

# PUBLIC HEALTH AND LICENSING



<i>For Office use only</i>	
<b><i>Caps Application No.</i></b>	
<b><i>Licence Number</i></b>	

## Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

### PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I



*(Insert name of applicant)*

**apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)**

#### Part 1 – Premises or club premises details

<b>Postal address of premises or, if none, ordnance survey map reference or description</b> Rajkumar 27 Springfield Road Horsham	
<b>Post town</b> Horsham	<b>Post code (if known)</b> RH12 2PG

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Mr Abdul Shahid
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<b>Number of premises licence or club premises certificate (if known)</b> LI/05/1148/PREM
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**Part 2 - Applicant details**

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick ✓ yes

Mr  Mrs  Miss  Ms  Other title (for example, Rev)

**Surname**

**First names**



Please tick ✓ yes

**I am 18 years old or over**

**Current postal address if different from premises address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address (optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address
Telephone number (if any)
E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address  [REDACTED] <b>South East - Immigration Compliance &amp; Enforcement (ICE) Team</b> <b>Immigration Enforcement</b> <b>Home Office</b>  <b>Timberham House, World Cargo Centre</b> <b>Gatwick Airport, RH6 0EZ</b>
Telephone number (if any) [REDACTED]
E-mail address (optional) [REDACTED]

**This application to review relates to the following licensing objective(s)**

- |   |                                     |
|---|-------------------------------------|
|   | Please tick one or more boxes ✓     |
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety                        | <input type="checkbox"/>            |
| 3) the prevention of public nuisance    | <input type="checkbox"/>            |
| 4) the protection of children from harm | <input type="checkbox"/>            |

**Please state the ground(s) for review** (please read guidance note 2)

Immigration Enforcement contend that the Licensing Objective of:

- i) Prevention of crime & disorder

has been seriously undermined by the Premises Licence Holder who has been found to be employing illegal workers who have no right to work in the United Kingdom due to their immigration status.

The Rajkumar, 27-31 Springfield Road, Horsham, RH12 2PG is one of a number of premises in the West Sussex Division which have, in recent months, been subject to enforcement action by Immigration Officers from the Sussex Immigration Compliance and Enforcement Team of the Home Office.

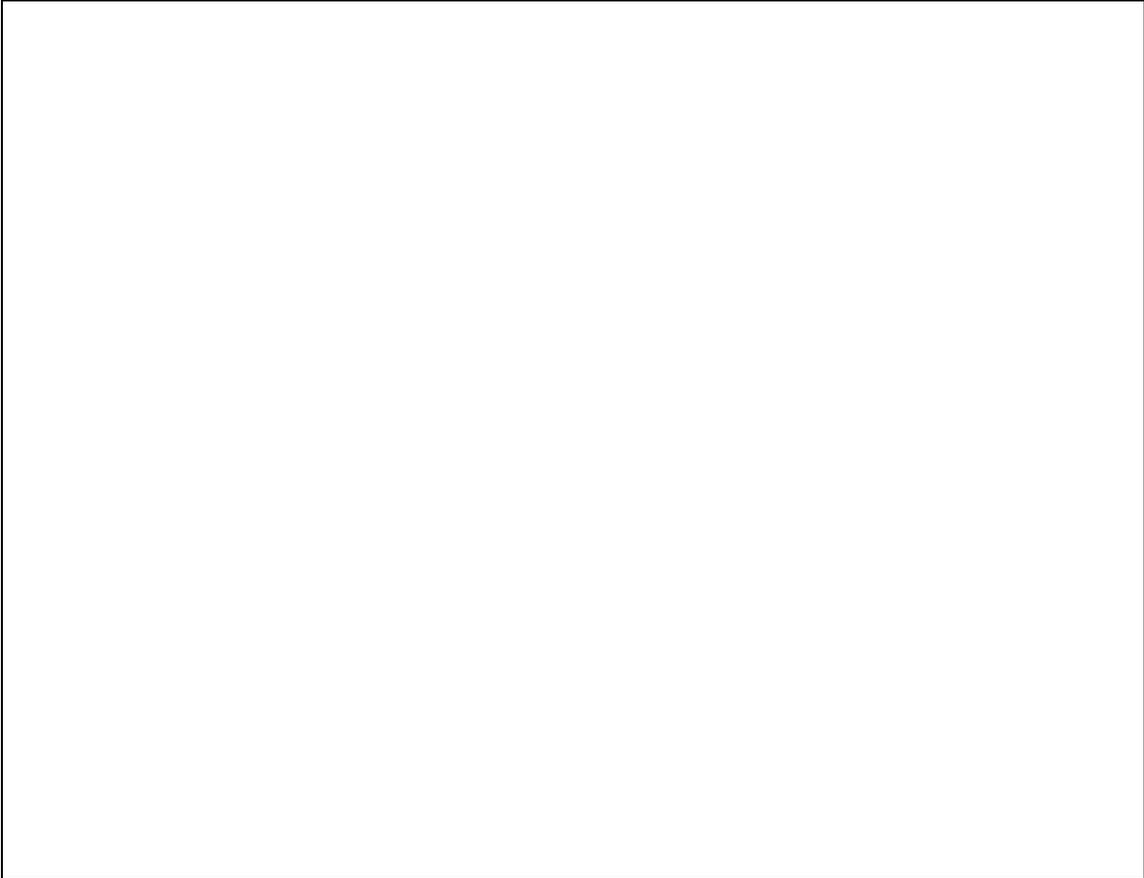
The 4 enforcement visits & 2 compliance visits for these premises were conducted between May 2013 and February 2018 and a total of 11 immigration offenders or illegal workers, that is persons were found to be employed who have no right to work in the UK. On the most recent enforcement visit the Home Office civil penalties team decided not to take action as they deemed the evidence of working provided by the ICE team not sufficient (despite the worker being behind the bar & in uniform).

