

MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (A) HELD IN COMMITTEE ROOMS 2/3, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON FRIDAY, 7 NOVEMBER 2014 AT 10.00 AM

Present

Councillor R Williams (Chair)

Councillors:

B Jones  
JE Lewis

Officers:

Helen Picton	Service Manager - Trading Standards
Andrea Lee	Senior Lawyer
Mark Galvin	Senior Democratic Services Officer - Committees

South Wales Police Representative:

PC Ellis - South Wales Police

Representing Momtaj Indian Restaurant, 118 Commercial Street, Maesteg

Mohamed Musawir  
Ziaur Rahman  
Naheem Miah

36. APOLOGIES FOR ABSENCE

None.

37. DECLARATIONS OF INTEREST

None.

38. LICENSING ACT 2003: SECTION 51 APPLICATION FOR REVIEW OF PREMISES LICENCE MOMTAJ RESTAURANT, 118 COMMERCIAL STREET, MAESTEG

The Service Manager - Trading Standards presented a report, advising that on 15 September 2014, an application for a Review of the Premises Licence was submitted by the Chief Officer of Police in relation to the above mentioned premises.

She continued by advising that when the application for the review of the Premises Licence was received, Samsoo Miah was the Premises Licence Holder. On 7 October 2014, an application to transfer the Premises Licence to NK (Wales) Ltd was received, and the application took immediate effect.

The Service Manager - Trading Standards confirmed that the Premises Licence authorises the sale by retail of alcohol and recorded music between 1000 - 2300 hours, Monday to Saturday, 1200 - 2230 hours Sunday, Christmas Day 1200 - 1500 hours and 1900 - 2230 hours, Good Friday 1200 - 2230 hours and New Year's Eve as per the Regulatory (Special Occasion Licensing) Order 2002.

A copy of the application form and background documents submitted by the Chief Officer of Police together with location plan was attached at Appendix A to the report. The application had been advertised in accordance with the regulations and no representations to this had been received. The Service Manager - Trading Standards added that Officers were not aware of any discussions between the Police and the Premises Licence Holder prior to today's meeting. A further document had however been served on the Premises Licence Holder by the Police on 30 October 2014, namely an extract from the Land Registry as to the title owner of the land that formed part of the premises. Agreement was given for this document to be tabled to Members.

Finally, she confirmed the options that were available to the Sub-Committee as outlined in paragraphs 8 of the report.

The Chairperson then invited PC Ellis to outline the application for Review of the Premises Licence as submitted by the Chief Officer of Police.

PC Ellis advised that it was detailed at page 25 of the review under additional information that applications to transfer the licence and vary the Designated Premises Supervisor (DPS) were served on 7 October 2014 which was after the review was submitted.

Firstly it was important he stated that these applications are addressed at some length as Samsoo Miah is detailed in the Review as being both Premises Licence Holder and Designated Premises Supervisor.

These representations evidenced the links between individual staff members associated with the premises and their roles as well as the Directors of those limited companies which have traded or are still trading at this restaurant.

He stated that these individuals and companies were so closely linked that South Wales Police did not feel that either the current or previous licence holders and Designated Premises Supervisors pass the fit and proper test to hold a licence as nothing will change in terms of the operation of the premises from previous, and therefore the licencing objectives will not be promoted.

Furthermore, PC Ellis added that Section 11 of the Home Office guidance refers to reviews and this was 10 pages long.

What was important he stated, was that nowhere in the guidance did it refer to the licence holder being subject of the review process. It was the Premises Licence which is being reviewed not the holder of the licence and therefore an application to transfer a licence does not negate a review application.

PC Ellis proceeded by outlining that obviously one must give due weight to a transfer if, for example, the premises was sold to another party prior to the review hearing and that party had no past association with those whose failure to promote the objectives led to review.

Clearly if this were the case and there was new ownership at the premises, then the responsible authority reviewing the licence could withdraw the application at the hearing and before the Sub-Committee, outlining their reasons for doing so. However, the review will evidence that there is no new ownership and South Wales Police invited the Sub Committee not to give any due weight to the transfer of the licence.

PC Ellis made reference to Samsoo Miah the previous licensee.

On receipt of the review he was clearly in a dilemma as South Wales Police were seeking to revoke his licence and it was therefore important for him to completely disassociate himself from the restaurant.

However, the time line at pages 26/27 of the report of the Assistant Chief Executive - Legal and Regulatory Services showed that he has been actively involved with the premises since he became Licensee in February 2004 when the Licensing Justices at Bridgend granted him the old Justices On Licence under the 1964 Licensing Act.

PC Ellis stated that in fact on the Momtaj website the premises was marketed as a, family run restaurant established in 2003.

South Wales Police records also showed that he either reported or was involved in incidents at the restaurant in 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2013 and 2014.

Significantly, he was also working when illegal migrants were arrested after the UK Borders Agency executed the first, second and fourth warrants in 2008, 2013 and 2014. It was highly improbable therefore that Samsoo Miah had severed his ties with the business, and South Wales Police were unconvinced that he is no longer concerned with this restaurant.

PC Ellis added that even if he had left a person called Abdul Kadir was the owner of the business and dictated what went on there. Samsoo Miah would be referred to elsewhere in the review he further added.

PC Ellis asked the Sub-Committee to turn their attention specifically to the owner of the Momtaj Restaurant, Abdul Kadir, father of Nahim Kadir. In the review Members would note that there is a copy of the Register of Title resulting from a recent Land Registry search. This highlighted that Abdul Kadir had owned the restaurant since purchasing it for £27,000 on 15<sup>th</sup> January 2002.

On the document, the "Title Absolute" actually detailed him as "Proprietor" since 15<sup>th</sup> March 2002. His address is noteworthy as it is the same Port Talbot dwelling, i.e. number 38, occupied by Samsoo Miah and previously occupied by both Samsoo and Majnoo Miah.

After purchasing the restaurant in 2002 Abdul Kadir applied for planning consent to make alterations to the building.

On the same previous Justices On Licence issued to Samsoo Miah, the owner of the restaurant was shown to be Abdul Kadir. He also worked at the restaurant as the chef, added PC Ellis.

