NCN: [2024] EWHC 1270 (Admin)
Case No: AC-2024-LON-000058

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2024

Before :

DAVID PIEVSKY KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

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Between :

THE KING (on the application of NEW HOPE CARE LIMITED)	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Zane Malik KC (instructed by **Lawmatic Solicitors**) for the **Claimant**
William Irwin (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 16 May 2024

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APPROVED JUDGMENT

David Pievsky KC sitting as a Deputy Judge of the High Court :

A. Introduction and factual background

1. In these judicial review proceedings, the Claimant challenges a decision of the Defendant to revoke its sponsor licence ("the revocation decision").

2. The Claimant is a large business which provides care services to individuals in need. Its director and co-founder is Mr Patrick Cheza ("Mr Cheza").

3. The Defendant is responsible for operating and enforcing the immigration system. A business wishing to employ a person who is not a settled worker and who does not otherwise have an immigration law right to carry out work for that business can apply for a licence from the Defendant, known as a sponsor licence. The holder of such a licence can then assign Certificates of Sponsorship to particular workers, enabling them to make a successful immigration application. The licence holder is responsible, among other things, for being satisfied that the worker can meet the relevant immigration requirements. The parties in this case agree that a very high degree of trust is placed on licence holders.

4. On 19 January 2023 the Defendant granted a sponsor licence to the Claimant. The Defendant's Guidance document (Workers and Temporary Workers: guidance for sponsors – version August 2022) ("the Guidance") set out a requirement for the Claimant to have an Authorising Officer ("AO") in place. Mr Cheza was the named AO.

5. On 7 August 2023 the Defendant's Compliance Team carried out a visit, in order to assess the Claimant's suitability as a sponsor. Mr Cheza was not present, but the Defendant sought and was provided with certain information.

6. On 14 August 2023 the Defendant decided to suspend the Claimant's licence, pending further investigation. The letter referred to "*evidence that justifies your licence being suspended pending a full investigation*", and that there was a strong indication that the Claimant was "*failing to comply with* [its] *duties as a licensed sponsor*…". As to those concerns, the letter continued: "[u]*nfortunately, we are not in a position to provide any further detail at this stage*". It stated that the Defendant would be carrying out further enquiries, and that it would then inform the Claimant of "*our findings, providing full and detailed reasons for the suspension of the licence*". It concluded by saying that the Claimant would have "*20 working days from the date of that written notification to respond to us*".

7. On 18 August 2023 the Defendant notified the Claimant by email that, since Mr Cheza was absent (and outside of the UK) on 7 August 2023, there would need to be a second compliance visit, which would take place on 6 September 2023. The Defendant stated that Mr Cheza would need to attend for an interview, along with two identified sponsored migrant workers.

8. On 30 August 2023 Mr Cheza replied, stating that he had been detained in Zimbabwe, was being required to report to the police, and that he needed to stay for the time being in order to clear his name. He asked for the proposed 6 September 2023 visit to be rearranged, so that it could take place after his return to the UK.

9. Initially the Defendant indicated, in an email to the Claimant dated 31 August 2023, that it wished to proceed with the visit scheduled for 6 September 2023 in Mr Cheza's absence. It asked for the name of an alternative employee who might act on Mr Cheza's behalf.

10. However, on 5 September 2023, Ms Gossage of the Claimant emailed the Defendant in the following terms:

> "As you are aware, Patrick [Cheza] is out of the country and none of us in the office are aware of the sponsorship duties; indeed I have spoken with the other managers as well. I can confirm that the only person who knows about the sponsorship duties is Mr Patrick Cheza who is a level 1 user as confirmed by him. Unfortunately, none of the managers have access to the home office system or are aware of any sponsorship duties, therefore I request that you postpone your visit until he arrives back in the country. As far as I am aware after reading online, the home office can only speak with the level 1 user and the authorising officer regarding sponsorship duties and if any other person in the absence of level 1 user answers or uses the sms system, they will clearly breach the sponsorship duties. As confirmed in his previous email, Mr Cheza is out of the country and he is the best person to assist you regarding sponsorship duties. I am hoping that this visit will be postponed in the interests of justice and equity."

11. On the same day the Defendant responded to Mr Cheza, saying that it had received Ms Gossage's email, and that it was content for the second compliance visit scheduled for 6 September 2023 to be cancelled. The Defendant asked Mr Cheza to inform the Defendant once he had returned to the UK, so that a further "*visit could be rescheduled, as appropriate*".

12. There is no evidence of any further correspondence between the parties between 5 September 2023 and the date of the decision letter, 6 October 2023. As I have said, the decision was to revoke the Claimant's licence.

13. The Defendant's decision letter is lengthy. It identified, in summary, the following circumstances justifying the decision to revoke:

    i) First, the Claimant's AO was not "*based in the UK*". He was overseas in Zimbabwe. There was no other AO "*in place*". This was inconsistent with paragraphs L.4.3 and L.4.22, and Annex C2(m), of the Guidance.

    ii) Secondly, the Claimant had issued an excessive number of sponsorship certificates. Combined with the AO's absence in Zimbabwe, this represented a threat to immigration control. This was inconsistent with paragraph C10.1 and Annex C2(bb) of the Guidance.

    iii) Thirdly, the Claimant had issued zero hours contracts to some of its workers, paid some of them less than it had said it would on the worker's CoS, paid some of them less than the national minimum wage or the working time regulations,

paid some of them in cash, and purported to require them to pay a penalty if they left the Claimant's employment within 3 years of their start date. The Defendant also expressed doubts that the Claimant was able to pay all of its employees the correct amount of salary, as specified on their CoS. These matters were inconsistent with Annex C1(aa) and/or Annex C2(a) and (b), and/or Annex C2(p) of the Guidance.

iv) Fourthly, some individuals had started to work for the Claimant more than 28 days after their employment had been due to begin according to the relevant CoS. This was inconsistent with Annex C2(a) and (b) of the Guidance.

v) Finally, there was no evidence of a "*right to work*" check having been carried out in respect of a number of the Claimant's workers. Record-keeping was in certain other respects inadequate. Mr Cheza had failed to keep a secure, personal email address. The Defendant was not satisfied that the Claimant's processes and procedures were adequate, engaging Annex C2(b).

14. The decision letter then stated, at paragraphs 76-77, that the Defendant "*always* [takes] *into consideration the potential impact revocation may have on a sponsor and consideration is always given to re-rating a sponsor licence to allow a sponsor to demonstrate full compliance with their sponsor duties if appropriate*", and that it had "*noted the possibility of downgrading* [the Claimant's] *licence and issuing… an action plan*" as an alternative to revoking it, but had concluded that such a downgrade was not appropriate "*due to the seriousness of* [the Claimant's] *non-compliance with* [its] *duties*". The Claimant's failure to comply with its obligations constituted an ongoing risk and a "*significant threat to immigration control*". The situation, said the Defendant, "*cannot continue*", and the sponsor licence would be revoked with immediate effect.

15. The consequence, it is agreed, is that the Claimant can no longer recruit sponsored workers under the work routes of the points-based immigration system; and that it is likely that many of its existing workers will have their immigration status reviewed by the Defendant with the consequence that they will potentially no longer be allowed to work in the United Kingdom. I was told during the course of oral argument that the Claimant has some 156 workers who have a CoS, and that the Defendant's process of reviewing their immigration status in light of its decision to revoke the sponsor licence has been deferred, pending the outcome of these judicial review proceedings.