A total of £55,000 penalty has been issued by the Home Office to the premises licence holders as a result of their employment of illegal workers. To date none of these civil penalties has been paid in full by the premises licence holders, neither did they appeal/object in court the decision to issue these penalties. The holding company for the Rajkumar restaurant has twice been dissolved with penalties outstanding – the company have only paid £1,975 toward the penalty total.

Appropriate checks had not been made at either premises by the Premises Licence Holders to ensure that all the staff employed had the right to work in the United Kingdom.

From the time of issuing the first civil penalty through to the last enforcement visit, despite several of the holding companies going in to liquidation, the premises license holder has always remained the same. Further to this the premises license holder has been in place since the change over from the Licensing Act 1964 to the Licensing Act 2003.

Sleeping areas for multiple persons were identified by immigration officers at the premises. The time lapse between the dates of the incidents and the ultimate submission of the Review application can be in part attributed towards a better working relationship between Immigration Enforcement and the local authority, with the first license review sought by Immigration Enforcement for two premises found to be regularly employing illegal workers in the authorities area heard in 2017.



**Please provide as much information as possible to support the application** (please read guidance note 3)

A timeline of Immigration Enforcement's involvement with the premises is as follows:

**09/05/2013-** Enforcement visit conducted to premises, 6x illegal workers encountered. A penalty of £30,000 was issued on 12/03/2013 to Sadiq-Nishat U.K Limited. The employer did not object/appeal the penalty, no payment was made, the company was dissolved.

**03/04/2014** Enforcement visit conducted to premises, 2x illegal workers encountered. £10,000 penalty issued on 23/05/2014 to ALM Horsham Ltd. The employer did not object/appeal the penalty, the company was dissolved with £8,025 outstanding to the Home Office.

**10/06/2017** - Enforcement visit conducted to premises, 2x illegal workers encountered. £10,000 penalty issued on 09/08/2017 to Apex Horsham Ltd. No payments made and penalty has been passed on to debt recovery agent.

**11/02/2018** – Compliance visit (a lower key visit with fewer officers) conducted to arrest & detain an immigration offender known to be linked to the business. Although no civil action was commenced, it is worth noting that both officers on this visit can testify to the fact that they saw the immigration offender in waiters uniform and in the front of the restaurant upon entry (at the end of the lunchtime service).

**19/02/2018** – Compliance visit conducted to speak with an EU national employed at the premises who following the visit on the 11/02/2018, had submitted representations to the Home Office claiming to be in a relationship with the individual arrested during the visit on the 11/02/18. The suspicion was that this was a sham relationship, designed solely to assist the individual arrested on the 11/02 with his immigration status, this suspicion was proven correct and the EU national was served papers as an immigration offender (appeal ongoing).

While it is noted that these cases are currently being dealt with by way of a civil penalty that does not alter the fact that the licensing objective of the prevention of crime and disorder has been undermined by the actions of the premises licence holder and/or the DPS on each occasion.