Furthermore he stated, Abdul Kadir was working when South Wales Police arrested a number of individuals resulting from an incident which took place at the restaurant in 2006.

Significantly he was also working when illegal migrants were arrested after the UK Borders Agency executed both the second and third warrants in August and September 2013, respectively.

PC Ellis went on to state that he was again working when the latest warrant was executed in July 2014 and illegal migrants were arrested. Premises used for food business are required by law to be registered with the local authority.

In July 2010 Abdul Kadir made application to the Public Protection Department of the local authority to register the premises as a Food Business Establishment naming himself as the Food Business Operator.

Samsoo Miah was detailed on the application as Manager with the restaurant trading under the company name of Gulshan Wales Ltd, at 118 Commercial Street, Maesteg. Abdul Kadir was sole director of Gulshan Wales Ltd. However, he subsequently liquidated the company.

Abdul Kadir was currently sole director of another company actively trading under the name of Mamtaz LTD at 118 Commercial Street, Maesteg, as opposed to Momtaj i.e the name of the restaurant.

This company was one of 2 active limited companies trading as this restaurant, as well as 2 former limited companies which had since been dissolved.

On 29<sup>th</sup> August 2014 a £20,000 penalty was issued to Abdul Kadir by the Home Office as they discovered him to be the liable party/employer who was responsible for employing illegal immigrants in July 2014. On 23<sup>rd</sup> September 2014 Abdul Kadir appealed against this fine.

These matters will be elaborated upon as part of the Police evidence.

There was a requirement advised PC Ellis, to notify the Public Protection Department of any change of proprietor of a Food Business Establishment and the new proprietor then had to complete another application.

On Monday 3<sup>rd</sup> November 2014, South Wales Police were informed by the Public Protection Department that in January 2014 Abdul Kadir again made application to register the premises as a Food Business Establishment, naming himself as the Food Business Operator.

He did so as he had changed the company trading name supposedly from Gulshan Wales Ltd. To Momtaj Ltd.

However; a search of the Register of Businesses at Companies House on 4<sup>th</sup> November 2014 revealed that no such limited company had existed, either as being dissolved nor as currently active.

No further applications had been submitted for a change of Food Business Operator.

Therefore stated PC Ellis, Abdul Kadir had not only been the owner/proprietor of Momtaj for over 12 years, he was also the Food Business Operator as well as the chef there and was present during four separate visits by South Wales Police and UK Borders Officers. When 12 Bangladeshi migrants were arrested as either having entered the UK illegally or being what the UK Borders Agency (UKBA) refer to as "overstayers" in the UK i.e. Immigration Offenders who had overstayed the terms of their visa.

It is Abdul Kadir therefore who had ultimate control of the restaurant and not the licensee or Designated Premises Supervisor.

In relation to the new Premises Licence Holder, NK (Wales) Ltd on 2<sup>nd</sup> October last Naheem Kadir personally made application to transfer the licence with immediate effect to NK (Wales) LTD, trading as the Momtaj Indian Restaurant.

It was important to note he considered that NK (Wales) LTD. was incorporated at Companies House on 29<sup>th</sup> September 2014 which is a mere 15 days after the review was served.

Companies House records showed that Naheem Kadir was the sole director of NK (Wales) LTD, and for all intents and purposes he was NK (Wales) LTD.

Not once since the Premises Licence was granted over 9 years ago, had a previous application to transfer the licence been made, stated PC Ellis.

Naheem Kadir, for example, was the son of the owner of the restaurant Abdul Kadir, and resided with him at an address in Port Talbot. He was also a staff member and therefore has a strong association with the restaurant.

PC Ellis confirmed that when UK Borders executed the latest warrant in July 2014 Naheem Kadir, Abdul Kadir and Samsoo Miah were all working at the premises at that time.

Naheem Kadir only turned 18 in July of this year and South Wales Police believed him merely to be a front for those who own and continue to manage the restaurant.

On 23<sup>rd</sup> October 2014 he telephoned South Wales Police and said that he had received a letter from the Local Authority instructing him to attend today's hearing.

He enquired as to whether he actually had to attend, as the premises was and, PC Ellis quoted him as saying "under new management" and the review related to the "old ownership" and was "nothing to do with us."

It was suspected that he had been advised to maintain this standpoint today, however, the Police believed this to be clearly and completely false.

Naheem Kadir seemed to think that by merely transferring the Premises Licence the review would simply just disappear.

PC Ellis then referred to the new Designated Premises Supervisor, Majnoo Miah the appointment of him and his association with the restaurant must also needed to be addressed.

On 2<sup>nd</sup> October last Naheem Kadir personally made application to vary the Premises Licence specifying Majnoo Miah as Designated Premises Supervisor with immediate effect.

Majnoo Miah was the brother of the previous licensee and DPS, Samsoo Miah. He was also a staff member who had strong links with the premises.

PC Ellis confirmed that in 2005 for example, he had become Designated Premises Supervisor, a position he held until 2010. He then first reported a crime at the premises to South Wales Police as far back as 1996 i.e. a case of burglary.

Since then he had either reported or been involved in other incidents at the restaurant namely in 1998, 2006, 2007, 2008, 2009, 2013 and 2014.

PC Ellis added that Majnoo Miah was working at the premises at the time the UK Borders Agency executed the first warrant in 2008 and when the latest warrant was issued in 2014.

The first two Premises Licences issued in 2005 and 2010 highlighted that Samsoo and Majnoo Miah resided at the same house in Port Talbot. However, Majnoo Miah now lived next door to this house.

On 2<sup>nd</sup> October 2012 another company was incorporated and registered at Companies House as a limited company with the premises trading under the company name of Premier Ltd at 118 Commercial Street, Maesteg. Majnoo Miah was sole director of this company when it was first incorporated.

On 15<sup>th</sup> October 2012 Samsoo Miah became sole director of the Company until March 2014 when he dissolved the company to avoid payment of fines totalling £20,000 imposed on him by the Home Office for employing illegal migrants at the Momtaj restaurant.

Premier Ltd, existed arguably as a front to be liquidated when enforcement action was taken against the premises.

