

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting

BIRMINGHAM CITY COUNCIL

COUNCIL BUSINESS MANAGEMENT (MISCELLANEOUS APPEALS) SUB-COMMITTEE

TUESDAY, 24 NOVEMBER 2015 AT 10:00 HOURS
IN COMMITTEE ROOM 1, COUNCIL HOUSE, VICTORIA SQUARE,
BIRMINGHAM, B1 1BB

A G E N D A

1 NOTICE OF RECORDING

Chairman to advise meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 APPOINTMENT OF AND FUNCTIONS OF SUB-COMMITTEE

To note a resolution of the Council Business Management Committee on 26 May 2015 appointing the Council Business Management Miscellaneous Appeals Sub-Committee and setting out its functions as follows:-

1. To consider any appeal under the Rules and Regulations for the Operation of the Retail Markets.
2. To consider any other appeal(s) that are not covered by any of the other Committees or Sub-Committees of the City Council.

The following Councillors appointed to serve on the Sub-Committee for the Municipal Year 2015/2016 with Councillor Alex Buchanan as Chair:

Councillor Nawaz Ali (Lab)
Councillor Alex Buchanan (Lab)
Councillor Marje Bridle (Lab)
Councillor Timothy Huxtable (Con)
Vacancy (Lib Dem)

N.B: Councillor Carol Jones subsequently filled the Lib Dem vacancy

3 **APOLOGIES**

To receive any apologies.

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4 **PROCEDURAL RULES FOR THE HEARING OF LICENCED AND CASUAL STALL HOLDER APPEALS 2015**

To note the Procedural Rules for the Hearing of Licenced and Casual Stall Holder Appeals 2015

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5A **APPEAL AGAINST A DECISION TO TERMINATE THE MARKETS LICENCES OF TWO TRADERS - REPORT OF THE OPERATIONS MANAGER - BULL RING MARKETS**

NB the appeals will be heard at 1000 hours

5B **APPEAL AGAINST A DECISION TO TERMINATE THE MARKETS LICENCES OF TWO TRADERS - JUDICIAL REVIEW PACK**

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6 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

7 **AUTHORITY TO CHAIRMAN AND OFFICERS**

Chairman to move:-

'In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

COUNCIL BUSINESS MANAGEMENT (MISCELLANEOUS APPEALS) SUB COMMITTEE

PROCEDURAL RULES FOR THE HEARING OF LICENSED AND CASUAL STALL

HOLDER APPEALS 2015

1. PURPOSE

- 1.1 These Procedural Rules exist to aid proper consideration and determination by the Council Business Management (Miscellaneous Appeals) Sub-Committee (“the Committee”) of all Licensed and Casual Stallholder appeals under the Rules and Regulations (2006) for the Operation of the Retail Markets.
- 1.2 The Rules and Regulations (2006) give the Committee the power to regulate its own procedure.
- 1.3 These Procedural Rules explain how appeals are to be heard, and give details of the role of the participants at the Hearing.
- 1.4 The Committee may depart from these Procedural Rules, giving full reasons for doing so, if the interests of justice require it.
- 1.5 These Procedural Rules should be read alongside the Council’s Constitution, Standing Orders, and the Rules and Regulations (2006) for the Operation of the Retail Markets.

2. DEFINITIONS

In these Procedural Rules the following terms have the meanings and interpretations hereby assigned:-

- 2.1 **“Appeal”** means an application to the Committee by a Licensed or Casual stallholder who is entitled to appeal under the Regulations against a decision of the Head of Operations, Market, Birmingham City Council.

- 2.2 **“Applicant”** means the stallholder who has submitted an appeal for consideration by the Committee.
- 2.3 **“Applicant’s Friend”** means a person attending a Hearing to assist an unrepresented Applicant in presenting his or her appeal. An Applicant’s Friend must not be a party to the Appeal, or a witness in the Appeal, or the provider of any evidence to the Committee for the Appeal. An Applicant’s Friend shall not be permitted to speak on the Applicant’s behalf except where specifically permitted to do so by the Committee having heard submissions from the Parties and taken legal advice from the Committee Lawyer.
- 2.4 **“Applicant’s Representative”** means a person attending a Hearing to represent an Applicant including a solicitor or barrister.
- 2.5 **“Authorised Officer”** means an officer in the Department who is authorised in writing by the Head of Operations, Markets – Birmingham City Council to exercise a particular function with respect to the Retail Markets.
- 2.6 **“Casual Stallholder”** means a trader attending the Retail Markets who has not been granted a Licence.
- 2.7 **“Chairperson”** means the Councillor who is the Chairperson of the Committee for the Hearing.
- 2.8 **“Committee” or “Appeals Committee”** means the Council Business Management (Miscellaneous Sub)-Committee to which the function of dealing with appeals under the Regulations is delegated.
- 2.9 **“Committee Lawyer” or “Clerk to the Council Business Management (Miscellaneous Appeals) Sub Committee”** means the Council’s solicitor or barrister (including an external solicitor or barrister instructed by the Council’s Chief Legal Officer) who is present at the Hearing to advise the Chairperson and the Councillors on law and procedure. The Committee Lawyer may upon

invitation from the Chairperson observe but may not take part in the Committee's discussions and determination of the Appeal.

- 2.10 “**Committee Manager**” means the Council's officer who is present at a Hearing to take minutes.
- 2.11 “**Committee Report**” means an Authorised Officer's written report to the Committee concerning the Appeal. A copy of the Committee Report shall be made available to the Applicant or any Interested Party in advance of the Hearing.
- 2.12 “**Council**” means Birmingham City Council
- 2.13 “**Councillor**” means a Councillor who is a member of the Committee that is considering an Appeal.
- 2.14 ‘**Department**’ means the Council's relevant Market which is the subject of the appeal.
- 2.15 “**Employee**” means a person working for a Licensed or Casual Stallholder.
- 2.16 ‘**Head of Operations, Markets**’ means the head of Operations, Markets – Birmingham City Council or in that person's absence the holder of the post of Markets Manager, Markets.
- 2.17 “**Hearing**” means a meeting of the Committee at which an Appeal is considered.
- 2.18 “**Licence**” means a licence granted by the Department to occupy a stall or stalls in the relevant Market which is the subject of the appeal.
- 2.19 ‘**Licensed Stallholder**’ means a trader who has been granted a Licence by the Department to occupy and trade from a stall or stalls in the relevant Market which is the subject of the appeal.
- 2.20 “**Interested Party**” means a person who is not a party to the Appeal who is present at a Hearing holding a relevant interest in the Appeal as determined

by the Committee. An Interested Party may be legally represented, or may be helped by a friend in the same way as an Applicant's Friend.

- 2.21 **"Parties"** means the Applicant, the Council or an Interested Party and representatives instructed by them.
- 2.22 **"Presenting Officer"** means the person instructed by the Council to be at the Hearing in order to present the Council's case. The Presenting Officer may be an Authorised Officer or a legal representative instructed by the Council.
- 2.23 **"Procedural Rules"** means these procedural rules.
- 2.24 **'Regulations'** means the Rules and Regulations (2006) for the operation of the Retail Markets.
- 2.25 **"Retail Markets"** means the Open Market, St. Martins Indoor Market.
- 2.26 **"Senior Officer"** means the Markets manager or Principal Market Officer(s) in the Department.
- 2.27 **"Serious Misconduct"** Includes but is not limited to any of the following:-
- Sexist, racist, foul or abusive language;
 - Acts of dishonesty;
 - Acts of indecency;
 - Any act causing or likely to cause death or personal injury to a person.

3. **GUIDING PRINCIPLES**

- 3.1 An Appeal is not courtroom litigation and should operate so far as practicable as an informal but fair process guided by the Chairperson with advice from the Committee Lawyer.
- 3.2 The Committee will at all times abide by its duty to act fairly and without bias.
- 3.3 The duty to act fairly incorporates basic legal standards of fairness. Amongst other common sense principles of fairness, the duty includes : -

- 3.3.1 Giving the Parties a chance to provide relevant evidence to the Committee; a chance to respond properly to the other Parties' arguments; and a chance to make submissions before the Committee makes a decision;
 - 3.3.2 Holding a hearing in public so far as is practicable under the law;
 - 3.3.3 Avoiding the appearance and existence of bias in favour or against one of the Parties;
 - 3.3.4 Assisting an unrepresented Party so far as practicable to give as good an account of himself commensurate with the duty to avoid the appearance of bias.
- 3.4 It is also fundamental that there is an orderly presentation of submissions at a Hearing so that the relevant issues are properly understood, evidence is tested, and that oral statements made at the Hearing are accurately recorded.

4. **THE APPEAL- Preliminary Matters**

- 4.1 Upon receipt of the Appeal the Committee Manager will write to the Parties to notify them of a timetable for both the Appeal Hearing itself and for providing all evidence for consideration by the Committee at the Hearing.
- 4.2 Upon receipt of that material the Committee Manager will by send out an Agenda for the Appeal Hearing, including all the evidence the parties wish to rely on.
- 4.3 The Committee Manager will determine by correspondence any application for amendment of the timetables save where there is a dispute requiring the input of the Committee in which case the Committee Manager may invite the Parties to make written submissions upon which the Committee can reach a decision on the papers.
- 4.4 Exceptionally, the Committee in consultation with the Committee Manager may list a pre-hearing review at which the Committee will determine any

preliminary matters. The Clerk to the Committee will be responsible for issuing any directions pursuant to the pre-hearing review.

- 4.5 Any material submitted by the Parties contrary to the timetable supplied by the Committee Manager may not be used in the Appeal without the consent of the Committee. In those circumstances, the Consent of the other Party must be obtained before Committee will consider your request.

THE APPEAL - The Hearing

- 4.6 The Appeal is by way of re-hearing, entitling the Committee to ask and answer the questions: 'Would we have found the allegations proved and if so what sanction would we have imposed?'
- 4.7 Any determination made by the Committee shall be made on the balance of probabilities.
- 4.8 There is no limit on the type of evidence that the Committee may accept from the Parties, including hearsay evidence. The weight to be accorded to any evidence is a matter for the Committee.
- 4.9 Prior to the Hearing commencing the Clerk to the Committee shall advise the parties of the procedure that the Committee proposes to follow at the Hearing.
- 4.10 The Hearing shall take place in public save where The Committee determine to exclude the public from all or part of the Hearing where it considers it to be in the public interest to do so and in accordance with the law including the Local Government (Access to Information) Act 1985, as amended. Public includes a party and any person assisting or representing a party.
- 4.11 The Committee may require any person attending the Hearing who, in their opinion, is behaving in a disruptive manner to leave the Hearing and may:
- (a) refuse to permit him/her to return; or

- (b) permit him/her to return only on such reasonable conditions as the Committee may specify;
- (c) in the event that a person is required to leave a Hearing that person may, before the end of the Hearing, submit to the Committee, in writing, any information which they would have given orally.

4.12 The Committee will determine whether the Appeal has properly been applied for in accordance with the Regulations.

4.13 The Committee will then consider any other preliminary matter before proceeding to the substantive appeal.

4.14 The Hearing will ordinarily be conducted by submissions rather than by hearing oral evidence.

4.15 As the hearings should be informal, but in accordance with rules of natural justice, cross-examination shall not be permitted unless the Committee considers it is required to enable it to consider the appeal. Any application to examine a witness in chief or to cross examine a witness shall be supplied to the Committee Manager in accordance with the timetable he provides under Procedural Rule 4.

5. **PRESENTATION OF SUBMISSIONS**

5.1 In the event that the Committee has given notice to a party requiring clarification on a point(s) then that party shall respond to the points raised by the Committee.

5.2 The Committee will allow the parties a reasonable time in which to present their cases, having regard to the evidence submitted.

5.3 Submissions shall be made in the following order unless the Chairperson directs otherwise:-

5.3.1 The author of the committee report orally presents it and will in particular draw the Committee's attention to:-

- (i) the options available;
- (ii) the considerations that are relevant in reaching a decision;
- (iii) any updated facts that have come to light since the Committee Report has been submitted;
- (iv) any relevant documentation supplied to the Committee in advance by the Applicant;
- (v) any action that the Applicant might take which would cause the representation to be withdrawn.

5.3.2 In the event that the Council instructs a separate Authorised Officer and Presenting Officer to attend the Hearing, then the Authorised Officer will present the Committee Report.

5.3.3 The Presenting Officer will then orally present the Council's case by way of submissions referring to any witness statements or evidence in chief.

5.3.4 The Applicant will then orally present their submissions referring to any witness statements or evidence in chief.

5.3.5 Any Interested Party will then orally present their submissions.

5.3.6 The Chairperson may allow any Party to reply.

6. **QUESTIONING OF SUBMISSIONS**

6.1 The Chairperson will regulate the order in which questions are asked by Councillors.

6.2 The Chairperson and Councillors may question any Party following the completion of their submissions.

6.3 If the Committee has allowed the oral examination of witnesses to take place, the Chairperson will regulate that questioning.

6.4 The Chairperson shall direct that questions that are not relevant to the appeal are neither put nor answered.

7. **DOCUMENTATION**

7.1 No party shall present new documentation to the Committee at the Hearing other than with the consent of the Committee. This does not preclude the Presenting Officer from correcting errors, providing updated information or an extract from a local map showing the Applicant's Premises.

7.2 If any party is granted permission to present supplementary material at the Hearing 10 copies must be provided at their own expense at the start of their submissions.