B. The claim for judicial review

16. The claim for Judicial Review was commenced on 5 January 2024. It raised four grounds:

i) Ground 1: irrationality. The revocation decision was irrational, in that there was no evidential foundation for the Defendant's contentions that (a) it had tried to visit the Claimant "*on several occasions*", and (b) the Claimant's AO was overseas "*indefinitely*".

ii) Ground 2: misdirection as to meaning of policy. The Defendant misconstrued its own policy, by treating a requirement for the AO to be "*based in*" the UK as

requiring the AO to be continuously *resident* in the UK, and/or *not physically absent* from the UK for any or any substantial period of time.

iii) Ground 3: procedural unfairness. The Claimant was given no meaningful opportunity to respond to the Defendant's concerns, still less the 20 days referred to in the Guidance. Mr Cheza could and should have been interviewed, either on his return to the UK or remotely while he was abroad. The revocation decision constituted (a) an unlawful failure by the Defendant to follow its own guidance / promises, and (b) a departure from the standards of fairness at common law.

iv) Ground 4: failure to carry out a "*global assessment*". In exercising the discretion to revoke the Claimant's licence, the Defendant ought to have conducted a global assessment of "*all relevant circumstances*", including in particular the large size of the Claimant's workforce, and the many services it provides. These were important considerations, because the impact on migrant workers (and their families) whose immigration status was likely to be adversely affected, and the potential impact on those receiving care services from the Claimant, was very significant. Reliance is placed on a very recent decision of this Court in Supporting Care Ltd v Secretary of State for the Home Department [2024] EWHC 68 (Admin), in which a similar complaint succeeded.

17. On 16 February 2024 Dexter Dias KC, sitting as a Deputy Judge, granted permission on all four grounds.

18. On 25 April 2024, in response to concerns about whether the Claimant's evidence was sufficiently candid and comprehensive, the Claimant filed a second witness statement from Mr Cheza, setting out the periods since the grant of the Claimant's licence during which he had been away from the UK in Zimbabwe. The periods of absence were:

i) 16 – 26 February 2023.

ii) 29 May – 15 July 2023.

iii) 21 July – 4 August 2023.

iv) 6 August – 11 October 2023.

19. Mr Cheza also said, in his second witness statement, that he had been arrested for politically motivated reasons, following his attempts to campaign for election in Zimbabwe, and that this had contributed to the length of the period of absence between 6 August and 11 October 2023. He said that he was innocent of any criminal activity and that the state had already dropped one of the charges against him. He stated that the UK was where he lived and was where his business is; and that he had made no decision to leave the UK. He had not succeeded in the elections in Zimbabwe. Had he succeeded, and decided to move to Zimbabwe, he would at that point have updated the Home Office, and appointed a new AO. He stated that he was sure that, if given the opportunity for an interview or a compliance visit, he would be able to show that the Claimant is a responsible and "*fully compliant*" sponsor, and that it can be trusted with a licence.

C. Legal framework

(1) The Guidance

20. The Guidance is a long document, running to over 200 pages with many chapters. It is non-statutory. Its provenance, lawfulness, and legal character are discussed in some detail in R (New London College Ltd) v Secretary of State for the Home Department [2013] 1 WLR 2358.

21. A reader of this Judgment who is unfamiliar with the Guidance may be assisted with a brief explanation of its basic structure.

22. There are three Parts. The first part is about how to apply for a *licence*. Its chapters and annexes are preceded by the letter L.

23. The second part is about *sponsors*. Its chapters and annexes are preceded by the letter S.

24. The third part is about *compliance*. Its chapters and annexes are preceded by the letter C.

Relevant provisions of Part 1

25. L4.1 explains the "*key personnel*" that each licence holder must appoint, including the AO.

26. L4.3 states that each of the key personnel "*must be based in the UK for the period they fill the role you have appointed them to – there is an exception to this requirement on the UK Expansion Worker route where the* [AO] *may be based overseas from the time you apply for your licence until they enter the UK with a valid entry clearance for the purpose of work on the UK expansion of your business*".

27. L4.5 makes clear that there can only be one AO.

28. L4.19 requires the AO to be "*the most senior person in your organisation responsible for the recruitment of all migrant workers and ensuring that you meet all of your sponsor duties… If there is more than one person who could fill this role, you must decide which one to nominate. You are responsible for the actions of your* [AO], *so you should ensure you are confident that they understand fully the importance of this role*."

29. L4.22 states: "*You must have an* [AO] *in place throughout the life of your licence. The nominated person must always meet the requirements set out in this guidance. If you fail to have an* [AO] *in place who meets our requirements, or you fail to tell us of a change in* [AO], *we will take action against you*."

Relevant provisions of Part 2

30. S1.30 requires a licence holder to check that any worker to be employed has permission to enter or stay in the UK and that they can do the work in question before they start work.

31. S1.31 states that the licence holder is responsible for checking that its sponsored workers carry out the role for which they are being sponsored, and for monitoring their attendance; and that it must tell the Home Office if they do not turn up for work, are absent without permission, or there are significant changes to their employment or to the organisation.

32. S1.32 requires the licence holder to keep records for each worker in accordance with Appendix D, the contents of which I do not need to rehearse.

33. S2.19 provides that, if a licence holder thinks that it does not have enough Certificates of Sponsorship for a particular year, it may apply to the Defendant to increase its allocation.

34. S3.10 provides that once a worker has been granted permission they should normally start working in their sponsored employment "*no later than 28 days after whichever is the latest of"* (i) the start date on the CoS, (ii) the "valid from" date on their visa, or (iii) the date of permission to enter, entry clearance, or permission to stay.

35. S3.11 provides that if the worker does not start employment by the end of that period, the licence holder must either inform the Home Office of the new start date and the reasons for the delayed start, or stop sponsoring the worker; and S3.12 requires that in either case, a report must be filed with the Home Office no later than 10 working days after that 28 day period. A non-exhaustive list of "*acceptable reasons*" for a delayed start are set out in S3.14.

36. S4.6 requires the licence holder to comply with the National Minimum Wage Regulations 2015 and the Working Time Regulations 1998.

37. S4.19 states that all payments to sponsored workers must be made into their own bank account in the UK or overseas. They must not be paid in cash.

38. S4.30 requires the licence holder to inform the Home Office if a worker's salary is reduced for a reason not related to absence, after assignment of a Certificate of Sponsorship.

39. S4.31 requires the licence holder to stop sponsoring the worker if their revised salary no longer meets any salary, hourly or going rate requirement for the job or on the route on which they are being sponsored, or the change is otherwise not permitted by the Immigration Rules or sponsor guidance.

Relevant provisions of Part 3

40. Annex C1 of Part 3 sets out circumstances in which the Defendant "*will*" revoke a sponsor licence. Of relevance in this case is the circumstance described in Annex C1(aa): "*You pay a sponsored worker less than you said you would on the worker's CoS, and* [i] *you have not notified us of the change in salary*; *or* [ii] *the reduction is not otherwise permitted by the Immigration Rules or the* [Guidance]".

41. Annex C2 sets out circumstances in which the Defendant will "*normally*" revoke a sponsor licence. Several of those listed circumstances are relevant in this case:

i) Annex C2(a): "*You fail to comply with any of your sponsor duties set out in section C1 of this document*." Section C1 includes the duty to comply with UK employment law (C1.48).

ii) Annex C2(b): "*As a result of information available to us, we are not satisfied you are using a process or procedure necessary to fully comply with your sponsor duties*."

iii) Annex C2(p): "*You pay a sponsored worker in cash*."

iv) Annex C2(bb): "*We have reason to believe that you otherwise pose any risk to immigration control*."

42. Annex C3 sets out other circumstances in which the Defendant "*may*" revoke a sponsor licence. It does not appear that any of the listed circumstances in Annex C3 were said to be engaged in this case.

43. Section C9 deals with various relevant procedural matters.

44. By C9.1, if the Home Office believes that the licence holder is breaching its sponsor duties and/or poses a threat to immigration control, it may suspend the licence whilst it makes further enquiries. No new Certificates of Sponsorship can be assigned during a suspension. However, workers who are already sponsored will continue to have permission.