On 2<sup>nd</sup> October 2014 Samsoo Miah gave his written consent to transfer the Premises Licence to yet another newly registered company called NK (Wales) Ltd. trading as Mumtaz Indian Restaurant, 118 Commercial Street, Maesteg.

However, the restaurant is actually called Momtaj and not Mumtaz.

PC Ellis advised Members, that Sub-Section 4.19 of Home Office guidelines issued under Section 182 of the Act relates to the specification of a new Designated Premises Supervisors and stated:-

“Every Premises Licence that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the Premises Licence holder”.

At the same time as the application to transfer the licence was served, an application was made replacing Samsoo Miah as DPS with his brother, Majnoo Miah, who gave his written consent to fulfil that role. Majnoo Miah therefore has day to day responsibility of the premises.

PC Ellis added however that during a 5 year period between 2005 and 2010 when Majnoo Miah held the position of DPS, four Bangladeshi migrants were employed despite them either having entered the UK illegally or being what the UK Borders Agency (UKBA) refer to as “overstayers” in the UK i.e. Immigration Offenders who had overstayed the terms of their visa.

After the arrest of a further 3 illegal migrants in September 2013 a notification of a possible fine was served on Majnoo Miah by the Home Office as he initially told UK Border Officers that he was the owner of the restaurant.

Additionally stated PC Ellis, a mere 24 hours after Majnoo Miah assumed the role of DPS a licensing visit was conducted by Maesteg Officers at the request of the Licensing Department.

The visit took place at 11.30pm on Friday 3<sup>rd</sup> October 2014 which is 30 minutes after the permitted closing time yet the premises was open.

Officers spoke directly to Majnoo Miah regarding this who falsely informed them that the premises was open for business as the licence authorised them to trade until 12 midnight.

In fact perusal of the Momtaj website yesterday detailed their opening hours as follows:-

Opening Hours

Mon to Thurs: 5pm to 11pm  
Fri and Sat: 5pm to Midnight  
Sun: 1pm to 11pm

Clearly he further added, the premises is not only regularly open on Friday, Saturday & Sunday outside the authorised opening times, but the management is also blatantly advertising these hours.

Therefore, in his role as both previous Designated Premises Supervisor AND current DPS, Majnoo Miah was not fit to hold such a responsible position, in the opinion of the South Wales Police.

Members would note that the applications which removed Samsoo Miah as DPS and licence holder were served just 17 days after the review process had commenced.

South Wales Police were also of the opinion that the licence was transferred not to promote the licensing objectives but as a cynically motivated attempt to circumvent the review process.

It was a calculated measure designed to mislead both South Wales Police and in turn the Sub-Committee, as it was clear that the ownership had not changed which would strongly suggest that the situation will not alter in the future given the enforcement carried out by the authorities to date.

South Wales Police has canvassed colleagues in other forces to ascertain their experience with regard to transfers of licences after review applications have been served. It would appear this has become common practice in an attempt to derail the process.

It was important therefore that Sub-Committees are aware of this fact.

Those were the representations in respect of the applications to transfer the licence and replace the Designated Premises Supervisor at the premises.

PC Ellis then made reference to the crux of the incidents which led to the review.

It was emphasised at page 2 of the Officers Report, and it was important to note that in relation to reviews, Sub-Committees must (and he emphasised the word must) not only have regard to Section 11 of the Home Office Guidance but also Section 12 of the

Council's own "Statement of Licensing Policy" which dictated that reviews represent a key protection for the community if problems arise at licensed venues.

Information highlighted within the review demonstrated a failure to promote the Prevention of Crime and Disorder and Public Safety.

PC Ellis also wished to highlight that "Licensing authorities should look to the police as the main source of advice on crime and disorder, they should also seek to involve the local Community Safety Partnership".

The Licensing Department of South Wales Police was an integral part of the Community Safety Partnership, and this was not a statement which had emanated from the Chief Officer of Police but was emphasised at Section 2 of Home Office guidance which relates to the licensing objectives and in particular sub-section 2.1, Crime & Disorder Act.

PC Ellis said the Police considered that the restaurant was a conduit for facilitating criminality, as it was being regularly used for the illegal employment of migrants who also resided at the premises, which would strongly suggest the involvement of organised crime.

What was of additional concern is that the antecedent history and criminal background of workers who have illegally entered the UK is unknown which also fails to promote the objectives.

The financial penalty on an employer for engaging in the employment of an illegal migrant worker had been highlighted at page 16 of the review.

He added that if UK Borders Agency were considering imposing such a fine then the previous procedure on evidencing the offence was that a Notice of Potential Liability (a NOPL) was served on the employer. These notices were now known as a Referral Notice.

The evidence collated was subsequently examined by the Home Office Civil Penalty Compliance Team (CPCT) which determines whether the employer should be subject of a penalty notice under Section 15 of the 2006 Act. To deter such criminality huge fines of up to £10,000 per worker can be served on employers by the Secretary of State, though the employer may appeal against the penalty imposed.

There was a vast amount of documentation available electronically and otherwise to help employers avoid committing immigration offences, and there is also a help line manned by UK Borders Agency staff.

PC Ellis advised that in short employers are given every assistance to thoroughly scrutinise potential staff and there was no reason therefore for any employer to employ migrants who are not permitted to work.

Despite support, it was quite clear that there has been a deliberate and sustained attempt to deceive the authorities by persistently employing such migrants.

UK Borders Officers will swear out an arrest warrant before a Justice of the Peace under the Immigration Act 1971, only if reliable information is received that immigration offences are being committed.

Enforcement by the UK Border Agency, which is all intelligence based, had led to 11 arrests and such numbers are unprecedented within this Borough. South Wales Police



officers have arrested 2 illegal migrant workers who were handed over to UK Borders Agency.

Additionally, other forms of criminality have taken place as offences have not only been committed under various Immigration Acts but also the Licensing Act and the Theft Act.

PC Ellis then referred to the enforcement action taken by South Wales Police in respect of the Momjaz premises.

On 28<sup>th</sup> October 2006 the police were called to a serious disturbance at the premises which involved staff and the public and the use of weapons. Three persons were arrested for violent disorder and possession of an offensive weapon and a staff member ran from the restaurant. He was pursued and arrested in a nearby street.