8. **INTERVENTION**

The Chairperson shall permit the following interventions at any point in the Hearing: -

8.1 The Committee Lawyer to advise the Committee on issues of law, procedure and relevant considerations on decision making. If necessary, the Chairperson may require all those present apart from Councillors, the Committee Lawyer and the Committee Manager to leave the Hearing so that advice can be given.

8.2 The Committee Manager to request that statements made are repeated for reasons of clarity so that they can be properly recorded.

9. **FAILURE OF PARTIES TO ATTEND HEARING**

- 9.1 If a Party has informed the Committee Manager that he does not intend to attend or be represented at a Hearing, the Hearing may proceed in the Party's absence.
- 9.2 If a Party has not given any indication and fails to attend or be represented at the Hearing then the Committee may:
- 9.2.1 where it considers it be necessary in the public interest, adjourn the Hearing to a specified date; or
- 9.2.2 hold the Hearing in the Party's absence.
- 9.3 Where the Council holds a Hearing in the absence of a party, it shall consider at the Hearing the application, representations or notice provided by that Party.

10. **CLOSING SUBMISSIONS**

The Chairperson shall allow first the Applicant an opportunity to make an oral closing submission and secondly, invite any Interested Party to do so and then finally permit the Presenting Officer to close the Council's case.

11. **DECISION**

- 11.1 Before considering any decision the Chairperson may, if he considers it necessary, require all those present apart from the Councillors, the Committee Lawyer and the Committee Manager, to leave the Hearing so that the decision may be considered, in private, and to consider any legal issues.
- 11.2 Neither the Committee Lawyer nor the Committee Manager will take part in the Committee's deliberations, but shall observe and advise only if asked to do so by the Committee.
- 11.3 The Committee is bound by the Regulations only to reach one of the following conclusions:

- 11.3.1 Allow the Appeal;
 - 11.3.2 Suspend the Applicant preventing him/her from trading from the Retail Markets for a period not exceeding twelve months; or
 - 11.3.3 Terminate the Applicant's Licence.
- 11.4 The Committee will give a reasoned decision in writing. At the discretion of the Committee a decision and the reasons for the decision may be reserved, or the decision may be given to the Parties orally and the reasons reserved.
- 11.5 The Committee Lawyer shall notify the Parties of the decision of the Committee in writing as soon as practicable after the Committee reaches its decision.

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Business Management (Miscellaneous appeals) Sub-Committee
Report of:	Amanda Prosser-Davies, Operations Manager – Bull Ring Markets
Date of Meeting:	12 October 2015
Subject:	The Appeal Hearing in accordance with the Judgment of the High Court made on 17th March 2015 against the decision taken by Mr Mark Croxford to terminate the Markets Licence of Mr Qasim Aryubi and Mr Saber Nazary on 14th February 2014.
Licenced traders:	Mr Qasim Aryubi Mr Saber Nazary
Operations affected:	Bull Ring Open Market
Contact Officer:	Amanda Prosser-Davies, 0121 303 7788, Amanda.prosser-davies@birmingham.gov.uk

1. Purpose of report:

To consider an appeal against a decision made by Mr Mark Croxford to terminate the Markets Licences of both Mr Aryubi and Mr Nazary.

2. Recommendation:

To consider and determine the outcome of the appeal.

3. Brief Summary of Report:

This report provides a summary of the decision made by Mr Croxford on 14 February 2014, including the events which preceded it and those which have followed the decision, resulting in the current appeal.

On 14 February 2014 Mr Croxford made a decision to terminate two licenses to trade, in respect of the Birmingham Open Market ("the Market"), granted to Mr Aryubi and Mr Nazary respectively.

The decision of Mr Croxford was subject to an earlier appeal heard by Ms Jacqui Kennedy on 1st April 2014. Upon hearing that appeal, Ms Kennedy's decision was also to terminate the licenses of both Mr Aryubi and Mr Nazary.

The decision of Ms Kennedy was then subject to Judicial Review proceedings. A decision was made by the Honorable Mr Justice Hickinbottom on 17th March 2015 that the appeal decision of Ms Kennedy should be quashed.

The Judgment in those proceedings states that the decision made by Ms Kennedy should be "remitted to the Council" and referred to the appropriate appeal body, namely the Business Management (Miscellaneous appeals) Sub-Committee ("the Committee").

The appeal follows the procedure detailed in the Markets Rules and Regulations (2006) for the operation of the retail markets. The Committee also operates under its own 2015 procedural rules document.

Under those procedures, Mr Aryubi and Mr Nazary are appealing the decision made by Mr Croxford on the 14th February 2014 to terminate their Licenses to trade on the Bull Ring Open Market.

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

The report complies with the City Council's Rules and regulations (2006) for the operation of the retail markets.

5. Relevant background/chronology of key events:

1. On 24th January 2014 officers from West Midlands Police ("WMP") carried out an operation at the Market where they arrested a number of foreign nationals on suspicion that they were not entitled to live (and work) in the UK.
2. The department (Markets) was informed by WMP that 7 foreign nationals (total) had been removed from stalls B9 & B11 (operated as a single stall under trade licence by Mr Aryubi) and stall B22 (operated under trade licence by Mr Nazary), or from the vicinity of those stalls, and arrested.
3. The department was later informed by the UK Border Agency that each of the 7 persons arrested, were confirmed to have no entitlement to live or work in the UK.
4. On the 14th February 2014 Mr Croxford met with Mr Aryubi and Mr Nazary to inquire about the arrests that had been made at, or around, the stalls which they licence. In particular to inquire about the persons they employ, as 6 of the 7 people arrested were believed to have been working at stalls B9 & B11 and B22 at the time of their arrest.
5. Following the meeting, Mr Croxford concluded that Mr Aryubi and Mr Nazary had, on balance, failed to comply with the terms of their licence in particular Regulation 2(k) and 2 (L). Therefore he decided to terminate their licences forthwith under the provision of part 10.3.3 of the Markets Rules and Regulations 2006.

6. List of background documents:

The following documents will be available to assist the Committee in reaching its decision:

1. Copy of an Open Market Licence;
2. Markets Rules & Regulations 2006;
3. Order of the High Court;
4. Judgment Transcript;
5. Letters to Mr Aryubi and Mr Nazary (invitation to meeting with Mr Croxford);
6. Decision Letter of Mr Croxford;
7. Statement(s) from Mr Croxford;
8. Statement from Dave Corner;
9. Statement(s) from West Midlands Police;
10. Statement from UK Border Agency;

Additional documents may be presented to the Committee by Mr Aryubi or Mr Nazary, in accordance with the Committee procedure.

7. Options available

Under part 11 of the Birmingham City Council Markets Rules and Regulations 2006 document, the Committee shall either:

1. Allow the stallholder's appeal;
2. Suspend the stallholder preventing him/her from trading from the retail markets for a period not exceeding twelve months, or;
3. Terminate the stallholder's licence.

BIRMINGHAM CITY COUNCIL BUSINESS MANAGEMENT (MISCELLANEOUS APPEALS) SUB-COMMITTEE

HEARING ON: 24 NOVEMBER 2015 AT 1000 HOURS

IN THE MATTER OF APPEAL BROUGHT BY:

(1) MR SABER NAZARY

(2) MR QASSIM ARYUBI

DOCUMENT INDEX

1. Birmingham City Council Markets – Retail Stall Licence (Open Market);
2. Birmingham City Council Markets Rules & Regulations 2006;
3. Order of the High Court, dated 28 May 2015;
4. Judgment;
5. Letters dated 5 February 2014;
6. Decision Letters dated 14 February 2014;
7. Statement of Mark Croxford dated 4 March 2014;
8. Supplemental Statement of Mark Croxford dated 30 September 2015;
9. Statement of Dave Corner dated 30 September 2015;
10. Statement of PC Alexander Roobottom dated 17 May 2015;
11. Statement of PC Jonathan Lander (unsigned);
12. Statement of PC Mark Owen (unsigned);
13. Statement of PC Andrew Bentley (unsigned);
14. Statement of Teena Oulaghan, Immigration Officer, dated 4 June 2015;
15. Skeleton Argument for the Respondent Department.

BIRMINGHAM CITY COUNCIL
MARKETS

RETAIL STALL LICENCE – BULL RING OPEN MARKET

THIS LICENCE is made the 31st day of October Two Thousand and Twelve
BETWEEN: (1) BIRMINGHAM CITY COUNCIL ("the Council") acting by MICK
TAYLOR, Operations Manager, Markets of the Local Services Directorate, Manor
House, 40 Moat Lane, Birmingham, B5 5BD and (2)

Mr. Saber Nazary

Of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

("the Stallholder")

WHEREAS:

- (1) The Council are the Market owners of Retail Markets ("the Market") and as Market owners are vested with the rights and duties of regulating and controlling the Market.
- (2) The Stallholder has requested the Council to grant him/her the licence to use a stall or stalls for trading upon part of the Market.

1. In consideration of the payment by the Stallholder of such licence fees as are specified in the Schedule hereto or such other charges the Council may from time to time in its absolute discretion determine the Council hereby grants to the Stallholder the licence to use such market stalls ("the Market Stalls") and on such times and days as set out in the Schedule or such other stalls as the Council may from time to time in its absolute discretion determine.

2. In consideration of the licence granted under Clause 1 the Stallholder hereby agrees:

- (a) to comply with conditions laid down within this licence.
- (b) not to permit any person other than his/her self or his/her registered employee to use the Market Stalls.
- (c) not to use the Market Stalls except for retail trade purposes and not to exhibit on or sell from the Market Stall any articles or goods which are in the reasonable opinion of Mick Taylor, Operations Manager, Markets, of an objectionable or dangerous nature or of a poor or unmerchantable quality. The Stallholder shall not sell articles or goods which are of inferior quality to those displayed.
- (d) not to do or permit to be done any act or thing which may in the opinion of Mick Taylor, Operations Manager, Markets be a nuisance to or cause harm or damage to other Stallholders or to the public, including but not exclusively drinking of alcohol and the use of any illegal substances.
- (e) not to make any alterations or additions to the structure or fittings of any of the market stalls without the prior written consent of the Markets Manager.
- (f) not to place goods beyond the limits of the Market Stalls and not to deposit or leave refuse of any description on or around the Market Stalls.
- (g) to keep the Market Stalls and fittings and the space below the Market Stalls clean and free from litter.
- (h) to carry out any reasonable instructions issued by an authorised officer of the Council in connection with the Market.
- (i) not to do anything which may prevent the Council from carrying out its duties as owner of the Market Stalls on the Market.

- (j) to hold a valid insurance policy for public liability for claims (minimum £2 million) and to permit the Markets Manager to inspect such policy of insurance and the receipt for the current premium at the Council's offices whenever requested by the Markets Manager.
 - (k) to comply with the Council's Market Bye Laws, the Food Act 1984, the Food Hygiene (Market Stalls and Delivery Vehicles) Regulations 1966, Mock Auctions Act 1961, Food Hygiene (General) Regulations 1970, Sale of Goods Act 1979 and all other statutory requirements or regulations.
 - (l) to comply with the Council's Market Rules and Regulations dated (2006) for the Operation of the Retail Markets) a copy of which is annexed hereto.
3. The Council may vary the terms of the Licence by giving at least three calendar months' notice in writing to the Stallholder during which period the Council would consider comments and representations.
 4. If the Stallholder shall fail to occupy the Market Stalls by 0900 hours on any market day then the Markets Manager may make whatever arrangements he considers appropriate for the use of the Market Stalls during the remainder of that day. Casual traders allocated stalls will be given an additional 30 minutes to set up.
 5. This Licence is personal to the Stallholder who shall not transfer, sub-licence or allow any other person to use Market Stalls or allow any other person to be associated with this Licence as a partner or in any other way without the prior written consent of the Council PROVIDED ALWAYS.
 - (a) that if the Stallholder has traded at the Market Stalls for at least 12 months, his/her Licence of the Market Stalls to a person approved by the Council selling the same or other approved commodities at a fair price for the assets and business carried out on the Market Stalls.
 - (b) any subsequent transfer of the Licence shall only be permitted by the Council after a further minimum period of 12 months has elapsed.
 - (c) in the case of the death or retirement of the Stallholder the widow or widower wife or husband sons or daughters may apply to the Markets Manager to become the Stallholder, or will be allowed to transfer the Licence to an approved person, subject to the appropriate transfer fee being paid as described in Clause 5(d).

- (d) any such transfer in Clauses 5(a) and 5(b) shall be subject to the Council receiving a transfer fee being £113.30 in advance of such transfer.
6. The permission granted to the Stallholder to use the Market Stalls shall not prevent the Council through its employees or agents entering upon the Market Stall for any purpose at any time whatsoever.
 7. This Licence shall commence on the **23rd day of April 2012** and may be determined by 28 days' notice in writing given by either party at any time and the Stallholder shall then make such arrangement as may be necessary to remove any goods or equipment and to leave the Market Stalls in a clean and tidy condition making good any damage to the satisfaction of the Council.
 8. The Stallholder shall pay on demand in advance to the Council such Licence fee(s) as are determined. The Council may vary this Licence fee at any time by giving 28 days' notice to the Stallholder.
 9. The licensed Stallholder will be entitled to two weeks holiday per annum when reservation fees will not be charged. Written notification must be received 14 days prior to commencement of holiday period. The reservation fee payable for all other absences is full rental.
 10. The Stallholder shall not use the Market Stalls for the sale of anything other than the goods stated overleaf and between the hours specified in the Market Rules. At normal closing time all goods must be removed where applicable from the Market Stalls.
 11. If the Stallholder fails to comply with the terms of this Licence then such failure may result in its termination by the Council.
 12. Nothing in this Licence shall be construed as creating the relationship of landlord and tenant.