45. C9.7 states: "*If any of the circumstances listed in Annex C1 arise, we will either revoke your licence immediately or suspend your licence pending further investigation or consideration*."

46. C9.8 states: "*If any of the circumstances listed in Annex C2 arise, we will first consider downgrading your licence. However, we may decide to suspend your licence without first downgrading it. This could be where there has been sustained non-compliance over a period of time, or where there have been a number of breaches which are minor in themselves but, taken together, indicate a more serious or systematic failing*."

47. C9.9 – C9.17 is preceded by a heading: "*The process we will follow*".

48. C9.9 provides that where satisfied of enough evidence to suspend a sponsor licence without further investigation, the Home Office "*will write to you giving reasons for the suspension*".

49. C9.10 states: "*Where we have evidence that justifies your licence being suspended pending a full investigation, we will write to you giving our initial reasons for suspension and telling you that an investigation will take place. It may not be possible to say how long the investigation will take, but we will update you on our progress at regular intervals. During this period, you can make any written statements to respond, including sending evidence. Any statement or evidence will be taken into account during the investigation*."

50. C9.11 states: "*You have 20 working days from the date of the written notification to respond to our letter. This is your opportunity to seek a review of our decision and to set out any mitigating arguments you believe exist. Your response to us must be in*

writing and set out, with any relevant supporting evidence, which grounds you believe to be incorrect and why. We may give you more time to respond if we are satisfied there are exceptional circumstances. We will not hold an oral hearing."

51. C9.12 states: "*If we identify any additional reasons for the suspension of your licence during that 20-day period, including any additional information gained during the course of discussions or interviews with workers to whom you have assigned a CoS, we will write to you again, giving you another 20 working days to respond in writing to the additional reasons*."

52. C9.13 states: "*When we receive a response from you, we will consider this and may ask a compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government or other body, for information*."

53. C9.14 states: "*If we do not receive a response within the time allowed, we will go ahead with whatever action we believe is appropriate and tell you of our decision in writing*."

54. By C9.15, "*appropriate*" action may include one or more of the following: reinstatement, preventing the assignment of new Certificates of Sponsorship, or revocation.

(2) The proper approach to the Defendant's supervision of the sponsorship regime

55. In R (London St Andrew's College) v Secretary of State for the Home Department [2018] EWCA Civ 2496, Haddon-Cave LJ referred at §29 to the summary of the legal principles applicable to sponsorship that he himself had provided in the earlier case of R (Raj & Knoll) v Secretary of State for the Home Department [2015] EWHC 1329 (Admin), as follows:

> "(1) The essence of the system is that the Secretary of State imposes "*a high degree of trust*" in sponsors granted (Tier 2 or Tier 4) licences in implementing and policing immigration policy in respect of migrants to whom it grants Certificate of Sponsorship ("CoS") or Confirmation of Acceptance ("CAS")…
>
> (2) The authority to grant a certificate (CoS or CAS) is a privilege which carries great responsibility: the sponsor is expected to carry out its responsibilities "*with all the rigour and vigilance of the immigration control authorities*" (per McGowan J in London St Andrews College v Secretary of State for the Home Department [2014] EWHC 4328 at [12]).
>
> (3) The Sponsor "*must maintain its own records with assiduity*" (per McGowan J in London St Andrews College v Secretary of State for the Home Department [2014] EWHC 4328 at [13])…
>
> (7) The primary judgment about the appropriate responses to breaches by licence holders is that of the Secretary of State. The role of the Court is simply supervisory. The Secretary of State is entitled to maintain a fairly high index of suspicion and a 'light trigger' in deciding when and with what level of firmness she

> should act (R (The London Reading College Ltd) v Secretary of State for the Home Department [2010] EWHC 1484 (Admin) per Neil Garnham QC.
>
> (8) The Courts should respect the experience and expertise of UKBA when reaching conclusions as to a sponsor's compliance with the Guidance, which is vitally necessary to ensure that there is effective immigration control (per Silber J in R (Westech College) v Secretary of State for the Home Department [2011] EWHC 1484 (Admin) at [29(d)]."

(3) Procedural fairness

56. Three aspects of procedural fairness are engaged on the facts of this case.

57. First, at common law a fair procedure will very often require that a person who will be adversely affected by a decision made by a public authority will have an opportunity to make representations: see (among many examples) R v Secretary of State ex parte Doody [1994] 1 AC 531, at p.560D-G per Lord Mustill. There can be exceptions, for example where the circumstances of the case make it "*impracticable*" to give a person the opportunity to make representations, or where to do so would lead to unacceptable risks to the public interest: see R (Balajigari) v SSHD [2019] 1 WLR 4647 per Underhill LJ at §60.

58. Secondly, where a published policy specifically sets out a procedure that a public authority says it will use before making a particular decision, the authority must use that procedure, unless there is good reason not to.

    i) In its JR Grounds the Claimant cited Lumba v Secretary of State for the Home Department [2012] 1 AC 245 at §35 for this principle. In that paragraph Lord Dyson JSC was speaking of the right to have one's case considered under whatever (*substantive*) policy the executive sees fit to adopt (provided that the adopted policy is a lawful exercise of the discretion conferred by the statute). It seems to me that the right to have one's case considered using a published *procedure* is related to the one described at §35 of Lumba but not precisely the same.

    ii) In its skeleton argument and oral submissions, the Claimant relied, in my view more appositely, on Mandalia v Secretary of State for the Home Department [2015] 1 WLR 4546. That was a case in which the relevant guidance had set out a *procedural* requirement that, where an application for leave to remain had omitted certain information, the decision-maker should give the applicant an opportunity to remedy the omission by supplying it. Lord Wilson JSC noted at §29 that the right to have an application determined in accordance in policy was "no doubt related" to the doctrine of legitimate expectation, but is properly to be regarded as "free-standing".

    iii) The proper interpretation of a policy document is for the Court to determine. In Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 Lord Reed JSC (with

whom the other Justices agreed) said (at §18): "*policy statements should be interpreted objectively in accordance with the language used, read as always in proper context*". In Mandalia (cited above) Lord Wilson JSC said at §31 that the interpretation of policy documents "*is a matter of law which the Court must therefore decide for itself*".

59. Thirdly, there is the concept of legitimate expectations. A public authority may be bound by clear and unambiguous promises it makes directly to a Claimant about the procedure it will follow, provided those promises do not conflict with its duty: see Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629, per Lord Fraser at p.638G and Re Finucane's Application for Judicial Review [2019] UKSC 7 [2019] HRLR 7 per Lord Kerr at §§55-72. There is scope for a public authority to resile from a legitimate expectation (whether about procedure or anything else), but only where to do so would be justified, fair, and proportionate: see R v North and East Devon Health Authority, ex p Coughlan [2001] QB 213 (CA) per Lord Woolf MR at §57(b); R (Nadarajah) v SSHD [2005] EWCA Civ 1363 per Laws LJ at §68; and Finucane per Lord Kerr JSC at §62-3.

D. The Grounds for Judicial Review

Ground 1: irrationality

(a) The Claimant's submissions

60. Mr Malik KC submitted that the revocation decision was irrational, on the simple basis that there was no evidential foundation for two of the Defendant's conclusions as set out at paragraph 2 of the decision letter.

61. First, the Defendant stated that it had "*attempted*" to visit the Claimant "*on several occasions*". This was irrational:

    i) "Several" means "many", or at any rate "more than two"; and

    ii) On no legitimate view of the facts had there been more than one "attempted" visit. The 7 August 2023 visit was not an "attempt".