Home Office checks revealed the person to be a Bangladeshi male national, aged 20 years, who had illegally entered the UK. The detainee was handed over to UKBA and later transferred to an immigration centre.

He then referred to enforcement visits by the UK Border Agency.

On 4<sup>th</sup> September 2008 UK Borders Agency executed the first immigration warrant.

Three Bangladeshi male nationals, aged between 19 and 59 years, were encountered at the premises and detained on suspicion of working illegally. Home Office identity checks proved them to be "overstayers" in the UK.

All three were subject of administrative removal procedures from the UK under Section 10 of the Immigration and Asylum Act 1999.

Two of these employees were in the UK on Visit Visas only, whilst another held a Work Permit visa. One visa expired in 2001 whilst the other expired in 2008. The Work Permit expired in 2006.

All three had been illegally in the UK since this time and stated that they slept above the premises.

What is important is that both Samsoo Miah and Majnoo Miah were working at the premises at the time the warrant was executed.

PC Ellis continued by stating that on 21<sup>st</sup> August 2013 UKBA executed a further warrant, as once more dependable information had been received that migrants were again being employed at the premises unlawfully.

One Bangladeshi male, aged 26 years, was found to be an "overstayer" who was illegally employed despite being not permitted to work.

He had previously been served with Section 10 documentation and was arrested as they are persons classed by UKBA as liable to be detained and removed from the UK. Again the employee stated that he slept above the restaurant.

At the time the premises was trading as Premier Ltd, the company mentioned earlier in the proceedings.

Premier Ltd was incorporated at Companies House on 02/10/2012, dissolved 19/3/2014, and the Director, Majnoo Miah, was appointed on 02/10/2012 and he resigned 15/10/2012.

A new Director, Samsoo Miah was then appointed on 15/10/2012 until the company was dissolved by him on 19/3/2014.

NOPL 21088 refers. A Notice of Liability (NOL) of £5,000 was served on Premier Ltd on 15/11/2013 in respect of 1 illegally employed worker. The employer objected to the fine, however; this was unsuccessful and on 29/01/2014 the decision was upheld by the Home Office.

This was the first large fine which Samsoo Miah failed to pay as he simply dissolved the company. Samsoo Miah and Abdul Kadir were working at the premises at the time the warrant was executed.

On 27<sup>th</sup> September 2013 UKBA executed a third warrant and 3 Bangladeshi males, aged between 23 and 49 years, were found to be illegally employed despite not being permitted to work.

One had not only illegally entered the UK but his application for asylum was refused by the Home Office. The 2 others had overstayed the terms of their visa.

One produced a forged Bangladeshi passport in the identity of another Bangladeshi national in an attempt to deceive UKBA officers.

Not only was the passport forged but it also contained a counterfeit residence permit. In fact all three had previously been served with Section 10 documentation and were arrested as they were persons classed by UKBA as liable to be detained and removed from the UK. All three once more stated that they slept above the premises.

Abdul Kadir was working at the time of the visit as was Majnoo Miah.

A Notice of Potential Liability (NOPL) i.e. notification of a possible fine was served on Majnoo Miah as he initially disclosed that he was the owner. He then claimed to be the manager, then stating to be a waiter.

At the time the premise was still trading as Premier Ltd.

On 31/10/2013 a Notice of Liability (NOL) of £15,000 was served on Premier Ltd in respect of 3 illegal workers. The employer again objected unsuccessfully and on 04/12/2013 the decision was upheld to fine it £15,000.

The case was referred to the HO third party debt recovery specialists as the full penalty remains unpaid.

However, Samsoo Miah then dissolved the company and the Home Office debt recovery action was put on hold. This was the second and larger fine which Samsoo Miah avoiding paying.

PC Ellis advised that it was important to note that after the 4 arrests in 2013 South Wales Police served a written warning on Samsoo Miah informing him unequivocally that an application to revoke the licence would be made if any more illegal migrants were found to be employed at the premises.

The written warning appeared on page 22 of the review.

There was absolutely no requirement to issue a warning in such circumstances, and in fact the guidance suggests quite the opposite and clearly invites responsible authorities to review licences to prevent the aforesaid activities from occurring.

In terms of further enforcement action taken by South Wales Police on 8<sup>th</sup> May 2014 another staff member was detained as a Section 10 overstayer after being arrested for theft from a store in Maesteg.

The circumstances are that staff at a supermarket contacted police to report a crime of theft from the store, and that a male had been detained and would not give his details. He had not been causing any problems however.

Modus Operandi of that offence was that an unknown male entered the store, selected an item from display, and placed it into a carrier bag and left without paying for this. The suspect was detained by staff and duly arrested by the Police.

UKBA was contacted and as it was established that his visa was valid only from 09/08/2005 until 09/08/2006.

He was detained and made subject of the Section 10 immigration procedure. However; he failed to report to the authorities.

On 4<sup>th</sup> July 2014 and again acting on intelligence UKBA executed a fourth warrant and 4 male Bangladeshi migrants, aged between 25 and 28 years, were found to be illegally employed at the premises despite not being permitted to work.

A mere 10 months had elapsed since the previous arrests were made and the warning letter was served on Samsoo Miah yet he chose to completely ignore the consequences of the warning and committed the same serious offences once again.

PC Ellis advised that one of those arrested was again an overstayer, as he was previously subject of the Section 10 procedure on 10<sup>th</sup> May 2014 having been arrested for theft.

On this occasion he produced a counterfeit Bangladeshi passport using the identity of a Bangladeshi male in an attempt to deceive Border officers.

The passport also contained a counterfeit residence permit, PPT E0524611, valid from 14/06/2011 to 13/06/2016.

These were offences contrary to the Identity Documents Act, added PC Ellis.

Three of the migrants had stated that they resided at the premises whilst the other gave his abode as an address in Birmingham. On this occasion Samsoo Miah, Abdul Kadir and Naheem Kadir were working at the restaurant.

The Home Office again served a Referral Notice in respect of a potential fine, and Reference 28165 referred to the warrant of 04/07/2014.

