

San Michael College Ltd v Secretary of State for the Home Department

Case No: C1/2011/0938

Court of Appeal (Civil Division)

18 November 2011

[2011] EWCA Civ 1336

2011 WL 5105620

Before: Lord Justice Pill Lord Justice Richards and Lord Justice Davis

Date: 18/11/2011

On Appeal from the Queen's Bench Division Administrative Court

His Honour Judge Behrens

[2011] EWHC 642 (Admin)

Hearing date: 26 October 2011

Representation

Vijay Jagadesham (instructed by Davies Gore Lomax LLP) for the Appellant.

Jonathan Swift QC and Vikram Sachdeva (instructed by Treasury Solicitor) for the Respondent.

Judgment

Lord Justice Pill:

1 This is an appeal against a judgment of His Honour Judge Behrens dated 18 March 2011 whereby he refused an application by San Michael College Ltd ("the College") to quash decisions of the Secretary of State for the Home Department ("the Secretary of State") by letter of 24 September 2010 to suspend, and by letter of 15 October 2010 to remove the College from the Register of Licensed Sponsors kept by the UK Border Agency ("UKBA"). The College's sponsor licence was revoked with immediate effect.

2 The College is a registered charity and a company limited by guarantee. It provides educational services to students from foreign countries at an address in Birmingham. To be able to provide such services, the College must be included in a register, known as the Sponsors' Register, kept by UKBA. The College was granted a Tier 4 Sponsor Licence on 25 November 2008.

The framework

3 The licence permitted the College to issue to a prospective student from overseas a visa letter or Confirmation of Acceptance for Studies ("CAS"). The distinction between them is not said to be relevant for present purposes. A visa letter was an offer to the student for a particular course or courses of study and a CAS an entry on a secure database. (The system of visa letters was withdrawn from February 2010.) One or other is required by a non-EU applicant for a Tier 4 (general) student visa if their visa application for entry to the United Kingdom is to be successful. To be placed on the Sponsors' Register, a college must first be accredited by an independent body, the relevant body for this college being the Accreditation Service for International Colleges ("ASIC") acting, it appears, through the British Accreditation Council ("BAC").

4 UKBA issues Guidance to sponsors, the relevant document being issued on 5 October 2009. The sponsor's duties include a duty to keep records (paragraph 280a) a duty to report events within a specified time (paragraph 280d) and a duty not to issue a CAS or visa letter unless it is satisfied that the student both intends and is able to follow the course of study concerned (paragraph 281). UKBA makes a final decision as to who is allowed to travel to or remain in the United Kingdom (paragraph 161).

5 An A-rated sponsor is one that has the necessary systems in place to meet its duties and with no evidence of abuse (paragraph 129). If a sponsor has not fully complied with its duties and has not acted in a way serious enough for UKBA to withdraw its licence, it will be awarded a B rating (paragraph 135). B-rated sponsors must comply with an Action Plan within a defined time. The plan sets out the steps the sponsor needs to take to comply fully with its duties to obtain an A rating (paragraph 139). Paragraph 138 provides that if a B-rated sponsor has not improved its performance, it risks having its licence withdrawn. Paragraph 138 provides:

"A B-rating is a transitional rating. This means that we expect a B-rated sponsor to have improved its performance enough to be upgraded to an A-rating within a relatively short time. If it does not, it risks having its licence withdrawn."

6 Circumstances in which a licence may be withdrawn are considered at paragraphs 344 and following. There are three sub-headings, first, circumstances in which "we will withdraw a sponsor's licence", secondly, circumstances in which "we will normally withdraw a sponsor's licence", and thirdly, circumstances in which "we may withdraw a sponsor's licence". The third category, under which the action has been taken by UKBA, has sub-categories which include:

"a. It fails to comply with any of its duties;

b. As a result of information available to our visiting officers, we are not satisfied that the sponsor is using the processes or procedures necessary to fully comply with its duties.

d. We find that students that it has sponsored have not complied with the conditions of their permission to stay in the United Kingdom and the sponsor has not been following good practice guidance set out by us or a sector body."

