided against this due to case law that supported a firm response. In *R (Raj and Knoll Limited) v Secretary of State for the Home Department* [2015] EWHC 1329 (Admin), Haddon-Cave J (as he then was), outlined the following legal principles following an analysis of relevant case law:

"(1) The essence of the system is that the Secretary of State imposes "a high degree of trust" in sponsors granted ('Tier 2' or 'Tier 4') licences in implementing and policing immigration policy in respect of migrants to whom it grants Certificate of Sponsorship ("CoS") or Confirmation of Acceptance ("CAS") (per McGowan J in *London St Andrews College v Secretary of State for the Home Department* (supra) [2014] EWHC 4328 (Admin) at [12]) (and see Silber J in *R (Westech*

College) v Secretary of State for the Home Department [2011] EWHC 1484 (Admin)).

- (2) The authority to grant a certificate (CoS or CAS) is a privilege which carries great responsibility: the sponsor is expected to carry out its responsibilities “with all the rigour and vigilance of the immigration control authorities” (per McGowan J in *London St Andrews College v Secretary of State for the Home Department* (supra) at [13]).
 - (4) The introduction of the Points-Based System has created a system of immigration control in which the emphasis is on “certainty in place of discretion, on detail rather than broad guidance” (per Lord Hope in *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33; [2012] 1 WLR 2208 at [42]).
 - (7) The primary judgment about the appropriate response to breaches by licence holders is that of the Secretary of State. The role of the Court is simply supervisory. The Secretary of State is entitled to maintain a fairly high index of suspicion and a ‘light trigger’ in deciding when and with what level of firmness she should act (*R (The London Reading College Ltd) v Secretary of State for the Home Department* [2010] EWHC 2561 Admin per Neil Garnham QC).
 - (8) The courts should respect the experience and expertise of UKBA when reaching conclusions as to a sponsor’s compliance with the Guidance, which is vitally necessary to ensure that there is effective immigration control ((per Silber J in *R (Westech College) v Secretary of State for the Home Department* (2011) EWHC 1484 (Admin) at [29(d)]).”
48. Similarly, in *R (Raj and Knoll Limited) v Secretary of State for the Home Department* [2016] EWCA Civ 770, at paragraph 32 Tomlinson LJ stated:
- “The mere fact that the decision making in this area may have serious commercial consequences for licenced sponsors is not of itself a reason to impose heightened scrutiny. The circumstance that the SSHD has special expertise in and experience of decision-making in this field, and that the Court possesses no particular institutional competence and can claim no special constitutional legitimacy, militates against that submission – see per Lightman J in *R (Cellcom) v DJ of Telecoms* [1999] ECC 314 at paragraph 26, and per Laws LJ in *R (Law Society) v London Criminal Court Solicitors’ Association* [2015] EWHC 295 (Admin) at paragraphs 32 and 33. It is also clear that the exercise in which the SSHD is engaged involves no fundamental right of the Appellant, but on the contrary a right contingent upon adherence to the Rules: (cf. per Lord Sumption *R (New London College Limited v Secretary of State for the Home Department)*...”
49. More recently in *R(Operation Holdings Ltd (trading as Goldcare Homes)) v Secretary of State for The Home Department* [2019] EWHC 3884 (Admin), Alison Foster QC sitting as a Deputy Judge of the High Court stated at paragraph 21:
- “It is clear that sponsorship is based on two fundamental principles: (i) Those who benefit most directly from migration, that is to say employers, education providers or other bodies who bring in migrants, must play their part in ensuring that the system is not abused; and (ii) The Home Office needs to be sure that those applying

to come to the UK to undertake work or to study are indeed eligible to do so and if a reputable employer or education provider genuinely wishes to take them on.”