On 23/07/2014 an Information Request letter was sent to Abdul Kadir as checks undertaken by the Home Office identified him as the liable party/employer and the letter was sent to him to confirm whether, or not, this identification was correct.

The premises was now trading as Mamtaz Ltd as the companies Gulshan Ltd and Premier Ltd had been dissolved.

Mamtaz Ltd was incorporated on 25/10/2013, and was still active as of 4<sup>th</sup> November 2014. Running in parallel with MK Wales Ltd. The Director was Abdul Kadir, who was appointed on 25/10/2013

In respect of NOPL 28165, a reply to the Information Request letter was received by the Home Office and on 29/08/2014 a decision was taken to serve a penalty of £20,000 for 2 illegal workers employed at Mamtaz Ltd.

On 23/09/2014 an appeal was made by Abdul Kadir against the £20,000 penalty issued by the Home Office.

PC Ellis confirmed that the fine was reduced to £10,000, the liability for a penalty in respect of one of the workers encountered at the time of the enforcement visit was cancelled as Abdul Kadir established a statutory excuse. Abdul Kadir was still able to dissolve this company however, as he did with the first company he registered and subsequently liquidated Gulshan Wales Ltd. Similarly as Samsoo Miah did the same with Premier Ltd. In order to avoid liability for £20,000 in fines.

The management of Momtaj have therefore not only been involved in the regular employment of illegal migrants stated PC Ellis but when immigration offences are detected then the same contempt is held for the fines issued.

Notwithstanding the numerous and serious immigration and document offences referred to above there has also been other incidents at the premises which impact on the crime and disorder objective.

In respect of licensing enforcement by South Wales Police, PC Ellis advised that at 11.30pm on Friday 3<sup>rd</sup> October 2014 Maesteg Officers attended at the premises and carried out an enforcement visit.

The premises was open for business outside the permitted hours, and when questioned, Majnoo Miah informed officers that the licence authorised opening until midnight, for both alcohol and food sales.

He added that the immigration offences committed in July 2014 post-dated the warning letter of September 2013.

In other words he explained, South Wales Police gave fair notice that it intended to make application to revoke the licence if illegal migrants were again employed, yet the warning was treated with contempt and the same serious offences were committed.

What should also be of concern to the Sub-Committee, was that the visit last month post-dates the review application of September, when the licence was potentially in serious jeopardy.

PC Ellis further added, that public safety is at risk because nothing was known of the antecedent history and background of the 2 employees who entered the UK illegally, which potentially further impacted on the licensing objectives.

In respect of Home Office guidance issued under Section 182 of the Licensing Act, Section 11 relates to reviews and was highlighted at page 2 of the report

Sub-section 11.5 supports a number of key aims and purposes which include protecting the public from crime caused by irresponsible licensed premises.

The guidance in relation to the review process is specific and very clear, and this focussed on reviews arising in connection with crime.

Sub-section 11.27 of the guidance highlighted that certain criminality should be treated particularly seriously.

PC Ellis outlined that these activities include the use of licensed premises: -

- For the sale and distribution of Class A drugs
- For the laundering of the proceeds of drugs crime
- For the sale and distribution of illegal firearms
- For the sale of alcohol to minors
- For prostitution or the sale of unlawful pornography by organised groups of paedophiles to groom children
- As the base for organised criminal activity, particularly by gangs
- For the organisation of racist activity
- For the promotion of racist attacks
- For unlawful gambling
- For the sale of smuggled tobacco and alcohol

These were serious offences and there was obviously such a growing concern with the number of illegal migrants entering and working in the UK that the Home Office has since included alongside these serious criminal activities the offence of knowingly employing a person who was unlawfully residing in the UK. He emphasised that twelve male Bangladeshi migrants had been arrested at the restaurant since 2006, and serious offences had been committed there.

One of these staff members was previously arrested by the police for theft and handed over to UKBA, whilst another migrant was also arrested by the police. None of these migrants were permitted to be in the UK let alone work reiterated PC Ellis.

With regard to Home Office guidance Sub-section 11.11 and reviews, PC Ellis stated that this indicated that, it is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, responsible authorities and any other persons in pursuit of common aims. Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged, and reviews should not be used to undermine this co-operation.

Responsible authorities have attempted to rectify given situations at premises failing to promote the licensing objectives by undertaking various forms of enforcement.

The guidance dictates that licence holders who have not responded to warnings issued by responsible authorities and failed to improve, will be subject of the review process.

Despite the involvement of two authorities serious offending had continued at the Momtaj Restaurant and the warning letter detailed at pages 22 and 23 of the report, was particularly significant, as it centred on three matters: -

- 1) The relevant guidance in relation to reviews
- 2) The fines which can be imposed
- 3) More importantly it is strongly emphasised that South Wales Police would apply to revoke the licence if offending continued

The Police were now of the opinion that other forms of enforcement have been exhausted and review is now the only option which will promote the licensing objectives.

There were currently around 550 licensed premises located within the County Borough, and to understand the overall picture of enforcement since this period specifically in relation to reviews, South Wales Police has had to review the authorisations of 18 premises in order to promote the licensing objectives. This equated to just two reviews each year.

He added that, again taking into consideration the Home Office guidelines that, "licensing authorities should look to the police as the main source of advice on crime and disorder" it was strongly recommended to those various sub-committees that 13 of these authorisations should be revoked. In other words the police did not propose that authorisations should be forfeited unless it was felt absolutely necessary in so doing to promote the licensing objectives.

What is alarming suggested PC Ellis, was that two of the last three reviews had been submitted on the basis of the repeated employment at premises of migrants who have either entered the UK illegally or who have not returned to their country of origin after their visas have expired.

In fact more migrants had been arrested at the Momtaj than were detained at both the other venues reviewed.

Bridgend County Borough Council, Licensing Sub-Committee revoked the authorisations of both these premises.

In respect of South Wales Police further enforcement, PC Ellis highlighted that the very nature of hearings are such that they essentially centre on enforcement.

It was important that the Sub-Committee were aware that numerous licensing applications are received on a weekly basis and include TEN's, specification of new DPS's, transfers, variations of licences, minor variations and applications for the grant of new licences.