Narrative

7 On 15 September 2009, the college was downgraded to a B rating. Following a visit to the premises, a time-limited Action Plan was devised. On 18 February 2010, the licence was suspended but, on 14 June 2010, the suspension was lifted and the College reinstated as a B-rated sponsor. It was stated:

"Whilst your representations have addressed some concerns, there are still outstanding issues which need to be addressed and evidenced.

As a result we have decided to lift the suspension of your licence and to reinstate you as a B-rated sponsor. The B-rating will remain in place for 1 month, after which time we will expect you to demonstrate that the processes you now have in place work effectively and fully meet PBS requirements. Should you fail to demonstrate that you have implemented the Action Plan within this time frame, your licence will be revoked."

8 What was described as a Sponsor Action Plan was specified. Attention was drawn to migrant tracking and monitoring and to record keeping. Procedures were set out in tabular form and an action point stated under the heading "Record keeping":

"Accurate record keeping of students – full details of attending students, non-attending students, warning letters and withdrawal of sponsorship to be kept as per paragraph 257 and Appendix D of the Tier 4 Sponsor Guidance."

The College vacation began on 14 June 2010, the date on which the Action Plan was due to commence, and lasted until 6 September 2010.

9 In the meantime, the College had instructed Mr Mark Taylor of the Taylor Partnership (Immigration) Ltd who advises colleges and schools holding a Tier 4 licence. Advice was given and Mr Taylor was also involved in further dealings with UKBA. His evidence is of a fundamental change within the College by 27 August 2010. He suggested to Mr Broadhead, visiting officer on 27 August, that the College should be allowed to function for the term beginning in September in order to demonstrate compliance. He suggested that "should the College be unable to demonstrate compliance by the end of term, UKBA should suspend the licence."

10 The College was visited on 20 July 2010 but further investigation was deferred until 27 August 2010. The visit report for that date noted that enrolment of new students was to be on 6 September. By letter dated 13 August, UKBA requested details of visa letters and CAS issued to all Tier 4 students between 31 March 2009 and 31 July 2010.

11 In a statement dated 11 February 2011, Mr Broadhead said that he explained to Mr Taylor that, although Mr Taylor "had put in place robust procedures to manage the PBS, the involvement of Charles Umoh did not inspire confidence in me that it would be maintained." That view was said to be based on Mr Broadhead's experience: "over several visits to the College." Mr Umoh was the Principal of the College.

12 In a statement of 11 February 2011, Ms Hargreaves, Sponsor Manager of UKBA, said that she had accompanied Mr Broadhead to the College on 27 August 2010. She confirms that she had told Mr Taylor that "the record keeping in respect of the student and staff files was significantly better", a bio-metric system was to be used to monitor and record attendance when term started in September 2010. A demonstration was given and "the College have what appears to be an appropriate system in place. As the system was not to be used until term started in September 2010 it was not possible to ascertain the effectiveness of the system in enabling the College to monitor attendance at the time of the visit."

13 By letter dated 24 September 2010, the College's licence was suspended. Reference was made to the 27 August 2010 visit and alleged defects in record keeping were particularised. Three examples were given. First, reference was made to three students whose visas had expired in late 2008 but on whom reports were not made until 2010, two of the reports being made during the period of the Action Plan. Secondly, records were said to show that a student was still in work placement on 27 August 2010 whereas she had left the placement on 21 July 2010. The third example was of alleged inconsistency between a student's record and information given orally.

14 More general points were then set out:

"In addition to the above issues identified during the visit, we have conducted an analysis of the attendance information provided by you for the period of 31 March 2009 to 31 July 2010. This information has identified further issues which support our conclusions that the college poses a threat to immigration control;

1. According to the spreadsheet that you submitted you have issued 326 students with either visa letters or CAS. We are aware, however, that in fact 952 students presented applications to the UK Border Agency with either visa letters or CAS issued by San Michael College. You have therefore failed to declare 526 students.

