Neutral Citation Number: [2017] EWHC 3204 (Admin)

Case No: CO/2788/2015

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/12/2017

Before :

ANTHONY ELLERAY QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

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Between :

THE QUEEN on the application of SRI PRATHINIK CONSULTING LIMITED	**Claimant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Michael Biggs (instructed by **Mayfair Solicitors**) for the **Claimant**
Sasha Blackmore (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 29 & 30 March 2017

- -

Judgment Approved

Anthony Elleray QC:

1. By this claim the Claimant ("the Company") seeks judicial review of a decision by the Defendant ("the SSHD"). The decision was dated 22nd May 2015 and was to revoke the Company's Tier 2 Sponsor Licence.

2. The Company has carried on business as an IT Consultancy. On 16 October 2013 it sought and obtained a Tier 2 Sponsor Licence because it asserted a need for experts in IT who were unavailable on the resident labour market. It acquired nine employees, eight of whom were tier 2 migrants.

3. The claim was issued timeously in June 2015. Permission to seek judicial review was refused on paper by Mrs Justice McGowan on 15 June 2015. However, on a renewed oral application permission to see judicial review was granted by Judge Andrew Grubb sitting as a Deputy Judge of the High Court. Judge Grubb also on an interim application stayed the decision of 22 May 2015 until further order, so that the Company was permitted to continue to employ those tier 2 migrants employed by it immediately before the decision of 22 May 2015, until further order.

4. The claim has involved two unusual interim features. First, the Company has sought to raise the correct standard of review (a heightened alternative to the "simple" *Wednesbury* unreasonable standard). By Order of Mr Justice Hayden dated 11 October 2015 provision was made for the Company to file Amended Grounds of Review to address the appropriate standard of review. A direction was consequently given that the claim should not be heard by a Deputy high Court Judge. However, the failure of the Company to file and serve such Amended Grounds timeously led Mr Justice Garnham on 21 March 2017 to refuse permission to serve Amended Grounds and to set aside the Order that the claim should not be heard by a Deputy. Second, the SSHD has not served detailed Grounds of Opposition to the claim for reasons which led Mr Justice Hayden to give relief from sanction on 11 October 2016. Thereafter, uncertainty as to whether the Company would serve Amended Grounds put off the need to finalise detailed Grounds. The SSHD did apply to Mr Justice Garnham for an order that skeleton arguments should stand as detailed grounds but that was not directly addressed in his order of 27 March 2017.

5. The parties have been represented throughout and now before me by Mr Biggs for the Company and Ms Blackmore for the SSHD.

6. By his Skeleton dated 27 March 2017 Mr Biggs raised the possibility of the Company renewing orally its application to extend time for filing Amended Grounds of Review and questioned the ability of the SHHD to appear for want of the detailed Grounds of Opposition.

7. However, at the outset of the hearing before me Mr Biggs disclaimed on behalf of the Company any intention to seek to renew its application to extend time for filing Amended Grounds and the parties were content that I should permit the SSHD to oppose the claim on her Summary Grounds as amplified in Ms Blackmore's Skeletons of 7 October 2016 and 27 March 2016, the latter in large measure embracing the relevant parts of the earlier argument.

Tier 2

8. In *R (Raj and Knoll Ltd) v. SSHD* [2016] EWCA Civ 770 Lord Justice Tomlinson in giving the leading judgment observed at Paragraph 1:

> "The Secretary of State for the Home Department, "SSHD", has responsibility for the maintenance of the United Kingdom's Immigration Controls. The "Tier 2" Points-Based System, "PBS", operated by the UK Visas and Immigration Section of the Home Department, is a scheme which covers the employment sector. It is contained in Part 6A of the Immigration Rules. Pursuant to the scheme skilled workers from outside the European Economic Area, the "EEA", are allowed leave to enter and remain in the UK to fill particular jobs which cannot be filled by settled EEA workers. This scheme permits employers to sponsor an applicant migrant by the issue to him or her of a Certificate of Sponsorship - "COS". In order to do so an employer must be licensed by the SSHD. Possession of a CoS does not guarantee an applicant migrant leave to enter and remain in the UK but it provides him/her with most of the necessary points under the PBS. It follows that licensed sponsors play an active and crucial role in support of immigration control. Unsurprising therefore sponsors are required to comply with comprehensive guidelines in matters of detailed record-keeping and reporting, and that compliance is monitored by the SSHD. The rules are contained in the published "Guidance".

9. Lord Justice Tomlinson at Paragraph 2 of that judgment also observed:

> "Tier 4 is a similar, but obviously not identical, system for licensing educational institutions to sponsor students from outside the EEA to enter and remain in the UK. In that context Lord Sumption has observed, in *R (New College Ltd) v. Secretary of State for the Home Department* [2013] 1 WLR 2358 at 2372, paragraph 29:

> "There are substantial advantages for sponsors in participating [in the Tier 4 scheme], but they are not obliged to do so. The rules contained in the tier 4 guidance for determining whether applicants are suitable to be sponsoring institutions, are in reality conditions of participation, and sponsors seeking the advantages of a licence cannot complain if they are required to adhere to them"
>
> The same is obviously true of those who seek the advantages of a Tier 2 licence."

Guidance

10. The SSHD has issued through UK Visas and Immigration: "Tier 2 and 5 of the Points-Based System Guidance for Sponsors."

11. The version applicable at the time of the decision dated 22 May 2015 was that issued in April 2015. There is common ground before me that though such Guidance was stated to be used for Tier 2 (and 5) applications made after 6 April 2015 there was no different provisions in earlier versions of the Guidance that would have relevance to me. Indeed, as I shall note, the SSHD has observed in terms that there is no material earlier Guidance that is relevantly different.

12. The provisions of the April 2015 version of the Guidance to which I have been particularly referred include the following provisions.

13. Section 1 related to applications for a licence. Paragraph 1.1 provided:

> "Sponsorship is based on two principles:
>
> a) Those who benefit most directly from migration (employers, education providers or other bodies who are bringing in migrants) should play their part in ensuring the system is not abused.
>
> b) We need to make sure that those applying to come to the UK for work or to study are eligible and that a reputable employer or education provider genuinely wishes to take them on."

Paragraph 1.3 provided:

> "Sponsorship plays two main roles in the migrant's application for permission to come to, or remain in the UK to work or study:
>
> a) It provides evidence that the migrant will fill a genuine vacancy that cannot be filled with a suitably qualified or skilled settled worker, or that they will be studying for an approved qualification.
>
> b) It involves a pledge from the sponsor that it accepts all the duties expected when sponsoring the migrant."

14. Section 3 dealt with sponsor duties and compliance. Under a sub-heading "Record-keeping Duties" Paragraph 15.1 provided:

> "You must keep the following record or documents, and make them available to us on request:
>
> (see also Appendix D – Record-keeping)
>
> a) A photocopy or electronic copy of the relevant page, or pages, of each sponsored migrant's passport, worker authorisation (purple Registration Certificate) or UK Immigration Status Document and Biometric Residence Permit (if available), that show their entitlement to work including their period of leave to remain in the UK. Further details of your responsibilities as an employer, to prevent illegal working, are available on our pages on the gov.uk website at …
>
> b) Each sponsored migrant's contact details (up-to-date UK residential address, telephone number and mobile telephone number).