South Wales Police only objected to an extremely small percentage of these applications, so when they bring a review before a Sub-Committee or object to any of the applications received, it was because they had a very good reason for doing so.

PC Ellis confirmed that there are only two licensable activities authorised by the licence and that was the sale of alcohol and the provision of regulated entertainment, i.e. recorded music. In respect of hot food one required a licence if it is intended to provide hot food and drink between 23.00hrs and 05.00hrs.

This he felt was important to note when Members made their deliberations.

The grounds for review were based on promoting two licensing objectives and the offending associated with the premises demonstrated that there has been an abject failure to promote these objectives, and an unwillingness to remedy ongoing situations.

In terms of act of criminality associated with the restaurant which impacted on the crime prevention & public safety objectives, the following five offences had been committed: -

- 1) Entering the UK without leave contrary to Section 24(1)(a) of the Immigration Act 1971.
- 2) Employing an adult subject to control who had not been granted leave to enter or remain in the UK contrary to Section 21 of the Immigration, Asylum and Nationality Act 2006.
- 3) Theft contrary to Section 1 to 7 of the Theft Act 1968 – As one of these migrants was arrested for stealing from a Maesteg supermarket.
- 4) The Identity Documents Act 2010 – As one of the detainees produced a counterfeit passport as well as a fraudulent residence permit.
- 5) The Licensing Act 2003 – The restaurant was open for licensable activity at 11.30pm on 3<sup>rd</sup> October last.

There were also potential offences under the Fraud Act as Samsoo Miah would not have paid tax and employee contributions to Her Majesty's Revenue and Customs.

PC Ellis questioned elements of individuals residing at the premises having paid tax and employee contribution to Her Majesty's Revenue and Customs. The penalties for committing these offences have been outlined in the review and are clearly severe, he added.

PC Ellis went on to say that if those present concentrated on the heart of the representations and focussed on the immigration offences then the mind-set toward offending was blasé and unacceptable.

To prevent the employment of illegal migrants, assistance was freely available and detailed in the review.

There was therefore no reason for any employer to employ, migrants who are not permitted to work.

However, it was quite clear that there has been a deliberate and sustained attempt to deceive the authorities by persistently employing illegal migrants at the Momtaj Restaurant.

PC Ellis stated that neither the severe financial penalties nor the warning letter from South Wales Police had any effect. These facts would suggest two things he considered: -

- 1) Illegal migrant workers have been employed with the full knowledge of the management.
- 2) The number of illegal migrant workers arrested at the premise implies that there is a need for several persons to be employed. However, these

employment opportunities have been denied to persons who are entitled to work.

Instead he felt that there was potential to exploit often vulnerable staff members in relation to their working hours and conditions, and in the current climate of austerity, there was also potential to defraud the UK of tax revenues.

He added that as a consequence of the arrests by the UK Border Agency, in 2013 the Home Office issued two fines of £15,000 and £5,000. However, on receipt of these fines Samsoo Miah merely liquidated the company.

The UK Border Agency had since informed South Wales Police that not a penny had been paid of this, and the Home Office had confirmed that as the company had been dissolved, there was very little likelihood of that money being recovered by them.

In relation to the current outstanding fine of £10,000 issued, he said that South Wales Police could confirm that neither all nor part of this fine had been paid.

This was again unacceptable he felt given that the penalties could have been paid in instalments.

As a consequence of receiving a review it was common practice for respondents to propose that additional conditions are appended to the licence to promote the licensing objectives in an attempt to prevent the Sub-Committee from either revoking the licence, or placing their own conditions on the authorisation which may be onerous.

This was particularly the case for applications to revoke licences.

The Police would ordinarily ask the Sub-Committee looks at the additional conditions, but not only were there none proposed, but also no documentation offering any sort of mitigation had been served.

The bundle before Members related solely to documentation served by South Wales Police as well as the Assistant Chief Executive - Legal and Regulatory Services' report.

Save for the inevitable transfer and change of Designated Premises Supervisor applications which were expected, there had been no concrete response whatsoever to the review application.

Again here, the South Wales Police wished to reiterate that these applications were served to circumvent the review.

PC Ellis confirmed that conditions would not be volunteered, which will cost money, as the offences committed to date relate to saving money by exploiting illegal immigrants.

Every opportunity had been afforded to address offending, yet despite enforcement, there had been a persistent failure to promote the licensing objectives.

He felt therefore, that it would be highly unlikely that if the Sub-Committee were to impose any meaningful conditions on the licence they would in turn, be complied with.

In summary therefore, PC Ellis confirmed that in 2006 an illegal migrant was found to be working at the premises and was arrested by South Wales Police.

In 2008 a warrant was executed by the Borders Agency and three illegal migrants were arrested.



In 2013 two warrants were executed by Borders and four illegal migrants were arrested.

Two penalty notices of £15,000 and £5,000 were served on Premier Ltd, but the company was liquidated immediately afterward, and the Home Office never received any of this fine.

Also in September 2013 South Wales Police warned Samsoo Miah of the consequences of employing illegal migrants.

In May 2014 an illegal migrant was arrested by South Wales Police for theft, and handed over to the Border Agency.

In July 2014 PC Ellis stated that a fourth warrant was executed by Borders and four migrants were found working. A third penalty notice this time for £20,000, later reduced to £10,000 on appeal by Abdul Kadir, was served on Mamtaz Ltd but the Home Office has not yet received any of this fine.

In September 2014 the application for review was served, yet in October 2014 the licence was then transferred.

- 1) The immigration offences alone are those which the guidelines dictate should trigger a review for which the Sub-Committee should then consider revocation of the licence.
- 2) Similarly if Members were persuaded that the regular employment of illegal migrants arose from criminality committed, in particular by gangs, then this is a further element of the guidelines for which revocation should be contemplated.

PC Ellis confirmed that in order to facilitate such a number of illegal migrants South Wales Police suggest the involvement of organised criminality.

- 3) Notwithstanding these aspects an employee was arrested for theft and the same employee subsequently produced both a counterfeit passport and counterfeit resident permit in an effort to deceive UKBA officials.

South Wales Police further suggest that these are documents which can only be produced by persons involved in organised crime.