[The arithmetic in that paragraph is plainly incorrect but in the event nothing turns on that.]

2. From the information it is evident that you have a non-attendance rate of 22.9% which is above the acceptable levels.

3. 51% of your students are failing to attend for at least 80% of the time. Again, this raises concerns about the intentions and credibility of your students, and therefore the robustness of your recruitment and assessments procedures. Please note that we will also be sharing these attendance findings with your accrediting body.

4. Assessing the intentions and credibility of prospective students is a core sponsor obligation. Given the fact that 22.9% of your students are not attending, a further 51% are failing to attend for at least 80% of the time and that 222 students applying for your institution have been refused leave from entry clearance posts abroad we are not satisfied that you have robust procedures in place.”

15 In conclusion, it was stated:

“The results of both the student attendance information and the visit have lead us to conclude that San Michael College continues to pose a threat to immigration control by failing to meet their sponsor obligations, particularly in relation to areas of recruitment, monitoring and record keeping. Despite being a B-rated sponsor since June 2009 you have consistently failed to address the issues identified by UKBA or follow published guidance and best practice.

In order to give you the opportunity to explain these discrepancies before we begin revocation action, we have suspended your licence with immediate effect. You have 28 days to make representations including, submitting evidence, in response to this letter. If you fail to make representations, or to adequately address this issue, within this time, your licence will be revoked and you will no longer be able to sponsor migrants.”

16 In a pre-action protocol letter, in response to the decision to suspend, Mr Taylor made detailed submissions on behalf of the College. These accepted the likelihood of earlier failures, described in detail the introduction of new procedures and stated:

“The fact that you reinstated the licence in June 2010 and imposed an Action Plan suggests that UKBA was prepared to allow the College to demonstrate change in management of immigration procedures and meet the Action Plan.”

Mr Taylor stated that the assessment in the letter of 24 September “reflects the position of the College prior to the initial suspension and bears no reflection to the current position of the College.” It was stated that action had been taken by way of a biometric system, warnings and reports. Attendance of students was now to be monitored. In relation to the tracking of work placements, Mr Taylor stated that summer holidays “are notoriously difficult to track” but correct procedures were now in place.

17 By letter dated 29 September 2010, the BAC told the College that, following an inspection, “the Accreditation Committee confirmed continuing accreditation of San Michael College.” The College was authorised in its publicity to state:

“Accredited by the British Accreditation Council for Independent Further and Higher Education.”

18 By letter dated 15 October 2010, the sponsor licence was revoked by UKBA and the College removed from the Sponsors' Register with immediate effect. The history of the investigation was set out. It was stated:

“When we visited you on 27 August 2010 it was evident that you had failed to meet the conditions of the Action Plan by:

1. Failure to notify UKBA in a timely manner of non-attendance;
2. Inadequate tracking of students on work placements;
3. Inconsistent record keeping”.

That was a summary of the points made in the letter of 24 September. A summary of representations made by the College on those detailed points, involving a handful of students, was provided. Commenting on the representations, UKBA stated, in relation to work placements, that the College “had very recently sent out letters to students” and that “this is information that the College would be expected to already have.”

19 General allegations are then made in relation to records for the period 31 March 2009 to 31 July 2010:

- “1. Failure to declare 526 visa letters issued by the College
2. 222 students refused entry clearance at posts abroad
3. Non-attendance rate of 22.9% — which is above acceptable levels.
4. 51% of students failing to attend for at least 80% of the time.”

In relation to point 1, it had been claimed by the College that “some level of visa letter fraud may have occurred.” Reference was made to a small number of cases in which fraud had been investigated and it was added:

“Therefore we do not accept that your example of 9 non-genuine students in India demonstrates that all 526 letters your client failed to declare were instances of visa letter fraud or that the 222 individuals refused entry clearance held non-genuine visa letters.”

