Neutral Citation Number: [2026] EWCA Civ 1368

Case No: CA-2025-001467

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE, KING'S BENCH DIVISION, ADMINISTRATIVE COURT IN LEEDS
Hill J
[2025] EWHC 1275 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 October 2026

Before :

LADY JUSTICE ASPLIN
LORD JUSTICE ARNOLD
and
LADY JUSTICE ELISABETH LAING

- -

Between :

R (ON THE APPLICATION OF TJ TRADING EXPRESS LIMITED)	**Claimant/ Respondent**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant/ Appellant**

- -
- -

David Manknell KC and Michael Biggs (instructed by **Government Legal Department**) for the **Appellant**
Zane Malik KC and Arif Rehman (instructed by **Lawfare Solicitors**) for the **Respondent**

Hearing date : 20 October 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Arnold:

Introduction

1. The principal issue on this appeal is the ambit of the common law duty of procedural fairness in the context of the system for approving employers to sponsor migrant workers who seek to enter the United Kingdom.

2. The concept of sponsorship is central to this system. If an organisation wants to employ a migrant worker, the organisation must (save in certain circumstances) be the worker's sponsor during their stay in the UK. Before an employer can sponsor a migrant, it must obtain a sponsor licence.

3. An employer which has obtained a sponsor licence must issue a Certificate of Sponsorship (CoS) for each migrant worker they wish to sponsor. The CoS is a virtual document created online which (among other matters) describes the tasks the migrant is intended to fulfil while working in the UK.

4. By a decision dated 6 March 2024 ("the Decision") the Secretary of State for the Home Department ("SSHD") revoked the sponsor licence of the Claimant ("TJ Trading"). TJ Trading challenged that decision by an application for judicial review. Hill J upheld that challenge and quashed the Decision for the reasons given in her judgment dated 22 May 2025 [2025] EWHC 1274 (Admin). SSHD appeals against the judge's decision with permission granted by Dove LJ.

Factual background

5. TJ Trading carries on business as a petrol station and attached convenience shop. On 21 July 2022 TJ Trading applied for a skilled worker sponsor licence, which was granted on 27 September 2022. On 15 November 2023 TJ Trading's director and level 1 SMS user, Jayaganth Ragunathan, assigned a CoS to Sukirthujan Sivalingam identifying the job to be carried out as a "Petrol Station Manager" under Standard Occupational Classification code 1190 (Managers and directors in retail and wholesale). A review of SSHD's records revealed that Mr Sivalingam was the brother of Mr Ragunathan's wife, i.e. Mr Ragunathan had assigned the CoS to his own brother-in-law. This had not been noted by TJ Trading on the CoS. This led to the Decision being taken.

The Guidance

6. The sponsorship system has no specific statutory basis, but it has been held that SSHD has an implied power under the Immigration Act 1971 to operate such a system, provided that it is not inconsistent with the Act or the Immigration Rules: see *R (New London College Ltd) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358.

7. The system is set out in a series of guidance documents entitled "Workers and Temporary Workers: guidance for sponsors" ("the Guidance"). "Part 1: Apply for a licence" provides guidance on how employers can apply for authorisation to sponsor an overseas national on the worker and temporary worker immigration routes. "Part 2: Sponsor a worker – general information" provides guidance on how licensed sponsors

can sponsor a person on the worker and temporary immigration routes. "Part 3: Sponsor duties and compliance" provides guidance as to sponsors' duties and the action that SSHD will take to ensure compliance with those duties. "Part 4: Sponsor a skilled worker" provides guidance on how an employer can sponsor a person on the skilled worker immigration route. The part of the Guidance that is primarily relevant to the appeal is Part 3. At the time of the Decision version 03/23 of this was in force.

8. Section C1 of Part 3 is headed "Your sponsor duties". Under the sub-heading "Guiding principles" this states:

> "C1.3. Sponsorship is a privilege not a right. The sponsorship system reflects that those who benefit directly from migration (employers, education providers or other organisations who bring in overseas nationals) should play their part in ensuring the immigration system is not abused. Significant trust is placed in sponsors and they must ensure they comply with immigration law and wider UK law, and not behave in a manner that is not conducive to the wider public good.
>
> C1.4. To achieve these aims, all licensed sponsors must fulfil certain duties. Some of these duties apply to all sponsors, while others are specific to those licensed under certain routes."