Findings

50. An analysis of the decision letter of 26 June 2023 indicates that there is no reference by the Secretary of State to the impact of the decision to revoke the sponsor licence on the Claimant’s 68 migrant workers and families, the vulnerable individuals under their care or to the adverse impact to the Claimant’s services and the wider industry if it becomes unable to fulfil its contracts. Instead, the Secretary of State adopted a holistic approach, stating as follows:

“80. We always take into consideration the potential impact revocation may have on a sponsor and consideration is always given to re-rating a sponsor licence to allow a sponsor to demonstrate full compliance with their sponsor duties if appropriate.

81. We have considered the possibility of downgrading your licence and issuing you with an action plan. However, we will only downgrade a licence and issue an action plan where there is scope to rectify shortcomings or omissions in systems or retained documents.”

51. The decision letter then goes on to refer to Annexes C1(s) and (z) of the policy (and Annex C2(b), which was subsequently abandoned), before stating “Downgrading your licence is not appropriate due to the seriousness of your non-compliance with your sponsor duties.” The Secretary of State continued that “Annex C1 ... sets out the circumstances in which we will revoke your licence – these are known as ‘mandatory’ grounds of revocation. If any of these circumstances arise, we may revoke your licence...”

52. A similar explanation was provided in the pre-action protocol response letter dated 18 July 2023, at paragraph (xv) as follows:

“However, we will only downgrade a licence and issue an action plan where there is scope to rectify shortcomings or omissions in systems or retained documents. However, the breaches identified were mandatory grounds for revocation and therefore, downgrading the licence was not appropriate due to seriousness of your client’s non-compliance with their duties. Therefore, the SSHD is content there is no error in this consideration.”

53. In oral submissions, Mr Malik KC submitted that on the one hand the 26 June 2023 decision letter states that in the circumstances the licence “will” be revoked because there were “mandatory grounds.” On the other hand the same paragraph in the same letter suggests that any such decision, i.e. even where there were “mandatory grounds”, is discretionary hence the statement, “we may revoke your licence.” As Mr Evans conceded, this was “not elegantly put.” In my judgment, it lacks sufficient clarity in respect of the decision making process that took place. I accept the submission by Mr Malik KC that it is not enough for the Secretary of State to make a general passing comment that she “always” considers the potential impact of the revocation. Whilst the case law relied upon by the Secretary of State supports taking a firm response, it does not support a contention that the Secretary of State is absolved from engaging with the

facts of a particular case and explain, with adequate reasons, why it is reasonable and proportionate to revoke a sponsor licence.

54. Such engagement is consistent with *Balajigari v SSHD*, where Underhill LJ stated at paragraph 39:

“Mr Biggs submitted that at this second stage of the analysis the Secretary of State must separately consider whether, notwithstanding the conclusion that it was undesirable for the applicant to have leave to remain, there were factors outweighing the presumption that leave should for that reason be refused. He submitted that it is at this stage that the Secretary of State must consider such factors as the welfare of any minor children who may be affected adversely by the decision and any human rights issues which arise. That seems to us in principle correct.”

55. The content of the decision letter and indeed the pre-action protocol response from the Secretary of State indicates that the principal, if not only, reason why the licence was revoked was because the policy stated revocation was mandatory in the circumstances. There was no actual or at least demonstrable engagement with any other consideration such as the impact of revocation upon the other 67 migrant workers and their families, the vulnerable individuals under care or to adverse impact to the Claimant and the wider industry. There was similarly no engagement with the question of whether revocation in such circumstances is reasonable and proportionate when a finding in relation to dishonesty related only to the role of a single employee from a workforce of 162 workers, including 68 skilled migrant workers. In those circumstances, I find that on the balance of probabilities the Claimant has demonstrated that the Secretary of State failed to conduct an adequately reasoned global assessment of all relevant considerations in deciding whether to revoke or downgrade the sponsor licence. I therefore allow this fourth ground of judicial review.

Conclusion

56. This judicial review claim is allowed on the basis of the fourth ground only. I therefore quash the Secretary of State’s decision dated 26 June 2023 (letter wrongly appears as 26 July 2023), to revoke the Claimant’s sponsor licence.