62. Secondly, the Defendant said that Mr Cheza was overseas "*indefinitely*". This failed to take into account the fact that Mr Cheza had wanted to return to the UK, specifically on 2 September 2023, but had not been able to for reasons that were beyond his control.

(b) The Defendant's submissions

63. Mr Irwin, on behalf of the Defendant, made three points in response.

64. First, he submitted that it was permissible and rational for the Defendant to consider that there had been "*several*" attempts to visit the Claimant, because that there had been more than one.

65. Secondly, he submitted that it was permissible and rational for the Defendant to consider that Mr Cheza was overseas "*indefinitely*", because there was no information about when he might be able to return to the UK.

66. Thirdly, any infelicity or error in the use of these particular words by the Defendant did not undermine the logic or rationality of the decision overall.

(c) Discussion and conclusions on Ground 1

67. I do not uphold Ground 1, for the following reasons.

68. First, I accept that it was not accurate or fair for the Defendant to say in its decision letter that it had "*attempted*" to visit the Claimant on "*several*" occasions. The true position was more nuanced. The Defendant's Compliance Team had *successfully* visited the Claimant once (on 7 August 2023), but that visit was not as *effective* as the Defendant wanted it to be because Mr Cheza was absent; it had then *wanted* to visit the Claimant on a second occasion, but it had itself *cancelled* that visit, again because Mr Cheza was still abroad. The broad assertion that there had been "*several*" attempts to visit the Claimant was an overstatement of the true position and likely to have come across to the recipient as unfair.

69. Secondly, it was in my Judgment permissible for the Defendant to describe Mr Cheza's absence from the UK as "*indefinite*", because a period of time can legitimately be thought indefinite by virtue of not having any known end-point. I do accept that it might have been more even-handed of the Defendant to record specifically the fact that Mr Cheza had said that he wanted to return to the UK, that he had been unable to do so, and that he had offered to make himself available for an interview; but it is not for the Court to police the precise drafting language used by a public authority, and in any event I do not consider that these omissions made it irrational or unfair to use the word "*indefinite*".

70. Thirdly, however, and in any event, neither of the phrases to which objection is taken under Ground 1 rendered the decision irrational. Both of those phrases are found in paragraph 2 of the revocation decision letter. Read fairly and in context, that is an *introductory* paragraph of the letter which purports to explain why the Defendant has decided to proceed based on what it has been told by the Claimant's employees, i.e. without waiting a further period in which Mr Cheza might return to the UK. Paragraph 2 is not, read fairly and in context, an attempt to summarise the Defendant's (substantive) reasons for revoking the Claimant's licence. Those substantive reasons are set out in the paragraphs of the decision letter which follow. I have attempted to summarise them in paragraph 13 above. To the extent there are errors or infelicities in the use of the words "*several occasions*" or "*indefinitely*" in paragraph 2 of the decision letter, these errors are not in my Judgment operative reasons for the overall decision, and do not render it irrational. There is of course a separate issue between the parties about whether the procedure used in this case was fair (see Ground 3 below), which includes the question whether it was fair and lawful for the Defendant to proceed to make a revocation decision at the stage it did, without carrying out further investigation or taking other procedural steps; but to my mind that raises different issues of law, and needs to be addressed separately.

71. Ground 1 accordingly fails.

Ground 2: misdirection as to meaning of policy

(a) The Claimant's submissions

72. Mr Malik KC contended that the Defendant misconstrued its own policy, by treating a requirement for the AO to be "*based in*" the UK as effectively requiring the AO to be *physically present* (or continuously resident) in the UK, without any (or any substantial) periods of absence abroad.

73. Mr Malik KC noted that there is no specific authority dealing with the meaning of the words "*based in the UK*", but he referred me to a decision of the Upper Tribunal in BD (Nigeria) v SSHD [2010] UKUT 418 (IAC) (a decision of Cranston J and Senior Immigration Judge McKee). That case, he said, illustrated that even lengthy absences from the UK do not necessarily break the continuity of a "*continuous period*" of residence in the UK, as required by certain Immigration Rules.

74. Mr Malik KC contended that it was not open to the Defendant to conclude that Mr Cheza was not "*based in*" the UK. Mr Cheza pays tax and national insurance in the UK; his home and his business are in the UK. He was for some periods physically absent from the UK, and he may well have *contemplated* the pursuit of other opportunities abroad, but this did not mean that he was not "*based in*" the UK. That is particularly the case for that period in which he was *involuntarily* absent (having been arrested and detained in Zimbabwe).

(b) The Defendant's submissions

75. Mr Irwin did not accept that the Defendant had interpreted the requirement for the AO to be "*based in*" the UK in the manner suggested by Mr Malik KC.

76. On the facts of the case, and bearing in mind the purpose of the rule, it had not been unlawful or irrational for the Defendant to conclude that the Claimant had not complied with the duty to have an AO in place who was "*based in*" the UK at all times. As at the date of the decision, there was in fact *no one* in the UK working for the Claimant who was discharging or capable of discharging the AO role, and there had not been such a person for some two months.

77. Mr Irwin then noted that according to Mr Cheza's second witness statement, over the course of the licence, which lasted some 260 days (19 January to 6 October 2023), Mr Cheza had been out of the UK for 135 days, i.e. more than 50%. Whilst the Defendant's decision was not specifically based on that information because it was only revealed by Mr Cheza during these proceedings, Mr Irwin placed reliance on it as an illustration of, in effect, the absurdity of any analysis of the concept of being "*based in*" the UK which ignores the possibility of lengthy or repeated absences from the UK.

(c) Discussion and conclusions on Ground 2

78. In my Judgment, Mr Malik KC is right to this extent: *had* the Defendant adopted an approach in which any (or any substantial) absence from the UK by the AO had led without more to a conclusion that the AO was not "*based in*" the UK, that would have been an error and a misdirection of law.

79. The words "*based in*" are ordinary English words. Whether someone is "*based in*" a particular country can be a question of degree, requiring the application of a judgment. A brief or temporary absence from a country does not mean that they are no longer "*based*" there. However, to my mind, it is equally obvious that there may come a point where someone's absences are so prolonged, repeated, or indefinite that it is no longer sensible or realistic to remain satisfied that they are based in that country.

80. It certainly does not follow, in my Judgment, simply from the fact that someone pays tax in the UK and owns a home or runs a business here, that the Secretary of State is compelled to accept that they are "*based in*" the UK, however long they spend abroad. That would be absurd; particularly so in the context of the regulatory framework to which this case relates, and the obvious importance, as stressed in the Guidance, of having an AO "*in place*" who is "*based in*" the UK in a practical and effective sense. A person may, of course, own properties (a home, or otherwise), or run or work for a business, in more than one jurisdiction.

81. In my judgment, the underlying premise for Ground 2 is not made out. The Secretary of State did not simply treat any (or any substantial) absence from the UK by Mr Cheza as dispositive of the issue of whether the Claimant had an AO in place who was based in the UK. The approach, reading the decision letter as a whole and in the context of the communications to which I have referred, was to consider a number of factors taken together: (a) the *extent* of Mr Cheza's absences (such as they were known at the time), (b) the *reasons* for them (including Mr Cheza's apparent desire to stand as an MP in Zimbabwe, along with his arrest and detention in Zimbabwe), (c) the *particular circumstances and adverse implications, from the Defendant's point of view, of that absence* (including that Mr Cheza was or had been "*incarcerated*", and that the Claimant was telling the Defendant in terms that there was no one else in the company who could fulfil his duties), and (d) the fact that there was not yet any specific date of return, nearly two months after the Defendant had suspended the Claimant's sponsor licence. The Defendant's approach to this issue did not in my Judgment involve the misdirection of law that has been alleged.