20 It was then stated, and this has given rise to an important issue in the case:

“You state that UKBA has chosen to use historic information to re-suspend the College without acknowledging the changes that have occurred. We do not accept this is the case. UKBA have suspended the College based on *recent* attendance analysis, failure to provide accurate figures in relation to visa letters issued and a failure to adequately implement the Action Plan despite introducing new procedures.”

21 The decision followed:

“Decision

Having reviewed all the available evidence in the form of the visit report, your representations (including supporting documentation) the attendance analysis from August 2010 and information from the British High Commission in New Delhi we have reached a decision.

Considering the case in its entirety we are not satisfied that extending the Action Plan period and maintaining a B-rating is appropriate in the circumstances because of the following:

1. The failure to provide any adequate explanation or evidence relating to the failure to declare the actual number of visa letters issued
2. The fact that a large number of individuals entered the UK on the basis of the visa letters and did not attend the college, thereby contributing to the 22.9% non attendance rate at the college and to UK immigration control problems relating to the number of students not meeting the conditions of their leave.
3. That the college were given the opportunity to make improvements when they were B-rated in June but despite implementing new processes and procedures still had issues with data accuracy, monitoring students on their work placements etc.

On balance, the representations provided do not adequately address the reasons for

suspension, nor do they persuade us that implementing new processes and procedures at the college have improved your client's ability to operate effectively as a sponsor of genuine migrant students."

22 By way of response to the pre-action protocol letter, UKBA wrote a further letter on 25 October 2010. Earlier correspondence was mentioned. Referring to the lifting of the suspension in June 2010, it was stated:

"The UK Border Agency found that following the representations from your client they appeared to be partially compliant with their sponsorship duties and were issued with a 1 month Action Plan to ensure that your client continued to improve to become fully compliant their sponsorship duties."

In response to the request for all visa letters and CAS issued to Tier 4 students between 31 March 2009 and 31 July 2010, it was stated:

"On analysis of the information provided by your client it was determined that your client's tracking and monitoring of visa letters and CAS was not sufficiently robust as they had failed to declare 526 students within the information they provided ... these checks demonstrated that your client did not hold full and accurate records for all visa letters and CAS issued by them ...

We note that your client has now taken steps to correct this however, as this is a mandatory part of their sponsorship obligations this should have been in place before any suspension or revocation action was taken against your client and therefore we do not concede this point."

23 Further questions were posed and individual cases considered. Dealing with the suggestion that UKBA was seeking "historical information", UKBA replied:

"This is not historical information, this analysis consisted of assessing your clients' attendance monitoring for the period of 31 March 2009 and 31 July 2010. Your client was given one month to ensure that this information matched that held by the UK Border Agency and was made aware in the letter dated 14 June that if they failed to demonstrate that they had implemented the Action Plan their licence would be revoked."

24 Further representations were then considered and it was claimed that UKBA had "considered all of the relevant information pertaining to your clients' sponsor licence and it was found that your client failed to implement fully the Action Plan set by the UK Border Agency". In conclusion, it was stated:

"The UK Border Agency have not used historic evidence to suspend your clients sponsor licence. The visit report and the attendance analysis are relevant, accurate and up to date pieces of evidence that demonstrate that your client is unable to fulfil their sponsorship obligations."

Judgment below

25 In his judgment, Judge Behrens referred to the three main points taken on behalf of the College, first, that UKBA relied on failures prior to the date of the Action Plan as providing grounds for suspension and revocation, secondly, that UKBA had failed to substantiate the allegation of deception with respect to 526 visa letters and, thirdly, that UKBA had relied on a poor attendance rate, where that issue had not formed part of the Action Plan.

26 The judge found that UKBA was entitled to look at all the circumstances of the case: "the fact that it had re-instated a licence subject to an Action Plan does not to my mind preclude it from relying on historic events in a situation where it was unaware of them at the time the Action Plan

was instituted" (paragraph 39). The judge found that UKBA was entitled to hold that there were a large number of undeclared students and that this demonstrated very serious failings in the College's record keeping (paragraph 48). He found that it was legitimate to take attendance rates into account in reaching a conclusion that the College did not have robust procedures in place to assess the intentions and credibility of its students. In any event, only very limited reference had been made to that failure, the judge said.

