

# Agenda



## Licensing Sub-Committee

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Date: Tuesday, 4 February 2020

Time: 1.00 pm

Venue: Committee Room 1 - Civic Centre

To: Councillors H Thomas (Deputy Chair), K Thomas, I Hayat, M Al-Nuaimi, J Cleverly, C Ferris, J Hughes, Y Forsey, T Suller and M Kellaway

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Item		Wards Affected
1	<u>Apologies for Absence</u>	
2	<u>Declarations of Interest</u>	
3	<u>Licensing Sub-Committee Code of Practice</u> (Pages 3 - 16)	
4	<u>Review of a Premises Licence under Section 51 Licensing Act 2003: Sanremo, 131 Caerleon Road, Newport, NP19 7BZ</u> (Pages 17 - 76)	St Julians

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## Conduct and Procedure of Licensing Sub-committee

### 1 Membership and appointment of Chair

- 1.1 The Licensing Sub-committee comprises all members of the committee, other than those who have an interest or who is the ward member for the ward in which premises under consideration is located. The quorum is three. The Chair will be elected on the day by a simple majority vote.
- 1.2 For example, if they live in the vicinity of the licensed premises, or have a friendship or a close personal association with either the applicant or any objector this would disqualify the Member from considering the matter.
- 1.3 Members of the Licensing Sub-Committees should inform the Senior Democratic Services Officer immediately if they consider that they are disqualified from considering any application, if members of the Licensing Sub-Committee become aware of any personal interest in any application before them they should declare the interest at the beginning of the meeting and withdraw immediately.

### 2 Ward Councillors

- 2.1 Ward Councillors are no longer expressly permitted to make representation in their capacity as Ward Councillors although they are entitled to make representations as individuals falling within the category of “any other person”, if they are likely to be affected by an application (for example if they live in close proximity to the licensed premises). Councillors however must comply at all times with the Members Code of Conduct (“the Code”). Ward Councillors should avoid discussing the application with any of the Licensing Sub-Committee beforehand to avoid any suspicion of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.
- 2.2 If a Ward Councillor has a personal interest in an application (for example, because he/she lives in close proximity to the premises), then this is also likely to be a “prejudicial” interest under the Code. Provided that the Member declares the interest and withdraws from the hearing after making representations, then he/she is entitled under paragraph 14(2) of the Code to appear at the hearing in the same way as any other member of the public having made a relevant representation within the meaning of the Act (“any other person”). This also applies whether or not the Councillor is a Member of the Licensing Committee. Because of this “personal and prejudicial” interest the Ward Councillor cannot have any other involvement with officers or members regarding the application.
- 2.3 Ward Councillors who are not members of Licensing Committee may also act as the appointed representatives for any other person at the hearing, if requested to do so, but they should avoid discussing the application with any of the Licensing Sub-Committee beforehand. If a Ward Member is representing any other person, that other person must have objected by their own accord before a Ward Member can be requested to act as their representative at the hearing.
- 2.4 Ward Councillors who are members of Licensing Committee should not appear as the appointed representatives for any other person at the hearing because of the requirements of natural justice and the need to avoid giving any impression of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.

### **3 Lobbying**

- 3.1 Other Members must not lobby any Member of the Licensing Sub-committee, directly or indirectly, about any application before them.
- 3.2 Members of the public or any of the parties must not lobby any members of the Licensing Sub-Committee about any application before them. If any of the members of the Licensing Sub-Committee are approached by any person about a licensing matter, they should explain that they cannot discuss the matter and refer the person to the Licensing Officer. Any written representations received by individual members of the Licensing Sub-Committee must be passed to the Licensing Officer and reported at the hearing.

### **4 Chair of the Licensing Sub-Committee**

The Chair of the Licensing Sub-Committee is to be elected by Members on the day by simple majority vote.

### **5 Quorum**

- 5.1 Although the Act allows for the hearing to continue with two members present, the Council's Constitution and the Statement of Licensing Policy provides that three Councillors shall constitute a quorum for any meeting and it is good administrative practice for three members to be present.

If the meeting becomes inquorate at any time, the matter will need to be adjourned or referred to full Licensing Committee.

- 5.3 Membership may change during the course of a Sub-Committee meeting only if an individual member is disqualified from considering some but not all of the applications on the agenda. All members considering an application however must be present throughout the individual hearing. If, for any reason, a member needs to withdraw during the hearing, the proceedings should be temporarily adjourned until the member returns. The meeting will only commence if quorate. If a member arrives late and after the hearing commences, he or she will be disqualified from hearing the specific case under consideration but can hear other cases set out in the agenda.

### **6 Statutory Guidance**

- 6.1 The Licensing Act 2003 (Hearings) Regulations 2005 SI 44/2005 and the The Licensing Act 2003 (Hearings) (Amendment) Regulations 2004 SI 78/2005 ("the Regulations") made under Section 183 of the Act set out the statutory framework for the Licensing Sub-Committee hearings.
- 6.2 These Regulations make provision for hearings required to be held by the Council as Licensing Authority, under the Licensing Act 2003. In particular, the Regulations provide for the timing of the hearings and the notification requirements regarding the time and date of the hearings and information to be given to the parties. In addition, provision is made for a party to provide information to the Licensing Committee about attendance at a hearing, representations, the seeking of permission for another person to attend to assist and whether a party believes that a hearing is necessary.
- 6.3 The Regulations provide for a range of procedural issues to govern the way in which preparations are made for a hearing, the procedures to be followed, the rights of parties at the hearing, the keeping of records and the manner of giving notices. The Regulations also make provision for the timing of the Licensing Committee's determination following a hearing.



- 6.4 Insofar as the Regulations do not make specific provision for procedures for and at hearings, the Licensing Authority can determine its own procedures.

## **7 Notice of Hearings**

- 7.1 The provisions of the Local Government Act 1972 requiring at least three clear working days' notice of Council and Committee meetings do not apply to hearings conducted under the Licensing Act 2003.
- 7.2 Instead Regulation 6 of the Regulations prescribes the period of notice to be given for a Licensing Committee hearing, depending upon the type of application being considered.
- 7.2.1 At least two clear working days' notice must be given if the hearing is to consider
- the cancellation of an interim authority notice following a police objection
  - counter notice following a police objection to a temporary event notice
- 7.2.2 at least five clear working days' notice must be given if the hearing is to consider
- review of premises licence following a closure order
  - determination of application for conversion of existing licence
  - determination of application for conversion of existing club certificate
  - determination of application by holder of justices' licence for the grant of a personal licence
- 7.2.3 In all other cases, at least 10 clear working day's notice of the hearing must be given.

## **8 Timescale for arranging hearings**

- 8.1 Regulations 4 and 5 and Schedule 1 set out the time periods within which the Council is required to arrange hearings. Where a hearing cannot be concluded in one day and has to be held on more than one day, the Regulations require that the hearing must be arranged to take place on consecutive working days.
- 8.2 The time frame for arranging hearings again depends on the nature of the application and varies from 20 working days from the last date when representation may be made or notice may be received from the Police to five working days in the case of cancellation of an interim authority notice following a police objection.

## **9 Form of Notice**

- 9.1 Regulation 34 requires that notice of the hearing shall be in writing although it is a matter for the Council to determine how the notice should be given. The Regulations specifically provide that notice can be given electronically (eg by email or fax transmission) provided that the recipient agrees to this method of notice beforehand and a hard copy of the notice is also despatched at the same time. The notice is then deemed to have been properly served at the time of the electronic transmission. Any notice served by second class post would generally be deemed to have been served within two working days.
- 9.2 It is recommended that all notices and information should be sent to the parties by second class post. In the case of emergency applications that have to be dealt with at short notice or where the parties specifically request, copies will also be sent by email or fax, where these details are known.

## **10 Information to be provided**

10.1 Regulation 7 provides that the following information must be sent out with the notice of hearing

- The rights of attendance, assistance and representation
- The consequences if a party does not attend or is not represented at the hearing (which will usually be that the hearing will proceed in the party's absence)
- The procedure to be followed at the hearing
- Any particular points on which the Licensing Committee considers that it wants clarification from any party at the hearing

10.2 Regulation 7(2) also provides that, in relation to the hearings listed in column 1 of Schedule 3 of the Regulations, certain specified documents must be sent with the notice of hearing to the persons identified. For most types of application, this means that copies of the relevant representations or notices given must be sent to the applicants or licence holders.

10.3 The Regulations require that the notice of the hearing and supporting information must be sent to the appropriate parties ie the applicant and any persons making relevant representations. There is no requirement for public notice to be given of the hearing or for the supporting information to be made available to the press and public or any other members of the Council. The Council however has a discretion as to whether or not to publicise the hearing more widely.

10.4 Having regard to the principles of open government, the Constitutional requirements that decisions are taken in a transparent and accountable manner and the requirements of Regulation 14(1) that hearings are generally conducted in public, it is recommended that the Licensing Sub-committees follow the same publicity arrangements as with other Committee meetings.

## **11 Requirements for Applicants and any other persons**

11.1 Upon receipt of the notice of the meeting, the Applicant and any other person must inform the Council in writing

- Whether they intend to attend or be represented at the hearing
- Whether they consider a hearing to be unnecessary
- Requests for any other people to attend the hearing eg witnesses (including their names and a brief description of the evidence that they can give and its relevance to the application)

11.2 In the case of emergency applications, such as the cancellation of an interim authority notice following representations by the police or a counter notice following a police objection to a temporary events notice, this information must be provided not later than one working day before the hearing. In the case of the review of premises licences following closure orders, an application for conversion of existing licences or club certificates and the grant of personal licences, the information must be provided at least two working days before the hearing. In all other cases the information must be provided at least five working days before the hearing.

11.3 It is recommended that a separate letter be sent to the Applicant and any other person at the same time as the agenda for the meeting, reminding them of the need for this information and asking them for a response as soon as possible before the meeting. If the Licensing Sub-committee is informed in good time before the meeting that the parties do not wish to attend, then it may be possible to reschedule other business or applications for that meeting.

- 11.4 Regulation 9 allows the Council to dispense with the need for a hearing if the Applicant and all any other persons agree. If all the parties respond to the request for information stating that they consider a hearing to be unnecessary, the hearing can be vacated and notice given to the parties accordingly. A determination must then be made within 10 working days of the notice.
- 11.5 Regulation 10 provides that any party may withdraw their representations by giving written notice at least 24 hours before the hearing or orally at the hearing itself. There are no powers to avoid wasted costs in favour of either party in the event of an abortive hearing due to late withdrawal of representations. The parties should be encouraged to give as much notice as possible if they intend to withdraw their representations to avoid the unnecessary time and expense of arranging a hearing.
- 11.6 Where all objections are withdrawn and/or all the parties agree that a hearing may be dispensed with, the applications may be determined by officers under delegated powers.

## **12 Extensions of Time and adjournments (Regulations 11-13)**

The Licensing Sub-Committee have a general discretion to extend the time limits contained in the Regulations or adjourn hearings if this is considered to be necessary in the public interest. Proper notice would have to be given of any extension of time or adjournment. Time cannot be extended or hearings adjourned if this would result in a failure to comply with the timescales set out in the Act.

## **13 The Hearing**

### **13.1 Exclusions**

Regulation 14 provides that all hearings must be held in public. The Licensing Sub-Committee may however exclude the press and public (including the parties and their representatives) from all or part of the hearing if they consider that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

- 13.2 The Access to Information provisions of Schedule 12A of the Local Government Act 1972 do not apply to hearings before the Licensing Sub-Committee. The test for exclusion of the press and public is not whether there is “exempt information” (as defined in Schedule 12A) which is likely to be disclosed, but whether it is in the “public interest” that the hearing (or part of the hearing) should be in private.

