



Sponsor licensing: Damage limitation for clients

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It's all about trust...

- Buzz words in Sponsor Guidance: Genuine, honest, dependable, reliable, capable...

*When a sponsor is granted a licence, **significant trust** is placed in them. With that trust comes a **responsibility to act in accordance with the Immigration Rules and the sponsor guidance***

Tier 2 Sponsor Guidance Version 11/16 para 1.5

- ‘performing functions which used to be undertaken by entry clearance officers or other UKBA officials’
R (WGGS Ltd) v SSHD [2013] EWCA Civ 177

The Home Office decides...

- Role of Court on JR is **simply supervisory**
- SSHD entitled to **fairly high index of suspicion and 'light trigger'**: *London St Andrews College v SSHD* [2014] EWHC 4328 (Admin)
- Courts should respect **experience and expertise of SSHD** in sponsor licensing, which is a vital part of immigration control: *R (Westech College) v SSHD* [2011] EWHC 1484 (Admin)

Ongoing duty to comply

Clients must:

- Be well organised: compliance systems/policies must be
 - **EFFECTIVE** and
 - **KEPT UNDER REVIEW**
- Comply with **REQUESTS FOR INFORMATION PROMPTLY** [generally]
- Be able to **EXPLAIN** systems to Home Office

Meetings: handle with care

- Meetings with the Home Office can be useful for building relationships **BUT...**
- Part of consultation process, so should be treated as part of the public law process
- You would not let a client make written reps without advice. Meetings are no different...
 - What is going to happen? Agenda?
 - Who will attend (on both sides)?
 - Who will take notes? (They could be needed in court!)

Heads up...and early #1

If something goes wrong:

- Be prompt to correct it
- Explain and mitigate
- ***Be granular: details not generalities***
- ***Submit evidence to show that the error is not likely to be repeated – preferably objective***
- ***VISIT THE CLIENT'S PREMISES WITH COUNSEL***

Heads up...and early #2

- Pre-action Protocol for Judicial Review
- Letter before claim is your practice run at grounds for JR
- Last chance for evidence: imperative to get all your points down if not already made
- Time does not stop running under CPR Part 54: negotiate by all means but prepare for JR at the same time
- Interim relief? Do not delay: days not months...

JR cases say...

- Guidance should be interpreted strictly, though subject to what 'reasonable and literate individual' would understand, in context, as to its meaning
- Deference: significant leeway to SSHD
- Bright line policies are lawful
- Innocent errors/mistakes may justify suspension/revocation

Recent cases showing courts' approach

- R (Raj and Knoll Ltd) v SSHD [2016] EWCA Civ 770 --- this is now the leading case on Tier 2 sponsorship
- Singhar Beauty Clinic Ltd v SSHD [2016] EWHC 2703 (Admin)
- R (Manzay Ltd) v SSHD [2016] EWHC 2582 (Admin)

Getting a remedy: SCA 1981 s.31(2A)

- High Court **must refuse to grant relief** on an application for JR if it appears **highly likely that the outcome for the applicant would not have been substantially different** if the conduct complained of had not occurred
- Court may disregard the requirements above for reasons of exceptional public interest

Getting a remedy #2

- *R (TH (Bangladesh)) v SSHD* [2016] EWCA Civ 815:

No relief granted: judge's approach reflected abstract and generic way the case had been put: no evidence as to what difference the error would have made to case



QUESTIONS???

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