SCHEDULE

Market: **BULL RING OPEN MARKET**
Market Stall No: **B 22**

Days on which Market Stalls may be used: **TUESDAY, WEDNESDAY,
THURSDAY, FRIDAY & SATURDAY.**

Goods Sold: **FRUIT & VEGETABLES**

IN WITNESS whereof the signature of the said MICK TAYLOR, (Operations Manager, Markets) on behalf of BIRMINGHAM CITY COUNCIL and the signature of the said

STALLHOLDERS NAME

[REDACTED]

SIGNATURE

[REDACTED]

DATE *16/11/2010*

WITNESS' NAME

[REDACTED]

SIGNATURE

[REDACTED]

DATE *16/11/12*

ADDRESS

[REDACTED]

OPERATIONS MANAGER,
MARKETS - BIRMINGHAM CITY
COUNCIL

[REDACTED]

DATE

WITNESS

[REDACTED]

[REDACTED]

DATE *16/11/2012*

ADDRESS

**MANOR HOUSE, 40 MOAT LANE,
BIRMINGHAM, B5 5BD**

[REDACTED]

[REDACTED]

16/11/12

BIRMINGHAM CITY COUNCIL
MARKETS

RULES AND REGULATIONS (2006)
FOR THE OPERATION OF THE RETAIL MARKETS

These rules and regulations are intended to assist in the operational effectiveness of the Retail Markets, to ensure equity in relationship to the traders and to support the City Council's intention to provide a high quality service.

All Licensed and Casual Stallholders shall comply with these Regulations. Where applicable, Employees shall also comply with these Regulations.

In these Regulations the following terms have the meaning hereby assigned:-

'Council'	means Birmingham City Council.
'Department'	means the Council's Market.
'Head of Operations, Markets'	means the Council's Head of Operations, Markets – Birmingham City Council or in the Head of Operations, Markets – Birmingham City Council absence the holder of the post of Markets Manager, Markets.
'Retail Markets'	means the Open Market, St. Martin's Indoor Market.
'Regulations'	means the Rules and Regulations (2006) for the operation of the Retail Markets.
'Licensed Stallholder'	means a trader who has been granted a Licence by the Department to trade on a specific stall or stalls in the Retail Markets.
'Licence'	means a licence granted by the Department in respect of a specific stall or stalls in the Retail Markets.
'Casual Stallholder'	means a trader attending the Retail Markets who has not been granted a Licence.
'Employee'	means a person working for a Licensed or Casual stallholder
'Authorised Officer'	means an officer in the Department who is authorised in writing by the Head of Operations, Markets – Birmingham City Council to exercise a particular function with respect to the Retail Markets.

- 'Appeals Committee' means the Council Business Management Sub-Committee to which the function of dealing with appeals under the Regulations is delegated.
- 'Senior Officer' means the Markets Manager or Principal Market Officer(s) in the Department.
- 'Serious Misconduct' Includes but is not limited to any of the following:-
 Sexist, racist, foul or abusive language;
 Acts of dishonesty;
 Acts of indecency
 Any act causing or likely to cause death or personal injury to a person;

1.0 **GENERAL CONDITIONS**

1.1 **Registration**

All Licensed/Casual Stallholders and their Employees shall register their names and current addresses with the Department in accordance with the requirements outlined on the Departments application form, and give written notice to the Department immediately of any changes in such details. A recent passport size photograph of the Licensed/Casual Stallholder signed on the reverse by the Licensed/Casual Stallholder will be required.

1.2 **Employees**

All Licensed/Casual Stallholders shall ensure that all their Employees comply fully with the Regulations as disciplinary action may be taken against any Licensed/Casual Stallholder or their Employees for any breaches of the Regulations. Licensed/Casual Stallholders are under a duty to bring the Regulations to the attention of their Employees.

1.3 **Children**

The employment of children is subject to the Children and Young Persons Act 1933. A permit is required from the Council's Education Department for the employment of any young person of compulsory school age.

It is an offence to employ any child under the age of thirteen.

1.4 **Equality**

Birmingham City Council is committed to a policy of equality within all the services for which it is responsible as outlined in the City Council's Equal Opportunities Policy and the delivery of a better quality of life for everyone in the City's diverse communities.

1.5 **Partnerships**

Only two persons will be permitted to be joint Licensed Stallholder at any stall, and both names shall be included on the original application. Licensed Stallholders shall not sub-let or assign their stalls except in accordance with Regulation 3.3.

1.6 **Lines**

All applications for a Licence shall include full details of goods to be sold on the stall. Future changes or additions to existing lines will require prior written consent from the Department, and will not normally be considered at less than twelve month intervals.

1.7 **Maximum Stalls**

The maximum number of stalls allocated on any one of the Retail Markets to a Licensed Stallholder shall not exceed four.

1.8 **Indemnity**

All Licensed/Casual Stallholders shall indemnify the Council against Third Party Claims. Details of insurance cover are to be set out on the application form for the Licence.

1.9 **Statutory Requirements**

All Licensed/Casual Stallholders and their Employees shall comply with all statutory requirements and statutory instruments including without limitation the Control of Substances Hazardous to Health Regulations 1988 in relation to the sale of goods or provision of services from their stall.

1.10 **Animals**

Licensed/Casual Stallholders and their Employees shall not bring or keep dogs or other live animals on the Retail Markets.

1.11 **Inflammables**

Licensed/Casual Stallholders shall not keep or store explosive materials, inflammable liquids or gases on their stalls or in the Retail Markets.

2.0 **TRADING CONDITIONS**

2.1 **Trading Hours**

All Licensed/Casual Stallholders shall ensure that their stalls are open for business during the trading hours of the Retail Market as specified from time to time by the Department and published at the Markets Customer Centre or at such other prominent position as shall be determined by the Council.

2.2 **Employees**

All Licensed/Casual Stallholders are fully responsible for the actions of their Employees within the Retail Markets.

2.3 **Vehicles**

All Licensed/Casual Stallholders shall ensure that vehicles used in respect of their stalls are moved from the Retail Markets area immediately they are unloaded or at the request of any Authorised Officer.

Licensed/Casual stallholders shall not bring or permit forklifts and other mechanical trucks to be in the Retail Markets after 09.00 hours.

2.4 **Nuisance**

Excessive noise or nuisance or any action likely to cause offence may result in disciplinary action being taken against the Licensed/Casual Stallholder and/or the Employee responsible.

2.5 **Stallage**

All Licensed/Casual Stallholders shall pay on demand from an Authorised Officer the daily stallage charge for their stall together with any arrears which may have accrued.

2.6 **Displays**

All goods and produce shall be displayed and sold within the area of the allocated stall. No trimming or sorting of produce is allowed in any public area of the Retail Markets.

2.7 **Cleanliness**

All Licensed/Casual Stallholders shall ensure that their stalls are kept clean and tidy throughout the trading day with all refuse being removed at the end of trading to the designated refuse area.

2.8 **Scales**

Scales must be clearly visible at all times to the public.

2.9 **Closing**

All Retail Markets to be cleared of goods and vehicles by 18.30 hours at the conclusion of each trading day.

3.0 **ALLOCATION FOR LICENSED STALLHOLDERS**

3.1 **Seniority and Priority**

Licences for stalls are allocated by the Department in line with seniority of attendance or priority due to minimal representation on the Retail Market.

Over representation may result in restrictions regarding certain lines.

3.2 **Seasonal Restrictions**

Seasonal Restrictions may also be applied by the Department in the best interest of the Retail Market.

3.3 **Transfer of Licences**

3.3.1 Licences may be transferred, subject to paragraph 3.3.2 below, by a Licensed Stallholder if the appropriate terms and conditions of the Licence are met, and subject to the relevant transfer fee being paid to the Department.

3.3.2 Any Licensed Stallholder who has been suspended pursuant to paragraph 7 and is facing a disciplinary hearing may not transfer their Licence from the date of the suspension notice until the outcome of either the disciplinary hearing in accordance with paragraph 9 or, if there is an appeal to the Council Business Management Sub-Committee, then until the outcome of that appeal.

3.4 **Holidays**

Casual Stallholders can give fourteen days written notice to the Department for up to four weeks holiday each twelve month period and remain listed.

The Licensed Stallholder will be entitled to two weeks holiday per annum when reservation fees will not be charged. Written notification must be received 14 days prior to commencement of holiday period.

The reservation fee payable for all other absences is full rental.

3.5 **Absences**

Any absence not covered by a Medical Certificate presented to the Department within seven days of the commencement of an illness or a Holiday form presented to the Department before the absence starts will result in the termination of the Licence to trade on the day(s) if the number of unauthorised absences exceed four in succession on any one trading day (e.g. four successive Tuesdays, Fridays etc) or six in any six month period.

3.6 **Permanent Stall Transfers**

Permanent stall transfers for Licensed Stallholders will be allowed by the Department based on seniority and lines.

4.0 **ALLOCATION FOR CASUAL STALLHOLDERS**

4.1 **Daily Allocation**

Allocation of available stalls to Casual Stallholders will be made by the Department each day from the lists of registered Casuals, based on the number of recorded attendances by such Casuals.

4.2 **Attendance Credits**

Casual attendees shall attend in person prior to allocation in order to receive an attendance credit from the Authorised Officer on the Retail Market.

4.3 **Times**

Casual allocation will take place as early as operationally possible by the Authorised Officer on the Retail Market.

4.4 **Vehicles**

Casual Stallholders vehicles will only be allowed access to the Retail Markets with the prior consent of an Authorised Officer.

DISCIPLINARY PROCEDURE

5.0 **ISSUE OF OFFENCE TICKETS**

5.1 Licensed/Casual Stallholders who contravene any of the Regulations may be issued with an Offence Ticket by an Authorised Officer.

5.2 The Offence Ticket will state details of the offence, the date of the offence and the name of the Authorised Officer who issued the Offence Ticket.

5.3 The following are types of offence for which Offence tickets may be issued but this list is not exhaustive:

5.3.1 *Selling or displaying goods which are not of a merchantable quality.*

5.3.2 *Selling by short measure.*

5.3.3 *Failing to comply with a reasonable written request of the Head of Trading Services or a Senior Officer.*

5.3.4 *The Display or deposit of goods outside the designated stall area contrary to Regulation 2.6.*

5.3.5 *The suspension of articles or equipment from the stall roof and/or lighting cable.*

5.3.6 *The parking of or permitting of a vehicle to be parked in the Market other than for longer than is reasonably necessary for loading or unloading.*

5.3.7 *Selling goods or offering goods for sale outside the designated stall area.*

5.3.8 *Failing to clear refuse, empty boxes etc. from designated stall areas as they arise during business and promptly at the end of each working day.*

5.3.9 *Trimming/sorting outside the designated area.*

5.3.10 *Displaying unauthorised lines or goods for contrary to regulation 1.5.*

5.3.11 *Employment of children under the age of 13 or unregistered staff contrary to Regulation 1.1 or 1.3.*

6.0 **MULTIPLE OFFENCES**

6.1 A Licensed/Casual Stallholder who receives more than three Offence Tickets within a 12 month period may be issued with a Notice of Suspension under Regulation 7 preventing him/her from occupying any stall or working at all the Retail Markets for a maximum period of one week following the issue of the notice.

6.2 If a Licensed/Casual Stallholder receives a further three Offence Tickets within three months following the issue of the Notice of Suspension under Regulation 6.1 the Stallholder may be issued with a second Notice of Suspension under Regulation 7 preventing him/her from occupying any stall or working in all the Retail Market for a maximum period of four weeks following the issue of notice.

- 6.3 If a Licensed/Casual Stallholder receives a further three Offence Tickets within three months following the issue of the second Notice of Suspension under Regulation 6.2 the Stallholder's licence to attend the stall may be terminated by a Termination Notice under Regulation 8.

7.0 **NOTICE OF SUSPENSION**

All Notices of Suspension shall be issued by a Senior Officer and shall be dated and state:

- 7.1 the details of the offence;
- 7.2 the date the suspension is to commence and end;
- 7.3 the effect of the suspension; and
- 7.4 the right of appeal under Regulation 9.

8.0 **TERMINATION NOTICE**

A Termination Notice shall be issued by a Senior Officer and shall be dated and state:

- 8.1 the reason for its issue;
- 8.2 the date it is to take effect; and
- 8.3 the effect of the termination; and
- 8.4 the right of appeal under Regulation 9.

9.0 **APPEALS TO HEAD OF OPERATIONS, MARKETS – BIRMINGHAM CITY COUNCIL**

- 9.1 A Licensed/Casual Stallholder who receives a Notice of Suspension or a Termination Notice may appeal in writing to the Head of Operations, Markets – Birmingham City Council, Manor House, 40 Moat Lane, Birmingham, B5 within five working days of the receipt of the Notice. For incidents of Serious Misconduct please see paragraph 10.
- 9.2 Following the receipt of such a written appeal by the Head of Operations, Markets – Birmingham City Council the Stallholder may continue to trade until the determination of the appeal by the Head of Operations, Markets – Birmingham City Council.