27 Judge Behrens held that the decision letter took into account the College's representations in the letter of 24 September. "Despite these representations UKBA took the view that [the College's] failings which were apparent both as a result of the visit and as a result of Mr Morris's analysis of the information supplied by Mr Umoh demonstrated a serious risk to proper immigration control." It was open to UKBA, the judge held, to form the view that the failings, including the large number of undeclared students, were so serious as to justify the revocation of the licence.

28 A serious risk to proper immigration control was apparent. The decision to revoke was neither irrational nor *Wedesbury* unreasonable, which was the test to be applied to this discretionary decision (paragraph 57).

29 On 16 November 2010, His Honour Judge Langan QC ordered that the College be restored forthwith to the register of Licensed Sponsors pending final judgment in the claim, or further order. Pending final judgment or further order, the College was permitted to issue CAS sufficient in number to allow the College to resume functioning, with an initial minimum number of 200.

30 Following the judgment of Judge Behrens, it was ordered in the Administrative Court that UKBA should continue to maintain the College on the register of licensed sponsors pending final judgment or further order. It was provided that the College could not assign CAS to new students but only to existing students.

Record keeping

31 This case is to do with record keeping and a most surprising feature of it is the absence of records in a satisfactory form, on either side, on the important question of the number of visa letters issued, or purportedly issued, by the College. A deficiency in College records is alleged with respect to a very substantial number. It is claimed that 952 visa letters or CAS issued by the College were presented to UKBA as against 326 the College said it had issued, a discrepancy of 626. (526 was the figure given in the letter of 24 September 2010 and later documents.)

32 For reasons which will appear, it is not necessary to reach a conclusion on specific numbers but, if the College had had any confidence in the adequacy of its records, it is surprising that, responding to the claim that there were 526 discrepancies, the best the College could say in their pre-action protocol letter was "presumably you [UKBA] have a copy of the visa letters that were issued." I would have expected, at an early stage, a strong request from the College for the evidence relied on by the Agency to substantiate the serious allegation made.

33 A request was made, we are told, at an interlocutory hearing and at the hearing before Judge Behrens. In the event, information was disclosed only after the hearing before the judge and it was claimed by UKBA, at the hearing before this court, that it was a sample disclosure. The bundle is unsupported by an explanatory statement. It consists of a folder containing 281 sheets of paper. It includes 226 allegedly undeclared visa letters out of the 526 alleged to have been sent. 14 pages are illegible and others do not identify the student to whom the document relates.

34 In this case, serious allegations are made on a serious subject, that is the alleged issue of visa letters assisting foreigners to obtain permission to enter from an Entry Clearance Officer, without a record being kept of them by the College. A serious challenge is made by UKBA to the College records and that is at the heart of the case. I find it disturbing that the Agency, when challenged to produce the evidence relied on to substantiate the charge, has made such a poor fist of doing so. The importance of immigration control is such that I would have expected records to be kept, and to be kept in a form which could be disclosed if the Agency took action against a sponsor, of the evidence relied on, that is, the visa letters presented, presumably, to Entry Clearance Officers ("ECOs").

35 All that is relied on is a mention of Mr Morris, Administrative Officer, of UKBA databases which

are said to provide “details of all migrants who have applied for leave to enter or leave to remain for the sponsor, in this case San Michael College.” No explanation is provided as to how the database is compiled or what information it contains. Presumably it is based on routine reports, which I would expect to be readily available, from ECOs in High Commissions and Embassies. But, however it is compiled, the material on which it is based must have been available to UKBA.

36 It may not avail the College in this case for reasons I will give but the absence of evidence, which should be routinely available in proceedings such as these, is disappointing in a public body. Such records are necessary if the activities of sponsors are to be monitored effectively, in the interests of immigration control. Further, there may well be cases, though evidence of fraud in the present case is sparse and inconclusive, where the letter headings of a College are used fraudulently by or on behalf of those seeking entry and only accurate and accessible records can expose that.