9. Under the sub-heading "Complying with our immigration laws" it states in paragraph C1.38:

> "You must comply with our immigrations law and all parts of the Worker and Temporary Worker sponsor guidance. To do this, you must:
>
> …
>
> • disclose (by adding a sponsor note) if you assign a CoS to a family member of anyone within the sponsor organisation if it is classed as a small or medium-sized business, or if you are aware you assigning a CoS to a family member of anyone else within a sponsor organisation classed as a large business
>
> …"

10. Section C1 of Part 3 is headed "Compliance checks". Under the sub-heading "Guiding principles" this states:

> "C7.1. The ability to sponsor workers to work in the UK is a privilege that must be earned. When a sponsor is granted a licence, significant trust is placed in them. With that trust comes a responsibility for sponsors to act in accordance with our immigration law, all parts of the Worker and Temporary Worker sponsor guidance, wider UK law (such as employment law) and the wider public good. UKVI has a duty to ensure all sponsors

discharge these responsibilities, and that a sponsor's actions (or omissions) do not create a risk to immigration control or are not conducive to the public good.

C7.2. The majority of those who employ overseas workers are honest and willing to comply with their duties. However, because sponsorship transfers a significant amount of responsibility and trust to sponsors, we have a duty to ensure that we deal appropriately with the minority who do not comply with their duties. We place great weight on the importance of trust in the operation of the sponsorship system and the need to ensure that sponsors take their duties seriously.

C7.3. We will continually monitor sponsors' compliance and take action against those who:

- pose, or may pose, a threat to immigration control
- breach their sponsorship duties, or otherwise fail to comply with the Immigration Rules or Worker and Temporary Worker sponsor guidance
- are convicted of criminal offences or issued with certain civil penalties (such as those for employing illegal workers)
- have engaged or are engaging in behaviour or actions that are not conducive to the public good

C7.4. Compliance checks may be taken on the basis of a reasonable suspicion that you have breached your sponsor duties or are otherwise no longer suitable to hold a licence. This may be based on a poor previous record of compliance with us or other government departments.

C7.5. We have a range of measures to make sure that we enforce sponsors' duties and identify dishonest, incompetent, or otherwise inappropriate sponsors early on. Action we may take includes:

- reducing your certificate of sponsorship (CoS) allocation
- downgrading your licence to a B-rating
- suspending your licence
- revoking your licence
- cancelling the permission of your sponsored workers to remain in the UK

- where we believe a criminal or civil offence has taken place, reporting this to the police or other relevant authorities".

11. Under the sub-heading "Outcome of compliance checks" it states:

"C7.23. After we have completed our checks, we will consider what, if any, action to take against you. We will notify you of our decision in writing.

C7.24. Where there has been a breach, or suspected breach, of your sponsorship duties, or if we consider you pose a threat to immigration control or are not conducive to the public good, we will assess the issue and decide on the most appropriate course of action to take.

C7.25. Where the breach is a relatively minor issue and you are willing and able to correct it, we will, in most cases, support you in making the relevant improvements by downgrading your licence to a B-rating and issuing a time-limited action plan which sets out the steps you must take in order to retain your licence.

C7.26. Where there is a more serious breach indicating:

- a significant or systematic failing
- you no longer meet the eligibility or suitability requirements for holding a licence
- you pose a serious threat to immigration control
- you are engaging, or have engaged, in behaviour or actions that are not conducive to the public good

we may decide either to:

- suspend your licence, with a view to revocation, while we investigate further, or
- revoke your licence without prior suspension".