- 13.3 It is recommended that, as a general rule, all representations from the parties should be heard in public unless there are exceptional circumstances. The overriding public interest dictates that hearings should be conducted in a fair, open and transparent manner and justice should be seen to be done. The Council’s constitution is also based on democratic open government, accountability and public access to meetings. The parties should be given the opportunity at the beginning of the hearing to make an application for a private hearing, but they would have to establish a clear reason why this should override the public interest in an open hearing. The fact that personal information or information relating to financial, business or commercial interests would be disclosed would not, in itself, justify exclusion. An application for exclusion of the press and public could be made, for example, where sensitive information relating to individual children could be disclosed in relation to a policy issue involving the protection of children from harm, or where there are criminal justice implications involving representations made by the police. The final decision as to whether the press and public should be excluded for all or part of the hearing on public policy grounds is a matter for the Licensing Sub-Committee.

- 13.4 It is however recommended that, as a general rule, the press, public and the relevant parties are all excluded from the meeting while the Licensing-Sub-committee deliberate and come to

their decision on the grounds that this private debate is considered to be in the “public interest”. Everyone should then be asked to withdraw from the room, except for the Licensing Officer, the Democratic Services Officer and the Head of Law and Standards or his nominated representative. These three officers shall be entitled to remain, but only for the purpose of offering advice as to procedure or any particular point of law and to record decisions. They must not participate in the decision-making by the Licensing Sub-Committee. Where it is more convenient, the Licensing Sub-Committee may withdraw to a private room rather than require everyone else to withdraw from the meeting room.

- 13.5 If there are any further points of clarification required, then all of the parties and the public should be allowed back into the meeting while these points of clarification are addressed.
- 13.6 Regulation 25 permits the Licensing Sub-Committee to exclude any person from the hearing if they are behaving in a disruptive manner, either permanently or temporarily (permitting them to return only if they comply with such conditions as may be specified). If one of the parties is excluded on these grounds and not permitted to return, they are entitled to submit to the Licensing Sub-Committee in writing any information which they would have been entitled to give orally had they not been excluded from the meeting.
- 13.7 Representations  
Any person or responsible authority may make written representations about an application for a premises licence or certificate within a specified period, which is generally 28 working days of the receipt of the application. Representations or requests for review will only be relevant if they relate to the four licensing objectives. The applicant will be provided with copies of all relevant representations received at the same time as the notice of hearing. The written representations will also be referred to as background papers to the Report of the Licensing Officer, which will be circulated to Members of the Licensing Sub-Committee and made available to the press and public as soon as possible and, in any event, at least two clear working days before the hearing.
- 13.8 Advice should therefore be given that, if any person responds to any notice or advertisement, their letter of objection or support will be made available to the public, including personal data (such as names and addresses) in accordance with the Data Protection Act 1988. If any person objects to their name and address, or any other personal information, being made public, then their representations will need to be redacted or anonymised before being circulated (but this may affect the weight that the Licensing Sub-Committee attaches to their representations).
- 13.9 Where relevant representations have been made and an application is to be determined at a hearing, the applicant and those parties who have made representations have a right to attend the hearing (subject to rights of exclusion) and may be assisted or represented at the hearing by any person (whether or not that person is legally qualified) (Regulation 15).
- 13.10 Regulation 16 provides that a party shall be entitled at the hearing to
- Give further information in response to a point upon which the Licensing authority has given notice that it wants clarification
  - Question any other party, if permission is given by the Licensing Sub-Committee
  - Address the Licensing Sub-Committee
- 13.11 Regulation 17 provides that Members of the Licensing Sub-Committee may question any party or other person appearing at the hearing.
- 13.12 In considering any application, representations or notice made by a party, the Licensing Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or notice, either before the hearing or, with the consent of the parties, at the hearing. The Licensing Sub-Committee has discretion as to whether to admit this documentary evidence but should, generally allow this to be presented

if it is relevant and material to the application, the representations or notice submitted and the licensing objectives. This however should not be seen as an opportunity to introduce new representations outside the statutory timescale. The parties should be advised to provide any additional documentary evidence as soon as possible before the hearing and, wherever possible, this should be circulated in advance to the Members of the Licensing Sub-Committee and the other parties. The Sub-Committee will then decide at the hearing whether or not this additional documentary evidence should be admitted and considered. If admitted, the additional information will then be made available to the press and public at the meeting. If the additional documentary evidence has not been produced before the hearing, it can only be admitted with the consent of all the parties. If any other party objects to the evidence being produced at the hearing, the Licensing Sub-Committee has no discretion to admit it or take it into account.

#### **14 Failure of parties to attend the hearing**

If a party has informed the Council that he/she does not intend to attend or be represented at the hearing, then the hearing may proceed in their absence. If a party, who has not given prior notice of his/her intention not to attend the hearing, is absent from the hearing the Licensing Sub-Committee may either adjourn the hearing or hold the hearing in the party's absence. Where the hearing proceeds in the absence of a party, the Licensing Sub-Committee must still consider the written representations or notice submitted by that party and follow the same principles of decision-making.

#### **15 Procedure at the hearing**

- 15.1 Subject to the provisions of the Regulations, the Licensing Sub-Committee has the discretion to regulate their own proceedings and procedure to be followed at the hearing. The proceedings should be kept as informal as possible although a logical and ordered approach should be maintained in order to ensure a fair and impartial hearing. A suggested form of procedure is attached however the Chair should make it clear that the Licensing Sub-Committee are not totally inflexible and would be prepared to vary the order of proceedings if this would facilitate the proper consideration of an application or notice.
- 15.2 Regulation 7(c) provides that parties should be informed of the procedure to be adopted at the hearing when they are sent notice of the arrangements for the meeting. It is therefore suggested that a copy of the written procedure is sent to the parties with the notice of the hearing.
- 15.3 Regulation 22 requires the Licensing Sub-Committee to explain the procedure to the parties at the beginning of the hearing and consider any request under Regulation 8(2) for permission for another person to appear at the hearing (such permission not to be unreasonably withheld). Prior notice should have been given if parties wish to call witnesses or other persons to address the hearing. Provided that their evidence or representations are relevant and material, permission should generally be allowed.
- 15.4 Regulation 23 provides that the hearing should take the form of a "discussion led by the authority" and cross-examination should not be permitted unless the licensing committee considers that this is required to enable them to consider the matter properly. Whilst parties and their representatives should not be allowed to make the hearing too adversarial, it is suggested that both parties should be allowed an equal opportunity to put questions to the other party and their representatives/witnesses (under Regulation 16). A period of five minutes each should be allowed for questions, with the Chair having discretion to disallow any questions which are considered by the Licensing Sub-Committee to be irrelevant, hostile or repetitive. Wherever possible, large groups of objectors should be encouraged to appoint a single spokesperson to present their case, to save time and avoid unnecessary duplication.

15.5 Regulation 24 provides that the Licensing Sub-Committee must allow the parties an equal maximum period of time in which to exercise their rights to put questions and address the hearing. It is suggested that, as a general rule, a maximum time of 20 minutes should be allowed for both parties, with 10 minutes for addressing the Sub-Committee, five minutes for questioning and five minutes for summing up at the end. The Licensing Sub-Committee can however extend time for both parties if this is necessary for the proper consideration of the matter.

## **16 Site Visits**

The Sub-Committee may, at its discretion, undertake a site visit of any premises that are the subject of any application. The visit may take place either before the hearing, by arrangement with the parties, or the Sub-Committee may adjourn the hearing at any time to visit the premises. If a site visit is undertaken, it should be a fact-finding exercise only and no representations should be heard from any party. Any questions should be addressed to licensing officer(s), wherever possible, but if it is necessary to ask a question of any party, this should be done in the presence of all the other parties.

## **17 Determination of applications**

17.1 Normally, the licensing Sub-Committee must make its determination at the conclusion of the hearing. In other cases the Sub-committee shall make its determination within five working days. Where a hearing has been dispensed with, the decision must be made within 10 working days of the notice to dispense with the hearing.

17.2 The Council's Statement of Licensing policy provides that every decision of the Licensing Sub-Committee shall be accompanied with reasons for that decision. A summary of the decision shall be posted on the Council's website as soon as possible after the decision has been made, where it will form part of the statutory licensing register.

17.3 Paragraph 24 provides that comprehensive reasons should be given and, on making findings of fact in its reasons, the Licensing Sub-Committee should ensure that they address the standard of proof and the burden of proof that they have adopted. The Licensing Sub-Committee should also address the extent to which the decision has been made with regard to its Statement of Licensing Policy and the Statutory Guidance issued under Section 182 of the Act.

17.4 Regulation 28 requires the Council to notify the parties in writing of the determination of the Licensing Sub-Committee and their rights of appeal. The Council is also required to send notification of the determination to the Chief Officer of Police, where the police have not been a party to the hearing. This notification must be sent within the period specified in the Act or, if no period is prescribed, forthwith on making the determination.

## **18 Right of appeal**

Any aggrieved party will have the right of appeal to the Magistrates' Court within 21 days of being notified of the decision.

## **19 Record of proceedings**

Regulation 30 provides that the Council must keep a record of the hearing in a permanent and intelligible form for a period of six years from the date of the determination or, where any appeal is brought against the determination of the Licensing Sub-Committee, from the disposal of any appeal. A verbatim note or transcript of the proceedings is not required, but the Minute recording the decision must be sufficiently detailed so as to provide an accurate record of both the proceedings and the decision taken, together with the reasons given and any conditions imposed.

## 20 Irregularities

Regulations 31-33 provide that any irregularities or clerical errors shall not invalidate any decision or render a determination void and enables the Council to correct any error or cure any irregularity as soon as possible.

### Organisation of Cases for the Hearing

- 1 The hearings will normally take place at the Civic Centre, Newport at times to be agreed with the Sub-Committee.
- 2 The agenda for the meetings of the Licensing-Sub-committee shall be agreed by the Licensing Officer and the Senior Democratic Services officer after any necessary consultation with the relevant Chair of the Licensing Sub-Committee. The officers shall determine how many applications can be heard at each meeting and the order in which the applications should be considered, taking into account the number of parties who will be attending.
- 3 Hearings should be scheduled in accordance with the timescales prescribed by the Regulations. In general a hearing must be held within 20 working days after the time has expired for making representations.
- 4 Once the draft agenda has been agreed, the Senior Democratic Services Officer should send out notice of the agenda to the Members, press and public in the usual way. Members should immediately inform the Senior Democratic Services Officer if they consider they are disqualified from hearing or they have an interest in any specific case.
- 5 At the same time, the Licensing Officer shall send notice of the hearing to the parties, together with
  - A copy of the procedure to be followed at the hearing
  - Confirmation of the parties' rights to be assisted or represented at the hearing (whether or not that person is legally qualified)
  - Confirmation that the parties will be allowed to address the Licensing Sub-Committee and put questions to the other parties for a maximum of 20 minutes
  - Confirmation that, if a party does not attend the hearing, the hearing would generally proceed in his/her absence
  - A note of any particular point on which the Licensing Sub-committee requires further clarification.
  - Copies of all relevant representations received
- 6 The parties should also be requested to notify the Council as soon as possible (and in any event within the timescale prescribed by the Regulations) whether they intend to appear and/or be represented at the hearing or whether they consider a hearing to be unnecessary.
- 7 If they intend to proceed with a hearing, they should be requested to give advance notice of any application to adduce any further documentary evidence (which should preferably be provided as soon as possible before the hearing) or request for any other person to appear at the hearing. The request must contain details of the name of the witness and a brief description of that person's evidence.
- 8 The notice of hearing and supporting documents should be sent by second class post and, except in the case of emergency applications or where the Regulations specify a shorter period, at least 10 clear working day's notice should be given. The Licensing Officer may also send electronic copies by email or fax by agreement with the applicants or other party.