- 9.3 The Head of Operations, Markets – Birmingham City Council will afford the Stallholder the right to be heard and represented at an oral hearing will give their decision in writing which may either:
- 9.3.1 *allow the Stallholder's appeal in which case the Stallholder will be allowed to trade forthwith;*
 - 9.3.2 *suspend the Stallholder from trading from all the Retail Markets for a period not exceeding the period specified under Regulation 6. Any such suspension shall state the date of its commencement and its expiry; or*
 - 9.3.3 *terminate the Stallholder's Licence provided that this shall only apply if the appeal is against a Termination Notice issue under Regulation 8.*
- 9.4 A Stallholder shall only be entitled to appeal against a decision of the Head of Operations, Markets – Birmingham City Council under Regulation 9 where the Head of Operations, Markets – Birmingham City Council suspends the Stallholder from trading at all the Retail Markets for a period exceeding four weeks or terminates the Stallholder's licence. Any period of suspension not exceeding four weeks to be given in consultation with the Chair of the appropriate Market Traders committee.

Where a Stallholder has a right of appeal, then the Head of Operations, Markets – Birmingham City Council written decision shall inform the Stallholder of his/her right of appeal to the Council Business Management Sub-Committee under Regulation 11.

10.0 **SERIOUS MISCONDUCT**

- 10.1 In the event of an incident of Serious Misconduct by a Licensed/Casual Stallholder a Senior Officer may by written notice suspend the Stallholder from trading at all the Retail Markets pending a disciplinary hearing. The notice will state the date the suspension is to commence and the effect of the suspension.
- 10.2 The Head of Operations, Markets – Birmingham City Council will convene the disciplinary hearing at the earliest opportunity and the Licensed/Casual Stallholder will have the right to be heard and represented.
- 10.3 Following the disciplinary hearing the Head of Operations, Markets – Birmingham City Council will give the decision in writing to the Licensed/Casual Stallholder which may be either:-
- 10.3.1 *allow the Stallholder's appeal in which case the Stallholder will be allowed to trade forthwith;*
 - 10.3.2 *suspend the Stallholder preventing him/her from trading from all the Retail Markets for a period not exceeding three months from the date of notice; or*
 - 10.3.3 *terminate the Stallholder's Licence.*

10.4 A Stallholder shall only be entitled to appeal against a decision of the Head of Operations, Markets – Birmingham City Council under Regulation 10.3 where the Head of Operations, Markets – Birmingham City Council suspends the Stallholder from trading from the Retail Markets for a period exceeding four weeks or terminates the Stallholder's Licence. Any period of suspension not exceeding four weeks to be given in consultation with the Chair of the appropriate Market Traders committee. Where a Stallholder has a right of appeal, then the Head of Operations, Markets – Birmingham City Council written decision shall inform the Stallholders of his right of appeal to the Council Business Management Sub-Committee under Regulation 11.

11.0 **APPEAL TO COUNCIL BUSINESS MANAGEMENT SUB-COMMITTEE**

A Stallholder who is entitled to appeal against a decision of the Head of Operations, Markets – Birmingham City Council under Regulation 9.3 or 10.3 may appeal to the Council Business Management Sub-Committee by sending a written notice within seven days of the receipt of the Head of Operations, Markets – Birmingham City Council decision to the Clerk to the Council Business Management Sub-Committee (Markets Appeals), Legal Services Department, the Council House, Victoria Square, Birmingham B1 1BB. If the Stallholder so appeals then:-

11.1 the Stallholder shall be entitled to continue to trade pending the outcome of the appeal unless he/she shall withdraw his/her appeal;

11.2 the Stallholder shall attend in person and shall have the right to be represented at such appeal;

11.3 the Council Business Management Sub-Committee shall be entitled to regulate its own procedure but shall either:-

11.3.1 allow the Stallholder's appeal;

11.3.2 suspend the Stallholder preventing him/her from trading from the Retail Markets for a period not exceeding twelve months; or

11.3.3 terminate the Stallholder's Licence.

11.4 The Clerk to the Council Business Management Sub-Committee shall notify the Stallholder of the decision of Council Business Management Sub-Committee in writing as soon as practicable after the Council Business Management Sub-Committee reaches its decision.

12.0 **COMMENCEMENT**

The (2006) Rules and Regulations for the operation of the Retail Market shall come into effect 1 April 2006 when the Birmingham City Council Markets, Rules and Regulations dated 1 January 2003 will cease to have effect subject to Regulation 13.

13.0 **AMENDMENT**

The Council may amend the Regulations at any time by giving at least three months notice in writing to Licensed Stallholders. Such written notice may be given by publishing the amendment to the Regulations in a prominent position on a Notice Board in each of the Retail Markets.

ref-LS/CVL/MD/134714

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

Case No: CO/2242/2014

BETWEEN:

THE QUEEN
on the application of
(1) QASIM ARYUBI
&
(2) SABER NAZARY

Claimants



- and -

BIRMINGHAM CITY COUNCIL

Defendant

ORDER

Before the Honourable Mr Justice Hickinbottom

Upon reading the trial bundle

And Upon hearing Counsel for the Claimants and for the Defendant

IT IS ORDERED THAT

- (1) The claim for judicial review is allowed.
- (2) The Defendant's decision dated 4 April 2014 terminating the First Claimant's licence of Bull Ring Open Market Stalls 9 & 11 and the Second Claimant's licence to Bull Ring Open Market Stall B22 is quashed.
- (3) The claim is transferred to the Birmingham County Court for directions in respect of the Claimants' claim for damages.
- (4) No order as to costs.

Dated

By the Court

LEGAL SERVICES	
Refer to:	
Rec'd	03 JUN 2015
Copy to:	

CO/2242/2014

Neutral Citation Number: [2015] EWHC 1972 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN BIRMINGHAM

Birmingham Civil Justice Centre
Priory Courts
33 Bull Street
Birmingham
B4 6DS

Tuesday, 17 March 2015

B e f o r e:

MR JUSTICE HICKINBOTTOM

Between:

THE QUEEN on the application of

(1) QASIM ARYUBI
(2) SABER NAZARY

Claimants

v

BIRMINGHAM CITY COUNCIL

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr R De Mello and Mr T Muman (instructed by Carltons Solicitors) appeared on behalf of
the **Claimants**

Mr A Verduyn (instructed by Birmingham City Council) appeared on behalf of the
Defendant

J U D G M E N T
(As approved by the Court)

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1. MR JUSTICE HICKINBOTTOM: The Claimants, who are of Afghan origin, are market traders whose business is to sell fruit and vegetables from stalls in the Birmingham open market known as the Bull Ring Market ("the Market"). The Market is owned by the Defendant Council ("the Council"), who issue licences to trade there. The licences are governed by the Council's Rules and Regulations for the Operation of Retail Markets 2006 ("the 2006 Regulations"). The 2006 Regulations allow the assignment of licences, and the profitability of stalls is such that, dependent upon location, they are often assigned for a premium. The Claimants say that they each paid £35,000 for the goodwill of the stalls from which they trade, namely stalls 9 to 11 (the First Claimant) and stall B22 (the Second Claimant).
2. The 2006 Regulations have a section headed "Disciplinary Procedure". Regulation 5 provides for the issue of Offence Tickets for breaches of the Regulations; and regulation 6 provides for periods of suspension and even termination of licence for stallholders who receive multiple Offence Tickets. One of the offences for which a ticket may be issued is the employment of unregistered staff, contrary to the requirement to register staff under regulation 1.1 and 1.3 (regulation 5.3.11). By regulations 7 and 8, a Senior Officer may issue a Notice of Suspension or Termination Notice; and those paragraphs provide for the contents of such notices including, for the latter, the reason for its issue.
3. Regulation 9 gives a stallholder a right of appeal from such notices to the Head of Operations (Markets) ("the Head of Operations") who is required to give a decision in writing, which may allow the appeal or suspend the stallholder or terminate the stallholder's licence. A further appeal from the Head of Operations is only allowed where the sanction involved is a suspension of more than four weeks or termination of licence. Any further appeal is to the Council Business Management Sub-Committee, under regulation 11.
4. However, that is not the only disciplinary route. Under regulation 10, where this has been "an incident of serious misconduct", a Senior Officer may suspend a stallholder pending a disciplinary hearing before the Head of Operations (regulation 10.1). The Head of Operations is then bound to convene a disciplinary hearing at the earliest opportunity (regulation 10.2). Following that hearing, again, the Head of Operations is required to give a decision in writing in one of the same three forms as under regulation 9 (Regulation 10.3). Again, a stallholder has the same right of appeal to the Business Management Sub-Committee under regulation 11 (regulation 10.4).
5. Under regulation 11, the Business Management Sub-Committee is entitled to regulate its own procedure, but it is again required to allow the appeal or suspend the stallholder or terminate his licence.
6. At the relevant time, the Head of Operations was Mark Croxford. The Business Management Sub-Committee was in abeyance; but Mr Croxford's line manager, the Director of Regulation and Enforcement, Jacqui Kennedy, was performing its relevant functions. There is no issue in this claim as to her authority to do that.

7. What happened on 24 January 2014 and subsequently is, to a very considerable extent, controversial. However, the Claimants say that, generally at that time, three men were working on stalls 9 to 11, namely the First Claimant, Mohammed Ejaz Khan and Mohammed Shafiq Khan; and three men were working on stall B22, namely the Second Claimant, Iqbal Khan and Ibrahim Bakerkhalil Khan. None of the four employees to whom I have referred was registered under the provisions of the 2006 Regulations.
8. That morning, the West Midlands Police carried out a raid at the Market, suspecting people of working there illegally. The Claimants themselves were not there, although the Second Claimant seems to have arrived as the operation was ending. In addition to the four employees to whom I have referred, two further men were at the market: Sabir Khan and Zaqil Dill, who at the time were apparently living with Iqbal Khan. During the operation, seven men were arrested, including all four employees, Sabir Khan and Zaqil Dill. I will return to those six arrested men shortly.
9. On 5 February 2014, Mr Croxford wrote to the Claimants inviting them to a meeting on 14 February, because (he said) it had come to his attention as a result of the raid that they had been employing persons ineligible to work. Mr Croxford appears to have considered this meeting a disciplinary hearing under regulation 10.2, although the Claimants were not suspended and Mr Croxford does not appear to have referred to it as such. He explained at the eventual appeal that, after the raid, he had been informed by the West Midlands Police and the UK Border Agency that the six arrested men "had been detained for working illegally and were... residing at a detention centre... awaiting deportation"; and it was that information which prompted him to write to the Claimants to discuss the matter. At the meeting, he said the Claimants were evasive and ill-informed about the men they employed, giving accounts that were to an extent contradictory. He said that a Market Police Officer had been there that day, and had seen all six men working on the stalls. He expressed the view at the appeal that he considered it unlikely to be happenstance that these men had been arrested and detained for working illegally; and the Claimants had shown him no evidence that they had carried out appropriate checks upon them.
10. In the event, Mr Croxford found that the Claimants did not know the names of the men who were working on the stalls, of whom at least two did not have the right to work. He concluded that the Claimants had not met the terms of their respective licences, in particular failing to comply with UK legislation (contrary to regulation 2(k)) or with the 2006 Regulations (regulation 2(l)). He therefore decided to terminate their licences forthwith. Again, it is not entirely clear under what provision of the 2006 Regulations Mr Croxford thought he was acting; but presumably it was regulation 10.3. Mr Verduyn, for the Council today, confirms that that was the case.
11. The Claimants did not accept any of the factual basis upon which Mr Croxford acted. Their four employees had the right to work, which they could prove, and the other two men who did not have such a right simply (they said) did not work on their stalls. They considered that Mr Croxford had arrived at the findings and conclusions he did because of a number of procedural errors on his part, which meant that the Claimants did not have a fair hearing. Had they had an appropriate opportunity, they considered they

could easily have shown that the factual basis upon which Mr Croxford worked was wrong.

12. As I have indicated, the Claimants had a right of appeal to Ms Kennedy, which they exercised. She held a hearing and produced a written decision dated 4 April 2014 in respect of each Claimant, but in essentially the same terms. Each decision letter is lengthy, and sets out the background to the appeal and the evidence from the witnesses that she heard, who included Iqbal Khan and Sabir Khan for the Claimants and an Andy Miller, a Market Police Officer. In addition to questions posed to those witnesses by the parties before her, she took the opportunity to ask the Claimants and Mr Croxford questions, the responses to which are set out over two pages in her decision letter. The questions and the responses were clearly focused upon the issue of whether the Claimants were employing illegal workers at the market.
13. In the decision letter, Ms Kennedy made it clear that she had disregarded letters from other market traders complaining that the Claimants had undercut the price of their products. It is common ground that she was right to do so. She said that Mr Croxford had acted on hearsay evidence, and it may have been that further investigations should have been carried out. She accepted that "the Council did not have sufficient evidence to be certain about the conclusions of Mr Croxford." As a result, she accepted that the decision of Mr Croxford was "wrongly made for the reasons which he stated". By that, she clearly meant that the reasons relied upon by Mr Croxford did not support the sanction of termination which he imposed. However, she went on to say that she was in the position to determine the appeal as the whole, with documents and oral representations of which Mr Croxford did not have the benefit. In legal terms, what she meant by that was that she had heard the disciplinary hearing de novo on the basis of the evidence that had been presented to her.
14. She said that the Claimants were right to say that they had not been arrested, charged or convicted of any offence. That, she noted, was not in dispute. But, she said, she was concerned by some of what she had heard and read during the appeal. She set out over a page what she described as a non-exhaustive list of her concerns. She said she was "sufficiently doubted by the ... matters". The seven bullet points to which she referred set out matters which she considered were "unusual". She then continued as follows:

"None of these matters are proved and I make no accusation. Nor am I able to draw any conclusion beyond inference. It would not be appropriate for me to entertain supposition and so I find that I am only able to say I believe the truth of this matter is not known to me.