12. Section C9 of Part 3 is headed "Suspending your licence". Under the sub-heading "How we decide whether to suspend your licence" this states in paragraph C9.7:

"If any of the circumstances listed in Annex C1 arise, we will either revoke your licence immediately or suspend your licence pending further investigation. "

13. Under the sub-heading "The process we will follow" it states:

"C9.11. You have 20 working days from the date of the written notification to respond to our letter. This is your opportunity to

> seek a review of our decision and to set out any mitigating arguments you believe exist. Your response to us must be in writing and set out, with any relevant supporting evidence, which grounds you believe to be incorrect and why. We may give you more time to respond if we are satisfied there are exceptional circumstances. We will not hold an oral hearing.
>
> …
>
> C9.13. When we receive a response from you, we will consider this and may ask a compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government or other body, for information.
>
> …
>
> C9.15. Appropriate action may include one or more of the following - we may:
>
> - reinstate your licence with an A-rating
> - reinstate your licence with a B-rating (and issue you with an action plan)
> - prevent you from assigning any new CoS
> - prevent the use of any assigned, but unused, CoS
> - revoke your licence".

14. Section C10 of Part 3 is headed "Revoking your licence". Under the sub-heading "Overview" this states in paragraph C10.1:

> "Certain circumstances can lead to your sponsor licence being revoked. These include, but are not limited to, where:
>
> - you cease to have (or never had) a trading presence
> - you cease to meet the requirements of the route, or routes, in which you are licensed
> - there is a serious or systematic breach of your sponsor duties
> - you pose a threat to immigration control
> - you have been convicted of a relevant criminal offence (see Annex L4 of Part 1: Apply for a licence) or issued with a specified civil penalty
> - you are engaging or having engaged in behaviour or actions that are not conducive to the public good".

15. Under the sub-heading "How we decide whether to revoke your licence" it states:

> "C10.4. Annex C1 of this document sets out the circumstances in which we will revoke your licence – these are known as 'mandatory' grounds of revocation. If any of these circumstances arise, we may revoke your licence immediately and without warning. If we do not revoke your licence immediately, we will suspend your licence pending further investigation.
>
> C10.5. Annex C2 of this document sets out the circumstances in which we will normally revoke your licence, unless there are exceptional circumstances.
>
> …
>
> C10.7. Annex C3 of this document sets out the circumstances in which we may revoke your licence. …."

16. Annex C1 is headed "circumstances in which we will revoke your licence". This begins by stating:

> "This annex set out the circumstances in which we will revoke your sponsor licence. We may suspend your licence first while we consider the matter, but we reserve the right to revoke your licence immediately without suspending it. …"

17. Annex C1 lists 41 different grounds. Two are relevant to this appeal.

18. First, ground C1(o):

> "Subject to the exception below, a sponsorship management system (SMS) user you have appointed assigns their own Certificate of Sponsorship (CoS) or assigns a CoS to a close relative or partner. By 'close relative or partner', we mean:
>
> …
>
> • a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law
>
> …"

19. Secondly, ground C1(z):

> "We have reasonable grounds to believe the role for which you have assigned a CoS is not genuine – for example, because it:
>
> • does not exist
>
> • is a sham (including but not limited to where the CoS contains an exaggerated or incorrect job description to

> deliberately make it appear to meet the requirements of the route you assigned it under when it does not); or
>
> • has been created mainly so the worker can apply for entry clearance or permission to stay".

Legal principles governing the sponsorship system

20. Baker LJ summarised the applicable legal principles in *R (Prestwick Care Ltd) v Secretary of State for the Home Department* [2025] EWCA Civ 184, [2025] 1 WLR 4761 as follows:

> "19. The legal principles governing the system of sponsorship and its review by the courts are established in a series of cases, some of which relate to the Tier 2 scheme (sponsorship of skilled workers) and others to the similar sponsor scheme under Tier 4 (for colleges who sponsor students). It is well established that the same principles apply to both Tiers: *R (London St Andrew's College) v Secretary of State for the Home Department [*2018] EWCA Civ 2496 ('*St Andrew's College*'), para 29 (considered below).
>
> 20. The sponsorship scheme is entirely voluntary. A care home can, if it chooses, engage only staff who already have leave to remain in this country. A sponsorship licence gives a care provider a business advantage through access to a wider labour market. But to enjoy that advantage the provider must comply with the rules of the scheme. In *R (New London College Ltd) v Secretary of State for the Home Department* [2013] 1 WLR 2358 Lord Sumption JSC said, at para 29:
>
> > 'There are substantial advantages for sponsors in participating [in the Tier 4 Scheme] but they are not obliged to do so. The Rules contained in the Tier 4 Guidance for determining whether applicants are suitable to be sponsoring institutions, are in reality conditions of participation, and sponsors seeking the advantages of a licence cannot complain if they are required to adhere to them.'
>
> 21. In *St Andrew's College*, at para 29, Haddon-Cave LJ reiterated a summary of the principles he had articulated in *R (Raj and Knoll Ltd) v Secretary of State for the Home Department* [2015] EWHC 1329 (Admin) ('*Raj and Knoll*'), at para 21, which had been approved by this court on appeal at [2016] EWCA Civ 770. For the purposes of these appeals they can be expressed as follows:
>
> > '(1) The essence of the system is that the Secretary of State imposes 'a high degree of trust' in sponsors granted ("Tier 2" or "Tier 4") licences in implementing and