- 9 The Chair of the Licensing Sub-committee may meet with the Democratic Services Officer, the Solicitor to the Licensing Sub-Committee and the Licensing Officer(s) presenting the report in advance of the hearing to identify any issues where further clarification should be requested from the parties. These issues will be notified to the parties by the Licensing Officer to enable them to address these issues in their submissions at the hearing. During this preliminary meeting and any pre-agenda meeting, no decisions shall be made and no discussions shall be held regarding the substantive merits of the application or representations.
- 10 The hearings shall be attended by a Solicitor, a Democratic Services Officer and the Licensing Officer. The officers shall attend for the sole purpose of giving advice on law and procedure and are not parties to the decision.
- 11 The role of the Solicitor is to provide legal advice in relation to the applications and submissions.
- 12 The role of the Democratic Services Officer is to record the proceedings and the decisions of the Sub-Committee and ensure efficient administration.
- 13 The Licensing Officer shall prepare a written Report for consideration by the Licensing Sub-Committee, which should include
  - A brief summary of the application
  - A brief summary of the representations
  - The relevant licensing objectives
  - Relevant aspects of the Council's Statement of Licensing Policy and statutory Guidance
  - Other background information (such as copies of letters)
- 14 The Licensing Officer's Report should be sent out as soon as possible and, in any event, no later than 10 clear working days before the hearing, together with copies of relevant documentary evidence submitted by the parties. Wherever possible, the Licensing Officer's Report should be sent out at the same time as the notice of hearing and supporting documents, but this will not be reasonably practicable where there are a significant number of applications to be determined. If additional documentary evidence is provided later by the parties, it should be copied and sent to the other parties before the hearing, if reasonably practicable.
- 15 After hearing all the representations and prior to retiring to make its decision, the Licensing Sub-Committee may, if it wishes, seek the guidance of the Licensing Officer and/or Solicitor on possible conditions that could be attached to any licence.
- 16 The Democratic Services Officer shall keep a record of the decisions taken and the Licensing Officer shall send written confirmation of the decision to the relevant parties, together with the reasons, any conditions and their rights of appeal.

### **Principles of Decision-Making**

- 1 This note is intended to provide members of the Licensing Sub-committee with a guide to the principles of decision-making. The licensing hearings are of a quasi-judicial nature and the procedures are, therefore, markedly different to the usual arrangements for Committee meetings.
- 2 It should be noted that the proceedings are governed by adjudication procedures and the rules of natural justice will, therefore, apply. All the parties should be given a full and fair hearing, which should be conducted in an open, transparent and accountable manner.
- 3 Members must, at all times, comply with the Council's Member Code of Conduct.



- 4 All licensing applications must be considered on the basis of whether they promote the four licensing objectives set out in the Act and incorporated in the Statement of Licensing Policy, namely
  - The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 5 In reaching their decisions under the Act, the Licensing Sub-Committee must have regard to all relevant considerations including (but not limited to)
  - The relevant statutory provisions
  - Relevant Statutory Guidance issued under Section 182 of the Act
  - The Council's Statement of Licensing Policy
  - The licensing objectives
  - The material facts based on the relevant evidence presented and representations received
  - The individual merits of each case
  - The public interest
- 6 The Licensing Sub-Committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives. Members must also disregard any party political considerations or decisions taken in political group meetings.
- 7 Members of the Licensing Sub-Committee must act fairly, objectively and impartially throughout. They must not show any bias or predetermination and must keep an open mind on all applications until they have heard all the relevant representations and evidence. Members must not prejudge any application, express any view on the merits of any application, organise any support or opposition to any application, in advance of the hearing. Any Member with a "closed mind" on any application would be disqualified from sitting on the Licensing Sub-Committee which considers that application.

In the event of any licensing applications submitted by or on behalf of the Council or an officer of the Council, the same rules and procedures shall apply. No account shall be taken of the fact that the application is submitted by the Council or an officer and no favour or consideration shall be shown in relation to the application. Any member involved in the decision to apply for the licence shall be disqualified from sitting on the Licensing Sub-Committee which considers the application.

### **Procedure to be Followed at The Hearing**

- 1 Preliminaries and Opening remarks

At the commencement of the meeting, the Chair for the meeting shall be elected by simple majority of members present.

The Chair of the Sub-Committee opens the meeting and welcomes those attending.

The Chair introduces the members and the officers present.
- 2 Apologies/declarations of interest

The Chair deals with any apologies for absence and declarations of interest. Any substitution of members will be dealt with at this stage.

### 3 Introductions

The Chair invites the applicant, any other person and their representatives to introduce themselves and indicate who will be speaking.

The Chair explains the procedures to be followed and the time allocated to each party and asks if there are any questions. (The order of proceedings may be varied at the discretion of the Sub-Committee where the parties have any particular preference or where this is necessary for proper consideration). The proceedings will generally be conducted in public unless it is in the public interest to hear cases in private. Any applications to exclude the press and public should be dealt with at this stage.

### 4 Applications

The Chair will inform the parties whether their applications to have certain people attend the hearing under Regulation 8(2) (eg witnesses) have been granted or refused.

The Chair will summarise the papers before the Licensing Sub-Committee and will confirm that everyone has copies. Chair will ascertain whether any representations have been or are now to be withdrawn. Licensing Sub-Committee will consider any requests for additional documentary evidence or other information to be introduced by either party. (Note that advance notification must be given, otherwise the additional information or evidence can only be adduced at the hearing with the consent of all the parties and the agreement of the Sub-Committee).

Chair is to identify any specific points about which the Licensing Sub-Committee have requested clarification.

### 5 Report from Licensing Officer

The Licensing Officer presents the Report outlining

- The nature of the application
- Any relevant background information
- Relevant issues in relation to the promotion of the four licensing objectives
- Relevant representations received
- Any relevant policy issues, including the Statement of Licensing Policy and any statutory Guidance

The Licensing Officer presenting the report will not make any recommendation regarding the determination of the application, but will simply outline the relevant considerations which the Licensing Sub-Committee will need to take into account when arriving at their decision. (It should be noted if the Licensing Authority wishes to make representation regarding application as a relevant authority under the Licensing Act 2003 a further Licensing Officer will be required to attend the committee and Act as a relevant authority).

The Members will be able to ask questions of the Licensing Officer(s) presenting the report to clarify any issues arising out of the Report.

### 7 The Applicant's case

- (a) The Applicant/representative to address the Sub-Committee and to call any witnesses where permission has been granted (maximum period of 10 minutes). Parties may give their evidence by making a statement or by being questioned by their representative.
- (b) The objectors/representatives shall be allowed to put questions to the applicant/representative and any witnesses (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the applicant/representative and any witnesses

8 The Objector(s) case

- (a) The Objectors/representatives to address the Sub-Committee and to call any witnesses, where permission has been granted (maximum period of 10 minutes). (The responsible authorities eg Police, Fire Authority, followed by any other person in the order in which they submitted their written representations. Where a large group have objected, they should be encouraged to appoint a single spokesperson in order to save time and avoid repetition).
- (b) The applicant/representative shall be allowed to put questions to the objectors/representatives and any witnesses, (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the objectors/representatives and any witnesses.

9 Closing Statements

- (a) Objectors or their representative(s) to sum up (maximum of five minutes). (In the order in which they addressed the Sub-Committee, if more than one).
- (b) Applicant or representative to sum up (maximum of five minutes). (At this stage the applicant/representative should indicate whether, in the light of the representations made, they wish to amend their application or offer any conditions to overcome the objections and/or promote the licensing objectives).

10 Decision

If there are no further matters to be resolved, the Chair will ask all the parties if they are satisfied that they have had a fair hearing and will then close the proceedings.

The Sub-committee to consider whether it is in the public interest that they deliberate in private or whether this part of the hearing should continue to take place in public.

Pass resolution to exclude the press and public (including the parties and their representatives) pursuant to Regulation 14(2) during this part of the hearing, while the Sub-Committee discusses its decision. Everyone should then be asked withdraw from the room, except the Licensing Officer(s) presenting the report, the Democratic Services Officer and the Head of Law and Standards or his nominated representative(s). These officers shall be entitled to remain but only for the purpose of offering advice as to procedure or any particular point of law. The Sub-Committee may withdraw into a private room to do this

The Members of the Sub-Committee will deliberate and come to their decision. The reasons for the decision, the material findings of fact and any conditions will be agreed and recorded in writing by the Chair. In the event of any disagreement, any matter under consideration shall be determined by a simple majority of votes cast.

The hearing will then resume in public. The Chair will announce the decision and give the reasons for that decision, any material findings of fact, any licence conditions that are to be imposed and the licensing objectives that they relate to (unless, where permitted by the regulations, the decision is to be communicated at a later time).

11 Repeat process for each hearing

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# Report

## Licensing Sub Committee Report.

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### Part 1

Date: 4 February 2020

**Subject**     **Review of Premises Licence under Section 51 Licensing Act 2003, Sanremo, 131 Caerleon Road, Newport, NP19 7BZ**

**Purpose**     The consideration and decision in respect of a review application under Licensing Act 2003.

**Author**     Steve Pontin (Licensing Officer)

**Ward**        St Julians

**Summary**    An application for a review of the premises licence was made by Home Office Immigration Enforcement on 20<sup>th</sup> December 2019 on the basis that the premises is undermining the prevention of crime and disorder.

**Proposal**    To make a decision on the application to review the Premises Licence issued in respect of Sanremo, 131 Caerleon Road, Newport, NP19 7BZ.

**Action by**   Head of Law and Regulation

**Timetable**   Statutory Consultation Period

**Signed**

## 1. Review Application

A review application under Section 51 of the Licensing Act 2003 was received on the 20<sup>th</sup> December 2019 from Home Office Immigration Enforcement department to review the Premises Licence issued in respect of Sanremo, 131 Caerleon Road, Newport, NP19 7BZ.

The application for review relates to the following Licensing objective(s):

### **The prevention of crime and disorder**

A copy of the review paperwork and supporting documents can be found in **Appendix A** of this report.

The application was received by the Licensing Authority on 20<sup>th</sup> December 2019 and in accordance with section 51(3)(a) of the Licensing Act 2003 a copy of the application was served on the holder of the Premises Licence and on all Responsible Authorities.

Following receipt of the application, the Licensing Authority advertised the application in accordance with the regulations of the Act, thereby inviting representations to be made by interested parties. Any representation in respect of this application made by a responsible authority or an interested party had to be received by the Licensing Authority by 17<sup>th</sup> January 2020.

## 2. Licensable Activities

The current premises licence holder is:

Mr Ardian Matmuja of 131 Caerleon Road, Newport, NP19 7BZ.