82. I do not uphold Ground 2.

Ground 3: procedural unfairness

(a) The Claimant's submissions

83. During oral argument, I asked Mr Malik KC whether he would accept that Mr Cheza ought to have done more to keep the Defendant informed, particularly after 5 September 2023, when the Defendant was clearly expecting further information about when he would be returning to the UK. He answered that he would accept that criticism. I also asked whether he might accept that Mr Cheza also ought to have communicated more openly and candidly with the Defendant, in relation to his political ambitions in Zimbabwe and his reasons for having travelled to Zimbabwe in the first place. Again, Mr Malik KC agreed with that proposition.

84. I think that Mr Malik KC was correct to accept these criticisms of Mr Cheza's approach. It is unsurprising that by early October, some two months after the compliance visit and the consequent decision to suspend the Claimant's licence, the Defendant felt a

compelling need to make real progress with the matter, and to expedite the process in some way.

85. Nonetheless, Mr Malik KC contends that it does not follow that the Defendant's ultimate treatment of the Claimant was procedurally fair. He puts this aspect of the claim in three ways.

86. First, the Defendant broke the clear and unambiguous promises, as set out in its letter to the Claimant dated 14 August 2023, about the procedure it would use.

    i) The Claimant had been told that the Defendant would contact the Claimant with its "*findings*", providing "*full and detailed reasons for the suspension of*" its licence. The Claimant would then have 20 working days from the date of that notification to respond.

    ii) None of that happened.

    iii) The promises set out in this letter gave rise to a legitimate expectation. By deciding to revoke the Claimant's sponsor licence in the way that it did, the Defendant unlawfully resiled from that legitimate expectation.

87. Secondly, *the Guidance* provided a clear procedure, to which the Defendant had publicly committed.

    i) Once it had decided to suspend the Claimant's licence, the procedure set out at C9.10 – C9.14 required the Defendant to do three things: (a) to provide "*initial reasons*" for that decision, (b) to give the Claimant at least 20 days to provide a written response, setting out which grounds were said to be incorrect and why, along with any mitigation, and (c) to consider that response before making any decision to revoke.

    ii) None of that happened.

    iii) There was no good reason for the Defendant's failure to follow its own published procedures, which was accordingly unlawful.

88. Thirdly, the Defendant's decision was procedurally unfair at common law.

    i) The Claimant had a common law right to be heard, and make representations, before the Defendant made any revocation decision.

    ii) In particular, the Claimant should have been given a meaningful opportunity to answer the substance of the Defendant's particular concerns, in advance. It was not "*impossible*", "*impractical*" or "*pointless*" to do so: see Bank Mellat v HM Treasury (No 2) [2014] AC 700 per Lord Neuberger at §179; and Balajigari, cited above, per Underhill LJ at §60.

    iii) Indeed, the AO was willing and anxious to co-operate. If the Defendant was concerned about the matter slipping, or an ongoing risk to immigration control, it could and should have given the Claimant a short period - e.g. 7 days - to respond to the allegations.

(b) The Defendant's submissions

89. Mr Irwin made, in summary, five submissions in response.

90. First, he reminded me that context is everything, and that the standards of procedural fairness are not immutable (as Lord Mustill said in Doody at p. 560D) or "*engraved on tablets of stone*" (as it was put by Lord Bridge in Lloyd v McMahon [1987] AC 625, at p. 702H), but depend on the context.

91. Secondly, he emphasised that the context here included the high degree of trust, recognised in the case-law, imposed on sponsors who have been granted licences in this area. The primary judgment about how to deal with a risk to immigration control is for the Secretary of State. He is entitled to maintain both a fairly high index of suspicion and a "*light trigger*" in deciding when and how to act: see the Raj & Knoll principles, cited above.

92. Thirdly, he submitted that the Defendant was fully entitled to revoke a sponsor licence without following the procedure set out at C9.10 – C9.14 of the Guidance.

    i) There were *mandatory* grounds for revocation. The Claimant had failed to pay its sponsored workers in accordance with what had been set out in their CoS. This was the type of bright-line circumstance in which the Defendant has publicly committed that it "*will*" revoke a sponsor licence.

    ii) The Guidance made repeatedly clear that in those circumstances the Defendant could revoke a licence "*immediately*", or "*immediately and without warning*".

    iii) Since the Defendant could do that, it is incorrect - absurd, even - to suggest that the Defendant could not properly revoke the licence without further delay, simply because he had *initially* decided to suspend it.

    iv) It was not inconsistent with the Guidance to revoke the licence after a two month period of suspension in which (a) Mr Cheza had largely failed to assist the Defendant by providing accurate, complete and up to date information, (b) Mr Cheza remained absent, apparently incarcerated (at least for some of the time), distracted by the need to clear his own name, and had not (on the Claimant's own case) enabled anyone else to assist, and (c) the Defendant genuinely and reasonably had serious concerns about the ongoing risk posed by the Claimant to the immigration system.

93. Fourthly, Mr Irwin submitted there were a significant number of very serious concerns about the Claimant's operations, such that revocation of its sponsor licence was in reality inevitable.

94. Finally, even if there was unfairness or an unlawful failure to follow policy, Mr Irwin submitted that it is inevitable, or at least "*highly likely*", that the outcome (revocation) would have been the same, had a fair and lawful procedure been used. There was, as set out above, a mandatory reason for revocation, and multiple other serious breaches each of which normally justify revocation. Most of those breaches have not seriously been challenged, either within the evidence put forward by the Claimant in these proceedings, or at all.

(c) Discussion and conclusions on Ground 3

95. Despite Mr Irwin's valiant and attractively presented attempts to persuade me otherwise, my conclusion is that Mr Malik KC's submissions on Ground 3 are to be preferred, and that Ground 3 must succeed.

96. I agree with all of Mr Irwin's preliminary points about the importance of trust, the correct approach to institutional responsibility, and the possibility of relatively "*light triggers*" for taking responsive and protective action within the context of this scheme. But it does not follow that the Defendant has more latitude in relation to whether to abide by his own published policy when it comes to the procedure to be used, or whether to keep clear promises sent in correspondence, or whether to abide by the standards of basic procedural fairness as developed by the common law. I do not read either Mr Garnham KC (as he then was) in the London Reading College case, or Haddon-Cave LJ in the London St Andrews case, as having intended to suggest otherwise. (Indeed the former was a case in which a decision was quashed for want of procedural fairness: see at §§28-55.).

97. An appropriate starting point for a proper analysis of the rival procedural fairness arguments in this case is the Guidance.

98. A critical issue between the parties is the correct interpretation of paragraphs C9.10 – C9.14 of the Guidance. As I have noted, this is an objective question for the Court. I cannot accept Mr Irwin's suggested construction of those paragraphs. It would have the overall effect that, in any case where a circumstance said to be mandatory (i.e. falling within Annex C1 of the Guidance) is in play, the Defendant can simply dispense with the need for basic procedural fairness, and give the licence holder no opportunity to respond to an allegation before a final decision is taken. That cannot be right. As part of that overall conclusion, I would emphasise the following considerations.

99. First, there are no express words within the Guidance itself which can justify such an interpretation. I have set out C9.10 – C9.14 at paragraphs 49-53 above. C9.10 and C9.11 provide in terms that the Defendant "*will*" write to a suspended licence holder with its reasons for the decision, and that the licence holder "*can*" then respond, providing "*statements*" or "*evidence*" in response, along with any "*mitigation*", within a period of 20 days. C9.13 then provides in terms that the Defendant "*will*" consider any response received within the time allowed. Had the intention really been that this opportunity to address the Defendant on matters of concern would only be available in those cases falling outside the scope of Annex C1, the Guidance would surely have said so expressly.