Whilst I can uphold the reasons given by Mr Croxford, I am concerned by the information I have read and heard and so I am not satisfied that the appeal should be granted.

The note that the licences could have been terminated on 28 days' notice in any event and also that the [2006 Regulations] appear not to have been followed for reasons other than those given by Mr Croxford. Namely that the [Claimants] have failed to register the names and current addresses for

all employees with the Council and to notify the Council immediately of any changes in such details...

It is my decision then to terminate both the first licence and the second licence under part 11.3.3 of the [2006 Regulations]."

15. This claim was issued on 15 May 2014. It sought to challenge the decision of Mr Croxford on 14 February 2014 to terminate the Claimants' licences, and the decision of Ms Kennedy on 4 April 2014 also to terminate the licences albeit on the basis of different reasons. On 15 May 2014, His Honour Judge McKenna ordered the Council not to transfer the stall licences, and to allow the Claimants to continue to trade from their stalls pending the determination of this claim. On 30 June 2014, on the papers, His Honour Judge David Cooke granted permission to proceed, but limited to a challenge to one against the 4 April 2014 decision, on the ground that it was not open to Ms Kennedy to impose a sanction of termination (a) having regard to the terms of the 2006 Regulations providing for sanction by way of offence notices and (b) having declined to make findings on the factual allegations against the Claimants. The Claimants did not renew their application in respect of the other grounds. Consequently, the focus of the claim before me has been and is on the decision of Ms Kennedy of 4 April 2014 to terminate the licences.
16. However, on 24 July 2014, the Council wrote a letter to the Claimant's solicitor offering to settle the whole of the claim. The letter made clear that it was open, and it was intended that the offer to settle would be made known to the court, which it has. The letter continued:

"Our client hereby offers to settle the whole of the claim referred to above on the following terms:

- 1) The Council offers a complete rehearing of [the Claimants'] internal appeal under [the 2006 Regulations] against its final decision to terminate [the Claimants'] licences for [the Market] stalls B9 and B11 and B22 respectively before a convened panel of Council members. For the avoidance of doubt, the Council's first instance decision (often referred to by yourselves as 'the Croxford decision') which was set aside under previous internal appeal remains wholly set aside as confirmed by His Honour Judge Cooke, and the Council now offers a complete rehearing at appeal level before a panel of Council members.

- 2) It follows that the Council accepts that in this process there are no sustainable findings against your clients from the Croxford decision at the opening of the rehearing at appeal level. That much and that there is to be a rehearing at appeal level can be a matter made public. Furthermore, if your clients are successful in the appeal then of course the Council accepts that their names remain clear. If there is an apology required at that stage then it is expected that the panel would make some suitable statement or require one of the Council [to do so]. Whilst such would certainly be considered at that point, it would be inappropriate to deal

with this in advance of the rehearing.

3) Your clients will be permitted to trade on their usual days under the terms of their respective licences at [the Market] stalls B9 and 11 and B22 respectively, pending the outcome of the rehearing. Accepting of course that your clients must abide by the terms of their licences and the [2006 Regulations] throughout.

4) This offer includes costs and, as mentioned above, the Council is willing to pay your clients' reasonably incurred costs on the standard basis to be assessed if not agreed up to the date of acceptance in writing of this offer."

17. There then followed considerable lengthy correspondence concerning this offer. However, none of that correspondence compromised the claim which has come before me this morning for substantive hearing.
18. In respect of the claim, it is important to mark the nature of an appeal under regulation 11 of the 2006 Regulations. Under that regulation, the appeal body is entitled to regulate its own procedure, but the result of the appeal can only be one of three, namely (i) to allow the appeal, (ii) to suspend the stallholder, or (iii) to terminate the stallholder's licence.
19. It is clear, looking at that particular regulation, and looking at the 2006 Regulations as a whole, that the appeal is essentially against the sanction imposed under regulation 9 or regulation 10 respectively. The appeal body may regulate its own procedure, and clearly it can entertain what at law is a full rehearing of any disciplinary matter. That is what Ms Kennedy did. She heard evidence and did not restrict herself simply to reviewing Mr Croxford's decision. Having reviewed the evidence, it was for her to make factual findings; and, on the basis of those factual findings, to determine whether to allow the appeal (and consequently allow the Claimants to continue trading), or to suspend or terminate their licence.
20. Mr De Mello for the Claimants today submitted that, on its true construction, Ms Kennedy's decision letter made factual findings in favour of the Claimants. When she said that "none of these matters are proved", she intended to mean and meant that it had not been proved that they had engaged illegal workers. She went on, however, to terminate the licence on the basis of a finding that the Claimants had failed to register the four employees contrary to regulations 1.1 and 1.3. That, Mr De Mello submitted, was unlawful; because the failure to register had not been a complaint which had been considered at the hearing and not put to the Claimants for response as it ought to have been.
21. In any event, if that had been the true complaint against the Claimants, then the proper procedure would have been to have gone through the offence ticket process, which could not have resulted in suspension or termination of their licences, at least at this stage. If it had been pursued as serious misconduct, termination of the licences for

mere failure to register employees would in any event have been a disproportionate penalty.

22. For the Council, Mr Verduyn submits that that is not a proper reading of the letter. When Ms Kennedy said that she was not able to draw "any conclusion beyond inference" made it clear, Mr Verduyn submitted, she meant that she considered it proved on the balance of probabilities that the Claimants had indeed employed illegal workers. That issue was at the heart of the complaint against the Claimants, and it was the issue upon which Ms Kennedy properly focused during the hearing when she asked questions. The reference to failure to register the employees was simply a throwaway remark of something that she merely noted; the decision to terminate, he submitted, was based upon a finding of fact that the Claimants had employed illegal workers. Mr Verduyn properly emphasised that Ms Kennedy is not a lawyer and her letter – which, he submitted, shows that she dealt with the matters before her with care - should not be construed in an over-legalistic manner.
23. However, it was incumbent upon Ms Kennedy to make a finding of fact on the central issue before her, namely whether the employees were illegal workers. In my view, unfortunately, she singularly failed to make any such finding. All she did in her letter was to note concerns about the evidence, and she based her decision to terminate merely upon those concerns. Looking at the letter fairly, she simply did not grapple with the core factual issue that was before her, and made no finding in respect of that matter. I do not accept, however, Mr De Mello's submission that she based her termination decision upon a failure to register the employees. The reference to that is something that Ms Kennedy merely noted in her decision letter after indicating she was not satisfied that the appeal should be granted. It was not, in my view, taken into account as a plank upon which her decision to terminate was based.
24. In those circumstances, it seems to me that Ms Kennedy's decision was unfortunately but clearly made upon the basis of a fundamental procedural error. She could not make a decision to terminate the licences in these disciplinary hearings based as they were upon the proposition that the Claimants had employed illegal workers without bringing her mind to bear upon, and making a clear finding of fact in respect of that issue.
25. Consequently, this decision must be quashed.
26. However, I do not accept Mr De Mello's submission that, having quashed the decision, the court can and should make the decision itself because there is only one decision to which a decision-maker in the shoes of the appeal body could come. The appeal body in this case was entitled, and indeed bound, to make findings of fact in relation to the core issue. In my judgment, this court cannot – and, certainly, should not - make those findings. That is a task properly for the appeal body on the basis of the evidence it considers appropriate to hear.
27. Consequently, this matter must be remitted to the Council, so that the matter can be referred to an appropriate appeal body which can make those findings and can, upon the findings it makes, make a decision as to which of the three options open to it under the 2006 Regulations is appropriate.

28. Mr Verduyn, upon instructions, has confirmed that the disciplinary hearing that Mr Croxford engaged in under Regulation 10 was based upon an allegation that the Claimants had employed illegal workers. That was a crucial issue in that that was the central issue upon which Mr Croxford was engaged and had been the core issue upon which the appeal body will be engaged. He confirmed that suspension or termination would not be appropriate without a positive finding in relation to that issue. If the appeal body is not satisfied to the appropriate standard of proof that the Claimants had not engaged illegal workers, that body will therefore be bound to allow the appeal.
29. If, as Mr De Mello concedes, the Claimants were engaging lawful workers, but workers unregistered under the 2006 Regulations, that has no part to play in the regulation 10 proceedings for serious misconduct - although it may attract other sanctions under the 2006 Regulations that apply to offence tickets.
30. However, for those reasons, this judicial review will be allowed, and the decision of Ms Kennedy dated 4 April 2014 will be quashed.

Our reference: SH/TW56/l:

5th February 2014

PRIVATE & CONFIDENTIAL
Mr Nazary

COPY DELIVERED TO STALL



Dear Sir

Re: Employment of Persons Not Eligible to Work in the UK

Following actions by Officers of West Midlands Police on Friday, 24th January 2014 it has been brought to my attention that you have been employing persons to work on your stalls who are not eligible to work in the UK. This is contrary to your licence, in particular to Page 3, Points 2(K) and 2(L).

I have concerns about the way you are currently operating your stalls and would be grateful if you would come and see me at 12.30 on Friday, 14th February 2014.

Please report to the second floor of Manor House at the appointed time where you will be met by an officer. You may bring someone to the meeting if you choose.

Yours faithfully



MARK CROXFORD
HEAD OF ENVIRONMENTAL HEALTH (NORTH)
AND BIRMINGHAM MARKETS



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The Government Standard

Birmingham City Council
Markets
Manor House
40 Moat Lane
BIRMINGHAM, B5 5BD

Contact: Mark Croxford
Tel: 0121 303 6350
Fax: 0121 303 0319

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Birmingham City Council

The Place Directorate

Our reference: SH/TW56/I:

5th February 2014

PRIVATE & CONFIDENTIAL

Mr Q Aryubi



COPY DELIVERED TO STALL

Dear Sir

Re: Employment of Persons Not Eligible to Work in the UK

Following actions by Officers of West Midlands Police on Friday, 24th January 2014 it has been brought to my attention that you have been employing persons to work on your stalls who are not eligible to work in the UK. This is contrary to your licence, in particular to Page 3, Points 2(K) and 2(L).

I have concerns about the way you are currently operating your stalls and would be grateful if you would come and see me at 12.00 noon on Friday, 14th February 2014.

Please report to the second floor of Manor House at the appointed time where you will be met by an officer. You may bring someone to the meeting if you choose.

Yours faithfully



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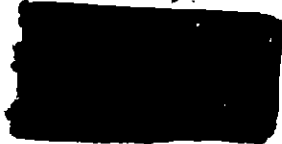
The Government Standard

PLACE DIRECTORATE

Our reference: MC/bjt/markets

14 February 2014

Mr S Nazary



Dear Mr Nazary

Re: Termination of Licence Stall B22 Bull Ring Open Market

Further to our meeting this afternoon I write to confirm the reason for terminating your license to trade on the Bull Ring Open Market. I was accompanied today by [redacted] and [redacted]. In addition [redacted] and [redacted] gave statements.

As you are aware there was a WM Police operation on the 24/1/14 to remove people employed on stalls on the Bull Ring Market who were not entitled to work in the UK. In total 7 people were arrested of which 6 were removed from your stall and stalls 9 and 11. The 7th person was believed to be from one of the stalls but this was not confirmed.

I asked for your understanding and background to this event. I heard from you and Mr Aryubi that; you and he are solely responsible for the employees on the stall; that 3 named persons were arrested and you did not know the names of the remaining 4 persons; that you carried out passport or driving licence and National Insurance checks on your employees and that you hold photocopies of these documents to ensure that they could be employed.

The Officers confirmed that there were at least 3 people employed on the stalls at 10am on the 24/1/14 and although unsure it was believed there may have been 4 on one of the stalls. This latter fact I have ignored. I was advised that 3 people were arrested from your stall and 3 more from Mr Aryubi. The seventh person was seen in the aisles and arrested having run away by a PCSO from WM Police. We are advised by WM Police that 6 persons are detained subject to deportation orders and the 7th was legally allowed to be employed.

My Conclusions are as follows:



FS 26188



The Government Standard



Mayor in People

REGULATION AND ENFORCEMENT

2nd Floor N12
Lancaster Circus
Birmingham, B4 7DJ
Postal: P O Box 15908, Birmingham B2 2UD

Tel: 0121-303 6350
Email: mark.croxford


Secretary: 0121 675 7830
m.gov.uk

1. You stated that you carried out ID and National Insurance checks of your employees and therefore you are aware of the necessity to comply with UK legislation when employing staff.
2. Having confirmed that you alone employ everyone on the stalls you should know the names of all your employees. You and Mr Aryubi were unable to provide more than 3 names of people arrested.
3. Point 2 therefore calls into question whether you were honest at the meeting. If you had carried out the checks you should have provided the names of your employees arrested. Alternatively the inability to provide them questions whether you did indeed undertake checks. Although you may hold some documentation I have no way of verifying its accuracy and I have focused therefore on the aspect of honesty at the meeting and on balance I do not think you were honest with me.
4. It is a fact that at least 2 people on your stall did not have the right to work. This is contrary to UK legislation which you confirmed you were aware of in point 1.
5. Birmingham City Council is undertaking a lot of investment in the Bull Ring Market and unlawful acts can bring both the City Council and the Bull Ring Market into disrepute as well as damaging the reputation of the City. Similarly once such offences have been commissioned non-action by the Council to respond to them can also bring the City into disrepute.