Paragraph 15.2 provided:

> "You must give us, when asked, any documents relating to your sponsored migrants or the running of your organisation that we consider relevant to assessing your compliance with your duties as a sponsor. We might, for example, ask for details of your agreement practices so that we can make sure that a resident labour market test was carried out correctly."

15. Under a heading "Complying with the Law" it was provided at Paragraph 15.12:

> "To make sure you are complying with our immigration laws you must:
>
> …
>
> d) Only assign a CoS to migrants who you believe will meet the requirements of a tier or category, and are likely to comply with the conditions of leave or worker authorisation …"

Under the heading "Documents":

> "… what documents must I keep now I have a sponsor licence?

It was provided at Paragraph 16.2:

> "There is no prescribed method for storing the documents, but they must be available to us on request. If you fail to keep any document specified in Appendix D and/or fail to give us any documents when we ask for them, we will take action against you."

16. Under the sub-heading "Revoking a licence", "Can my licence be revoked after it has been granted?" Paragraph 19.3 provided:

> "For information on the circumstances in which we will revoke your sponsor licence see Annex 5."

And under Paragraph 19.5:

> "For information on the circumstances in which we may revoke your sponsor licence see Annex 6."
>
> Paragraph 19.6 observed on the inability to define exceptional circumstances in which SSHD might not revoke the sponsor licence but when one of the circumstances listed in Annex 6 applied such would be viewed as a serious matter.

17. Section 4 of the Guidance dealt with assigning a Certificate of Sponsorship and employing a Tier 2 (or tier 5) migrant. Under the heading "Certificate of Sponsorship … What is a Certificate of Sponsorship (CoS)?" Paragraph 23.8 provided:

> "One you have assigned a CoS, it can be used by the migrant you have assigned it to, to support their application at any time during the three month period from the date it was assigned. During this period a migrant cannot be assigned another CoS by any other sponsor. If the migrant does not use the CoS within this three month period to make an application, it will expire and will show as 'expired' in your SMS account. Please note that a migrant cannot apply for a Tier 2 or Tier 5 leave more than three months in advance of the start date stated on their CoS."

18. Paragraph 28 of the Guidance under the sub-heading "Resident Labour Market Test – Tier 2 (General) ('RLMT') provided at Paragraph 28.1:

> "The Resident Labour Market Test is there to protect the settled workforce and means that you must advertise a job you want to recruit for to give settled workers a chance to apply. You can only recruit a migrant if:
>
> a) You have completed a Resident Labour Market Test in accordance with this Guidance and can show that no suitable settled worker is available to fill the job, or
>
> b) The job is exempt from the Resident Labour Market Test."

19. Under the sub-heading "How to carry out the RLMT" Paragraph 28.16 provided:

> "Unless an exemption applies all jobs must be advertised to settled workers for 28 calendar days. For more information on exemptions, please see exemptions from the resident labour market test. You can advertise jobs in two ways:
>
> a) Advertise the vacancy for a single continuous period, with a minimum closing date of 28 calendar days from the date the advertisement first appeared.
>
> b) Advertise the vacancy in two stages, with each stage being advertise for no fewer than seven calendar days but where both stages total a minimum of 28 calendar days. For example, you could at first advertise the vacancy for 14 calendar days and appoint any suitable settled worker who applies. If no suitable settled worker applies, you

> can't appoint a migrant worker at this stage as you must advertise the vacancy for a further 14 calendar days, making 28 calendar days in total. If no suitable settled worked applies during the first or second stage, then the resident labour market test has been passed and you can appoint a Tier 2 migrant."

Paragraph 28.17 provided:

> "You must place two advertisements using the methods set out in this Guidance. In many cases, one of those will be online advertisement using the Jobcentre Plus Universal Jobmatch service … This is mandatory for certain jobs. For more information on advertisement methods, please see resident labour market test Tier 2 (General) advertising methods …"

Paragraph 28.24 provided:

> "For each recruitment method, where you have carried out the Resident Labour Market Test, you must keep the documents listed in Appendix D. If you fail to advertise a job vacancy in line with the requirements set out in this Guidance, we will take action against you …"

Paragraph 28.26 provided:

> "If the job is based in England, Wales or Scotland, it must be advertised online through the Job Centre Plus Universal Jobmatch service …"

20. Paragraph 29 of the Guidance was under the heading "Tier 2 (General) Certificate of Sponsorship (CoS)". Paragraph 29.2 provided:

> "All CoS restricted or unrestricted, must be assigned within six months of the date the vacancy was first advertised. Where the vacancy has been advertised in two stages, for more information please see how to carry out a resident labour market test. The CoS must be assigned within six months from the date the first of the two advertisements appeared. [The sub-paragraph then refers to four particular exceptions to the six months limit with which I am not concerned.]"

21. Paragraph 29.3 provided:

> "When you assign a CoS you must:
>
> a) Give full details of the resident labour market test carried out, including:
>
> - the dates the job was advertised;
> - where the job was advertised;
> - any relevant reference numbers including the Universal Jobmatch, Job ID number … as detailed in the SMS Guidance …"

22. Under a sub-heading "Restricted CoS" the Guidance provided:

> "29.8. Between 6 April 2015 and 5 April 2016 there are a limited number of restricted CoS available to Tier 2 (General) Sponsors each month. The annual limit is 20,700 and they are divided in 12 monthly allocations. 2,550 restricted CoS will be available in the first month, and 1,650 in each following month … The monthly total will be increased in line with any restricted CoS which have been unallocated, returned or reclaimed during the last month….
>
> 29.9. If you need to assign a restricted CoS to a migrant, you must apply for it using the restricted CoS application process..."

23. Under the sub-heading "How to apply for Restricted CoS", the Guidance included these provisions:

> "29.13. When you apply for a restricted CoS you must have carried out a resident labour market test (where suitable) that meets the requirements in this Guidance …
>
> 29.15. We may wish to check the information you send with your application, for example if we have doubts about its validity. If we need to make any checks, we may ask for more information or documents. You must send us any information or documents within 10 working days. If you do not your application will be rejected."

24. Under the sub-heading "Criteria" Paragraph 29.7 provided that applications for restricted CoS would be scored and prioritised based on criteria set out in Table 2 within that paragraph, which was points-based.

25. Under the heading "Use of Restricted CoS", provisions in the Guidance included that:

> "29.41. We accept that there may occasionally be circumstances in which some of the details you enter on a successful restricted CoS application may have changed by the time the CoS is allocated to you, or you come to assign it. Although you cannot amend the pre-populated fields when assigning the CoS, you can add a Sponsor note to let us know of the following changes:
>
> …
>
> c) Start and end date - You can amend either or both of these dates but you should remember that a restricted CoS must be assigned within three months of it being allocated to your SMS account. After it has been assigned, the migrant then has only three months to use it to support an application for leave …
>
> 29.43. These are the only changes you can make to a restricted CoS when you assign it. If anything else has changed, for example the SoC code or job description, you must return the restricted CoS to us, carry out a new resident labour market test (where required) and then apply again at a later date if necessary …
>
> 29.45. You must only assign a restricted CoS if you intend to employ the migrant on the conditions stated on the application you made for it or in any Sponsor note added in the circumstances permitted in Paragraph 29.42-40.43. If we subsequently find that you gave false information on your application for a restricted CoS … we will revoke your Sponsor Licence."