The Premises Licence relates to:

### **Sale by retail of Alcohol**

Monday to Thursday inclusive 12:00 - 14:30

Monday to Thursday inclusive 18:00 - 23:30

Friday 18:00 - 23:30

Saturday 12:00 - 14:30

Saturday 18:00 - 23:30

Sunday 18:00 - 23:30

### **Playing of Recorded Music**

Monday to Thursday inclusive 12:00 - 14:30

Monday to Thursday inclusive 18:00 - 23:30

Friday 18:00 - 23:30

Saturday 12:00 - 14:30

Saturday 18:00 - 23:30

Sunday 18:00 - 23:30

### **Late Night Refreshment**

Monday to Sunday inclusive 23:00 - Midnight

A copy of the premises licence can be found in **Appendix B** of this report

## 3. Representations

The Licensing Authority received no further representations during the consultation period from either a Responsible Authority or "Other person"

#### **4. Background/Premises Licence History**

The Premises was formerly an Indian restaurant and was converted to an Italian restaurant when the current premises licence holder, Mr Matmuja, transferred the premises licence in March 2018. The premises is located at 131 Caerleon Road, Newport, NP19 7BZ and is on a stretch of Caerleon Road that has a mixture of both business and residential properties. The location of the premises can be found in **Appendix C** of this report; The Licensing Authority has received no complaints regarding the premises or has any outstanding issues.

#### **5. Legal Considerations, Guidance, Policy Consideration.**

The decision must be taken following consideration of the representation received with a view to promoting the licensing objectives which are:

- Prevention of crime and disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

In each case the Sub-Committee may make the following determination

- To modify the conditions of the Premises licence
- To exclude a licensable activity from the scope of the premises licence
- To remove the designated premises supervisor from the licence
- To suspend the premises license for a period not exceeding 3 months
- To revoke the premises licence
- Take No Action in respect of the Premises Licence.

#### **6. Guidance**

**Paragraph 9.5** of the Revised Guidance issued under section 182 of the Licensing Act 2003 states:

“The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State’s behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly”.

**Paragraph 2.6** of the guidance clearly stipulates:

“The prevention of crime includes the prevention of immigration crime including illegal working on licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises”.

**Paragraph 11.19** of the guidance states:

“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);
- 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.”

**Paragraphs 11.25 to 11.28** of the guidance cover the review process in further depth:-

“11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

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.

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 and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

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 licensed premises....

**• For employing a person who is disqualified from that work by reason of their immigration status in the UK;**

11.28 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.”



## 7. Issues for discussion

- The content of the application made by Home Office Immigration Enforcement for a review of the Premises Licence.
- Any evidence and mitigation provided by Licence Holder

## 8. Financial Summary

- The costs and financial implications: You must discuss financial implications with the Head of Finance and the report must identify from where your proposals will be funded, together with any impact on budgets or any opportunity costs

	<b>Year 1 (Current) £</b>	<b>Year 2 £</b>	<b>Year 3 £</b>	<b>Ongoing £</b>	<b>Notes including budgets heads affected</b>
<b>Costs (Income)</b>					
<b>Net Costs (Savings)</b>					
<b>Net Impact on Budget</b>					

## 9. Risks

It is important to identify and manage any project or scheme's exposure to risk and have in place controls to deal with those risks.

In this section, you should consider the key risks facing the proposals in your report, particularly those which would impact on delivery or sustainability of the project or projected outcomes. You will need to include details of how risks will be managed. If your proposals rely on short or medium term grant aid or funding streams you will need to outline your exit or continuation policy here.

You will need to complete the following Risk table

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Making a unlawful decision	High	Low	The Committee will consult with the Legal Officer and Licensing Officer to determine if any decision is lawful and proportionate. Members training.	Chairperson. Legal Officer.
The licensing committee departing from the licensing policy.	Medium	Low	If the Committee wishes to depart from the Councils policy they must give good reason for this and obtain advice from the Legal Officer when departing from the Policies to ensure the decision is lawful. Members training.	Chairperson. Legal Officer.

The applicant does not have a fair hearing	High	Low	A Licensing Committee procedure should be followed by the committee. The Legal Officer alongside the Democratic Service Officer will advise the committee if at any stage an unfair hearing is taking place. Members training.	Democratic Service Officer. Chairperson. Legal Officer.
--------------------------------------------	------	-----	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------

\* Taking account of proposed mitigation measures

#### **10. Links to Council Policies and Priorities**

This report has been prepared in accordance with The Licensing Act 2003 and with regard to Newport City Council Statement of Licensing Policies 2015.

## **APPENDIX A**

Application for Review of a Premises Licence under the Licensing Act 2003  
From the Home Office Immigration.

Licensing Authority: Newport City Council  
Address: info@newport.gov.uk

Our Reference: ARS

**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 Home Office (Immigration Enforcement)** .....

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

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

Postal address of premises or, if none, ordnance survey map reference or description	
Sanremo Italian Restaurant, 131 - 133 Caerleon Road	
Post town Newport	Post code (if known) NP19 7BZ

<b>Name of premises licence holder or club holding club premises certificate (if known)</b>
Mr Ardian Matmuja

<b>Number of premises licence or club premises certificate (if known)</b>

**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)

☒

Version 1.0

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

I am 18 years old or over

Please tick ✓ yes

☐

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**

Home Office Immigration Enforcement Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY
Telephone number (if any)
E-mail address (optional) IE.Alcoholreviews@homeoffice.gov.uk

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

- |                                         |                                     |                                 |
|-----------------------------------------|-------------------------------------|---------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> | Please tick one or more boxes ✓ |
| 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)

We have grounds that the license holder has failed to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at these premises.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.

The Home Secretary (in practice Home Office (Immigration Enforcement)) was added to the list of Responsible Authorities (RA) in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences and applications to vary a Designated Premises Supervisor (DPS)), and in some limited circumstances personal licence applications. In carrying out the role of responsible authority, Home Office (Immigration Enforcement) is permitted to make relevant representations and objections to the grant of a licence or request a review of an existing licence as a responsible authority where there is concern that a licence and related licensable activity is prejudicial to the prevention of immigration crime including illegal working

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

On THURSDAY 6th JUNE 2019, an intelligence-led Enforcement visit was conducted to 'SANREMO ITALIAN RESTAURANT, 131-133 CAERLEON ROAD, NEWPORT, NP19 7BZ', as we had received an allegation that there were person(s) being employed illegally at the address.

The team entered the premises at approximately 2032 hours under Section 179 of The Licensing Act 2003 as amended, as Newport Licensing officers had confirmed the premises held a licence to sell alcohol.

On entering the restaurant, an employee present in the kitchen area attempted to leave the premises from the rear. He was arrested immediately and confirmed to be illegally present in the United Kingdom. Subsequently, two additional employees were also found to be illegally present in the United Kingdom with no permission to work. A fourth member of staff fled the scene prior to his details being obtained. A thorough search of the premises and the surrounding area by Police failed to find him. He could have potentially been an additional Immigration offender.

In total, 3 persons were arrested, all 3 denied being employed at the restaurant, however, there were no other employees present and those arrested had recently finished serving a table of approximately 8 customers. All were conveyed to local custody.

At 2203 hours, the mobile telephone number provided by Newport Licensing for the Premises Licence holder, Mr Ardian MATMUJA was called. However, the person who answered denied being Ardian MATMUJA or having any link to SANREMO ITALIAN RESTAURANT. In fact, when asked to clarify their identity, they promptly ended the call and the number was then unobtainable on subsequent attempts made. Consequently, it was not possible to ask questions regarding illegal working.

Newport Licensing Officers were informed and a visit was made by them to the premises on Monday 10th JUNE 2019. Mr ARDIAN MATMUJA was present and confirmed he remained the Premises Licence holder and confirmed his mobile number to be that used on the evening on 6th JUNE 2019 to contact him.

A Referral Notice for potential Civil Penalty action was sent by registered post to the business address on 18/06/19.

The premises has failed to meet the licensing objective of 'the prevention of crime and disorder' as they were employing 3 (possibly 4) person/s illegally at the time of the visit. Also, the conditions of the Licence were not being adhered to as the Premises Licence holder could not be contacted at the time of our visit.

Please tick ✓

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

**Part 3 – Signatures** (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature P. Thomas

Date 20/12/2019

Capacity Responsible Authority

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

**Alcohol Licensing Team**  
**Lunar House**  
**40 Wellesley Road**

Post town <b>Croydon</b>	Post Code <b>CR9 2BY</b>
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) IE. Alcoholreviews@homeoffice.gov.uk	

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Please tick ✓ yes

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

☐

If yes please state the date of that application

Day	Month	Year

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





Home Office

# Premises Licence Review

**Mr Ardian Matmuja**

**Sanremo Italian Restaurant  
131-133, Caerleon Road  
Newport  
Wales  
NP19 7BZ**

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# Outline of the Circumstances leading to the Review Application

## Summary

- 1.1 On Thursday 6<sup>th</sup> June 2019 at approximately 20:32 an intelligence-led enforcement visit was made to SANREMO ITALIAN RESTAURANT, 131-133, CAERLEON ROAD, NEWPORT, NP19 7BZ, by Immigration Compliance & Enforcement (ICE) officers, as they had received an allegation that there were person(s) being employed illegally at the address.
  - 1.2 During the visit a total of 3 persons were arrested, all 3 denied being employed at the restaurant however, there were no other employees present and those arrested had recently finished serving a table of approximately 8 customers.
  - 1.3 At 22:03 the Officer in Charge (OIC) called the mobile telephone number provided by Newport Licensing for the Premises License holder, Mr Ardian MATMUJA. However, the person that answered denied being Ardian MATMUJA or having any links to SANREMO ITALIAN RESTAURANT. In fact, when asked to clarify their identity, they promptly ended the call and the number was then unobtainable on subsequent attempts made. Consequently, it was not possible to ask questions regarding illegal working.
  - 1.4 Newport Licensing Officers were informed, and a visit was made by them to the premises on Monday 10<sup>th</sup> June 2019. Mr ARDIAN MATMUJA was present and confirmed he remained the Premises Licence holder and confirmed his mobile number to be that used on the evening of 6<sup>th</sup> June 2019 to contact him.
  - 1.5 A Referral Notice for potential Civil Penalty action was sent by registered post to the business address on 18/06/2019.
  - 1.6 Succeeding parts of this application explore relevant legislation and the statutory guidance and Home Office (Immigration Enforcement) ask the sub-committee to revoke the premises licence as a deterrent to others and the management/owner of this premises in particular.
  - 1.7 Copies of all the witness statements or pocket notebook (PNB) entries made by relevant immigration officers are appended; should the sub-committee wish to read these.
-

## Occurrence

- 1.8 On Thursday 6<sup>th</sup> June 2019 at approximately 20:32 an intelligence-led enforcement visit was made to SANREMO ITALIAN RESTAURANT, 131-133, CAERLEON ROAD, NEWPORT, NP19 7BZ, by Immigration Compliance & Enforcement (ICE) officers, as we had received an allegation that there were person(s) being employed illegally at the address.
- 1.9 The operation was conducted by a number of Immigration Compliance & Enforcement (ICE) officers. The team was led by Officer in Charge (OIC) [REDACTED] in company with Chief Immigration Officer (CIO) [REDACTED] and Immigration Officers (IO's), [REDACTED] and [REDACTED] and Assistant Immigration Officer (AIO) [REDACTED].
- 1.10 Entry to the premises was gained under Section 179 of the Licensing Act 2003 as amended, as Newport Licensing officers had confirmed the premises held a licence to sell alcohol.
- 1.11 On entering the restaurant, an employee present in the kitchen area attempted to leave the premises from the rear. He was arrested immediately and confirmed to be illegally present in the United Kingdom. Subsequently, two additional employees were also found to be illegally present in the United Kingdom with no permission to work. A forth member of staff fled the scene prior to his details being obtained. A thorough search of the premises and the surrounding area by Police failed to find him. He could have potentially been an additional Immigration offender.
-

1.12 IO [REDACTED] conducted the following interview in [REDACTED] using BIG WORD INTERVIEWER.

1.13 The interview proceeded as follows:

IO [REDACTED]: How long have you been working here?