- 4) Additionally it was quite obvious that the restaurant had been intentionally set-up under limited company status so that those companies can be simply dissolved when illegal migrants are arrested at the premise thereby avoiding payment of very substantial fines.

The actions of the management therefore seriously impact on the prevention of crime and disorder and the promotion of public safety.

Other than a closing statement PC Ellis confirmed that this concluded the representations of the South Wales Police.

The Chairperson at this stage in proceedings, asked if any of the representatives of Momtaj had any questions for PC Ellis.

They replied that they had no such questions for the representatives of the South Wales Police.

The Chairperson then asked them to present their response to the application made by the South Wales Police, but they replied they had no such response.

The Chairperson asked Naheer Kadir if he was the son of Abdul Kadir. He replied that he was.

He asked if his father had owned the Momtaj restaurant from the time this had been registered with the Land Registry for Wales.

The Chairperson asked if there was any evidence that could be given that could dispute the Police accusations that illegal immigrants had been residing at the restaurant, and if Abdul Kadir had made the necessary checks to establish whether or not previous employees working at the restaurant or just residing there were illegal immigrants.

Naheem Kadir advised that the necessary checks were made against these people both on-line and through valid passports.

The Chairperson asked, if when responsibility for the business had changed hands had the previous owner paid a purchase price for the business.

Mr Kadir replied that he was not sure of the answer to this question.

He added that he had actually inherited his father's business and took over this on 2 October 2014. Therefore, he had not actually purchased the business, rather it had been given to him.

The Legal Officer asked Naheem Kadir if he was confirming that the premises had therefore actually been officially transferred to him.

He replied that this was the case.

PC Ellis asked Mr Kadir why the new Designated Premises Supervisor Majnoo Miah was not present at today's meeting.

He replied that he could not be here today as he had other commitments.

PC Ellis asked Mr Kadir why his father Abdul Khadir had not come to today's meeting, to confirm that he has handed over complete control of the business to his son and to explain the circumstances as to why this had transpired.

Mr Kadir advised the Sub-Committee that he had not thought his father needed to be present at today's meeting, given that the business was now in his and not his father's name.

PC Ellis understood this, but added that as he had handed complete control of the business to his son, he thought it may have been beneficial for Mr Kadir senior to be present to explain the facts, or rather the alleged facts, to the Sub-Committee.

PC Rowlatt noted that Mr Kadir had confirmed that the business had been handed over to him by his father. She asked him to explain how the business now operated, i.e. who was in control and did he now run it.

Mr Kadir advised that he worked part time, on Fridays and Saturdays and Majnoo Miah supported him in the service of customers etc, as did his Uncle on the more business

side of things, for example on the financial side of the business, until he became more settled in.

PC Rowlatt asked Mr Kadir how long he had worked at the restaurant.

Mr Kadir replied that he had worked there for approximately 12 months.

PC Rowlatt asked Mr Kadir to explain, bearing in mind what had been said by PC Ellis as part of the South Wales Police submission, how it had transpired that the business had been passed to him and why.

Mr Kadir advised that this had been due to the fact that his father had been suffering with stress and also had been experiencing financial difficulties, and those are the main reasons why the business was passed to him, so as to give him more support.

PC Rowlatt asked Mr Kadir if he had been aware of the problems previously experienced at the premises whilst his father was Premises Licence Holder and of the fines that he had received as outlined in the Sub-Committee papers, which had not been fully paid.

Mr Kadir advised that he had been aware of these prior to today's Hearing.

PC Ellis noted that Mr Kadir had confirmed that all the passport details of immigrants had been checked prior to them working or residing at the premises subject of the report. He asked who had been responsible for checking these, and was it his father.

Mr Kadir replied that this was the case and that all passport details of persons were thoroughly checked, copies retained and filed off when they came to work or reside at the restaurant.

PC Ellis asked Mr Kadir if all the relevant documents of illegal immigrants were also checked on the UK Border Agency website, to establish if any such documentation may be false. He said this, as there had been occasions previously at the premises where the visas of people employed at the restaurant had expired and one case of an illegal passport being held by someone. It was obvious therefore that any checks that had been made of these documents had not been that thorough.

Mr Kadir noted this, but confirmed that he had not been the owner of the premises at that time, as his father was then.

The Legal Officer asked where did the people who worked and/or stayed at the premises originate from, and why did they stay at the restaurant. She asked if this had arisen from advertising for vacant positions at the restaurant.

Mr Kadir confirmed that employment of Indian waiter staff came about through word of mouth, i.e. by asking staff in other nearby Indian restaurants.

The Legal Officer queried with Mr Kadir, that if/when they wanted to recruit staff, then why was this just not advertised through the job centre in the usual way. She also asked him where the restaurants takings went at the end of a working day/week, was it a bank account.

He replied that this was the case, ie into a bank account.

The Legal Officer asked who was the holder of the account that the money went into.

He replied that the restaurant takings went into his father's account.

The Service Manager - Trading Standards noted that Mr Kadir had confirmed that he worked part-time at the premises on Friday and Saturday. She asked why he did not work full-time there.

Mr Kadir stated that he could not work at the business full time as he was also a student studying a course on Business Information Technology at Swansea University.

The Legal Officer asked Mr Kadir if this were the case, then who was responsible for the premises in his absence, given that he was the Premises Licence Holder.

Mr Kadir confirmed that his father was responsible for the restaurant in his absence.

The Legal Officer asked Mr Kadir if this was appropriate, given that he had previously been caught employing illegal immigrants at the restaurant.

Mr Kadir replied by stating that this was just an interim arrangement and that he would work full time at the restaurant after he had completed his course at Swansea University.

As this completed the submission of the Police and the Premises Licence Holder, including questions of each other and from the Sub-Committee, the Chairperson asked both parties to make their closing statements.

Mr Kadir apologised to the Sub-Committee for the past mistakes that had taken place at the premises, but stressed that this was at a time when he was not the person who was responsible for the premises. Now he was in charge of the premises, he assured the Sub-Committee that the mistakes previously made, would not be repeated. He hoped the Sub-Committee would understand therefore, and give him another chance to make the business succeed.