26. Annex 5 of the Guidance set out "Circumstances in which we will revoke your Licence." One such circumstance was:

> "u) You assign a Tier 2 … to a migrant and on that CoS or letter we said we will allow you to give them a migrant as evidence you have carried out a resident labour market test, or, if it is a restricted CoS, on the application for that CoS you stated any of the following:
>
> - that you carried out a resident labour market test and the test you carried out did not meet the requirements set out in this Guidance.
> - that you had carried out a resident labour market test and you had not …"

27. Annex 6 of the Guidance provided "Circumstances in which we may revoke your Licence." Such circumstances include:

> "c) You fail to provide any documents listed in Appendix D of this Guidance, when requested or within the specified time period …
>
> f) You fail to comply with any of your sponsor duties …
>
> i) As a result of information available to us we are not satisfied you are using your processes or procedures necessary to fully comply with your sponsor duties."

As I shall note the impugned decision cited certain documents listed in Appendix D. As already foreshadowed I shall refer to the resident labour market test as "RLMT".

Case Law

28. In *Raj and Knoll* the Court of Appeal dismissed an appeal from a rejection by Mr Justice Haddon-Cave of a challenge by way of judicial review of a decision by SSHD on 16 June 2014 to revoke the Tier 2 licence of the relevant appellant, the operator of nursing homes.

29. At Paragraph 23 Tomlinson LJ observed:

> "After summarising the facts and setting out the relevant provisions from the Guidance the Judge observed that the principles applicable to the Tier 2 and Tier 4 Point-Based Systems are similar and that the watchword for both is trust. He continued:

’21. The following principles can be derived from the recent case law:

(1) The essence of the system is that the Secretary of State imposes “a high degree of trust” in the sponsors granted (‘Tier 2’ or ‘Tier 4’) licences in implementing and policing immigration policy in respect of migrants to whom it grants a Certificate of Sponsorship (“CoS”) or Confirmation of Acceptance (“CAS”) (per McGowan J in *London St Andrew’s College v. Secretary of State for the Home Department* (supra) [2014] EWHC 4328 (Admin) at [12]) (and see Silber J in *R (Westech College) v. Secretary of State for the Home Department* [2011] EWHC 1484 (Admin)).

(2) The authority to grant a Certificate (CoS or CAS) is a privilege which carries great responsibility: the sponsor is expected to carry out its responsibilities “with all the rigour and vigilance of the immigration control authorities” (per McGowan J in *London St Andrew’s College v. Secretary of State for the Home Department* (supra) at [13]).

(3) The Sponsor “must maintain its own records with assiduity” (per McGowan J in *London St Andrew’s College v. Secretary of State for the Home Department* (supra) at [13]).

(4) The introduction of the Points-Based System has created a system of immigration control in which the emphasis is on “certainty in place of discretion, on detail rather than broad guidance” (per Lord Hope in *R (Alvi) v. Secretary of State for the Home Department* [2012] UKSC 33, reported at [2012] 1 WLR 2208 at [42]).

(5) The CAS in the ‘Tier 4’ scheme (the equivalent of the CoS in the ‘Tier 2’ scheme) is very significant: the possession by a migrant of a requisite CAS provides strong, but not conclusive, evidence of some of the matters

> which are relevant upon the migrant's application for leave to enter or remain (*Global Vision* per Beatson LJ at [12] citing Lord Sumption SCJ in *R (New London College) v. Secretary of State for the Home Department* [2013] UKSC 51.
>
> (6) There is no need for UKBA to wait until there has been a breach of immigration control caused by the acts or omissions of the Sponsor before suspending or revoking the sponsorship, but it can, and indeed should, take such steps if it has reasonable grounds for suspecting that a breach of immigration control might occur (per Silber J in *R (Westech College) v. Secretary of State for the Home Department* [2011] EWHC 1484 (Admin) at [17]-[18]).
>
> (7) The primary judgment about the appropriate response to breaches by licence holders is that of the Secretary of State. The role of the court is simply supervisory. The Secretary of State is entitled to maintain a fairly high index of suspicion and a 'light trigger' in deciding when and with what level of firmness she should act (*R (The London Reading College Ltd) v. Secretary of State for the Home Department* [2010] EWHC 2561 (Admin) per Neil Garnham QC).
>
> (8) The court should respect the experience and expertise of UKBA when reaching conclusions as to a Sponsor's compliance with the Guidance, which is vitally necessary to ensure that there is effective immigration control (per Silber J in *R (Westech College) v. Secretary of State for the Home Department* [2011] EWHC 1484 (Admin) at [29(d)]).'"

30. Tomlinson LJ at Paragraph 26 of *Raj and Knoll* observed:

> "I mean no disrespect to Mr Biggs' carefully formulated argument on that topic if I summarise it as challenging the appropriateness of the SSHD adopting a 'light trigger' approach and suggesting that the court in turn should adopt a heightened standard of reviews or otherwise the SSHD

> would have carte blanche to engage in oppressive decision-making."

As I have noted, the Grounds seeking review in this case have not been amended to make the "heightened standard of review point". Tomlinson LJ at paragraph 28 of *Raj and Kroll* also observed on "..the importance of proper record-keeping and the ability on request to produce documentary evidence of compliance with the relevant procedure is not just obvious but in any event clearly spelled out in the Guidance."

31. Ms Blackmore also cites from the first instance decision of Mr Justice Haddon-Cave the following, with her underlined emphasis:

> "*The Scope of Judicial Review*
>
> > 22. Given the *plethora* of challenges in this field, it is worth reiterating the words of caution of Lord Browne-Wilkinson in *Reg. v. Bishop Challoner School, ex p Choudhury* [1992] 2 AC 182, 197), regarding the scope of judicial review: *'It is essential that in exercising the very important jurisdiction to grant judicial review, the court should not intervene just because the reasons given, if strictly construed may disclose an error of law. The jurisdiction to quash a decision only exists where there has in fact been an error of law. Moreover, the court should not approach decisions and reasons given by committees of laymen expecting the same accuracy and use of language which a lawyer might be expected to adopt.*' …
> >
> > 42. … Paragraph 19.6 of the Guidance makes it clear that even where there are discretionary grounds for revocation of a licence, 'revocation can be expected in all but "exceptional circumstances". Revocation of the sponsor's licence is likely and to be expected for any infraction of the requirements imposed by the Guidance (per Hickinbottom J in *R (Central College of London Ltd) v. Secretary of State for the Home Department* [2012] EWHC 1273 at paras.42-44 and see McGowan J in *London St Andrew's College*, supra, at paras.31-32). Immediate revocation for these infractions was overwhelmingly to be expected …
> >
> > *Postscript*

> 46. Finally, I suggest that heed is paid to the words of McGowan J in *London St Andrew's College v. Secretary of State for the Home Department* [2014] EWHC 4328 (Admin) [36]):
>
> > 'It must be understood that the grant of [sponsor] status is a *fragile gift, constant vigilance about compliance is a minimum standard required for such sponsors. The burden of playing an active role in support of immigration control is a heavy one. The SSHD is entitled to review faulty compliance with a cynical level of supervision*.'"