100. Secondly, there is no principled reason which justifies such an interpretation of the Guidance:

i) The need for procedural fairness is not lower - indeed it is at its most pressing - where the most serious concerns are being raised about a person's conduct.

ii) Whether the Defendant is entitled on the facts of any given case to suspend or revoke a licence "*immediately*" and without notice, rather than after using a slower and fairer procedure, cannot sensibly be thought to arise from the mere *classification* of the conduct about which the Defendant has a concern (e.g.

whether that conduct is set out in a policy that is said to require, rather than merely permit, revocation). It must also depend on factors such as *the urgency of the relevant circumstances*, along with some evaluation of what the *public interest* requires.

101. Thirdly, the Guidance itself has to be interpreted against the background of the common law. A person's common law right to have a reasonable opportunity of learning what is alleged against him, and putting forward his answer to it, is a "*fundamental*" one: see O Reilly v Mackman [1983] 2 AC 237 per Lord Diplock at p. 279F-G; and In re Application for Judicial Review by JR 17 [2010] UKSC 27 [2010] HRLR 27 per Sir John Dyson SCJ at §50. The Court will be very slow, when construing a policy statement, to conclude that a public authority intends not to act in accordance with that fundamental right.

102. What are the consequences of this analysis? Once it is clear, as I consider it to be, that the Guidance required the Claimant to be given notice of the Defendant's concerns and a fair opportunity to respond to them, the remaining issues between the parties under Ground 3 become, in my view, relatively straightforward.

103. As to the claim that there was an unjustified departure from the Guidance:

i) There is no evidence from the Defendant that it considered that there was any "*good reason*" to depart from the Guidance on the facts of this case. That is, to my mind, highly significant.

ii) Indeed, the Defendant's positive case is that it did not depart from the Guidance. I have rejected that case. The reason for departing from the requirements of the Guidance was that the Defendant did not consider that they were in fact required. It misunderstood them. That cannot amount to a good reason for departure.

iii) It is also important to remember that on the facts of this case the Defendant made numerous findings about a significant number of breaches falling into Annex C2 ("*circumstances in which we will normally revoke your licence*"), as well as those findings which were said to engage Annex C1 ("*circumstances in which we will revoke your licence*"). A company whose licence has been suspended pending an investigation into matters falling within Annex C2 would be entitled, on the Defendant's own case, to receive a list of reasons for the suspension decision, to make a written statement in response, to provide evidence, and to have all of that taken into account before any decision relying on circumstances said to engage Annex C2. None of that happened on the facts of this case.

104. As to the legitimate expectation element of the claim, the position seems to me to be as follows:

i) The suspension letter reflected, highlighted, and emphasised the relevant procedural requirements of the Guidance, as I have interpreted them. It amounted to a clear and unambiguous promise about the procedure which would be used, and it was devoid of any relevant qualification. It has not been suggested otherwise.

ii) The law permits a public authority to resile from a legitimate expectation if it is fair and proportionate to do so: see e.g. Nadarajah, cited above, at §68; and Finucane, cited above, at §62. Usually, in cases where the promise is one of consultation or notice, there will need to be an "*overriding reason*" to resile from it: see Coughlan, cited above, per Lord Woolf MR at §57(b).

iii) Importantly, the onus is on the public authority to demonstrate fairness and proportionality, by placing material which can support that view before the court: see R (Paponette) v AG of Trinidad and Tobago [2012] 1 AC 1 per Lord Dyson at §§37, 38 and §42.

iv) Here, there was no evidence at all from the Defendant on this point; it follows that there is simply no material before the Court which can adequately support Mr Irwin's submission that departing from the clear and unambiguous commitments set out in the suspension letter was a justified and proportionate course of action in the circumstances of this case.

v) Even if there had been such evidence, supporting Mr Irwin's particular submissions, I do not think the reasons given by him during oral argument would have been sufficient to outweigh the Claimant's fundamental right to a fair process, as promised, before having its licence revoked.

vi) I have already accepted that Mr Cheza could and should have done more to assist, and communicate with, the Defendant, particularly between 5 September and 6 October 2023; and the consequence was that the Defendant was by the latter date entitled to be frustrated and concerned by the lack of progress in the matter. But the *proportionate* response, as at 6 October 2023, to this situation was not, in my Judgment, to move from the strict requirements of the Guidance, and the clear promises in the suspension letter, to the extreme opposite proposition that there needed to be an immediate decision to revoke, with no further opportunity to comment. There is simply nothing to suggest that Mr Cheza (or the Claimant) could not sensibly have been given a relatively short period in which to respond to a written summary of the areas of concern; nor any good reason to think that Mr Cheza could not have been asked to attend a remote interview, if necessary, or at minimum asked for his views by email.

vii) Accordingly, my conclusion is that the Claimant's complaint that the Defendant unlawfully resiled from a procedural legitimate expectation is correct.

105. As to the common law, my conclusions are very similar. The common law right to be heard before important benefits are taken away is, as I have said, fundamental. I think it applies even where, as here, the benefit that has been conferred is "*a privilege not a right*" (as the Guidance describes sponsorship at C1.3). It applies with full force – and certainly no less force – where, as here, a public authority considers that there has been, in effect, a litany of failures, justifying very firm intervention.

106. When considering the common law aspects of the complaint, I have been struck by the fact that there is no evidence before the Court even of any *oral* notice being given to the Claimant about what the Defendant's substantive concerns were, before the licence revocation letter was ultimately sent. The Defendant could have filed evidence, accompanying its Detailed Grounds of Resistance, about what actually happened during

the 7 August 2023 visit. Or that visit could have been described in more detail at an earlier stage, as part of the Defendant's correspondence with the Claimant. If, for example, such evidence had indicated that specific concerns were raised orally by the Defendant's representatives on 7 August 2023, it *might* have been possible for the Defendant to say that it was sufficient to raise them in that way, with whichever representatives of the Claimant had made themselves available, even if they were never directly raised (in writing or otherwise) with the absent Mr Cheza. But there is no evidential foundation for that sort of analysis. The suspension letter, for its part, simply states that the Claimant is failing to comply with its duties and may be posing a threat to immigration control, and that no "*further details*" can be given at this stage. There is no evidence explaining why the Defendant considered that no further details of the allegation could be provided at that stage. There is, ultimately, no evidence before the Court of *any* notice, written or oral, of *any* of the reasons for the concerns that were said to justify revocation ever being put to any employee of the Claimant for comment, before the final decision was made. In my Judgment this involved a clear departure from the requirements of common law procedural fairness.

107. I turn to Mr Irwin's final submission on this Ground, i.e. that any procedural unfairness about which the Claimant complains in these proceedings did not render the revocation decision unlawful or does not justify any relief. The unfairness was "*immaterial*" at common law because revocation was inevitable; alternatively, relief should be refused on statutory grounds because it was "*highly likely*" that the outcome would not have been "*substantially different*" for the Claimant had the conduct complained of not occurred: see section 31(2A) of the Supreme Courts Act 1981.

108. Mr Irwin emphasised, in this regard, the following:

i) The Claimant had been found to have contravened a fundamental requirement of the Guidance (relating to the amount of work and pay given to the Claimant's sponsored employees), in respect of which revocation was mandatory (under Annex C1(aa));

ii) The Claimant had not challenged those findings as *irrational* in these proceedings;

iii) The Claimant had not even put in evidence explaining why (or even asserting that) it considered that those findings were *wrong*;

iv) The Claimant had taken the trouble to serve evidence relating to the allegation about Mr Cheza not being "*based in the UK*" (a discretionary ground of revocation) but, strikingly, had not properly engaged with most of the other discretionary grounds.

v) Given the many serious concerns that remained unanswered even at this stage, revocation was, he said, inevitable, or at any rate, "*highly likely*".

109. I cannot accept either the Defendant's materiality or its "*no difference*" arguments. I cannot conclude that it is highly likely (still less inevitable) that revocation would have been the outcome, for the following reasons.