Submissions

37 For the Secretary of State, Mr Swift QC submitted that serious failings of record keeping and of monitoring students had been established and the decisions to suspend and revoke were justified. It would be artificial to ignore earlier failings. When the failings came to light following investigation, the Secretary of State was entitled to rely on them to revoke the licence. When the Action Plan was instituted, no assurance had been given that earlier faults would be disregarded.

38 While submitting that the reasons given in the three numbered paragraphs under the heading ‘Decision’ in the letter of 15 October 2010, should be treated cumulatively, Mr Swift also submitted that ground 3 plainly did not relate to past conduct but to failure to improve sufficiently during the period of the Action Plan. It was a conclusion based on material provided earlier in the letter and could be relied on in any event. Mr Swift relied on the discretion available to a decision maker in circumstances such as the present.

39 Mr Jagadesham's central point, on behalf of the College, was that, having given the College the opportunity to improve its record keeping and other practices, and stipulated an Action Plan, UKBA suspended and revoked its licence without taking account of measures taken under the Action Plan and without giving a sufficient opportunity to demonstrate compliance. The College could not demonstrate, during the summer vacation, that the measures taken to improve record keeping and operations had been put into effect. It was submitted that two of the three reasons given for revocation, or three of the four if the attendance rate is taken into account, were based on historic analysis. Projection of the date for records forward to 31 July 2010 did not make it a “current reflection” because the period from 14 June to 31 July was entirely in the vacation.

40 Reliance on the 80% attendance standard was inappropriate, it was submitted, not only for that reason but because that percentage does not appear in UKBA's Guidance. While it does appear in BAC's Accreditation Handbook, BAC was prepared on 29 September 2010 to confirm the accreditation of the College. Moreover, UKBA's approach to attendance rates was erroneous in confusing contact points with attendance at classes, it was submitted.

Conclusions

41 I have no difficulty in concluding that, up to the date of suspension on 18 February 2010, the College's record keeping was well below standard. Unsatisfactory though UKBA's evidence is, for reasons given earlier, it does demonstrate substantial defects which, in the present context, were serious and a threat to proper immigration control. In his attempt at analysis of the UKBA folder disclosed, Mr Umoh accepts that 49 of the letters in it are visa letters issued by the College relating to students who were not declared.

42 The issue is, however, whether, given the sequence of events described, the decisions to suspend and to revoke can be upheld. In my judgment, they cannot:

- (a) The College was given an opportunity, by the lifting of the suspension on 14 June, to remedy the position. In the letter specifying the Action Plan, it was stated that the College was expected to demonstrate “that the processes you *now* have in place work effectively.” (my emphasis) The Action Plan was forward looking requiring records to be kept

(paragraphs 7 and 8 above).

(b) Revocation would follow, it was stated, "if you fail to demonstrate that you have implemented the Action Plan" (paragraph 7). That is consistent with paragraph 138 of the Guidelines (paragraph 5 above).

(c) The necessary demonstration could not fully be given during the period of the summer vacation and the extension requested on behalf of the College to include the autumn term was not accepted (paragraphs 9 and 12).

(d) Notwithstanding the opportunity given to the College to remedy matters for the future, which must be assumed to have been a genuine offer, the suspension and revocation decisions relied very substantially on defaults which had occurred prior to the period of the Action Plan (paragraph 21). The response to the pre-action protocol letter expressly relied on the allegation that records "should have been in place before any suspension or revocation action was taken" (paragraph 22). Had the Action Plan required the College to justify past failures, the situation might have been different, but the Action Plan was not devised or presented in that way.

(e) While reason numbered 3 in the revocation letter does relate to events during the currency of the Action Plan, it was not suggested in the letter that reason 3 alone would have justified suspension and revocation. The emphasis of the letter was quite different (paragraphs 19 and 21).

(f) Even if it had so suggested, the allegations relate to a handful of alleged defaults on a scale entirely different from the historic allegations, and were a doubtful basis for suspension (paragraph 18).