32. In the *New London College* case the Supreme Court rejected a case that "Guidance" in relation to licensing educational establishments (Tier 4) required Parliamentary approval under Section 3(2) of the Immigration Act 1971. At Paragraph 16 Lord Sumption observed that the tenor and purpose of the Guidance was conveyed by Paragraphs 1 and 2 of the Guidance under the heading "What is Sponsorship?" from which I have cited paragraph 1 in the April 2015 Guidance, which has Tier 2 relevance. At paragraph 22 Lord Sumption said:

> "The mandatory requirements, whether they relate to the grant or the withdrawal of a licence or of highly trusted sponsor status, cannot be severed from the rest of the licencing scheme, because they are fundamental to its whole operation. It follows that either the sponsor licensing scheme is wholly unlawful by reason of its inclusion of mandatory requirements for sponsors or it is lawful notwithstanding those requirements. Neither alternative will result in these claimants being licensed. There is no half-way house."

Further, at Paragraph 29 he observed:

> "The rules contained in the Tier 4 Guidance for determining whether applicants are suitable to be sponsoring institutions, are in reality conditions of participation, and sponsors seeking the advantage of a licence cannot complain if they are required to adhere to them."

That observation was cited, as I have noted, by Lord Justice Tomlinson at Paragraph 2 of his judgment in *Raj and Knoll*.

33. In the *London St Andrew's College* case, Mrs Justice McGowan was considering a challenge to the revocation of a Tier 4 licence. At Paragraph 13 she observed:

> "Being authorised to grant such a certificate is a privilege but carries great responsibility. The Sponsor is, rightly, expected to carry out those responsibilities with all the rigour and vigilance of the immigration control authorities. That includes the proper determination of a student's ability and commitment to study and to abide by the rules. It further imposes a heavy burden on the Sponsor to ensure that the student continues to comply with all requirements; to that end the Sponsor must maintain its own records with assiduity. To achieve these results the Sponsor must be vigilant to report and if necessary expel students who appear to have failed to meet the highest requirements upon them even if they are some way through their period of study. They must follow these requirements, even if to do so is contrary to their economic interests."

At Paragraph 14 McGowan J observed:

> "The SSHD continues to bear the responsibility for the grant and supervision of such trusted status to the Sponsors. The exercise of her discretion should not be interfered with lightly. She has the experience and expertise to make those decisions. The role of this court must be only to interfere if the discretion has been exercised in an unlawful way …"

At Paragraph 17 she observed:

> "This is not a case concerned with the sort of fundamental rights engaged by the definition of illegal entrant … In cases of the instant type it is not for the court to take on the position of fact-finder or decision-maker, rather the court's role is to review and only to upset a decision which is so unreasonable as to be unlawful …"

34. In the *Westech* case, the tier 4 claimant was challenging revocation and other decisions including a suspension decision. At Paragraph 29(d) Silber J observed:

> "The courts should respect the experience and expertise of UKBA (which the courts do not have) when it reaches conclusions relating to the issue of whether any acts or omissions of the sponsor might suggest it has not complied with its obligations or it might not comply with its obligations set out in the Guidance, which is vitally necessary to ensure that there is effective immigration control."

At Paragraph 29(g) he also cited the speech of Lord Browne-Wilkinson in the *Bishop Challenor* case, a passage I have already cited.

35. In the *Central College* case, a tier 4 case, Hickinbottom J, as he then was, considered and rejected unamended grounds seeking judicial review against a background that Court of Appeal authority had prevented reliance upon the sole ground for which permission had been given to seek judicial review. He variously observed:

> "42. The Guidance does not refer to 'proportionality' at all. It indicates that, where there are discretionary grounds for revocation of a licence revocation can be expected in all but 'exceptional circumstances' … For any infraction of the requirement imposed by the Guidance upon a Tier 4 Sponsor, revocation of the licence is likely and to be expected, it will not be revoked only in exceptional circumstances. At the very least, the Guidance clearly reserves to UKBA a wide discretion as to whether a licence will be revoked.
>
> 43. The reason for that wide margin of discretion, even where the direct consequence of the breach may appear to be limited, has also been marked …
>
> 44. With regard to sanction for any particular breach, the scheme requires UKBA to assess the appropriate penalty, because it has particular expertise so to do (a point particularly made by Silber J in *Westech* …). This court will be cautious when considering replacing UKBA's assessment of appropriate sanction with its own. It will only do so when the sanction is so disproportional(ity) that no reasonable authority would impose it for the relevant breaches or if it amounts to some other breach of public law. For the position to be otherwise would be to bring in disproportionality as a discrete realm of public law challenged by the back door.
>
> 45. Furthermore, a commitment to consider a sanction "proportionately" cannot be considered in a vacuum: it has to be looked at in proper context. UKBA considered this case in the proper context of the Guidance, fairly read. That Guidance required any sanction to be in accordance with the scheme of

> the Guidance itself, and to fall within the generous bounds of UKBA's discretion allowed by the *Wednesbury* test. The Guidance could not arguably have given rise to any commitment to dealing with the matter 'proportionately' in any other sense …
>
> 49. … neither the relatively minor consequences of the breaches, nor the severe consequences for both the claimant and its students, can arguably be described as 'exceptional circumstances'. In this context the decision to revoke may be regarded as harsh by the claimant; but it cannot arguably be considered irrational."

36. In *The Queen (on the application of WGGS Ltd) v. Secretary of State for the Home Department* [2013] EWCA Civ 177 the Court of Appeal dismissed an appeal against a decision of the Administrative Court upholding a decision by UKBA to refuse the college's application for "highly trusted status", a Tier 4 case. In giving the leading judgment, Lord Justice Jackson rejected arguments that there were express or implied exceptions from a relevant obligation in the Guidance (Paragraph 36) or that relevant reporting conditions in the Guidance were unclear and he further observed that it should not be forgotten that colleges were performing functions which used to be undertaken by Entry Clearance Officers or other UKBA officials and that there was clear responsibility on those colleges to show that they deserved the trust which was being placed in them (Paragraph 42).

37. In the *Global Vision* case, the Court of Appeal dismissed an appeal by a college from a failure to obtain judicial review of a decision that it should be refused HTS status. In giving the leading judgment, Lord Justice Beatson cited at Paragraph 17 evidence of a witness relied upon by SHHD who observed amongst other matters:

> "This fundamental expectation that a sponsor run a rigorous recruitment process links to the core principles of sponsorship, in that those who benefit most from immigration should play a vital role in making the system work for everyone involved."

38. In *The Queen (on the application of West London Vocational Training College Ltd) v. Secretary of State for the Home Department* [2013] EWHC 31, Lord Justice Toulson and Mr Justice Simon rejected a challenge in the Administrative Court to a refusal of an application by the claimant in that case for HTS and to reduce its allocation of CAS to zero. At Paragraph 29 Lord Justice Toulson observed:

> "The claimant argues that the policy guidance is to be construed in accordance with the approach to the

> Immigration Rules summarised by Lord Browne in *Mahad v. Entry Clearance Officer* [2009] UKSC 16, [2010] WLR 48 at [10]:
>
> > 'The rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy.'