[REDACTED]: Working in car wash down in London but today is my first day, working on car wash was very hard.

IO [REDACTED]: What is your job role/what are your duties?

[REDACTED]: I was just learning things today and preps as today is my first day.

[REDACTED]: What days/hours do you work each week?

[REDACTED]: I don't know how many as this is my first day.

IO [REDACTED]: Who gave you this job (name and role in business)?

[REDACTED]: Friend of friend, I don't know name.

IO [REDACTED]: Who tells you what days/hours to work?

[REDACTED]: I didn't talk about hours as this was trial.

IO [REDACTED]: Who tells you what tasks/duties to do each day?

[REDACTED]: I don't know the name of the person; the person is not here today.

[REDACTED]: How are you paid (money, accommodation, food?)

[REDACTED]: Not getting paid.

IO [REDACTED]: How are you paid (money, accommodation, food?)

[REDACTED]: Boss said he is trying to get him accommodation.

IO [REDACTED]: What name does the employer know you as?

[REDACTED]: [REDACTED]

IO [REDACTED]: Did you show documents before being offered the job? If so, what?

[REDACTED]: I didn't give any documentation, I just came and asked can I work and have a try.

IO [REDACTED]: Does your employer know you're not allowed to work in the UK?

[REDACTED]: No, he didn't know.

IO [REDACTED]: Who else works here?

[REDACTED]: [REDACTED]

1.14 IO [REDACTED] conducted the following interview in English.

1.15 The interview proceeded as follows:

IO [REDACTED]: How long have you been working here?  
[REDACTED]: Just today.  
IO [REDACTED]: What is your job role/what are your duties?  
[REDACTED]: Front of house.  
IO [REDACTED]: What days/hours do you work each week?  
[REDACTED]: Don't know.  
IO [REDACTED]: Why are you working here today, what's the reason.  
[REDACTED]: Favour for a friend, they called me.  
IO [REDACTED]: What was the name of the person that called you?  
[REDACTED]: I don't want to give his name.  
IO [REDACTED]: Who gave you this job (name and role in business).  
[REDACTED]: Don't want to give his name.  
IO [REDACTED]: Who tells you what tasks/duties to do each day.  
[REDACTED]: Don't want to tell you his name.  
IO [REDACTED]: How are you paid (money, accommodation, food)?  
[REDACTED]: Cash  
IO [REDACTED]: If money, how much and how do you receive it?  
[REDACTED]: Don't know he might not pay me at all.  
IO [REDACTED]: Do you pay income tax or have a National Insurance Card?  
[REDACTED]: No  
IO [REDACTED]: Where did you sleep last night?  
[REDACTED]: Home.  
IO [REDACTED]: What name does the employer know you as?  
[REDACTED]: [REDACTED]  
IO [REDACTED]: Did you show documents before being offered the job? If so, What?  
[REDACTED]: None.  
IO [REDACTED]: Does your employer know you're not allowed to work in the UK?  
[REDACTED]: Don't know.  
IO [REDACTED]: Who else works here?  
[REDACTED]: I have no idea.

---

1.16 AIO [REDACTED] conducted the following interview in English.

1.17 The interview proceeded as follows:

AIO [REDACTED]: How long have you been working here?

[REDACTED]: I don't work here, I was visiting friends to play football.

AIO [REDACTED]: How long have you been working here?

[REDACTED]: I'm not working here.

Checks on Home Office records were conducted confirming that [REDACTED]  
[REDACTED], [REDACTED] male born [REDACTED] has no permission to work in the  
UK.

## Reasons for Review

- 2.1 Whether by negligence or wilful blindness illegal workers were engaged in activity on the premises, yet it is a simple process for an employer to ascertain what documents they should check before a person is allowed to work. It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case.
  - 2.2 The case of *East Lindsey District Council v Hanif* (see 8.11) determined that in such circumstances, even without a prosecution, the crime prevention objective is engaged. The statutory Guidance issued under the Licensing Act provides that certain criminal activity (in particular employing illegal workers) should be treated particularly seriously and it is envisaged that the police will use the review procedures effectively to deter such activities and crime.
  - 2.3 Home Office (Immigration Enforcement) submits that for commercial reasons those engaged in the management of the premises employed illegal workers and a warning or other activity falling short of are view is in appropriate; this is why Home Office (Immigration Enforcement) has proceeded straight to review.
-

## Outcome Sought

- 3.1 Home Office (Immigration Enforcement) asks that the premises licence is revoked. Merely remedying the existing situation (for instance by the imposition of additional conditions or a suspension) is insufficient to act as a deterrent to the licence holder and other premises' licence holders from engaging in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally.
- 3.2 This submission and appended documents provide the licensing subcommittee with background arguments and information pertinent to that contention. These provide the sub-committee with a sound and defensible rationale as to why it should revoke the licence.
- 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 subcommittee 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 Home Office (Immigration Enforcement). In order to protect themselves, reputable employers have been conducting these checks since 1996 when it first became a criminal offence to employ illegal workers.
- 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, Home Office (Immigration Enforcement) has considered and rejected conditions as an alternative, in part because this is specifically addressed paragraph 1.16 of the Guidance, viz: "(...) Licence conditions should not duplicate other statutory requirements or other duties, or responsibilities placed on the employer (my emphasis) by other legislation".
- 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 Home Office (Immigration Enforcement) contends that a licence holder who has himself or through his agents negligently or deliberately failed to conduct right to work checks which have been a requirement since 2006 should not be afforded an opportunity to do so until caught and then merely be asked to do what they should have been doing already. Deterrence and not mere remedy is appropriate and is supported by case law (as set out within section 8 of this submission).
- 3.9 Respondents who fail to convince a subcommittee that the imposition of conditions to undertake proper right to work checks is a suitable alternative to a deterrent outcome often point to the option of suspension of a licence; pointing out that this may be a suitable punitive response instead which will deter others.
- 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 Home Office (Immigration Enforcement) would counter such claims and point to the continuing changes made to both immigration law and the Guidance (paragraphs 11 .26 — 11 .28) which point to a requirement to send a clear message to potential illegal immigrants that UK authorities will do all they can to prevent them finding illegal employment and a similar message to employers that those employing illegal workers will face severe disruption and penalties. There are simple processes (set out in section 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.

## Immigration Offences

- 3.14 Illegal workers are those subject to immigration control who either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them taking up the work in question. It is an employer's responsibility to be aware of their obligations and ensure they understand the immigration landscape to avoid the risk of prosecution, the imposition of a civil penalty or their vocation/suspension of their premises licence.
- 3.15 Since 1996 it has been unlawful to employ a person who is disqualified from employment because of their immigration status. A statutory excuse exists where the employer can demonstrate they correctly carried out document checks, i.e. that they were duped by fake or forged documents.
- 
- 3.16 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"*.
- 3.17 Since 2016 an employer may be prosecuted not only if they knew their employee was disqualified from working but also if they had reasonable cause to believe that an employee did not have the right to work: what might be described as wilful ignorance where either no documents are requested, or none are presented despite a request. This means an offence is committed when an employer 'ought to have known' the person did not have the right to work.
- 3.18 Since 2016 it has also been an offence to work when disqualified from doing so. It is obvious that without a negligent or wilfully ignorant employer, an illegal worker cannot work. Such an employer facilitates a criminal offence and Home Office (Immigration Enforcement) highlights this as relevant irrespective of whether a civil penalty is imposed, or a prosecution launched for employing an illegal worker.
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- 3.19 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.
- 3.20 Thus, an individual with no right to work in the UK commits offences if they undertake paid or unpaid work, paid or unpaid work placements undertaken as part of a course etc. are self-employed or engage in business or professional activity. For instance, undertaking an unpaid work trial or working in exchange for a nonmonetary reward (such as board and lodging) is working illegally and is a criminal offence committed by the worker and facilitated by the 'employer'.

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

- 3.21 It is a straightforward process for any employer, no matter how small, to prevent themselves employing an illegal worker. If an employer has failed to take even the most basic steps then Home Office (Immigration Enforcement) contends they have chosen to remain ignorant of the immigration status of their workforce and no amount of potential imposed conditions is sufficient, in our opinion, to avoid the legitimacy of revocation in proving a deterrent to others to the employment of illegal workers.
- 3.22 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.
- 3.23 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.
- 3.24 The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.
- 3.25 The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) details general advice, checking the documents, taking a copy of the documents, what if the job applicant can't show their documents and provides details of an employers' telephone helpline. This page has a direct link to what documents are acceptable proofs of a right to work in the UK and also allows an employer to fill out an online enquiry about a named individual they are considering offering employment to.
- 3.26 Appendix A sets the above out in some detail.
-

## Relevance/irrelevance of a Civil Penalty or Prosecution

- 3.27 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.
- 3.28 Where an illegal worker is detected a civil penalty maybe issued against the employer in accordance with the Home Office Code of Practice on Preventing Illegal Working (May 2014). In the case of a civil penalty the balance of probabilities test applies where as a prosecution requires a higher burden of proof.
- 3.29 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.
- 
- 3.30 But where an employee has not bothered with the basics of return to work checks, placed an employee on 'the books', paid the minimum wage or paid employer national insurance contributions - it becomes difficult to 'prove' the employment statement where the only evidence maybe the word of an illegal worker who has since been detained or who has 'moved on'.
- 
- 3.31 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.
- 3.32 This does not however prevent the crime prevention objective being engaged with as the premises licence holder has none the less facilitated a criminal offence taking place and the lack of checks suggests that in the past (and is likely in the future) has employed illegal workers. In drawing its conclusion, the subcommittee is entitled to exercise common sense and its own judgment based on the life experience so fits members. The East Lindsey case (see section 8) provides that action (revocation) to prevent what is likely to happen in the future is legitimate.
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# Appendix A – Right to Work checks

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

The second link is to the Home Office document; "An Employer's Guide to Right to Work Checks" (published 16<sup>th</sup> May 2014 last updated 16<sup>th</sup> August 2017).

Another link provides a site (<https://www.gov.uk/employee-immigration-employment-status>) which guides an employer through the process AND allows an employer to make an online submission to the Home Office to check if the proposed employee is prohibited from working as well as providing a telephone helpline.

Specifically, the first link (<https://www.gov.uk/check-job-applicant-right-to-work>) provides as follows:

## General Advice

- You must see the applicant's original documents;
- You must check that the documents are valid with the applicant present; and
- You must make and keep copies of the documents and record the date you made the check.

## Checking the Documents

In relation to checking the documents it also adds that an employer needs to check that:

- the documents are genuine, original and unchanged and belong to the person who has given them to you;
- The dates for the applicant's right to work in the UK haven't expired;
- Photos are the same across all documents and look like the applicant;
- Dates of birth are the same across all documents;
- The applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work);
- For students you see evidence of their study and vacation times; and
- If 2 documents give different names, the applicant has supporting documents showing why they're different, e.g. a marriage certificate or divorce decree

## Taking a copy of the documents

When you copy the documents:

- Make a copy that can't be changed, e.g. a photocopy

- for passports, copy any page with the expiry date and applicant's details (e.g. nationality, date of birth and photograph) including endorsements, e.g. a work visa
- for biometric residence permits and residence cards (biometric format), copy both sides
- for all other documents you must make a complete copy
- keep copies during the applicant's employment and for 2 years after they stop working for you
- record the date the check was made

### **If the job applicant can't show their documents**

You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- you're reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office;
  - they have an Application Registration Card; or
  - they have a Certificate of Application that is less than 6 months old
- Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.