110. First, the starting point is necessarily that I have concluded that there was a fundamental departure from the standards required by the common law, and clear (and unjustified) departures from the Defendant's own commitments as to what a fair and appropriate process would look like, in a case such as this one.

111. Secondly, it has repeatedly been recognised that it is difficult, and often impossible, to uphold a Defendant's s.31(2A) argument where there has been a decision-making *process* which is not in accordance with the law: see e.g. R (Cava Bien) v Milton Keynes Council [2021] EWHC (Admin) per Kate Grange KC, sitting as a Deputy Judge, at §52(x); and R (ASLEF) v Secretary of State for Business [2023] ICR 1405 per Linden J at §§194-5. That must be *a fortiori* the position when considering an immateriality argument at common law, since the acceptance of such an argument requires the Court to be even more confident about what the outcome would ("*inevitably*" or "*necessarily*") have been: c.f. Cava Bien at §52(ii) and R (Plan B Earth) v Transport Secretary [2020] EWCA Civ 214 [2020] PTSR at §267 (both referring to the older case of Simplex GE (Holdings) Ltd v Secretary of State for the Environment (Court of Appeal, 6 May 1988) [2017] PTSR 1041, per Purchas LJ at p.1060E-F.

112. Thirdly, in this case, one of the matters that could have been addressed by the Claimant, had the Defendant acted consistently with its own policy, was specifically about "*mitigating arguments…* [which the licence holder believes] *exist*": see Guidance at C9.11. That illuminates that whether or not the Claimant was guilty of breaching the guidance, and if so which aspects of it, was only one of two central issues that needed to be determined. The other was, in effect, whether revocation of a licence would be a justified and proportionate sanction for the breach, bearing in mind any relevant mitigation. Mr Irwin accepts Mr Malik KC's contention (rightly in my view) that even a policy stating that certain conduct "*will*" lead to revocation carries with it the residual possibility of an exception being made.

113. Fourthly, I agree with the Defendant's submissions that the concerns raised by the Defendant were numerous, wide-ranging, and serious; and I accept that on the present state of the evidence, revocation is a *serious possibility*. But that is a long way from being satisfied that revocation is "*highly likely*" which is a "high hurdle" (see Cava Bien, cited above, at §52(ii)).

114. It is not possible for the Court to know (a) what the Claimant would have said about the misconduct alleged, or any relevant mitigation, or the proportionality of revocation overall, had it been given the opportunity to which it was entitled by law; nor (b) what the Defendant would rationally and fairly have made of the Claimant's submissions, had they been made. As Megarry J pointed out in John v Rees [1970] Ch 345 at p.402, there are many cases in which apparently "*open and shut*" allegations turn out not only to be answerable but actually wrong, once the person accused is given a chance to respond.

115. I uphold all three elements of Ground 3. The revocation decision was unlawful because it was inconsistent with published policy, contrary to a legitimate expectation, and procedurally unfair at common law.

Ground 4: "global assessment"

(a) The Claimant's submissions

116. Mr Malik KC, as I have already noted, emphasised that the Defendant was exercising a discretion when he decided to revoke the Claimant's licence. Even though the Guidance specified various situations in which it was said that the Defendant "*will*" revoke a licence, one of which was said to be engaged on the facts of this case, the general law accorded the Defendant, and required it to consider the possibility of exercising, a residual discretion to make an exception: see e.g. Lumba v Secretary of State for the Home Department [2012] 1 AC 245 per Lord Dyson at §21.

117. In the recent case of R (Supporting Care Ltd) v Secretary of State for the Home Department [2024] EWHC 68 (Admin), a revocation decision made by the Defendant was quashed by this Court because the Defendant had not, it was said, properly engaged with the impact of revocation on the workers, their families, the vulnerable individuals receiving care, or the adverse impact of revocation on the business and the wider industry.

118. Mr Malik KC submitted that the 6 October 2023 decision is indistinguishable from the one that was considered and quashed in Supporting Care. Indeed, the language used by the Defendant at paragraphs 76-77 of the decision letter (to which I have referred at paragraph 14 above) is *identical* to the language quoted, and found to be wanting, in Supporting Care at §50. In this case, said Mr Malik KC, the Defendant has similarly failed to examine the impact of revocation on some 800 people who are receiving care from the Claimant, and on the 156 migrants who are likely to lose their jobs and their immigration status, and on the families of those migrants.

119. Whilst the Defendant has made an application for permission to appeal the decision in Supporting Care, I am told that there has as yet been no decision by the Court of Appeal in that case. Mr Malik KC said that I was required to follow Supporting Care unless satisfied that it was "*plainly wrong*".

(b) The Defendant's submissions

120. Mr Irwin did not shrink from arguing that the decision in Supporting Care was indeed plainly wrong. It was inconsistent with previous authority, particularly Prestwick Care Limited and others v Secretary of State for the Home Department [2023] EWHC 3193 (Admin), at §§29, and 89-93; and it wrongly and unrealistically required the Defendant to consider and examine matters that were in truth irrelevant or of marginal relevance.

121. Mr Irwin referred me to a witness statement of Mr James Turner, the Defendant's Head of Work Services, dated 3 May 2024. The Defendant applied for permission to rely on this statement on 13 May 2024, i.e. three days before the hearing. Mr Malik KC was concerned that this statement had been filed and served far too late, and initially invited me to refuse to admit it. In the end he agreed with Mr Irwin's proposal that I should read it *de bene esse* and consider whether it assisted me. I have concluded, having particular regard to what was said about extensions of time for filing evidence in judicial review claims in R (Liberty) v Secretary of State for the Home Department [2018] EWHC 976 (Admin) per Singh LJ at §3, that I should not admit this statement.

i) It was filed very late – more than six weeks after the deadline for the Defendant's evidence as set out in CPR 54 and as applied by the Court's 21 February 2024 case management order following the grant of permission. The Claimant had no meaningful opportunity to respond to it, if so advised. This amounted to a significant failure to comply with the Rules and with the Court's 21 February 2024 order.

ii) There is no information about why the statement could not have been prepared and filed in time, or significantly earlier. I infer that there was no particular reason for its lateness, other than that it was only appreciated at a late stage that it might help the Defendant's case.

iii) The circumstances of the case do not support its admission. I do not find it particularly relevant or helpful in determining Ground 4. It is a generally expressed statement that does not relate to the facts of this case. It relates largely to mitigating steps the Defendant says it takes when sponsor licences are suspended or revoked. The extension of time sought is not in the interests of justice.

(c) Discussion and conclusions on Ground 4

122. I confess to having hesitated about the appropriateness of trying to resolve the debate between the parties on Ground 4. I have already found the Defendant's decision to be unlawful on procedural grounds. It will have to be reconsidered, in due course, using a fair procedure. What the Claimant might say in response to the allegations, or in mitigation, is unknown. Moreover, the Defendant's application for permission to appeal the decision in Supporting Care will in due course be considered by the Court of Appeal. That may well involve choosing between two contrasting approaches to the issue, as set out in two recent High Court Judgments. Whether the Court of Appeal grants permission to appeal or not, it seems to me that whatever I might say about Ground 4 is liable to be overtaken by events. I have asked myself whether it is appropriate for me to say anything substantial about it.

123. In the end I have concluded that the right approach is for me to address it as best I can. The Claimant has put forward four analytically distinct JR grounds, and is entitled to expect an adjudication from the Court on each of them, applying the law as it currently stands. It would not be right for me to avoid the question, however uncomfortable it may be for me to answer it at the present time.

124. My conclusion, with all due deference, is that as things stand there is a powerful reason for not following the decision in Supporting Care, and that I should not uphold Ground 4 in this case. I would make five points about this.