At Paragraph 40 Lord Justice Toulson expressly agreed with the observations of Thelwall J in *R (WGGS) v. Home Secretary* [2012] EWHC 2076 (Admin) at 34 in rejecting an argument that the use of a refusal rate for undermining status was irrational:

> "In the absence of such an approach the Secretary of State would, as Mr McDonald submits she should, be bound to examine the reasons for each refusal, a task which the partial delegation of immigration powers to colleges was designed to avoid. The claimant has undertaken the exercise at some length in these proceedings, for reasons I understand, but the length and detail of the exercise underlines why the use of a refusal rate cannot be said to be irrational. There can be no in principle objection to the use of a refusal rate as the basis upon which a decision can be made where recruitment procedures are not sufficient robust."

39. In *The Queen (on the application of London School of Sound Technology) v. Secretary of State for the Home Department* [2017] EWHC 423, Miss Sarah Cockerill QC sitting as a Deputy High Court Judge dismissed a challenge to the revocation of a Tier 4 Sponsor licence and a Tier 2 licence. It was a case in which Mr Biggs and Ms Blackmore appeared. At Paragraph 50 the learned Deputy Judge rejected the making of an unpleaded heightened standard of review point. She had observed at Paragraph 49:

> "As to the standard of review, the existing authorities indicate the court's decision is defined to interfering if a decision-maker has behaved in an unlawful way:
>
> > (i) *Bradley v. The Jockey Club* [2004] EWHC 2164 (QB) per Richards J (repeatedly cited with approval elsewhere):

> 'The function of the court is not to take the primary decision but to ensure that the primary decision-maker is operating within lawful limits … The essential concern should be with the lawfulness of the decision taken: whether the procedure was fair, whether there was any error of law, whether any exercise of judgment or discretion fell within the limits open to the decision-maker and so forth … The decision is unlawful only if it falls outside the limits of that discretionary area of judgment … if it falls outside the range of reasonable responses to the question of where a fair balance lies between the conflicting interest.'
>
> (ii) *London St Andrews College v. SSHD* per McGowan J: The court's discretion is 'only to interfere if the discretion has been exercised in any unlawful way … A decision was not necessarily unreasonable or irrational if a subsequent enquiry demonstrates the position on that individual ground is not as extreme as was first thought.'"

Further, at Paragraph 51 the learned Deputy Judge referred to there being a plethora of authority indicating that the SSHD was entitled to look for strict compliance from sponsors making citations from the already noted *London St Andrew's* and *London Reading College* cases, beings cases cited by Haddon-Cave J in the *Raj and Knoll* case. Amongst other matters, the learned Deputy Judge (at 66) had to consider whether the decision letter had contained a new ground on which the claimant had not had an opportunity to comment. As I understand it, the learned Deputy Judge was concerned with public law in the context of whether the claimant licence-holder had a proper chance to respond on the facts. At Paragraph 72 she observed that a decision letter was not a final end date in terms of the SSHD considering submissions regarding the issues. At Paragraph 120 the learned Deputy High Court Judge noted a submission on behalf of the claimant that the case was akin to *Minster Care Management Ltd v. Secretary of State for the Home Department* [2015] EWHC 1593. The SSHD in that case had belatedly withdrawn a number of reasons relied upon in support of the relevant revocation letter and a number of its reasons had been unsustainable in public law. Mr Biggs was submitting that it was not highly likely that the revocation decision would still be to revoke relevant Sponsor licences so that the revocation decision in issue in that case should be quashed. The learned Judge rejected that reasoning.

40. The reference to "highly likely" is a reference to Section 1 of the Senior Courts Act 1981 to which Ms Blackmore invites me to have regard. Section 31(2A) provides:

> "The High Court -
>
> (a) must refuse to grant relief on an application for judicial review, and
>
> (b) may not make an award under sub-section (4) on such an application,
>
> if it appears to the court to be highly likely the outcome for the applicant would have been substantially different if the conduct complained of had not occurred."

41. In the *Minster Care* case the learned Deputy Judge in considering whether as a matter of discretion he should refuse to quash an unlawful decision was applying then case law that the approach should be that SSHD would have to show that the decision would inevitably have been the same absent the public law errors of the SSHD. At Paragraph 110 the learned Deputy Judge concluded that in particular one of the two grounds on which the claimant succeeded in that case was such as the decision would not inevitably have been the same if the SSHD had not erred. That particular ground was a ground for revocation that the SSHD had found that she was not satisfied that the relevant claimant had conducted the RLMT leading to an erroneous belief that the claimant had knowingly provided false representations and wrongful reliance on Paragraph 6(a) of Annexe 6 to the Tier 2 and Tier 5 Guidance providing a discretionary ground for revocation for knowingly providing false statements or false information. The SSHD had withdrawn that and accepted that finding of hers had been erroneous. The learned Deputy High Court Judge considered that it was not inevitable that the decision would have been the same if there had not been the wrongful finding of knowing provision of false representations.

The Facts

42. I repeat that on 16 October 2013 the Company obtained its Tier 2 Sponsorship Licence. It was to sponsor Tier 2 migrants as eight out of its nine employees.

43. On 19 November 2014 officers employed by the SSHD made an unannounced visit to the Company's premises at 5th Floor, 338 Hayes Park, Hayes, 3, 11 Millington Road, Middlesex UB3 4AZ.

44. On 18 March 2015 the SSHD wrote to suspend the Company's Tier 2 licence in essence in relation to concerns as to the want or adequacy of records maintained in relation to four named Tier 2 migrants.

45. On 15 May 2015 the Company through its solicitors wrote to address the suspension reasons ("the Company's Reply").

46. However, on 22 May 2015 the SSHD decided in writing to revoke the Company's Tier 2 Sponsor Licence. As will appear, the revocation related to concerns relating to two of the four Tier 2 migrant employees that had been mentioned in the suspension letter.

47. The Company challenges that revocation in seeking its judicial review.

Mr Sarwar

48. The first ground of challenge relates to the decision to revoke by reason of the appointment of Mr Sarwar more than six months after his RLMT test. The suspension of licence had arisen in his case on the ground of failing on inspection to show any retained evidence of the RLMT. The Reply had given evidence of the posting of two advertisements of the post on totaljobs.com (ref: 2136/58520096) and Jobcentre Plus Universal Jobmatch online (ref: 533947). The decision letter at Paragraph 3 noted that on the date of inspection (19 November 2014) the Company had failed to retain any evidence of the RLMT. However, the decision letter whilst observing that the failures to retain evidence would be contrary to Appendix D of the Tier 2 Sponsor's Guidance, Paragraphs 2(e), 2(g) and 2(l), does not suggest a ground for revocation in such relation. However, the decision picked up from the Reply evidence of the posting of the two advertisements that they had been posted more than six months before the assignment of the CoS:

> "You say in your representations that the RLMT was carried out through advertisements on Universal Jobmatch and totaljobs group. You have provided copies of these advertisements, but they were all posted on 1st January 2014 and the CoS for Shiskir Sarwar was assigned on 10th August 2014. We therefore do not accept this as credible evidence.
>
> 6. Paragraph 29.2 a) of the Tier 2 and 5 Sponsor's Guidance states:
>
> '*All CoS, restricted or unrestricted, must be assigned within 6 months of the date the vacancy was advertised.'*
>
> 7. Annexe 5 u) of the Tier 2 and 5 Sponsor Guidance states we will revoke your licence if:

> '*You assign a Tier 2 or a Tier 5 CoS to a migrant and on that CoS or the letter we said we will allow you to give a migrant as evidence that you will have carried out a Resident Labour Market Test, or, if it is a restricted CoS, on the application for that CoS you stated any of the following:*
>
> - *that you had carried out a Resident Labour Market Test and the test you carried out did not meet the requirements set out in this Guidance."*"

There is reference to Annexe 6(c) and (i) at Paragraph 20 which harks back to complaints concerning two other employees to which I will later turn.