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The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

### **Acceptable Documents**

A list of acceptable documents can be found via the link to

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/441957/employers\\_guide\\_to\\_acceptable\\_right\\_to\\_work\\_documents\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf)

# Appendix B – Statutory Guidance & Caselaw

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

- 3.33 In order to avoid punitive action, respondents to review hearings sometimes refer to both the statutory guidance issued under section 182 Licensing Act 2003 and those parts of the Authority's own policy which replicate paragraph 11.10 of that Guidance, viz:

*Where authorised persons and responsible authorities have concerns about problems identified at premises, it's good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns.*

- 3.34 Home Office (Immigration Enforcement) submits that in the particular circumstances of cases where Immigration Compliance and Enforcement receive intelligence concerning the employment of illegal workers and act upon it; such warnings are inappropriate.
- 3.35 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.
- 3.36 In particular; Home Office (Immigration Enforcement) submits that paragraph 11.10 of the Guidance must be read in conjunction with the more specific paragraphs relating to reviews arising in connection with crime (paras. 11.24 — 11.29).
- 3.37 Paragraph 77.26

*Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. (...). The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the*

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*interests of the wider community and not those of the individual licence holder.*

3.38 Thus the financial hardship occasioned by the suspension or revocation of the premises licence should not sway the sub-committee but instead it should look at what is appropriate to promote the objective within the wider business and local community given "illegal labour exploits workers, denies work to UK citizens and legal migrants and drives down wages" (Rt. Hon James Brokenshire, Immigration Minister on the introduction of the 2016 Act).

3.39 In particular, the sub-committee are asked to consider (below) the cases of R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D)

*350 and East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2076] EWHC1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime.*

3.40 Paragraph 11.27 of the Guidance states:

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*There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises(...)for employing a person who is disqualified from that work by reason of their immigration status in the UK.*

Home Office (Immigration Enforcement) would draw the sub-committee's attention to the change in wording of this paragraph following the April 2017 revision of the guidance, where the previous reference to 'knowingly employing' was removed.

3.41 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.*

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Home Office (Immigration Enforcement) considers this paragraph self-explanatory; where an enterprise employs illegal workers, it is the duty of Home Office (Immigration Enforcement) to bring forward reviews and for the authority to consider revocation in the first instance.

- 3.42 In support of this statement; Home Office (Immigration Enforcement) would draw the subcommittee's attention to the "Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales" (Home Office) [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".*

- 3.43 Since the main draw for illegal migration is work, and since low-skilled migrants are increasingly vulnerable to exploitation at the hand of criminal enterprises, the government has strengthened enforcement measures and the statutory Guidance to deter illegal workers and those that employ them.
- 3.44 Deterrence is a key element of the UK government's strategy to reduce illegal working and is supported by both the Guidance and Case Law.

## Case Law

- 3.45 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.
- 3.46 *R (Bassetlaw District Council) v Worksop Magistrates' Court*; [2008] WLR (D) 350.

*This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority. The premises licence holder argued that they had a policy in place for checking the age of customers, but this was not a perfect policy and had not been adhered to and that rather than revoke the licence, instead stringent conditions on proof of age should instead be imposed on the licence.*

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- 3.47 Issues relevant to the case before today's sub-committee which were considered in the *Bassetlaw* judgement included whether a licensing authority was restricted to remedial action (as opposed to punitive action such as revocation); and the precedence of wider considerations than those relating to an individual holder of a premises licence when certain criminal activities (as specified in the Guidance) took place.
- 3.48 It specifically examined (and set aside in the case of 'certain activities') those parts of the Guidance now contained within paragraph 11.20 and 11.23, viz:

*In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises.*

- 3.49 In her judgement, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

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*"Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State. (...) However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable."*

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- 3.50 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.
- 3.51 This has some similarity with any argument that may be put forward in the case before the subcommittee today that the imposition of conditions to check immigration status either directly or through an agency (essentially a requirement since 2006 under the *Immigration, Asylum and Immigration Act 2006*) would serve as sufficient remedy for the employment of illegal workers
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and negate a deterrent (suspension/revocation) being imposed by the subcommittee despite the wording of the Guidance at paragraph 11.28.

- 3.52 Mrs Justice Slade stated: *"The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However, it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14-year-old girls".*
- 3.53 Home Office (Immigration Enforcement) contends that in the case before the subcommittee the facts are similar. In the cited case straight forward, sensible enquiries could have been made as to the age of the children and the imposition of additional conditions as a form of remedy was considered in appropriate by Mrs Justice Slade for 'those serious cases' set out in the Guidance.
- 3.54 In the case before the subcommittee, simple steps (set out at Appendix A) were available to prevent the employment of illegal workers -none were taken; the imposition of conditions to remedy this situation is inconsistent with the section 182 Guidance and this case citation. A negligent employer should expect revocation in the first instance.
- 3.55 *East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway)*, [2016] EWHC 7265 (Admin)  
This is a recent High Court decision (published April 2016) which has similarities with the one before the sub-committee in that it related to the employment of an illegal worker and where a prosecution for such had not been instigated.  
Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for the employment of an illegal worker was not in place. Whilst the initial hearing may have suggested several illegal workers being employed, the High Court appeal and decision related to the employment of one individual and is therefore, Home Office (Immigration Enforcement) would argue, indistinguishable from the matter before the subcommittee today.
- 3.56 The case reaffirms the principle that responsible authorities need not wait for the licensing objectives to actually be undermined; that crucially in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor. It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee. Mr Justice Jay stated: *"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether*

*revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder.*

*This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required." (Paragraph 18)*

*Mr Justice Jay added: "Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked." (Paragraph 23)*

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## Appendix C – Supporting Evidence

Witness Statement IO [REDACTED]	22-24
Witness Statement IO [REDACTED]	25
Exhibit SH01 IO [REDACTED]	26
Witness Statement IO [REDACTED]	27-28
Exhibit CC06/06/19 IO [REDACTED] Pages 1-10	29-38
Witness Statement AIO [REDACTED]	39

## WITNESS STATEMENT

Criminal Procedure Rules, r 27.2: Criminal Justice Act 1967, s.9: Magistrates' Court Act 1980, s.5B

URN

Statement of:

Age if under 18 – over 18 (if over 18 insert 'over 18')

Occupation: Immigration Officer

This statement (consisting of 3 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: .....

Date 20<sup>th</sup> November 2019Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am employed by the Home Office as an Immigration Officer at the Immigration Compliance and Enforcement (ICE) Team, Floor 2, 31-33 Newport Road, Cardiff, CF24 0AB.

On THURSDAY 6<sup>th</sup> June 2019, I, along with colleagues from the Cardiff ICE Team, attended SANREMO ITALIAN RESTAURANT, 131 -133 CAERLEON ROAD, NEWPORT, NP19 7BZ.

My role on this particular visit was as Officer in Charge (OIC). Entry was gained at 2032 hours under Section 179 of The Licensing Act 2003.

As I entered the premises, I noted two males working behind the bar. Both were preparing drinks and a table of approximately 8 people were present in the restaurant. They appeared to have finished their meals. I introduced myself to the two males behind the bar, showed my warrant card and asked who was the person in Charge. I served the Notice to Occupier to the male who initially identified himself to be in charge, Mr

I requested access to the kitchen area by fully informed consent. He was hesitant to agree.

At this point, IO informed me via airwave radio, that a person had attempted to flee from the rear door and had been arrested as a person liable to be detained. Officers, therefore entered the kitchen area under Paragraph 25A, Schedule 2 of The Immigration Act 1971 as amended in order to search for identification of the arrested male. I was informed via radio that another male was present in the kitchen and support was requested. The arrest 1 pairing, went through to the kitchen to assist. I remained in the restaurant area with Mr and one other male.

Signature:.....

Signature witnessed by:.....

I recall Mr . asking to speak to me in a quieter area, he invited me in to the kitchen. I asked CIO . to cover the restaurant area whilst I spoke with Mr

Mr informed me that he had entered the United Kingdom illegally, he currently had a marriage application submitted with the Home Office, he is married to a national, has no children and reports regularly to Immigration at the Cardiff Office.

Home Office checks confirmed that Mr had been served with form RED0001 on 16/04/19, identifying him as an illegal entrant to the United Kingdom who was liable to be detained. He was set up to report on a monthly basis, with his next reporting event scheduled for 11/06/19 and his application for an EEA Residency Card was rejected on 29/05/19.

At 2055 hours, I arrested Mr as a person liable to be detained and removed from the United Kingdom as his application for an EEA residency Card had been rejected and he had no outstanding applications with the Home Office.

I then asked Mr the following question;




Q How long have you worked here?

A I am not working, I am only here for today.

At approximately 2120 hours I declared a critical incident with CIO as it had become apparent that the male I had left in the restaurant area with CIO had disappeared, most likely through a window on 1st floor leading onto a flat roof balcony area. At 2125 hours, I contacted the Police for assistance enquiries were made at the flat next door, number 133A and neighbouring properties, unfortunately nobody had seen or heard anything. A thorough search of the premises and the surrounding area was conducted by Police, Police dispatched officers to the address given by in case the missing male who it transpired lived at the same address was present but no one was at the address.

Satisfied that if male had escaped, he was not in the near vicinity and was not injured, I made a call made to the number held for the License holder. However, the person who answered the phone denied being Ardian MATMUJA or having any link to Sanremo Restaurant. I requested their details so that I could inform licensing that details held were incorrect, the male then asked if he could call me back as he was driving and promptly ended the call. He did not call back and the number was then unobtainable on subsequent attempts made. Using Keys found on the premises, I secured the premises, ensured appliances in the kitchen were

Signature:..... Signature witnessed by:.....

		<b>RESTRICTED (when complete)</b>				<b>MG11 UKBA</b>
<p>switched off, lights turned off and the sign on door switched to closed.</p> <p>In total, 3 males were arrested at the scene having been identified as illegal entrants to the United Kingdom. 1 male escaped and could not be located. All were helping with the running of the business that evening. The person in Charge could not be confirmed on the night in question as all denied being employed at the premises and the contact details held for the Licence holder led to a person who denied being the Licence holder. Consequently, a referral notice was served by post.</p> <p></p> <p>Signature:..... Signature witnessed by:.....</p>						



**WITNESS STATEMENT**

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

Statement of:

Age if under 18: over 18

(if over 18 insert 'over 18')

Occupation: Immigration Officer

This statement (consisting of 1 page signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature:

Date: 24-10-2019

I am an Immigration Officer, warrant number 7472, with the Home Office Immigration Enforcement Team, based at GENERAL BUILDINGS, 31-33 NEWPORT ROAD, CARDIFF. On Thursday 6<sup>th</sup> JUNE 2019 I was on duty with officers from the Cardiff Arrest Team when we attended SANREMO ITALIAN RESTAURANT, 131-133 CAERLEON ROAD, NEWPORT, NP19 7BZ. The Officer in Charge of the visit was Immigration Officer . Entry to the premises was intended to be under Section 179 of Licensing Act 2003 as amended by Immigration Act 2016. I was allocated the role of rear cover Officer with Officer

At approximately 20.34 hours I arrived at the premises and made my way to the rear lane running behind the premises with Officer . I heard Officer speak to a male who had tried to leave the rear of the premises. At 20.38 hours I witnessed Officer arrest the male I now know as male, born

At approximately 20.38 hours I entered the premises through the rear door with Officer and under Immigration Act 1971(as amended) Power Schedule 2 Paragraph 25A. Whilst in the premises I took a photograph of the Employers Liability Certificate which I attach as Exhibit SH01. The Employers Liability Certificate was hanging on the wall behind the bar. I also went to the first floor of the premises with Officer to try and locate an unknown male who had been witnessed by Officer going upstairs in the restaurant. Both myself and Officer were unable to locate the male. At 22.11 hours I departed the premises.