(g) In some of those few cases, adverse comment is made upon the very action taken by the College, pursuant to the Action Plan, to remedy defects about which complaints had been made. Action had been taken to notify the expiry of visas and to obtain work placement contact details (paragraphs 13 and 18).

(h) The revocation letter persists in the misconceived notion that because attendance figures go up to 31 July 2010, even though the entire period of the Action Plan was in the summer vacation, the analysis was not historic (paragraph 23).

(i) When considering the decision making process, in the context of the Action Plan, it is difficult to reconcile the encouraging statements of UKBA's Sponsor Manager, Ms Hargreaves, on 27 August 2010 that "the record keeping in respect of the student and staff files was significantly better," and that the College "have what appears to be an appropriate system in place," with the action taken or with the terms of the suspension letter of 24 September, emanating from the UKBA Suspension & Revocation Team (paragraphs 12 and 13).

(j) The progress made under the Action Plan, supported by the re-accreditation by BAC, was not taken into account (paragraphs 12 and 17).

(k) The revocation letter is itself confusing in that the complaint about the attendance rate of 80%, an historic complaint, appears in the body of the letter but not in the reasons for decision. UKBA's perception of it and its relevance are not made clear (paragraphs 19 and 21).

(l) No explanation is given of the relevance of the 222 individuals said in the revocation letter to have been refused entry clearance. Given the broad duties of ECOs and the criteria they apply, that of itself proves little (paragraphs 14 and 19).

43 Because the point, though pleaded, had not been taken earlier, or at the trial, the court declined to hear submissions from the College based on an alleged breach, when the decision was taken, of Article 1 of the 1st Protocol to the European Convention on Human Rights .

44 I would allow this appeal. Notwithstanding its serious defaults, the College was entitled to a fair and adequate consideration by UKBA of its case. The procedure followed by UKBA was, for the reasons given, so unfair and the decision making process so obscure that the suspension and revocation cannot stand and must be quashed. That being so, there is no need to determine precisely how many visa letters had been issued and not declared or to consider further the accuracy and relevance of the 80% attendance rate.

45 It is probably unnecessary to add this but I do so because of the College's past defaults. If the College continues to operate with a sponsor licence, I would expect its activities to be closely monitored by UKBA.

Lord Justice Richards:

46 I agree.

Lord Justice Davis:

47 Experience teaches one, regrettably, that Colleges of Further Education for foreign students can be operated so as to involve widespread evasion of immigration control. It is essential, therefore, that such colleges be expected properly to comply with, and actually to comply with, the terms of any applicable Sponsors' Licence and related Guidance; and also that they be closely monitored.

48 In the present case, there was good reason to be wary of the College's mode of operation. However, notwithstanding the College's sorry record, UKBA elected by its letter of 14 June 2010 to give the College a further chance, over a period falling in the vacation. I agree with Mr Swift QC that that does not mean that UKBA was thereafter entirely precluded from relying on past deficiencies. But it does mean, in my view, that the main emphasis was to be, and was to be understood to be, on the position going forward. The College, in short, was to be given a fair chance to put its house in order. That was the purpose of the Action Plan.

49 As explained by Pill LJ, this did not happen. Notwithstanding the attempts at compliance with the Action Plan by the College, as advised by Mr Taylor, the ultimate decision letters of suspension and revocation again focused primarily on defaults said — in some respects on an insufficiently particularised basis — to have arisen before the Action Plan. To the extent that reliance also was placed on isolated matters said to have arisen after the Action Plan, these do not seem to me to be of a nature anything like sufficient to justify suspension or revocation. In my view (and quite apart from the lack of clarity in the reasons for suspension or revocation as put forward by UKBA) the decision making process was in the circumstances of this case, contrary to the principle of fairness (in the public law sense).

50 Accordingly, and in entire agreement with the reasons given by Pill LJ, I too would allow the appeal. I also would wish to associate myself with the last paragraph of his judgment.

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