49. The Company's submission through Mr Biggs is that the SSHD has misinterpreted and misapplied the applicable policy and has therefore made a material error of law and/or acted inconsistently with her published policy and/or had acted unreasonably in the *Wednesbury* sense.

50. Through Mr Biggs, the Company points out that Paragraph 28 of the Guidance deals with policy relating to RLMT whereas Paragraph 29 dealt with policy relating to CoS. The six month requirement under Paragraph 29.2 related to CoS. He submits the grounds for revocation under Paragraph (u) of Annex 5 are said only to relate to a breach of Paragraph 28 relating to the carrying out of a RLMT.

51. Mr Biggs submits, first, that the RLMT process must necessarily take place before the CoS is assigned. It ensures that jobs are offered to members of the Resident Labour Market if at all possible, and once a job is offered there is no basis to apply the RLMT. He argues, secondly, that late post six months assignment of a CoS could not defeat the "core purpose" of the RLMT. He observes that the acceptance of a late CoS assignment does not defeat that purpose for there is then no post to which the RLMT applies. He contends, thirdly, that Paragraph 29.13-29.21 and Table 2 regarding assignment of restricted CoS makes clear that the SSHD must be satisfied that the RLMT has been carried out before a restricted CoS can be issued. He contends that since Paragraph 29.2 deals with the six months applicable to the assignment of a restricted CoS it cannot be part of the RLMT test since the SSHD could not otherwise issue a restricted CoS consistently with Paragraph 29.13-29.16. Mr Biggs then argues, fourthly, that SSHD evidence that the RLMT evidences a vital component of the two tier sponsorship scheme makes out the basis for revocation if the RLMT test is not carried out, but a failure to assign a restricted CoS within six months of the first advertisement does not provide clear justification for mandatory revocation.

52. Mr Biggs goes on to contend that the flawed understanding of Paragraph 29.2 that its non-observance leads to mandatory revocation means that there makes for a clear possibility that the SSHD may have acted differently if she had realised that a breach of Paragraph 29.2 did not lead to mandatory revocation. He also argued orally that the SSHD might have considered that the Company's circumstances might have fallen within the scope of downgrading sanctions in Annex 3 or 4 of the Guidance but did not seek to amend the grounds for review in context.

53. The first challenge goes on to point out that Paragraph 29.12 of the Guidance points out that the assignment of a restricted CoS must be within a three month period and that Mr Sarwar's appointment was within three months of the approval by the SSHD of the CoS in June 2015. It is submitted that the decision in this case to revoke was unnecessary and substantially unfair given the core purpose was not being "defeated" by the late assignment of the CoS. It is submitted that it would be unfair to revoke for an assignment within the permitted three months simply because the six month period had expired, in particular because the relevant CoS that was issued stated it was valid to November and the CoS was assigned before then. He submits that SSHD could have curtailed the three month period to bring it into line with Paragraph 29.2 of the Guidance. He contends that the SSHD has overlooked the fact that a bona fide and responsible sponsor could easily have acted as the Company did in fact act.

54. Mr Biggs goes on to submit that in all the circumstances of the case the decision of the SSHD to permit the restricted CoS assignment in relation to Mr Sarwar amounted to a "waiver" of the provisions of Paragraph 29.2 of the Guidance. In context he cited *Ex parte Mangoo Khan* [1980] 1 WLR 569. In that case the Court of Appeal granted habeas corpus to an allegedly 'illegal entrant' who had been detained. He was alleged to have obtained entry by deception, given that he was no longer a minor or unmarried, grounds for entry under then relevant rules. The SSHD was found to have erred in considering the appellant under a duty of disclosure and at 578H and 579E respectively Lawton LJ and Ackner LJ, as he then was, considered that a relevant embassy official had waived the relevant rule.

55. The SSHD through Ms Blackmore submits, first, that the SSHD in her discretion decided to revoke the Sponsor Licence for failure to comply with the Guidance in assigning the CoS after six months. She makes in context four core points. She refers to the discretion set out in the decision letter, the want of exceptional circumstances that would fetter the exercise of discretion to revoke, the core importance of the six months and the high likelihood that the decision would have been the same even if, as she disputes, there had been a mistake that the revocation was mandatory.

56. The SSHD through Ms Blackmore submits, secondly, that it is wrong to consider the RLMT test is only concerned with the offer of a job and not with the CoS assignment. Her points in context are that the Guidance must be read as a whole,

the RLMT test is not one narrow part of the Guidance, the Company's argument undermines the proper part of the RLMT in a CoS Assignment and the Guidance should be construed as a whole, it being artificial on the face of the Guidance to make a distinction between Paragraphs 28 and 29 in the way made by the Company. Ms Blackmore contends that for those reasons and additionally as a matter of discretion the SSHD lawfully regarded the process of timely assignment of a CoS as part of the process of testing the RLMT before a foreign worker could be recruited and providing the CoS to assist with entry clearance. Ms Blackmore also draws my attention to the fact that the SSHD has more recently amended the Guidance expressly to include a requirement for assignment of the CoS within six months within Paragraph 28.18 (dealing with how to carry out the RMLT) in addition to its inclusion within Paragraph 29 removing any question but that the SSHD considers the six month limitation on CoS assignment as part of the Resident Labour Market scheme.

57. The SSHD through Ms Blackmore denies any question of waiver in fact by the SSHD of the provisions of Paragraph 29.2 in this case.

Discussions and Conclusion

58. As will appear, I consider that the challenged decision did not contain a mistaken view that revoking the Company's Sponsor Licence by reason of the late assignment of the Sarwar CoS was mandatory. Alternatively the revocation was within the proper discretion of SSHD and wholly unsurprising.

59. I repeat my citation of Paragraphs 1 and 2 of the leading judgment of Tomlinson LJ in *Raja and Knoll*. I stress that the Tier 2 Sponsorship scheme permits the CoS assignment by a Sponsor employer of a migrant to a particular job which cannot be filled by a settled EEA worker. Sponsors have advantages and cannot complain if they are required to comply with relevant Guidance.

60. The SSHD relies on the evidence of Ms Souster, an Operations and Policy Manager with responsibility for Sponsorship under the Points-Based System, particularly in relation to tier 2 and Tier 5.

61. Ms Souster stresses at Paragraph 4 of her statement that sponsorship is based on two fundamental principles which are set out at Paragraph 1.1 of the Guidance which I have already cited. At Paragraph 6 Miss Souster observes:

> "The grant of a licence confers a responsibility that carries significant duties. By being part of the scheme individual employers become an important part of border control and as such a high degree of responsibility attaches to the licence-holders. Licence-holders are expected to fully familiarise themselves with all duties and obligations under

> the scheme on an ongoing basis and ensure strict compliance with such duties."