I have concluded that you did not comply with the terms of your Licence in particular Page 3 points 2(K) Compliance with UK legislation and 2(L) the Market Rules and Regulations. Employment of persons who are not entitled to work in the UK is unfair and gives you an unfair trading advantage. It does bring the Council into disrepute as we must maintain the highest standards and set examples for others. I have therefore decided to terminate your Licence forthwith and refuse you the ability to trade on the Bull Ring Market. This also applies if you appeal my decision as the matter falls inside Sec 10 of the Rules and Regulations of the Market.

You are entitled to appeal my decision by submitting a written application to Jacqui Kennedy Director of Regulation and Enforcement, at Manor House, 40 Moat Lane, Birmingham B5 5BD.

Yours sincerely


Mark Croxford
 Head of Environmental Health (North) &
 Birmingham City Markets
 Regulation and Enforcement

c.c. Jacqui Kennedy



FS 26188



The Government Standard



STAND FOR PEOPLE

REGULATION AND ENFORCEMENT

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Tel: 0121-303 6350 (Markets Secretary: 0121 675 7830)
 Email: mark.croxford@birmingham.gov.uk

PLACE DIRECTORATE

Our reference: MC/bjt/markets

14 February 2014

Mr Q Aryubi

Dear Mr Aryubi

Re: Termination of Licence Stall 9 & 11 Bull Ring Open Market

Further to our meeting this afternoon I write to confirm the reason for terminating your license to trade on the Bull Ring Open Market. I was accompanied today by [REDACTED] and [REDACTED]. In addition [REDACTED] and [REDACTED] gave statements.

As you are aware there was a WM Police operation on the 24/1/14 to remove people employed on stalls on the Bull Ring Market who were not entitled to work in the UK. In total 7 people were arrested of which 6 were removed from your stall and stall B22. The 7th person was believed to be from one of the stalls but this was not confirmed.

I asked for your understanding and background to this event. I heard from you and Mr Nazary that; you and he are solely responsible for the employees on the stall; that 3 named persons were arrested and you did not know the names of the remaining 4 persons; that you carried out passport or driving licence and National Insurance checks on your employees and that you hold photocopies of these documents to ensure that they could be employed.

The Officers confirmed that there were at least 3 people employed on the stalls at 10am on the 24/1/14 and although unsure it was believed there may have been 4 on one of the stalls. This latter fact I have ignored. I was advised that 3 people were arrested from your stall and 3 more from Mr Nazary's. The seventh person was seen in the aisles and arrested having run away by a PCSO from WM Police. We are advised by WM Police that 6 persons are detained subject to deportation orders and the 7th was legally allowed to be employed.



FS 26188

My Conclusions are as follows:

1. You stated that you carried out ID and National Insurance checks of your employees and therefore you are aware of the necessity to comply with UK legislation when employing staff.

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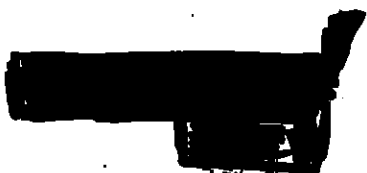
Investor in People

2. Having confirmed that you alone employ everyone on the stalls you should know the names of all your employees. You and Mr Nazary were unable to provide more than 3 names of people arrested.
3. Point 2 therefore calls into question whether you were honest at the meeting. If you had carried out the checks you should have provided the names of your employees arrested. Alternatively the inability to provide them questions whether you did indeed undertake checks. Although you may hold some documentation I have no way of verifying its accuracy and I have focused therefore on the aspect of honesty at the meeting and on balance I do not think you were honest with me.
4. It is a fact that at least 2 people on your stall did not have the right to work. This is contrary to UK legislation which you confirmed you were aware of in point 1.
5. Birmingham City Council is undertaking a lot of investment in the Bull Ring Market and unlawful acts can bring both the City Council and the Bull Ring Market into disrepute. Also once such offences have been commissioned non action by the Council to remedy them can also bring the City into disrepute.

I have concluded that you did not comply with the terms of your Licence in particular Page 3 points 2(K) Compliance with UK legislation and 2(L) the Market Rules and Regulations. Employment of persons who are not entitled to work in the UK is unfair and gives you an unfair trading advantage. It does bring the Council into disrepute as we must maintain the highest standards and set examples for others. I have therefore decided to terminate your Licence forthwith and refuse you the ability to trade on the Bull Ring Market. This also applies if you appeal my decision as the matter falls inside Sec 10 of the Rules and Regulations of the Market.

You are entitled to appeal my decision by submitting a written application to Jacqui Kennedy Director of Regulation and Enforcement, at Manor House, 40 Moat Lane, Birmingham B5 5BD.

Yours sincerely



Mark Croxford
Head of Environmental Health (North) &
Birmingham City Markets
Regulation and Enforcement



c.c. Jacqui Kennedy



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Statement of Mark Croxford – 4 March 2014

I am Mark Croxford, Head of Environmental Health (North) and Birmingham Markets. I am employed by Birmingham City Council and have been a senior manager for approximately 10 years and a Head of Service for the Markets Service for 1 year.

Following reports from traders and markets officers that there were apparently people trading on the open market with staff who do not have the right to work in the UK I referred the matter to West Midlands Police (WMP) and the UK Border Agency (UKBA).

I was advised that on the 24th January 2014 that WMP attended the markets assisted by Markets Police Officers and arrested 7 persons from 2 stalls. This subsequently turned out to be 3 persons from stall 9 & 11 (1 trading stall) and 3 persons from stall B22. The Seventh person was arrested in the public aisle after a short foot chase by a PCSO from WMP. Market traders confirmed to the WMP and Markets Officers that this arrested person had been working on one of the stalls that morning.

Via WMP and the UKBA I have been informed that 6 of the 7 persons detained are to be deported and are now in detention centres and identity checks are being carried out by WMP and UKBA to confirm the 7th person's eligibility to work in the UK. I know this from conversations with [REDACTED], Markets Police, emails and discussions with WMP and UKBA.

Accordingly I wrote to the two licensed stall holders requesting they attend a meeting on the 14th February 2014 to discuss the events surrounding their stalls.

On the 14th February in accordance with their wishes I saw both Mr S Nazary and Mr Aryubi together. I was accompanied by [REDACTED] and [REDACTED] both employees of Birmingham City Council and attached are the typed notes of that meeting. They also contain the conclusions of the Panel and my thoughts as the Chair.

During the meeting it became very apparent that both Mr Aryubi and Mr Nazary were trying to distance themselves from the events in that:

1. Both stated they had left the Market for Friday prayers on the 24th January 14, but when asked how they were advised of the WMP attendance at the stalls, SN said he was present.
2. Initially both denied the 7 people were arrested on their stalls even though Dave Corner advised this was the case he confirmed that 3 were arrested on each stall and a 7th in the aisle. This is despite SN later admitting he had been present at the time of the arrests.
3. When pressed SN and QA confirmed that 3 of the arrested persons were known to them, however when asked about employment checks they gave comprehensive answers showing that they were aware of the checks required by the UK legislation to be undertaken. Both advised they had carried out ID/Passport, a home address and National Insurance number checks.

As stated above in my opinion the answer to 3 showed a very good awareness of UK employment legislation. Both SN and QA advised the panel they could bring the photocopies of the checks undertaken and that there was nothing more they could do to ensure they had not employed workers who were ineligible. The fact that SN and QA could only advise of 3 names of their employees lead me to the conclusion the checks were not undertaken properly or that SN and QA were being dishonest in their answers.

I also formed the opinion that we were discussing 2 small outlets, i.e. Market stalls, employing 7 people, to have 6 persons without the correct authorities to work in the UK was beyond the likelihood of accident or happenstance SN seemed less engaged and was following QA's lead.

As a Senior Manager I have a duty to Birmingham City Council to ensure that nothing untoward occurs on the markets and that every effort is made to have a fair trading environment. I also have a duty to try and ensure that nothing our staff or our market does is likely to bring the Council or the Bull Ring Market into disrepute.

Under the terms of the Licence on page 3, points 2(k) and 2(l) both stallholders had failed to comply with UK legislation and to comply with the Markets Rules and Regulations.

This action of employing people that cannot lawfully work in the UK, is illegal it is also likely to damage the reputation of Birmingham City Council's Markets and has the potential of calling the Council and the Bull Ring Retail Markets into disrepute. In action by the council would do nothing to protect the reputation of the Council either.

In my opinion committing criminal offences on the Market is serious misconduct.

In deciding whether to suspend or terminate the stallholders licences, consideration was given to the likelihood of QA/SN knowing whether or not they were breaking the law (it is evident by the level of checks they claim to have undertaken in checking the ID of their employees that they are well aware of UK employment legislation); However there is no evidence the checks were undertaken and had they been undertaken as appears to have been suggested by the stallholders they would have been aware that they should not have employed the individuals concerned and should have refused them employment but they did not do so.

The Markets Rules and Regulations (2006) allow for people to continue to trade whilst under appeal however, the rules fail to address serious misconduct such as violence where it would be more appropriate to protect other traders and members of the public rather than ensuring people could continue to work whilst the matter is resolved. Similarly they do not cover the situation where the Bull Ring Market can be called into disrepute by actions of Stallholders.

In this instance, I considered that there is a huge reputational issue around Local Authorities allowing the employment of people who are not entitled to work in the UK and that currently this being played out in the press around a government minister who had employed a cleaner who could not be lawfully employed in the UK.

On balance I concluded that if one person had had been arrested for not having the correct paperwork would be serious. However for both stalls to be completely populated with staff all of whom did not have the correct paperwork was intentional. I have subsequently been informed that during a conversation with a UKBA officer one of the staff was paid £20 per day. This also shows that SN and QA were exploiting the individuals and reinforces the opinions I formed during the meeting. This was more than happenstance or "unluckiness" that so many people had been found on the market.

In my opinion the lease and the rules and regulations had been breached in a very serious manner. For that reason I decided the lease should be terminated forthwith.

**NOTES OF MEETING TO DISCUSS AN INCIDENT ON THE BULL RING OPEN MARKET
WHERE PEOPLE WHO WERE INELIGIBLE TO WORK WERE ARRESTED BY WEST
MIDLANDS POLICE**

Held on Friday, 14 February 2014 at 12.30pm

PRESENT:

Mark Croxford, Chair

MC

[REDACTED], Birmingham City Council Equalities

[REDACTED]

[REDACTED], Markets Operations Manager

[REDACTED]

[REDACTED], Senior Officer

[REDACTED]

[REDACTED], Markets Police Inspector

[REDACTED]

Mr S Nazary, Licence Holder

SN

Mr Q Aryubi, Licence Holder

QA

Colleague/Translator

Introductions were made and MC advised that MC understood that both Mr Aryubi and Mr Nazary wished to have a joint meeting and not be heard separately, which was confirmed. MC advised them that it was regarding a serious issue whereby West Midlands Police had arrested 7 people on 24 January 2014 and this was effectively a disciplinary meeting to understand what had occurring on the Bull Ring Open Market.

SN/QA initially advised that they were unaware of 7 people being arrested, but following questioning advised that they were aware of [REDACTED], [REDACTED] and [REDACTED] having been arrested on 24 January 2014.

They advised that the remaining people were possibly friends of the 3, but they were unaware of who they were.

When asked where SN/QA were on this date, SN/QA advised that they had left around 11.30am and gone to the mosque for Friday prayers.

MC asked QA if he knew all of the employees on his stalls and QA confirmed that that he did. MC asked SN if he knew all of the employees on his stalls and SN confirmed that that he did too. When asked, SN/QA confirmed that the employees had worked for them for a period of between 5 weeks and 2 months. Both confirmed that their staff members were not paid sufficiently to purchase assistants to work on the stall and therefore, only employees of NS/QA would be on the stall.

MC asked how they found out about police attendance at their stalls, as both had previously indicated that they had gone to prayers however, at this stage QA advised he was telephoned and SN advised that he was present when the police arrived.

There were no further questions from the Panel and MC invited [REDACTED] to make a statement as to the morning events on the 24 January.

[REDACTED] advised that a Market Officer had observed the stalls at around 10am and noted that each stall had 3 persons serving the public. At 12 noon he attended with West Midlands

Police and 3 people were arrested on SN's stall and Andy Millar, Markets Police Patrol Officer, advised [REDACTED] that a further 3 were arrested from QA's stall. A seventh person appeared in the Market and other traders advised that he had been working on one of the stalls too, which was believed to be SN's stall and after a short foot chase, this person was caught by a PCSO and brought back to the stall. Again, this person was identified by other market traders as having worked on the stall in the morning.

[REDACTED] advised that West Midlands Police have subsequently confirmed that 6 of the 7 people arrested were not eligible to work in the UK.

[REDACTED] advised that he had not been present on the morning of 24 January 2014 however, he was aware that in the days leading up to this date, there had been between 3 and 4 people working on SN's stall and 2 and 3 people working regularly on QA's stall.

MC invited questions from both officers and stall holders. Neither the officers nor stallholders asked any questions of each other.

At approximately 1310 hours, there was a short break for the panel to discuss the information they had heard. At approximately 1320 hours, SN was invited back with the interpreter and asked by WA how he recruited staff. SN advised that people approach him randomly and ask for work.