> policing immigration policy in respect of migrants to whom it grants Certificate of Sponsorship ("CoS") or [under the Tier 4 scheme] Confirmation of Acceptance ("CAS") …
>
> (2) The authority to grant a certificate (CoS or CAS) is a privilege which carries great responsibility: the sponsor is expected to carry out its responsibilities "with all the rigour and vigilance of the immigration control authorities" …
>
> (3) The Sponsor "must maintain its own records with assiduity" …
>
> (4) The introduction of the Points-Based System has created a system of immigration control in which the emphasis is on "certainty in place of discretion, on detail rather than broad guidance" (per Lord Hope in *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, reported at [2012] 1 WLR 2208, para 42).
>
> (5) The [certificate] is very significant: the possession by a migrant of a requisite CAS [or CoS] provides strong, but not conclusive, evidence of some of the matters which are relevant upon the migrant's application for leave to enter or remain …
>
> (6) There is no need for UKBA to wait until there has been breach of immigration control caused by the acts or omission of a sponsor before suspending or revoking the sponsorship, but it can, and indeed should, take such steps if it has reasonable grounds for suspecting that a breach of immigration control might occur …
>
> (7) The primary judgment about the appropriate response to breaches by licence holders is that of the Secretary of State. The role of the Court is simply supervisory. The Secretary of State is entitled to maintain a fairly high index of suspicion and a 'light trigger' in deciding when and with what level of firmness she should act …
>
> (8) The courts should respect the experience and expertise of UKBA when reaching conclusions as to a sponsor's compliance with the Guidance, which is vitally necessary to ensure that there is effective immigration control …'

22. In the following paragraph (para 30) in *St Andrew's College* , Haddon-Cave LJ endorsed the following four further principles which he derived from the judgment of Silber J in *R (Westech*

College) v Secretary of State for the Home Department [2011] EWHC 1484 (Admin):

> '(1) The SSHD has stringent powers to suspend or revoke a sponsor's licence if the SSHD becomes concerned that a sponsor is not complying with its obligations and must be sensitive to any factors which might suggest the possibility of any breaches of immigration control having occurred or being about to occur because of lapses or omissions committed by a sponsor …
>
> (2) There is a clear need in some circumstances for the SSHD to invoke the SSHD's powers where there is a risk that the sponsor might not be complying with its duties provided of course that UKBA complies with its public law duties …
>
> (3) The expertise and experience of the SSHD and UKBA in being able to detect the possibility that a sponsor might not be or be at risk of not complying with its duties is something that the court must and does respect because, unlike the SSHD, courts do not have this critically important experience or expertise …
>
> (4) An entity which holds a sponsor licence has substantial duties to ensure that the rules relating to immigration control are adhered to strictly and properly, such that if the SSHD were concerned that a sponsor is not complying with those duties, it would entitle, if not oblige, UKBA to prevent that sponsor from either granting more [certificates] or revoking its licence …"

23. In *Raj and Knoll* in the Court of Appeal, Tomlinson LJ said (at para 32):

> 'I was not … immediately impressed by the submission that the supervision of this scheme by the SSHD attracts an enhanced standard of judicial scrutiny. The mere fact that the decision-making in this area may have serious commercial consequences for licensed sponsors is not of itself a reason to impose heightened scrutiny. The circumstance that the SSHD has special expertise in and experience of decision-making in this field, and that the court possesses no particular institutional competence and can claim no special constitutional legitimacy militates against that submission … It is also clear that the exercise in which the SSHD is engaged involves no fundamental right of the appellant but on the contrary a right contingent upon adherence to the rules …'