62. Ms Souster explains at Paragraph 10 of her statement that in March 2015 there where approximately 25,000 Tier 2 General licence-holders. At Paragraph 11 she explains that:

> "self-evidently from the above [number of responses] the Home Office cannot check every Sponsor's compliance even annually, although there is a regular programme of visits … As noted above, the Home Office monitors compliance with the Tier 2 system and takes action when abuse is found, but it must also rely on Sponsors to carry out their duties assiduously. This is a very important part of sponsorship."

63. At Paragraph 17 of her statement Ms Souster refers to three relevant aspects to the validity of a CoS:

> "(1) The Sponsor must assign the CoS to a migrant they wish to employ within six months of the first advertisement of that vacancy: see para.29.2 of the Guidance.
>
> (2) A 'restricted' CoS must be assigned to a migrant within three months of the date it is allocated to the Sponsor: see 29.12. After three months, it will expire. As above, it must also be assigned within six months of the position being first advertised.
>
> (3) Once assigned to a migrant, the CoS can be used to support the migrant's application which is made during the three month period from the date it was assigned: see para.23.8 of the Guidance."

64. At Paragraph 21 of the statement Ms Souster observes:

> "The six month time period has been in place since 2008 when the scheme began. The Secretary of State considers it is a reasonable period of time from the date of first advertising the vacant position. It allows for a proper Resident Labour Market Test to take place but also provides a fundamental incentive to fill vacant positions promptly, particularly given the fluctuating nature of the employment market: recalling, of course, that the core theory behind tier 2 is to fill specific positions that cannot

> be met from the settled workforce. This core purpose of an RLMT *test* would be defeated if the job could be advertised for one month and the vacancy was in fact accepted many months or even a year or two later, when the advert would not be an indicator as to whether there was a current worker in the settled workforce who could do the job."

65. By a statement dated 11 June 2015 Mr Karry, a director of the Company, states at Paragraph 9:

> "I accept Shiskir Sarwar was assigned after six months of the advertisement. However, I wish to confirm that on 4th June 2014 we applied to the Defendant for issuance of a restricted CoS. In the request form we provided full details of the date of advertisement and other information. On 11th June 2014 this CoS was approved by the Defendant to be valid until 11th September 2014.
>
> 10. I was acting under the good faith belief that the validity period was granted by the Defendant in full knowledge of the fact that the advertisement for the relevant position was first posted on 1 January 2014 so I signed the CoS on 10th August 2014 without any expectation that this would attract the Defendant's criticism."

66. I do not consider that it is possible to isolate the CoS from the RLMT in the manner argued by Mr Biggs as a matter of construction of the relevant Guidance or generally. Paragraph 29.2 of the Guidance made clear that all CoSs must be assigned within six months of the date the vacancy was first advertised. That involved a time limit on assigning the CoS following the RLMT. The limit needed observance to ensure satisfaction that the migrant was not taking a place that could be filled by the Resident Labour Market. Paragraph 29.3 emphasised that point.

67. I consider that the bullet-point under Annex 5(u) relied upon in the decision letter was apt to meet the circumstance in which the RLMT relied on in relation to Mr Sarwar was more than six months before the CoS assignment relating to him. I do not consider that Mr Biggs is correct that Paragraph (u) only relates to a breach of Paragraph 28 of the Guidance. His argument would have had more force if the bullet-point relied upon in the decision letter was of a failure to carry out an RLMT, but that was not the point relied upon in the Decision.

68. It follows that I also reject Mr Biggs' contention that post-dating the six month period would not defeat a core purpose of the RLMT.

69. Further, I reject Mr Biggs' point that the SSHD had to be satisfied that the RLMT had been carried out, before a restricted CoS could be issued. The Sponsor was to tell the SSHD that it had duly carried out the RLMT. The SSHD was relying on the Sponsor duly to report on the RLMT and to have made any CoS assignment within the six months. Paragraph 29.13-29.21 and Table 2 of the Guidance made clear the need for satisfying the SSHD that the RMLT had been carried out prior to the approval of a CoS but the satisfaction was dependent upon due reporting by the company as sponsor. Further the SSHD was relying on the Company as sponsor to assign the CoS within the six months required at paragraph 29.2. I cannot see how the SSHD can be taken in this case to have waived the requirement that the CoS should be assigned within six months of the RMLT. The *Mango Khan* case is readily distinguishable given that the relevant factual onus here was on the Company rather than the SSHD rather than vice-versa.

70. I do not consider that Annex 3 or Annex 4 sponsorship downgrading powers, which were not pleaded or explored in argument, can undermine or fetter Annex 5 mandatory revocation grounds.

71. I consequently reject the case that a failure to carry out the CoS assignment within six months did not call for revocation.

72. Accordingly, I do not consider the decision was wrong in referring to mandatory revocation.

73. It is my view that Mr Carry was mistaken in assuming that he had three months from the approval of the SSHD of the CoS in June 2005. The fact that such approval would lapse within the three months did not in my view extend the six month period the subject of Condition 29.3 of the Guidance.

74. Had the Annex 5(u) mandatory ground for revocation been wrong, I agree with Ms Blackmore that assigning a CoS after six months could not be considered an exceptional circumstance which could be a reason for SSHD not to exercise her discretion to revoke. I accept that the Resident Labour Market scheme can only sensibly work if attendant assignments of CoSs take place within the six month period required by paragraph 29.2.

75. The initial concern of the SSHD relating to the Company's dealing with Mr Sarwar had been the want of retention of records available at inspection. The Company's Reply to the attendant suspension was in effect to reveal that Mr Sarwar had been appointed six months after the advertisement was first posted.

76. If contrary to my view the SSHD did err in her reliance upon the Annex 5(u) of the Section 5 mandatory grounds, that would not in the circumstances lead me to consider as a matter of discretion that I should grant some relief. The decision to revoke for breach of Paragraph 29.2 of the Guidance appears to me wholly and rationally within the discretion of the SSHD. The decision letter read in the round

clearly refers to the discretionary right to revoke as well as to the mandatory ground for revocation relied upon.

77. For reasons I have discussed, I agree with Ms Blackmore that in relation to the Sarwar case it is highly likely that the decision to revoke would have been the same if the SSHD had simply referred to the revocation being a matter of the proper discretion of the SSHD. Accordingly, in accordance with Section 31(2A) of the Supreme Court Act 1981 I would not grant review.

78. For the reasons I have sought to explain, the challenge as it relates to revocation concerning the out of time restricted CoS assignment of Mr Sarwar fails. I have not considered it relevant to have had regard to the more recent amendment of paragraph 28.19 which expressly includes a requirement for assignment of the CoS within six months. The Guidance fell to be read as it stood at the time of the decision. I suspect that the amendment was of the 'for avoidance of doubt' kind.

Mr Raut

79. The impugned decision letter set out at paragraph 4, two paragraphs of Appendix D of the Tier 2 Sponsor Guidance:

> "2(e) Where the vacancy was advertised on the internet, including where it is advertised on your own website (where this is permitted) you must keep a screenshot from the website hosting the advertisements, on the day that they can see it is first advertised, which clearly shows:
>
> - the name of the website; and
> - the contents of the advert; and
> - the date and the URL; and
> - the closing date for applications.
>
> NB: If the website clearly shows that the date of the vacancy was first advertised, a screenshot can be taken at any point during the period the vacancy is advertised.
>
> Where the advertisement is not on your own website and does not show your name, a copy of the letter or invoice from the website will be required, to prove that an advertisement was placed.