[REDACTED] asked what checks SN undertook to ensure that the people were illegible to work in the UK and he advised that he obtained an ID with an address on it, a National Insurance Number and usually a driving licence with a photo ID. SN then advised that he keeps all of these and takes photocopies.

[REDACTED] asked how quickly the staff turnover and SN advised people can work for him for a period of 1 week to 3 months. SN offered to produce the photocopies of the records subsequent to the meeting.

QA was then invited back into the meeting and SN left. [REDACTED] asked how QA recruited new employees. QA advised that friends refer workers to him and he takes copies of an Insurance Number (National Insurance Number) and ID with a photograph such as a driving licence or passport that contains an address. QA stated he could do no more as he has to assume that the IDs are legitimate and cannot do checks to ensure that they are not fraudulent and he offered to share the ID photocopies with MC.

CONCLUSION BY PANEL

The panel considered the evidence that they had heard and the following conclusions were drawn:

- 7 people were arrested on 24 January 2014 and QA/SN could only provide 3 names of people who worked on their stalls on that morning after questioning by MC.
- If the seventh person from aisle was not from the stalls, but was not entitled to work in the UK, then a minimum of 5 of the 6 persons from the stalls had to be working illegally in the UK.
- If SN/QA had undertaken the checks as diligently as described, they would have known the names of the people employed on their stalls.
- SN/QA had confirmed that they were the only people that employ people on their stalls and that the 3 people they had named were their employees.
- SN/QA confirmed only employees would work on their stalls and that their employees would not sub-contract others.

CONCLUSION BY CHAIR

MC is satisfied that a minimum of 5 people were employed on the Bull Ring Open Market who did not have the right to work in the UK.

MC is satisfied that there was a lack of honesty in the meeting, either the checks were not carried out as described or QA/SN or that QA/SN knew the IDs of the 6 people arrested from their stalls, but failed to give them to the panel.

MC considered the merits of the case and the significant impact such matters can have on the reputation of Birmingham City Council and the Traders of the Bull Ring Market.

QA/SN were asked to come back into the meeting at 13.45 approx. and were advised of the conclusions and decision to terminate the licence forthwith. MC advised of the right of appeal to the Director of Regulation and Enforcement and that a letter would be sent that day confirming the decision.

Termination letters were sent on the evening of 14 February 2014 to SN/QA at their home address in Formans Road, Sparkhill.

Additional Statement of Mark Croxford – 30 September 2015

I am Mark Croxford, Head of Environmental Health with Birmingham City Council. I make this additional statement further to my statement of the 4 March 2014.

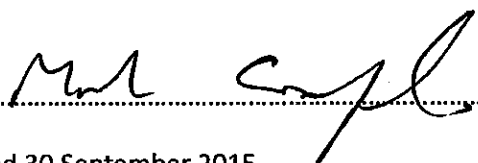
I have now read the statements provided by both PC Roobottom (17 May 2015) and Teena Oulaghan (dated 4 June 2015) and note they confirm that all of the seven persons arrested on the Bull Ring Open Market were illegally present in the UK and not authorised to work.

I note that PC Roobottom recalls only two people behind stall B22 at the time when the arrests were made. I was informed by our markets officers that they were satisfied that at that time six of the seven persons who were arrested, had been seen working on the 2 stalls, and they knew those persons by sight from preceding days. In any event, it is clear from the evidence of PC Roobottom and particularly Teena Oulghan, that all persons arrested and removed from Birmingham's Open Market on that day, were illegally present in the UK.

I have re-read my earlier statement and the record of the interview and I am still satisfied that the conclusions I drew at that time from the evidence I heard on the 24 January 2014, are correct.

I believe the facts given in this statement are true.

MARK CROXFORD


.....

Dated 30 September 2015

BIRMINGHAM CITY COUNCIL BUSINESS MANAGEMENT (MISCELLANEOUS APPEALS) SUB-COMMITTEE

HEARING ON: 12 OCTOBER 2015 at 10:00am

IN THE MATTER OF APPEAL BROUGHT BY:

**(1) MR SABER NAZARY
(2) MR QASSIM ARYUBI**

**WITNESS STATEMENT OF
DAVE CORNER**

I, DAVE CORNER, Senior Officer – Street Trading & Subsidiary Markets, of Birmingham City Council, Manor House, 40 Moat Lane, Birmingham, B5 5BD, SAY as follows:

1. I am employed by Birmingham City Council ("the Council"), as a Senior Officer for Street Trading & Subsidiary Markets and have been in their employ since 1980. I am familiar with the facts of this matter and I am authorised to make this statement on behalf of the Council. Unless otherwise stated, I do so from facts and information known to me from my own knowledge or from information held by me.

2. I recall the events of 24 January 2014 and have additionally reviewed my contemporaneous notes from that day, when compiling this statement.

3. I make this statement to assist the Council's Business Management (Miscellaneous Appeals) Sub-Committee, to make its decision.

4. At around 11:30am on 24 January 2014, I was invited to attend a meeting with my colleagues and officers from West Midlands Police ("WMP"), who briefed us about suspected illegal immigrants believed to be working on two Market stalls in the Open Markets. The stalls identified in the brief were B9 & B11 (being operated as a single stall) and B22.
5. At around 12:00 noon, I attended the Open Markets together with officers from WMP, to show them the precise location of those stalls. I witnessed a number of men being arrested who, at the time of arrest, appeared to be working behind the stalls. I recall the total number of people arrested, who appeared to be working behind the stalls when I arrived with officers from WMP, was six.
6. Whilst the arrests of those six people were taking place, a seventh man appeared in the public aisle, near to the stalls. A number of market traders from other stalls shouted to Police Officers, to indicate that the seventh man was also known to work at the stalls where they were currently making arrests. The seventh man attempted to run away, but was chased and caught by a Police Community Support Officer. He was then also arrested.

Dated this 30 day of September 2015

STATEMENT OF TRUTH

I believe that the facts stated in this statement are true.

Signed.....

DAVE CORNER
Senior Officer for Street Trading & Subsidiary Markets

WITNESS STATEMENT

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

Crime No. []

URN []

Statement of Alexander Paul Roobottom

Age if under 18 Over 18 (if over 18 insert "over 18")

Occupation Police Constable

This statement (consisting of 2 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: Alexander Paul Roobottom (witness)

Date 17/05/2015

This statement relates to multiple arrests that were made for offences concerning immigration on 24 January 2014.

I am Pc 20932 Roobottom and I am currently based at Digbeth Police Station, Birmingham.

Information had been received by West Midlands Police to suggest that there were 'illegal immigrants' working within the Birmingham outdoor markets on Edgbaston Street. I therefore set about creating a task-force consisting of both Police Officers and Market Police to explore the information and to conduct immigration checks on two market stalls that had been highlighted within the information.

At 1130 at around on 24/1/14, I attended the Market Police officers on Moat Lane. I then briefed the Market Police, in company with approximately eight Police Officers, that information had been received to suggest that illegal immigrants were being employed on two market stalls. During the briefing, market Police officers notified me that they were aware of two stalls at which suspected illegal immigrants were working. It was therefore agreed with market Police officers for them to escort Police Officers to the relevant stalls where the illegal immigrants were suspected to be working in order for immigration checks to be conducted.

At around 1200 hours on 24 January 2014, I entered onto the Open Markets and was directed by Market Police staff onto a stall that faced towards Moat Lane. The stall that I was directed to was in the immediate vicinity of the the B18 & B20 stalls. I have since been informed that the stall attended my myself where the following events took place was in fact Stall B22 and I have been able to verify this by identifying it on a plan shown to me of the Open Market area.

The stall had many differing varieties of fruit and vegetables on it. Behind the stall counter (the part of the stall at which I would expect the market trader to sell to customers from) were two males of an Afghan appearance. I then conducted Police National Computer and UKBA checks on the two males that were stood behind of the stall. UKBA checks revealed that one of the two males working behind the stall was working in the United Kingdom illegally. I therefore arrested this male for an offence under s.71 Immigration Act. There was another male stood in front of the stall (the public side of the stall) whom was also found to be in the United Kingdom illegally. I now know the two males whom I arrested to be [redacted] and [redacted]. Because of the time that has elapsed since making the arrests of [redacted] and [redacted] I cannot say with any certainly which male was working behind the stall and which male was stood on the public access side of the stall. I do believe that the male whom I arrested from behind the stall was trading to members of public owing to his position behind the stall. There were large volumes of public in and around

Signature

Signature witnessed by

07/2013

Crime No. []

URN []

Statement of Alexander Paul Roobottom

the stall whom appeared to be shopping on the markets.

Market Police had also directed a second group of Police Officers to a market stall which was located towards the indoor market where it was suspected that illegal immigrants were working. I was aware that further arrests were made from this stall for offences under the immigration act.

In total, seven arrests were made for offences under the immigration act from the open markets. Their names were provided at the time of arrest as below (information on status was supplied by UKBA in April 2014);

[redacted] - detained and due to be removed from the UK on 18/02/2014. [redacted]

[redacted] - detained, no definite date for removal (removal may be authorised for 18/02/2014). [redacted]

[redacted] - detained for possible removal to Italy as he has previously made a claim for asylum there. No date for removal yet. [redacted]

[redacted] - detained and has made a claim for asylum. This may be fast tracked so an outcome can be decided quickly. [redacted]

[redacted] - detained for possible removal to France as he has previously made a claim for asylum there. No date for removal yet. [redacted]

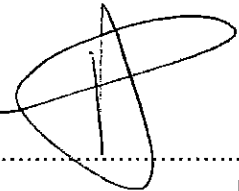
[redacted] - detained for possible removal to Italy as he has previously made a claim for asylum there. No date for removal yet. [redacted]

[redacted] - released as he made a claim for asylum. [redacted]

All seven persons whom were arrested to transported to Birmingham Central Police Station where their detention was authorised.

On or about 7 April 2014 I received confirmation from UKBA that none of the seven persons arrested had permission to work in the United Kingdom.

Alexander Paul Roobottom

Signature 

Signature witnessed by

07/2013

Crime No. **WITNESS STATEMENT****Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B**URN 20/BW/0001792/14

Statement of Jonathan Mark LANDER

Age if under 18 Over 18 (if over 18 insert "over 18")

Occupation Police Constable 21403

This statement (consisting of 2 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: Jonathan Mark LANDER

Date Thursday 4th June 2015

Further to my original statement made on Friday 24th January 2014.

This statement is regarding the arrest of [REDACTED] born [REDACTED] on suspicion of entering the UK illegally. I am Police Constable 21403 LANDER of WEST MIDLANDS POLICE currently stationed at DIGBETH POLICE STATION. On FRIDAY 24th JANUARY 2014 I was in police uniform on mobile patrol in company with PC 21040 OWEN, PC 0409 BENTLEY and PC 20830 MCDONALD. At approximately 1215 hours I was requested to attend the OPEN MARKET, EDGBASTON STREET, BIRMINGHAM CITY CENTRE after the Market Police suspected that some of the stall holders were illegal immigrants.

On arrival at the OPEN MARKET I was directed by the Market Police to a stall selling fruit and vegetables. Whilst at the stall I spoke to a male who I now know to be [REDACTED] born [REDACTED]. At the time [REDACTED] stated that his name was [REDACTED]. I then completed a PNC check on the details that [REDACTED] had provided, which resulted in no record found. I then contacted UKBA Immigration and a fingerprint check on a mobile identification device was completed, both resulted in no record found. [REDACTED] stated that he had no identification documents in his possession that could confirm the personal details he had provided were correct.

At 1243 hours I said to [REDACTED] "YOU ARE UNDER ARREST ON SUSPICION OF ENTERING THE UK ILLEGALLY". I then cautioned [REDACTED], to which he made no reply. I then informed [REDACTED] "THE NECESSITY FOR YOUR ARREST IS TO CONFIRM YOUR NAME AND ADDRESS, AND TO INVESTIGATE YOUR IMMIGRATION STATUS". [REDACTED] was then handcuffed in a front stack position. He was then transported to STEELHOUSE LANE POLICE STATION where his detention was authorised,

Signature Jonathan Mark LANDER

Page 67 of 80 signed and witnessed by

09/2011

URN

20/BW/0001792/14

Statement of Jonathan Mark LANDER

20FA/770/14 refers.

On THURSDAY 4th JUNE 2015 I checked custody reference [REDACTED] in order to complete this statement. I can confirm from the custody reference that the correct personal details of the male I arrested are [REDACTED] born [REDACTED]

Signature: Jonathan Mark LANDER

Signature witnessed by:

WITNESS STATEMENT

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

Crime No. []

URN []

Statement of Mark OWEN

Age If under 18 Over 18 (if over 18 insert "over 18")

Occupation Police Officer 21040

This statement (consisting of 2 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: Mark OWEN (witness)

Date 05/06/2015

This statement is in relation to an arrest I made on the 24th JANUARY 2014 concerning an immigration matter.

I am PC 21040 OWEN and I am based at DIGBETH police station, Birmingham, as I was at the time of the arrest.

On arrival at work that day I was informed that information had been received by West Midlands Police to suggest that there were 'illegal immigrants' working within the Birmingham outdoor markets on Edgbaston Street, and I was requested to assist with the job of checking these individuals at the location.

At around 1200 hours I was directed to a stall in the outdoor market, but due to the time lapse I cannot recall exactly which stall it was. Market police had informed us that there were possibly males working there illegally.

I was directed to deal and conduct checks on a male who gave his details as [redacted] bn [redacted]. A lantern check was completed and Immigration was checked but there was no trace.