> 24. These principles have since been applied in a number of first instance cases, including, in respect of Tier 2 licences, *R (Birds Hill Nursing Home) v Secretary of State for the Home Department* [2015] EWHC 2241 (Admin) and *R (Operation Holdings Ltd (trading as Goldcare Homes)) v Secretary of State for the Home Department* [2019] EWHC 3884 (Admin) ('*Goldcare*'). In the latter case, the deputy judge, Alison Foster QC (as she then was), observed:
>
> > '21. It is clear that sponsorship is based on two fundamental principles:
> >
> > (i) Those who benefit most directly from migration, that is to say employers, education providers or other bodies who bring in migrants, must play their part in ensuring that the system is not abused; and
> >
> > (ii) The Home Office needs to be sure that those applying to come to the UK to undertake work or to study are indeed eligible to do so and if a reputable employer or education provider genuinely wishes to take them on.
> >
> > 22. This provides the context for the application of the scheme, and reflects, as was said by McGowan J [at first instance] in *R (London St Andrew's College) v Secretary of State for the Home Department* [2014] EWHC 4328 (Admin) at [13], that the obligation of a sponsor is to carry out its responsibilities 'with all the rigour and vigilance of the immigration control authorities'. This approach is found throughout the case law …'"

21. It is common ground that, even where one of the "mandatory" grounds for revocation listed in Annex C1 applies, SSHD has a residual discretion not to revoke the sponsor's licence. In *Prestwick* the central issue was whether SSHD was obliged, when considering whether to revoke a care provider's sponsor licence on one of those grounds, to consider the impact of revocation on the care provider's business, its employees, those who received its care services and the wider care industry. This Court held that she was not. It was open to SSHD to consider that impact if she chose to do so, but the impact of revocation was a consideration which fell within the third category of consideration identified by Simon Brown LJ in *R v Somerset County Council ex parte Fewings* [1995] 1 WLR 1037 at 1049-1050 ("those to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so") and elaborated upon by Lord Hope and Lord Sales in *R (Friends of the Earth Ltd) v Secretary of State for Transport* [2020] UKSC 52, [2021] 2 All ER 967 at [120]-[121]. It was not irrational for SSHD not to advert to impact at all in deciding to revoke the licence. In so far as SSHD turned her mind to impact, it was not irrational for her to give it no weight at all.

The Decision

22. Paragraphs 2-6 of the Decision set out the facts that I have summarised in paragraph 5 above. It went on in paragraph 7 to say that "[i]n view of the above, we believe that the role of '*Petrol Station Manager*' was created solely to facilitate Mr Sivalingam's entry to or stay in the UK".

23. Having set out Annex C1(o) of Part 3 of the Guidance, the Decision stated in paragraph 11: "This issue alone is sufficient to revoke your sponsor licence".

24. Having set out Annex C1(z) of Part 3 of the Guidance, the Decision stated in paragraph 13: "This issue alone is sufficient to revoke your sponsor licence".

25. The Decision then stated, under the heading "Decision":

> "14. We maintain that the issues described above constitute a failure by you to comply with your sponsor duties, and as a result, your sponsor licence has been revoked. There is no right of appeal against this decision.
>
> 15. Whilst we acknowledge the potential impact that revocation may have, UKVI has a duty to ensure that all licensed sponsors adhere to the duties and responsibilities outlined in the published Guidance for Sponsors. The Guidance for Sponsors makes it clear that sponsorship is a privilege, not a right and that alternative action such as downgrading a licence is appropriate if circumstances limited to those listed in Annex C2 or Annex C3 arise. Paragraph C10.4 of the Workers and Temporary Workers: Guidance for Sponsors (part 3) states that: [this is set out above].
>
> 16. You have acted in contravention of a number of issues contained in the Workers and Temporary Workers: Guidance for Sponsors. We are satisfied that each of the following, individually and cumulatively, are a necessary basis for revocation: General Sponsor Duties (Annex C1 o) and z))."