> 2(g) Where the vacancy has been advertised online through Jobcentre Plus or Jobcentre Online, you must keep a screenshot from the relevant Government website which clearly shows all of the following:
>
> - the logo of the relevant Government website posting the job advertisement;
> - the contents of the advert;
> - the vacancy reference number (for Universal Jobmatch vacancies this is the 'Job ID number' and for Jobcentre Online this is the 'Job reference number');
> - the date;
> - the URL (for Universal Jobmatch vacancies this also contains the Job ID number); and
> - the closing date for applications."

80. At Paragraph 8 the decision refers to assignment of a restricted CoS to Siroja Ranjan Raut (C2G5V74813P) to work as an analyst programmer. The CoS states the RLMT was met and the post was advertised on totaljobs.com (ref: 2136/58520073) and Jobcentre Plus Universal Jobmatch Online (ref: 5339943). That paragraph went on to record concerns apparent from the inspection that some of the RLMT evidence provided did not meet the above requirements (which must be taken to be a reference to the Appendix D paragraphs which I have cited).

80. Paragraph 9 of the decision letter referred to representations which had been made in the Company's Reply which led the SSHD to conclude:

> "We therefore accept that you have partially addressed this issue."

81. But at Paragraph 10 SSHD observed:

> "You state that the RLMT was carried out for advertisements on Universal Jobmatch and totaljobs.com. You have provided copies of advertisements placed on Universal Jobmatch, businesslink.gov.uk and totaljobs.com. However, the totaljobs.com advertisement does not appear to be a screenshot, it consists of just text with no URL, and the screenshot of the businesslink.gov.uk advertisement does not show the date the vacancy was first advertised or the date the screenshot was taken. We therefore do not

> accept this as credible evidence and this issue has not been fully addressed."

82. The decision at Paragraph 11 observed that Annexe 6(c) and (i) of Tier 2 and Tier 5 Sponsor Guidance states:

> "We may revoke you licence if:
>
> (c) You fail to provide any document listed in Appendix D of this Guidance, when requested within the specified time limit …
>
> (i) If as a result of information available to us we are not satisfied you are using the processes or procedures necessary to fully comply with your Sponsor duties."

84. The SSHD in her discretion saw matters and grounds for revoking the Sponsor Licence.

85. Mr Biggs' first challenge to revocation in relation to Mr Raut is that the restricted CoS in his case had been issued after the SSHD had been satisfied that the requirements of the RLMT had been met. I accept Ms Blackmore's short response that the SSHD does not and cannot verify in every one of the thousands of cases that the RLMT requirements have been met in authorising a restricted CoS. As Ms Blackmore submits, it is for the Sponsor to be assiduous in his responsibilities.

86. Mr Biggs submits, secondly, that reliance in defence by the SSHD on failures immediately to produce documents showing the RLMT had been satisfied here is a new point. He submits that for the avoidance of doubt the policy is that the SSHD accept that evidence with respect to record-keeping issues may be produced after inspection request, a matter which happened in this case. It may, as Mr Biggs submits, be procedurally unfair to rely on matters that did not form part of the decision-making process, but I do not understand the SSHD in fact to contend through Ms Blackmore that revocation as a matter of discretion was justified in relation to Mr Raut for reasons not set out in the decision letter.

87. The decision asserted that the totaljob advertisements were not "screenshots", that the businesslink.com.uk and Jobcentre/Universal Jobmatch advertisements did not show when they were placed, and that the businesslink.gov.uk screenshot does not show when the screenshot was taken.

88. In relation to Mr Raut, SSHD is said to have been unreasonable, irrational or mistaken in relation to the Universal Jobmatch/businesslink.gov.uk advertisements since they in fact did show the date they were posted and the businesslink.gov.uk (which is a website for Universal Jobmatch website) fell

within Paragraph 2(g) of Appendix D of the policy which required so far as material that any screenshot showed the starting and closing date for the application, not when the screenshot was taken. It is submitted that Paragraph 2(e) refers to the date of posting and that Paragraph 2(g) should be construed accordingly. In relation to the totaljobs documents, the print-outs show the start date and end date of the advertisement for the post linked to the website. The contention is that totaljobs is a well-known and reputable recruitment forum and it would have been a simple task for the SSHD to verify the documents provided by the Company. Further, e-mail replies to the advertisements were provided confirming they had been posted.

89. Ms Blackmore for the SSHD concentrates on the want of a screenshot, in particular as it applied to totaljobs and the acceptance by the Company that the advertisements to which they had copied the SSHD were not screenshots. She makes the point that a screenshot is important to show that a job was in fact advertised on the internet and the date of the screenshot of the advertisement are part of what the SSHD requires a Sponsor to keep. She emphasises that the SSHD requires at least two advertisements, one on the Jobcentre Plus/Universal Jobmatch system. The requirement for two advertisements, she submits, is central since many professional jobs are not filled through the Jobcentre Plus. It is important that the other advertisement is also testing the market for at least the minimum period. Further, she stresses the point that the SSHD is not required to take onerous steps to "verify" a document. The obligation is on the Sponsor to satisfy the SSHD's concerns. She cites in context in particular Paragraph 28 of the judgment of Tomlinson LJ in *Raj and Knoll*.

Discussion

90. Appendix 2(e) required a screenshot for the totaljobs advertisement. There was none. I accept it was not for the SSHD to verify the totaljobs advertisement and an assiduous Sponsor would have had the relevant evidence available on inspection or produced it in reply to suspension. Though a screenshot was produced for the Jobcentre Plus/Universal Jobmatch system, it simply showed that it was originally last modified on 1st January 2014 (a public holiday) with a closing date of 29th January 2014. I agree with Ms Blackmore that the screenshot did not show when the advertisement went live or "clearly that it was publicly available for 28 days." I agree that the Appendix 2(e) "date" will refer to that of the screenshot and was not clear.

91. Further, I agree that it was for the Company Sponsor to comply with the Guidance and breaches of Appendix 2(e) and (g) were not simply technical matters.

92. I cannot see an error of law by the SoS in exercising its discretion to revoke in relation to breaches of Appendix 2(e) and (g).

Mr Jhanji

93. The decision letter also referred to a third assigned CoS on that occasion to Mr Jhanji. On inspection by the SSHD there were simply no copies of advertisements or interview notes available for inspection, but the response to suspension was to provide such evidence.

94. The decision was that such met the requirements of the SSHD and I do not understand the decision to have involved revocation because of concerns relating to the assignment of a CoS to Mr Jhanji.

Conclusion

95. I dismiss this application for judicial review.

96. As I indicated when reserving judgment, I shall be grateful for Mr Biggs and Ms Blackmore to make written submissions to me in relation to a draft Order and costs and any application for permission to appeal.

97. Mr Biggs criticised the use of the phrase twice in the decision letter that representations were not accepted as "credible evidence". I understand the phrase as a shorthand phrase for rejecting the case that the evidence produced demonstrated compliance with the relevant Guidance.