125. First, the Judge in Supporting Care, HHJ Siddique sitting as a Deputy High Court Judge, did not address Prestwick.

i) Prestwick was a very recent decision of this Court. It was handed down on 14 November 2023, the day before oral arguments in Supporting Care took place. My understanding is that it was not published on Bailii until 14 December 2023. Supporting Care was handed down on 19 January 2024. Nothing I say is

intended to suggest any criticism, but the position is that neither the Judge nor counsel in Supporting Care were aware of the decision in Prestwick.

ii) Prestwick was highly relevant to Ground 4. The context was the very same Guidance, and a very similar legal complaint – i.e. that the Defendant had not considered the potential impact of revocation on the sponsor's business (see §14(m)), or on those to whom it provided care services (see §29).

iii) In answer to that complaint, this Court (HHJ Kramer, sitting as a Deputy High Court Judge) identified serious principled and methodological objections with the notion that the Defendant is required to consider the precise impact of revocation on a licence holder, or on the care economy, or the impact on care and health, in any particular case: see at §§92-3.

iv) The Judge in Prestwick also robustly held at §§90-91 that the Defendant is simply not required to take such factors into account, either in reaching a decision about whether the licence holder has complied with the guidance, or (if not so satisfied), what the Defendant should do about it, because they are not even "*relevant considerations*". To my mind, that is a complete answer to the Claimant's virtually identical complaint, at paragraph 38 of the JR Grounds in this case, that the Defendant failed to assess or address those matters, insofar as they arose in this case, as "*relevant circumstances*".

v) The Judge in Supporting Care would in all likelihood have followed Prestwick had he known of it; and would duly have rejected the "*global assessment*" JR Ground that was before him, unless convinced that Prestwick was itself wrongly decided or that there was a "*powerful reason"* for not following Prestwick: see R v Manchester Coroner ex parte Tal [1985] 1 QB 67 per Goff LJ (as he then was) at p. 81 and Willers v Joyce (No 2) [2018] AC 843 per Lord Neuberger at §9.

vi) I cannot myself see a powerful reason for not following the decision in Prestwick. On the contrary, I respectfully agree with it.

126. Secondly, the Judge in Supporting Care referred, when rehearsing the submissions that had been advanced to him under Ground 4, to older binding authority which in my Judgment also bears on that Ground (see at §§47-9). I have found it difficult to see how those particular authorities then feed into the dispositive part of the Judgment at §§50-56. The key authorities in this regard were:

i) Raj and Knoll in the Court of Appeal ([2016] EWCA Civ 770) per Tomlinson LJ at §32 ("*The mere fact that the decision making in this area may have serious commercial consequences for licensed sponsors is not of itself a reason to impose heightened scrutiny. The circumstance that the SSHD has special expertise in and experience of decision making in this field, and that the Court possesses no particular institutional competence and can claim no special constitutional legitimacy, militates against that submission… It is also clear that the exercise in which the SSHD is engaged involves no fundamental right of the Appellant, but on the contrary a right contingent upon adherence to the Rules*"); and

ii) R (New London College) v SSHD per Lord Sumption JSC at §29 ("*There are substantial advantages for sponsors in participating* [in the Tier 4 scheme] *but they are not obliged to do so. The Rules contained in the Tier 4 Guidance for determining whether applicants are suitable to be sponsoring institutions, are in reality conditions of participation, and sponsors seeking the advantages of a licence cannot complain if they are required to adhere to them.*"

127. Thirdly, I venture to suggest that there is a meaningful distinction between the Defendant (a) being required to stand back from the detail of an analysis of misconduct, and to ask whether the ultimate sanction of revocation is proportionate in all of the circumstances (bearing in mind the obvious seriousness of that decision, and the sorts of 'built-in' consequences which are likely to flow from it); and (b) proactively being required to investigate and make precise findings about the *particular* likely impact on the *actual* individuals who have been cared for by the Claimant, or the *actual* employees whose immigration status may be at risk, or the particular impact on the *family members* of those employees, or to try and predict or assess the impact of revocation of the sponsor on the UK care support economy. In my Judgment, a "*global assessment*", as it has perhaps not entirely helpfully[1] been described, may well be required in the sense of meaning (a); but it is not required if it bears meaning (b), essentially for the reasons set out in Prestwick, Raj and Knoll, and New London College.

128. Fourthly, even if there is the duty for which the Claimant contends, I do not consider that the Defendant breached that duty. I do not in particular accept that it would be fair to dismiss, as Mr Malik KC urged me to do, what the Defendant said at paragraphs 77-78 of the decision letter (see paragraph 14 above) as constituting "*generic*" language, justifying an inference that the Defendant used a "*copy and paste*" approach. That would be unjustified and unfair to the Defendant. The fact that the language happens to be the same as in two paragraphs of previous letters does not mean that a legally adequate thought-process leading to the use of that language has not occurred in this case. In any event, I think that the Defendant can be taken to have known the size of the business he was considering, and to have understood the potential impact of revocation on that business, on many of its workers and their families, and on those individuals to whom it provides care. These are, to be blunt, obvious: they are potential consequences of *any* decision to revoke a large organisation's sponsor licence.

129. Finally, my view is that, if after a wholly fair and lawful process a company holding a sponsor licence had been found to have committed all of the breaches said to have occurred in this case (see paragraph 13 above), revocation would in *that situation* have been highly likely. A "*global assessment*" of the impact of revocation on those adversely affected, even if diligently, precisely, and conscientiously carried out in the most detailed way by the Defendant as contended for by Mr Malik KC, would not, in all probability, change that outcome. To hold otherwise would, in my Judgment, have the effect of undermining a policy position that has been taken by the Secretary of State, i.e. that certain sorts of misconduct should invariably or almost invariably justify revocation because the risk to the immigration system of allowing people who have committed that sort of misconduct to carry on as sponsor licence holders is simply unacceptable. That is a policy judgment that the Defendant is entitled to make. The

[1] I say not entirely helpfully because the word "global" seems ambiguous in this context, and because this complaint can adequately be slotted into one of the orthodox judicial review grounds, i.e. an alleged failure to have regard to relevant considerations, or a failure to seek further information about them.

large size of the Claimant undertaking (which on analysis, is the key driver of Mr Malik KC's points about the adverse consequential impact on "*large numbers*" of workers or "*large numbers*" of other individuals) does not appear to me to be capable of bearing anything like the mitigating weight that he seeks to place on it, in a situation where, on the relevant hypothesis, a Secretary of State has otherwise rationally concluded that the undertaking represents an unacceptable risk to immigration control and that the risk cannot be permitted to continue. So if necessary, and if wrong about everything else relevant to Ground 4, I would have concluded that on the relevant counterfactual premise, it would have been "*highly likely*" that the outcome for the Claimant would not have been substantially different, had the conduct complained of under Ground 4 not occurred.

130. Accordingly, I do not uphold Ground 4 and/or would refuse to grant relief in respect of Ground 4.

E. Conclusion

131. The claim for judicial review fails on Grounds 1, 2, and 4, but succeeds on Ground 3.

132. In my draft judgment, circulated to counsel, I said that in light of my findings I was minded to make a quashing order, subject to any further observations either party might wish to make about relief. In the event, the parties have agreed a draft Order. I approve it. The Court's Order will say that: (1) the claim for judicial review is granted; (2) the Defendant's decision of 6 October 2023 to revoke the Claimant's sponsor licence is quashed; and (3) the Defendant shall pay the Claimant's reasonable costs on a standard basis to be assessed if not agreed.

133. I would like to thank both counsel for their excellent, crisp, and candid submissions, which I found very helpful; and the legal teams of both parties for the sensible and efficient manner in which they prepared the documents in the case.

Approved Judgment

This judgment was handed down remotely at 10.00am on 24 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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