At 12.53 hrs I arrested [redacted] for an offence under s71 of the immigration act. Cautioned him.

[redacted] was then transported to STEELHOUSE LANE custody whereby his detention was authorised. Custody record [redacted] refers.

Due to the timescale in this matter I can not recall what [redacted] looked like or offer any further evidence in relation to this matter.

Signature Signature witnessed by

WITNESS STATEMENT

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

Crime No. []

URN []

Statement of Andrew BENTLEY

Age if under 18 Over 18 (if over 18 insert "over 18")

Occupation Police Constable

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: (witness)

Date 07/06/15

I am Police Constable 0409 BENTLEY, of the West Midlands Police and I am currently based at Digbeth Police Station.

On FRIDAY 24th JANUARY 2014, I was on high visibility, full uniformed, mobile patrol, in company with PC 21403 LANDER, PC 20830 MCDONALD and PC 21040 OWEN. At approximately 12:15 hours, I was directed to attend the OPEN MARKET, EDGBASTON STREET, BIRMINGHAM CITY CENTRE, to a report from the Market Police, that they suspected that some of the stall holders were illegal immigrants.

On arrival at the location, I was directed by the Market Police, to a stall selling fruit and vegetables. Whilst at the stall, I spoke to a male who I now know to be, [REDACTED] born [REDACTED]. I completed a PNC check of the details that [REDACTED] had provided, which came back as a no trace. PC 21403 LANDER, then contacted UKBA Immigration and a fingerprint check on a mobile identification device, was completed. Both checks resulted in no record found.

At 12:40 hours I said to [REDACTED] "YOU ARE UNDER ARREST ON SUSPICION OF ENTERING THE UK ILLEGALLY". I then cautioned [REDACTED], to which he made no reply. I then said to [REDACTED] "THE NECESSITY FOR YOUR ARREST IS TO CONFIRM YOUR NAME AND ADDRESS, AND TO INVESTIGATE YOUR IMMIGRATION STATUS". [REDACTED] was then handcuffed in a front stack position, in order to prevent him from escaping custody and also to prevent him from causing injury to myself or that of any other person. He was then placed in the rear of our marked police vehicle and conveyed to STEELHOUSE LANE POLICE STATION, where his detention was authorised. Custody Number [REDACTED] refers.

I had no further dealings with this matter.

Signature

Signature witnessed by

RESTRICTED (when complete)

WITNESS STATEMENT

(CI Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; MC Rules 1981, r.70)

URN

Statement of: Teena Oulaghan

Age if under 18: over 18

(if over 18 insert 'over 18')

Occupation: Immigration Officer 7580

This statement (consisting of 2 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 anything in it, which I know to be false, or do not believe to be true.

Signature: [REDACTED]

Date 04/06/2015

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

I am the above named officer. I am an Immigration officer of Immigration Enforcement unit, part of Home Office based at Sandford House, 41 Homer Road, Solihull, West Midlands, B91 3QJ.

During January 2014 I was contacted by PC ROOBOTTOM from DIGBETH POLICE STATION to see if I was able to assist with a job he was conducting at BIRMINGHAM MARKETS. The operation was being conducted on 16/01/2014 following reports of illegal workers from AFGHANISTAN on a stall in the market, details given to me of possible offenders for Immigration offences were checked against Home Office records and revealed that those named had valid leave in the UK and were able to take employment. Those persons checked were as follows:

Mr Saber Nazary – DoB 1.1.77 Address: [REDACTED], Alternative Address: [REDACTED]. UK Passport No. [REDACTED]

Mr Qasim Aryubi – DoB [REDACTED] Address: [REDACTED], NI No. [REDACTED]. Residence Permit No. [REDACTED]

Mr [REDACTED] – DoB [REDACTED] Address: [REDACTED], Residence Permit No. [REDACTED], UKBA Case ID – [REDACTED], Bank [REDACTED]

Due to them all having the right to work in the UK I was unable to attend or take any part in the visit, and informed PC ROOBOTTOM of this.

On 24 January 2014 I was informed from one of my colleagues at Solihull that 7 AFGHANISTAN nationals had been arrested by PC ROOBOTTOM at the market when he had conducted a visit there and encountered them working, I was present at Birmingham Central Police Station and assisted officers from Solihull with all those arrested. I can confirm

that all 7 AFGHAN males were illegally present in the UK and dealt with in regards to their immigration status's only, and not from an illegal working aspect, therefore no civil penalty enquiries were made at the police station.

Those arrested details as below.

1. [REDACTED] – detained and due to be removed from the UK.
2. [REDACTED] – detained, no definite date for removal.
3. [REDACTED] – detained for possible removal to Italy. No date for removal yet.
4. [REDACTED] – detained and has made a claim for asylum.
5. [REDACTED] – detained for possible removal to France. No date for removal yet.
6. [REDACTED] – detained for possible removal to Italy. No date for removal yet.
7. [REDACTED] – released as he made a claim for asylum.

I can confirm that due to no Immigration involvement in this visit, no referral notice has been served on the employer for employing illegal immigrants. I am however able to confirm that non of the 7 males arrested had permission to take employment in the UK.

Since the visit I can confirm that persons 1, 2, 3, 5 and 6 have all been removed from the UK, and there is no evidence of re-entry. Persons 4 and 7 are still in the UK but at large – no recent contact made with the Home Office.

I have no other information to add, and to the best of my knowledge I have had no other dealings with any of the 7 persons listed above since 24/01/2014.

Signature: Teena OULAGHAN

Signature witnessed by: [REDACTED]

BIRMINGHAM CITY COUNCIL BUSINESS MANAGEMENT (MISCELLANEOUS APPEALS) SUB-COMMITTEE

HEARING ON: 12TH OCTOBER 2015 at 10:00 am

IN THE MATTER OF APPEAL BROUGHT BY:

(1) Mr SABER NAZARY

(2) Mr QASIM ARYUBI

SKELETON ARGUMENT FOR THE RESPONDENT DEPARTMENT

References are to the paginated documents in form: "[Page number § paragraph (if any)]"

1. Mr Nazary and Mr Aryubi appeal the termination of their licences to operate stalls in the Bull Ring Open Market, notified by letters of 14th February 2014 [51]-[54]. The decisions were taken by Mr Mark Croxford as Head of Environmental Health (North) & Birmingham City Markets following a meeting with them the same day [57]-[59]. The meeting had been called following a West Midlands Police raid on the Market stalls of Mr Nazary and Mr Aryubi on 24th January 2014 in which 7 people were arrested for working illegally. One was subsequently released, but the others were detained [74] whilst their status and removal from the country was under consideration. Mr Croxford had been satisfied that a minimum of 5 people were employed on the stalls concerned without the right to work, he was satisfied that "there was a lack of honesty in the meeting" because Mr Nazary and Mr Aryubi confirmed checks made regarding qualification for lawful employment but had nevertheless employed the individuals concerned, and he was concerned at the impact of the matter on "the reputation of Birmingham City Council and the Traders of the Bull Ring Market" [59]. Mr Croxford's decision was appealed to Mrs Jacqui Kennedy, and she upheld his decision but for her own reasons following a re-hearing.

Her decision was quashed by Order of the Honourable Mr Justice Hickinbottom in the High Court [39]-[41] following a hearing on 17th March 2015. His judgment is lengthy [41]-[48], but sets out that [47]: "it was incumbent upon Mrs Kennedy to make a finding of fact on the central issue before her, namely whether the employees were illegal workers ..." [47 §23]; "She could not make a decision to terminate the licences in these disciplinary hearings based as they were upon the proposition that the Claimants had employed illegal workers without bringing her mind to bear upon, and making a clear finding of fact in respect of that issue" [47 §24]. He found she had not done this and so he quashed the decision accordingly. He declined to make a decision in substitution for that of Mrs Kennedy, though:

"The appeal body in this case was entitled, and indeed bound, to make findings of fact in relation to the core issue. In my judgment this Court cannot - and, certainly, should not - make those findings. That is a task properly for the appeal body on the basis of the evidence it considers appropriate to hear. Consequently, this matter must be remitted to the Council, so that the matter can be referred to an appropriate appeal body which can make those findings and can, upon the findings it makes, make a decision as to which of the three options open to it under the 2006 Regulations is appropriate." [47 §§26-27]

The options in question being to allow the appeal and restore the licences, to suspend the licences for a period not exceeding 12 months, or to terminate the licences [36 §11.3]. The Sub-Committee's hearing is the appeal anticipated by the High Court Judge. It is properly a complete re-hearing (as the Sub-Committee rules require [8 §4.6]) and hence the original reasoning of Mr Croxford is immaterial. The department maintains that he reached the correct result, and that the Licences were and should remain properly terminated.

2. The Department notes the Sub-Committee Rules. It is contended that "Serious Misconduct" [6 §2.27] includes employment of people not entitled to work in the United Kingdom. Not only is it unlawful to employ such people, but also checks by an employer should be made sufficient to be sure that this does not take place (see, for example, Section 15 and following of the Immigration, Asylum and Nationality Act 2006). The employment of such people in a public market brings the market and the market operator into disrepute (in this case the Bull Ring and the Council,

respectively). It also invited the disruption that eventuated in this case on 24th January 2014, with at least 8 police officers attending and making arrests during business hours. The Sub-Committee will be invited to solicit the views on this assessment of what constitutes serious misconduct from Mr Nazary and Mr Aryubi, but it is anticipated that they would be unlikely to disagree with the Council's assessment.

3. The Department further maintains that employment of staff that had no right to work in the United Kingdom breaches paragraphs 2(k) and 2(l) of the respective licences [23 §§2(k)(l)] which require compliance with "statutory requirements and regulations" and with the Council's Market Rules and Regulations (2006) ("the 2006 Regulations" below). Statutory requirements have not been met, as the employment of people without the legal right to work in the United Kingdom is plainly unlawful. The 2006 Regulations are broken by such employment amounting to serious misconduct [28] & [35 §10]. Mr Croxford applied Regulation 10 when he conducted his disciplinary hearing subject to this appeal on the basis of just such serious misconduct and it is contended that this is procedurally correct.
4. The central issue, as identified by the High Court Judge, is whether Mr Nazary and Mr Aryubi did employ people on their stalls who were not entitled to work there. The Department will assert that the evidence for this is over-whelming:
 - (a) There is the evidence of the co-ordinating police officer, PC Roobottom [65]-[66] who details the raid on the two stalls concerned and who personally arrested two men, one of which was working behind Mr Nazary's stall. He confirms a total of seven arrests were made on the raid on the two stalls and none of the seven had the right to work.
 - (b) Mr Dave Corner, Senior Officer for Street Trading & Subsidiary Markets, was also present and witnessed six men arrested working on stalls, and a seventh identified as having been working but then in the aisle between the stalls.
 - (c) Ms Teena Oulaghan, an immigration officer, confirmed that all of the seven men arrested were illegally present in the UK and none had the right to work [73]-[74].
 - (d) Mr Croxford reports the information he collected on the raid [55]-[56]; [61].

His account of seven arrests and only one person out of these released, is corroborated by the other evidence. Whilst his description of the arrests on the day appears to be hearsay (albeit from market officers who were present at the police raid), he gives a first-hand account of what Mr Nazary and Mr Aryubi said of their own involvement and admissions from them in respect of employment of three of the men arrested.

- (e) It will be noted that the High Court Judge summarised the case for Mr Nazary and Mr Aryubi as being that each stall had only two employees on it and all four employees were arrested. They accepted that two men living with one employee were also arrested. Mr Nazary and Mr Aryubi claimed that only the four men employed were working and they had the right to work [43 §§7, 8 & 11]. Given that the evidence is that 7 people were arrested and none had the right to work, the recorded High Court description of events given by Mr Nazary and Mr Aryubi is very dubious.

5. Mr Nazary and Mr Aryubi have submitted no documents or witness statements, even though they are represented by Carltons' Solicitors. Carltons appear to dispute the Sub-Committee's jurisdiction, asserting a new decision ought to be made at first instance. This is an incomprehensible objection in light of the decision of the High Court Judge that the previous appeal (only) is quashed. The Department has maintained throughout that the decision of Mr Croxford is subject to appeal and cannot be enforced accordingly: it is for the Sub-Committee to decide the outcome now. In these circumstances, the apparent refusal of Mr Nazary and Mr Aryubi to engage in the process of appeal to date is a matter for them and their advisors only. On the material properly submitted to the Sub-Committee the conclusion that Mr Nazary and Mr Aryubi were engaged in serious misconduct in their employment of persons not entitled to work in the United Kingdom is fully made out on the balance of probabilities and, given the damage this does to the proper conduct of the market, and the reputation of the market and the market operator, it is entirely appropriate to terminate the licences of Mr Nazary and Mr Aryubi accordingly.

ANTHONY VERDUYN

Counsel

BIRMINGHAM CITY COUNCIL BUSINESS
MANAGEMENT (MISCELLANOUS
APPEALS) SUB-COMMITTEE

HEARING ON: 12TH OCTOBER 2015

IN THE MATTER OF APPEAL BROUGHT
BY:

(1) Mr SABER NAZARY

(2) Mr QASIM ARYUBI

**SKELETON ARGUMENT FOR
THE RESPONDENT DEPARTMENT**

Signed:



Dated 7th October 2015

St Philip's Chambers
55 Temple Row
Birmingham
B2 5LS

Birmingham City Council
Legal & Democratic Services
P.O. Box 15992
Birmingham
B2 2UQ

Ref.: LS/CVL/MD/134714