Staff who are not officially registered as employees will not be afforded protection under employment law or other safeguarding mechanisms. The males employed across the premises could not have provided the requisite paperwork, national insurance number, nor tax code. This not only defrauds Her Majesty's Revenue & Customs but can lead to the exploitation of vulnerable individuals. In this instance the failure to put appropriate checks in place has resulted in multiple individuals being unlawfully employed at both premises. The licensing objectives are in place for the

avoidance of future harm and, as cited in the High Court ruling in relation to East Lindsey District Council v Abu Hanif, where there is evidence of defrauding HMRC, exploitation of vulnerable workers and a failure to pay the minimum wage, then in those circumstances, albeit being dealt with by way of civil penalty, the crime and disorder licensing objective is clearly engaged.

The Revised Guidance under Section 182 of the Licensing Act 2003 states;

*11.26 Where the licensing Authority is conducting a Review on the grounds that the premises has 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. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.*

It further states;

*11.27 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 premises:*

- *For knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter*

*11.28 It is envisaged that licensing authorities, the police 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*

Immigration Enforcement contends that despite repeated intervention from ourselves, offences have been repeatedly committed which cannot be allowed to continue. Having considered the alternatives, it is requested that the Licensing Committee seriously consider revocation of this premises licence. This will send a strong message that that the Local Authority are proactively combating the exploitation of workers, by ensuring employers take seriously their responsibilities in relation to the legislation and to the people within their employ.

***Philip Kolvin QC reports on an important High Court ruling after a restaurant owner appealed the revocation of his premises licence over the employment of an illegal worker.***

In *East Lindsey District Council v Abu Hanif (trading as Zara's restaurant and takeaway)* a High Court Judge has restored a licensing authority's decision to revoke a premises licence for employment of an illegal worker.

Zara's restaurant traded in East Lindsey. The owner and licensee was Mr Hanif. After a raid by the immigration authorities it was discovered that Mr Hanif was employing an illegal worker.

The Police brought review proceedings and the licensing authority revoked the premises licence. Mr Hanif appealed. At the appeal, which was heard by District Judge Veits, his counsel argued before the District Judge that, since Mr Hanif had not been prosecuted for employing an illegal worker under section 21 Immigration, Asylum and Nationality Act 2006, but had merely been given a civil penalty under section 15 of that legislation, the crime prevention objective was not engaged.

At the hearing of the magistrates' appeal, it was established that Mr Hanif had employed the illegal worker without paperwork showing a right to work in the UK, he had paid him cash in hand, he paid him less than the minimum wage, he did not keep or maintain PAYE records and that, while he had deducted tax from the worker's salary, he failed to account to the HMRC for the tax deducted.

The District Judge held that because prosecution proceedings had not been brought, and no crime had been reported, the crime prevention objective was not engaged; and that in any event the failure to pay the minimum wage had not been the main basis of the licensing authority's decision.

The council appealed by way of case stated. It argued that it is not necessary for a crime to have been reported, prosecuted or established in a court of law in order for the crime prevention objective to be engaged. The licensing objectives are prospective, and are concerned with the avoidance of harm in the future.

The matter came before Mr Justice Jay. He accepted all of the council's arguments. In his view, there was clear evidence of the commission of criminal offences, both in relation to the non-payment of the minimum wage and also tax evasion. As for the offence of knowingly employing an illegal worker, he considered that, based on the fact that the employee could not provide the requisite paperwork, a national insurance number or a tax code, the clear inference was that Mr Hanif well knew that he was employing an illegal worker. A deterrent approach was justified on the facts.

Mr Justice Jay decided that remission of the case to the Magistrates' Court was not appropriate, since he considered that the council's decision to revoke was clearly correct. In reaching that decision, the Learned Judge pointed out that employing an illegal worker involves not only defrauding the Revenue, but also the exploitation of vulnerable individuals including, here, by not paying them the minimum wage.

The Learned Judge ordered Mr Hanif to pay costs in the High Court in the sum of £15,000 and ordered costs of the Magistrates' proceedings in the sum of £4,000.

Reflecting the importance of the principle that it is not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged, Mr Justice Jay certified the case as appropriate for citation in future cases under the relevant Practice Direction. This means that the judgment can be cited in future cases.

Have you made an application for review relating to the premises before

**Please**  
 **No**

If yes please state the date of that application

Day    Month    Year  

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**If you have made representations before relating to the premises please state what they were and when you made them**