Signature .....

Signature witnessed by N/A

Exhibit

SH01



# CERTIFICATE OF EMPLOYERS' LIABILITY INSURANCE(a)

(Where required by regulation 5 of the Employers' Liability (Compulsory Insurance) Regulations 1996 (the Regulations) (and as amended) one or more copies of this certificate must be displayed at each place of business at which the policy holder employs any relevant employee of the class or description to which such certificate relates. These requirements will be satisfied if the certificate is made available in electronic form and each relevant employee to whom it relates has reasonable access to it in that form)

Policy Number: SJL2/4744629

1. NAME OF POLICY HOLDER : Mr Adrian Matmugg Vs S4NFM9
2. DATE OF COMMENCEMENT OF INSURANCE: 24 December 2018
3. DATE OF EXPIRY OF INSURANCE : 23 December 2019

We hereby certify that subject to paragraph 2 -

1. the policy to which this certificate relates satisfies the requirements of the relevant law applicable in Great Britain, Northern Ireland, the Isle of Man, the Island of Jersey, the Island of Guernsey and the Island of Alderney, or to offshore installations in any waters outside the United Kingdom to the Employers' Liability (Compulsory Insurance) Act 1999 or any amending primary legislation applies (b); and
2. (a) the minimum amount of cover provided by this policy is no less than £5,000,000(c);

Signed on behalf of Accelerant Agency (UK) Ltd on behalf of HDI Global SE - UK

Frank O'Neill

## Notes:

- a) Where the employer is a company to which regulation 5 (2) of the Regulations applies, the certificate shall state in a prominent place, either that the policy covers the holding company and all its subsidiaries or that the policy covers the holding company and all its subsidiaries except any specifically excluded by name, or that the policy covers the holding company and all its subsidiaries.
- b) Section 1(1) of the Regulations requires a certificate to state whether paragraph 2(a) or 2(b) does not apply.
- c) Section 1(1) of the Regulations requires a certificate to state the amount of cover provided by the relevant policy.

# HDI

Accelerant Agency (UK) Ltd is authorised by the Financial Conduct Authority (FCA) to conduct business in the United Kingdom as a member of the Financial Services Compensation Scheme (FSCS) and is authorised by the FCA to conduct business in the United Kingdom as a member of the Financial Services Compensation Scheme (FSCS).

HDI Global SE is a member of the Financial Services Compensation Scheme (FSCS) and is authorised by the FCA to conduct business in the United Kingdom as a member of the Financial Services Compensation Scheme (FSCS).

**WITNESS STATEMENT**

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

Statement of: [REDACTED]

Age if under 18: over 18

(If over 18 insert lower 18)

Occupation: Immigration Officer

This statement (consisting of 1 page signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: [REDACTED]

Date: 04-11-2019

I am an Immigration Officer, warrant number 18109, with the Home Office Immigration Enforcement Team, based at GENERAL BUILDINGS, 31-33 NEWPORT ROAD, CARDIFF. On Thursday 6<sup>th</sup> JUNE 2019 I was on duty with officers from the CARDIFF Arrest Team when we attended SANREMO ITALIAN RESTAURANT, 131-133 CAERLEON ROAD, NEWPORT, NP19 7BZ. On enforcement visits I wear full P.P.E and am clearly identified as HOME OFFICE IMMIGRATION ENFORCEMENT personnel. I identify myself to all persons I encounter with my warrant identity card and badge prior to speaking with them. The Officer in Charge of the visit was Immigration Officer [REDACTED]. Entry to the premises was intended to be under Section 179 of Licensing Act 2003 as amended by Immigration Act 2016. I was allocated the role of Arrest Officer. At approximately 20.33 hours I arrived at the premises and made my way into the premises with the OIC [REDACTED]. I went to the back of the kitchen and I encountered a gentleman at 20:35. In the kitchen prepping food, I asked him to could I ask him a few questions using BIG WORD INTREPETER using language interpreter code P0097031, his name was [REDACTED] male.

After a few questions please see exhibit CC06/06/19 the subject told me that he came into the UK on the back of a lorry, I completed checks and there was no trace on home office systems or CRS systems. As the subject told me that he came into the UK on the back of a lorry and there were no trace I established that the subject was an illegal entrant in the UNITED KINGDOM I therefore arrested the subject as being an illegal entrant in the UNITED KINGDOM using the administration caution and informed him that he is under arrest under Paragraph 2 Schedule 17.1 of the Immigration Act 1971 ( as amended). Mr [REDACTED] was advised that he had entered the UNITED KINGDOM without valid leave, an offence under 24 (1) (a) of the Immigration Act 1971 (as amended). Mr [REDACTED] confirmed that he understood the administrative caution.

Official Sensitive

MG11T

I conducted a full mitigating circumstance interview please see exhibit number CC06/06/19. I then went through some illegal working questions with him please see EXHIBIT CC06/06/19 for the questions that I asked. The subject claimed that this was his first day at working at the SANREMO ITALIAN RESTAURANT as he previously worked at the car wash in London and it was hard work. At 21:09 [redacted] was then Searched by my male cover officer and no objects were found. At 21:37 I was asked by the OIC [redacted] to conduct illegal working questions on the subject that was encountered and arrested by OIC [redacted] at 21:00. He was encountered at front of the house his name was [redacted] male [redacted], please see EXHIBIT REF CC06/06/19 for the questions that were conducted with the subject. The subject stated that this was also his first day and he was working front of house, he also told me that he did not want to tell me the individuals name that contacted him and asked to help out but it was a friend of a friend. After conducting the questions, I escorted the subject using the correct use of force an escort position. I approximately left the premises at 22:13 hrs on 06/06/2019. The subject was then transported to BRIDGEND police station and served with an Illegal Entrant and detention paperwork by myself. I exhibit CC06/06/19 which is a 10 page print out of my electrical notes which I made at the time of the immigration enforcement visit.

Signature

Signature witnessed by M/A [redacted]

MG11

Official Sensitive

OFFICIAL SENSITIVE

Arrival	
Officer	
Date/Time	06-06-2019 20:33.29
Geolocation	Easting 331985
	Northing 109003
Visit reference	EV24-16,201

OFFICIAL SENSITIVE

Encounter	
<b>Details</b>	
Type of work	Visit
Visit reference	EV24-16,201
Created by	.
ProntoID	.
Time	20:35
Created at geolocation	<div>Easting 331972</div> <div>Northing 188987</div>
Creation date	06-05-2019 20:35:33
<b>Chosen Identity</b>	
Identity source/type	Declared
Name	
DOB	
Gender	Male
Nationality	.
<b>Languages</b>	
Languages spoken	None specified
Interpreter used?	Yes
Interpreter details	Interpreter code - p0097031
<b>Encounter</b>	
Type of encounter	Subject
Encountering officer	
Declared immigration status	Illegal entrant
How and when did the subject last enter the UK?	Came last year on back of lorry
Is this person the subject of the visit?	No
Justification for questioning someone who is not the subject of the visit	Intel stated possible illegal workers on premises subject was working in kitchen
Where in the premises was the subject located?	Kitchen prepping food
Do you know the subject's CID Person ID?	No
Details of vulnerabilities/ safeguarding issues	

OFFICIAL SENSITIVE

Section 55 Issues?	No						
Referral to social services?	No						
Referral to NRM (National Referral Mechanism)?	No						
Duty to Notify/MS1 referral made?							
References (Person ID, HO Ref, Port Ref, BRP)							
Biographic search results	<table> <tr> <td>Systems checked</td> <td>CID</td> </tr> <tr> <td>Result of checks</td> <td>No trace</td> </tr> <tr> <td>Status returned by system checks</td> <td>No trace</td> </tr> </table>	Systems checked	CID	Result of checks	No trace	Status returned by system checks	No trace
Systems checked	CID						
Result of checks	No trace						
Status returned by system checks	No trace						
<b>Identity Documentation</b>							
No documentation provided.							
<b>Notes</b>							
Spoke to Interpreter and confirmed							

OFFICIAL SENSITIVE

Illegal Working - Employee	
<b>Details</b>	
Type of work	Visit
Visit reference	EV24-16,201
Created by	
ProntoID	
Subject CID Person ID	Unknown
Subject name	
Subject DOB	
Subject nationality	
Subject gender	Male
Time	21:13
Created at geolocation	<div>Easting 331965</div> <div>Northing 188986</div>
Creation date	06-06-2019 21:13:49
<b>Language of Interview</b>	
What language is the interview carried out in?	
Interpreter used?	Yes
Details of interpreter	P0083110
<b>Obligation</b>	
How long have you been working here?	Working in a car wash down in London but today is my first day working on car wash was very hard
What is your job role/ what are your duties?	I was just learning things today and preps as today is my first day
What days/ hours do you work each week?	I don't know how many as this is my first day
<b>Control</b>	
Who gave you this job (name and role in business)?	Friend of friend I don't know name
Who tells you what days/ hours to work?	I didn't talk about hours as this was a trial
Who tells you what tasks/ duties to do each day?	I don't know the name of the person the person is not here today



OFFICIAL SENSITIVE

<b>Remuneration</b>	
How are you paid (money, accommodation, food)?	Not getting paid
How are you paid (money, accommodation, food)?	Boss said he is trying to get him accommodation
where did you sleep last night	London I came by train today
<b>Pre-employment Checks</b>	
What name does the employer know you as?	
Did you show documents before being offered the job? If so, what?	I didn't give any documentation I just came and asked can I work and have a try
Does your employer know you're not allowed to work in the UK?	No he didn't know
<b>Additional Questions</b>	
Who else works here?	
<b>Photographs</b>	
No photographs	
<b>Declaration</b>	
Interviewee signature ( )	
<b>Observations</b>	
Observations	Interpreter confirmed that he understood all the questions and was happy to sign for me.