PC Ellis noted that Mr Majnoo Miah was not here to be questioned on the history regarding the premises, particularly at a time when he had been Designated Premises Supervisor. This had resulted in an application being made to transfer the Premises Licence Holder, but he stated that he hoped the Sub-Committee would see through this.

PC Ellis confirmed that arrests of migrants, notices of potential penalties, subsequent fines and a warning have been issued by two authorities yet each area of enforcement has been treated with disdain.

The options available to the Sub-Committee were clearly laid out in the guidance at Sub-section 11.19 and of the Licensing Act are précised on page 2 of the Officers Report. He then briefly covered the steps the Sub-Committee could take to promote the four licensing Objectives at the premises as follows:-

- (1) Take no action
- (2) Modify conditions
- (3) Exclude a licensable activity
- (4) Suspend the premises licence for a period not exceeding three months
- (5) Ultimately revoke the licence

He reiterated that twelve illegal migrant employees had been arrested in connection with the premises.

Of these ten were "overstayers" one of whom produced a counterfeit passport and also a counterfeit residence permit

A further two were arrested for illegally entering the UK.

3 substantial fines, amounting to £30,000 have been served by the Home Office. Of those fines £20,000 will never be recovered and £10,000 remains outstanding.

The new DPS, Majnoo Miah, was at the premises when it was found to be open for business at 23.30 hours on Friday 3<sup>rd</sup> October 2014. Clearly the premises is licensed only until 23.00 hours on this day.

He added that the applications to transfer and vary the DPS were dated 2 October 2014, so within 24 hours the "alleged" new management intended committing the most serious offences under the Licensing Act.

This was a clear indication that nothing has changed and any enforcement would be ignored and presents as an abject failure to promote the Licensing objectives.

PC Ellis stated that Sub-section 11.28 of the guidance is very clear it not only instructs responsible authorities to use reviews effectively to prevent the offences referred to from being committed, but when reviews arise it expects Licensing Sub-Committees are expected to seriously consider revoking the licence if the crime prevention objective is being undermined.

What is very significant is that it goes onto suggest that this should be the course of action and he quoted, "even in the first instance."

This was an area of the guidance which offers Sub-Committees little room for manoeuvre.

Entering the United Kingdom illegally and employing an adult who had not been granted leave to enter the UK, or remain in UK (when ones visa has expire) were offences which impacted upon the crime prevention and public safety objectives and South Wales Police suggest that, given the guidelines specific to these offences then these alone should warrant revocation of the licence.

However; a number of other serious offences have been committed which would suggest the involvement of organised criminals which is another offence under the guidelines which directs Sub Committee's to consider revocation.

Previous enforcement by two authorities had been wholly ineffective and South Wales Police are of the opinion that offending has not been committed as a consequence of ignorance or error but as an intentionally determined effort to deceive the authorities.

Samsoo Miah had also deliberately avoided being punished financially for his criminality.

The Police felt the situation would not change and the offending committed to date by Samsoo Miah, Majnoo Miah and Abdul Kadir encompassed contraventions not only of Immigration Acts but also the Licensing Act and merits revocation of the premises licence.

PC Ellis stated that as highlighted at the commencement of these representations, authorisation was only required if it is intended to provide hot food and drink at the premises between 11.00pm and 05.00am.

It was clearly never the intention to legally operate after 11.00pm otherwise the original application would have included a late night refreshment provision on the Premises Licence.

If the Sub-Committee decided that revoking the licence will promote the licensing objectives then what is unfortunate given the level of offending is the decision will mean that the respondent will still be able to sell hot food up until 22.59 hours.

He will not of course be permitted to engage in the primary activity i.e. the sale of alcohol or the secondary activity the provision of recorded music which arguably is not required in any event.

As this concluded debate in relation to the application, the Sub-Committee retired to consider the matter further. Upon their return, it was

RESOLVED:

The Sub-Committee heard the evidence from the Police in support of their application, the majority of which related to the employment of illegal immigrants at the restaurant. The Sub-Committee had heard that as a result of four warrants executed at the premises 12 Bangladeshi nationals were found at the premises then the Police would make an application to review the premises licence.

The Sub-Committee were also advised that there is a public safety risk in employing illegal immigrants because nothing is known about their antecedent history which could cause a significant risk to members of the public.

After the Police submitted their application for a review on the 15 September 2014 an application was made to the Authority to transfer the premises licence from Samsoo Miah to NK (Wales) Ltd and the application took immediate effect.

Naheem Kadir has appeared before the Sub-Committee today and informed the Sub-Committee that he now runs the restaurant and the business has been given to him by his father. Naheem is the brother of Samsoo Miah and Abdul Kahir is his father. However, when questioned confirmed that the profits received from the business are paid into his father's account. In addition to which Mr Kadir has also advised that he only works at the restaurant two nights a week as he is a student and that his father manages the restaurant on the days he is not available. However, when asked previously whether his father would be working at the restaurant he advised that his father would not be working there or having anything to do with the business.

The Sub-Committee also heard that the Police have found the restaurant open for business after the permitted hours.

When Border Control have found illegal immigrants at the premises Border Control issued fixed penalties for the offences. The Sub-Committee advised by the Police that none of these penalties had ever been paid and that Abdul Kadir simply dissolves the company he is running at the time to avoid payment.

The history of offending at these premises dates back to 2008 and despite the Border Control Agency issuing a number of fixed penalties and the Police issuing a warning letter this business continues to employ illegal immigrants.

The Sub-Committee upon hearing the evidence from both parties have concluded that Abdul Kadir still owns and manages this business and has controlled this business since at least 2004. The Sub-Committee has concluded the transfer of the premises licence to NK(Wales) Ltd was an attempt to avoid the licence review application issued by the Police.

The Sub-Committee have decided that as these premises have continually broken the law spanning a number of years and that they have failed to promote the licensing objectives in accordance with the Licensing Act.

In order to promote the licensing objectives in particular the crime and disorder objective the Sub-Committee have decided to revoke the premises licence. The Sub-Committee have made this decision on the basis that there has been a pattern of offending since 2008 and this offending will continue if the licence is not revoked.

The meeting closed at 1.40 pm