OFFICIAL SENSITIVE

Mitigating Circumstances			
<b>Details</b>			
Type of work	Visit		
Visit reference	EV24-16,201		
Created by			
ProntoID			
Subject CID Person ID	Unknown		
Subject name			
Subject DOB			
Subject nationality			
Subject gender	Male		
Created at geolocation	Easting	331963	
	Northing	188983	
Creation date	06-06-2019 21:09:17		
<b>Medical</b>			
Currently taking any medication	Yes		
Length of time medication taken	More than 5 years		
Details of medication/ dosage	Pain relief not prescribed		
Medication prescribed by	Not prescribed		
Registered with a GP surgery	No		
Hospital treatment or consultations received in the past 3 years?	No		
Currently awaiting NHS treatment	No		
Pregnant	No		
Notes			
<b>Partner and Dependants in UK</b>			
No partner or dependants in the UK			
<b>Criminal History</b>			
Criminal history in the UK	No		
Criminal history in another country	No		
Notes			
<b>Armed Forces</b>			
Subject/ dependant is a member of Armed Forces?	No		

OFFICIAL SENSITIVE

Declaration	
Notes	
Interviewee signature	

OFFICIAL SENSITIVE

Illegal Working - Employee	
<b>Details</b>	
Type of work	Visit
Visit reference	EV24-16,201
Created by	
ProntoID	
Subject CID Person ID	13360951
Subject name	
Subject DOB	
Subject nationality	
Subject gender	Male
Time	21:37
Created at geolocation	<div>Easting 331965</div> <div>Northing 188994</div>
Creation date	06-06-2019 21:37:25
<b>Language of Interview</b>	
What language is the interview carried out in?	English
Interpreter used?	No
<b>Obligation</b>	
How long have you been working here?	Just today
What is your job role/ what are your duties?	Front of house
What days/ hours do you work each week?	Don't know
why are you working here today what's the reason	Favour of a friend they called me
what was the name of the person that called you	I don't want to give his name
<b>Control</b>	
Who gave you this job (name and role in business)?	Don't want to give his name
Who tells you what tasks/ duties to do each day?	Don't want to tell you his name

Page 2 of 2

OFFICIAL SENSITIVE

Departure	
Officer	
Date/Time	06-06-2019 22:13:13
Geolocation	No geolocation available
Visit reference	EV24-16,201

## WITNESS STATEMENT

Criminal Procedure Rules, r 27.2: Criminal Justice Act 1967, s.9: Magistrates' Court Act 1980, s.5B

URN

Statement of: [REDACTED]

Age if under 18: Over 18 ..... (if over 18 insert 'over 18') Occupation: Assistant Immigration Officer .....

This statement (consisting of 1 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: .....

Date 03.12.2019 .....

Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am employed by the Home Office as an Immigration Officer at the Immigration and Compliance and Enforcement Team at General Buildings, Floor 2, 31-33 Newport Road, Cardiff. CF24 0AB.

On THURSDAY 6th JUNE 2019 I attended SANREMO ITALIAN RESTAURANT, 131-133 CAERLEON ROAD, NEWPORT, NP19 7BZ on information there was an immigration offender on the premises.

I arrived at the premises at approximately 20:36 in full PPE. I was rear cover officer for the enforcement visit. Shortly after the team entered through the main front door of the business, I observed a male attempting to leave the premises from the rear door. I had reasonable belief that the subject attempted to leave the premises on sight of officers entering the premise through the front door, giving me reasonable grounds to believe that the male was an immigration offender. The male, who I now know [REDACTED], [REDACTED] male born [REDACTED], was arrested under Paragraph 17(1) of Schedule 2 of the 1971 Immigration Act (as amended) as I suspected they were persons liable to be detained and removed from the UK. At approximately 21:25 I then began to question [REDACTED], [REDACTED] male born [REDACTED] in relation to his employment at the restaurant. The questions were conducted in ENGLISH which he was happy to continue with. My questions and Mr [REDACTED] answers were recorded in my notebook and below as follows:

Q. How long have you been working here?

A. I don't work here I was visiting friends to play football.

Q. How long have you been working here?

A. I'm not working here

Checks on Home office records were conducted confirming that [REDACTED], [REDACTED] male born [REDACTED] [REDACTED] has no permission to work in the UK. [REDACTED]

## **APPENDIX B**

Premises Licence Sanremo, 131 Caerleon Road, Newport, NP19 7BZ.

### **Schedule 12**

#### **Part A**

(THIS PART OF THE LICENCE  
MUST BE KEPT AT THE  
PREMISES AT ALL TIMES AND  
PRODUCED UPON REQUEST OF  
AN AUTHORISED OFFICER)

#### **Premises Licence City of Newport**



<b>Premises Licence Number</b>	18/00556/LAPVPT
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#### **Part 1 – Premises Details**

<b>Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code</b>
Sanremo 131 Caerleon Road Newport South Wales NP19 7BZ
<b>Telephone number</b>

<b>Where the licence is time limited the dates</b>
Not Applicable

<b>Licensable activities authorised by the licence</b>
Sale by retail of Alcohol Playing of Recorded Music Late Night Refreshment

<b>Times the licence authorises the carrying out of licensable activities</b>
Sale by retail of Alcohol Monday to Thursday inclusive 12:00 - 14:30 Monday to Thursday inclusive 18:00 - 23:30 Friday 18:00 - 23:30 Saturday 12:00 - 14:30 Saturday 18:00 - 23:30 Sunday 18:00 - 23:30  Playing of Recorded Music Monday to Thursday inclusive 12:00 - 14:30 Monday to Thursday inclusive 18:00 - 23:30 Friday 18:00 - 23:30



Saturday 12:00 - 14:30  
Saturday 18:00 - 23:30  
Sunday 18:00 - 23:30

Late Night Refreshment  
Monday to Sunday inclusive 23:00 - Midnight

**The opening hours of the premises**

Monday to Thursday 12:00 - 15:00 and 18:00 - 00:00  
Friday 18:00 - 00:00  
Saturday 12:00 - 15:00 and 18:00 - 00:00  
Sunday 18:00 - 00:00

**Where non-standard timings are authorised, the opening times shall be as those authorised for licensable activities with an additional 30 minutes on the terminal hour.**

**Where the licence authorises supplies of alcohol whether these are on and / or off supplies**

Alcohol is supplied for consumption on the Premises

**Part 2**

**Name, (registered) address, telephone number and email (where relevant) of holder of premises licence**

Ardian Matmuja  
131 Caerleon Road  
Newport  
South Wales  
NP19 7BZ  
E Mail megard1@live.co.uk

**Registered number of holder, for example company number, charity number (where applicable)**

**Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol**

Rifan Zoku  
44 North Road  
Bristol  
BS35 1EB

**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol**

Party Reference: SGC/107208

Licensing Authority: South Gloucester Council

**This Premises Licence is issued by Newport City Council as Licensing Authority under Part 3 of the Licensing Act 2003 and regulations made thereunder.**

**Dated this** 14th March 2018



Helen Wilkie  
Public Protection Manager

## **Mandatory conditions**

1 No supply of alcohol may be made under the premises licence:

- i) at a time when there is no designated premises supervisor in respect of the premises licence; or
- ii) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

2 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

3 Where at specified times one or more individuals may be at the premises to carry out a security activity, each individual must be licensed by the Security Industry Authority.

For the purposes of this section:

- i) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies; and
- ii) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

4 The admission of children to the exhibition of any film must be restricted in accordance with any recommendation made by the British Board of Film Classification (BBFC) or in the absence of a recommendation from the BBFC, the Licensing Authority.

For the purposes of this section:

- i) "children" means persons aged under 18 years of age.

5 The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises -

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to -  
(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or  
(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner; .

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

6 The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

7 (1) The premises licence holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either :

- (a) a holographic mark, or
- (b) an ultraviolet feature

8 The responsible person must ensure that -

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml; and

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available

#### **New Mandatory condition for on and off sales from 28 May 2014**

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

(2) In this condition:-

(a) "permitted price" is the price found by applying the formula  $P = D + (D \times V)$ , where-

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(b) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence-

- (i) the holder of the premises licence,
  - (ii) the designated premises supervisor (if any) in respect of such a licence, or
  - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

(3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.

(4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

**Conditions consistent with the Operating Schedule**

1. No adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children, (including, but not exclusively, nudity or semi nudity), regardless of whether children are present on the premises, are permitted within the premises at any time when the premises is open to the public
2. All incidents of crime and disorder shall be reported to Heddlu Gwent Police and recorded in an incident log book
3. All staff shall receive suitable training in respect of health & safety and fire safety and shall be aware of what action is to be taken in the event of an emergency
4. No new customers will be permitted to enter the premises after 23:30hrs other than for take-away orders

**Conditions attached after a hearing by the licensing authority**

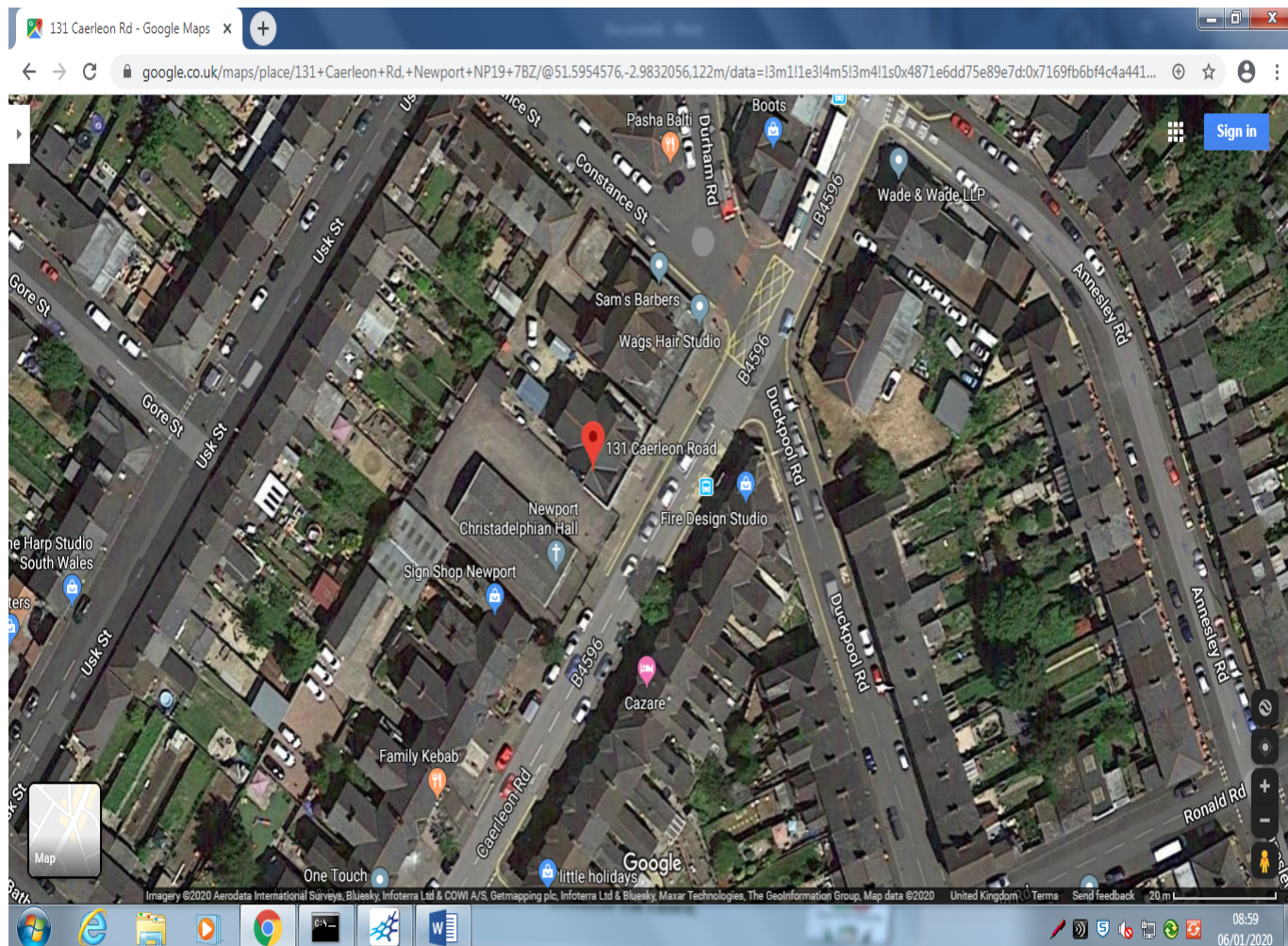
NIL.

**Plans**

Please see attached plans

## Appendix C

### Location of premises









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