The common law duty of procedural fairness

26. The duty of procedural fairness is one of the cornerstones of the common law, both in the context of private law and in the context of public law. The classic statement of the duty in the latter context remains that of Lord Mustill in *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 at 560:

> "… (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness

> demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

27. In *Bank Mellat v HM Treasury* [2013] UKSC 39, [2014] AC 700 the Treasury had imposed a Financial Restrictions Order on the bank, which effectively prevented it from carrying on business in the UK, pursuant to powers contained in the Counter-Terrorism Act 2008. The bank applied to set aside the Order on three grounds. The third ground was that, by failing to give the bank an opportunity to make representations before the Order was made, the Treasury had acted in breach of the rules of natural justice and of Article 6(1) of, and Article 1 of the First Protocol to, the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Supreme Court by a majority upheld that ground.

28. The main judgment was given by Lord Sumption, with whom Baroness Hale of Richmond, Lord Kerr of Tonaghmore and Lord Clarke of Stone-cum-Ebony agreed. Having cited Lord Mustill's statement in *Doody*, Lord Sumption said at [31]:

> "It follows that, unless the statute deals with the point, the question whether there is a duty of prior consultation cannot be answered in wholly general terms. It depends on the particular circumstances in which each directive is made. Some directives that might be made under Schedule 7 to the Act could not reasonably give rise to an obligation on the Treasury's part to consult the targeted entity, for example because there was a real problem about the implicit or explicit disclosure of secret intelligence or because prior consultation might frustrate the object of the directive by enabling the targeted entity to evade its operation, notably in a case involving money-laundering or terrorism. …"

29. He went on to say in [32] that, in his opinion, unless the Act expressly or impliedly excluded any relevant duty of consultation, it was obvious that "fairness in this case" required that the bank should have had an opportunity to make representations before the Order was made. He continued at [33]:

> "In these circumstances, the only ground on which it could be said that the Treasury was not obliged to consult Bank Mellat in advance, was that such a duty, although it would otherwise have

> arisen at common law in the particular circumstances of this case, was excluded by the Act in cases such as the present one."

For reasons he went on to explain, the Act neither expressly nor impliedly excluded that duty.

30. Lord Neuberger of Abbotsbury agreed with Lord Sumption with respect to the third ground. Having cited proposition (5) from Lord Mustill's statement in *Doody* in [178], Lord Neuberger said at [179]:

> "In my view, the rule is that, before a statutory power is exercised, any person who foreseeably would be significantly detrimentally affected by the exercise should be given the opportunity to make representations in advance, unless (i) the statutory provisions concerned expressly or impliedly provide otherwise or (ii) the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity. I would add that any argument advanced in support of impossibility, impracticality or pointlessness should be very closely examined, as a court will be slow to hold that there is no obligation to give the opportunity, when such an obligation is not dispensed with in the relevant statute"

31. Lord Dyson also agreed with Lord Sumption with respect to the third ground, but added no reasoning of his own.

32. In *R (Osborn) v Parole Board* [2013] UKSC 61, [2014] AC 1115 the issue was whether prisoners were entitled to an oral hearing before the Parole Board decided whether or not to recommend their release or transfer to open conditions. The Supreme Court unanimously held that, as Lord Reed summarised the decision at [2]:

> "(i) In order to comply with common law standards of procedural fairness, the board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake. …
>
> (ii) It is impossible to define exhaustively the circumstances in which an oral hearing will be necessary, but such circumstances will often include the following. [A number of factors were then set out.]"

33. As Lord Reed explained at [65]:

> "The court must determine for itself whether a fair procedure was followed: *Gillies v Secretary of State for Work and Pensions* [2006] 1 WLR 781, para 6, per Lord Hope of Craighead. Its function is not merely to review the reasonableness of the decision-maker's judgment of what fairness required."

34. Lord Reed went on to explain at [67] that, although "one of the virtues of procedurally fair decision-making is that it is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested", "[a]t least two other important values are also engaged":

> "68. The first was described by Lord Hoffmann [in *Secretary of State for the Home Department v AF (No 3)* [2010] 2 AC 269, para 72] as the avoidance of the sense of injustice which the person who is the subject of the decision will otherwise feel. I would prefer to consider first the reason for that sense of injustice, namely that justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions taken in the exercise of administrative or judicial functions. Respect entails that such persons ought to be able to participate in the procedure by which the decision is made, provided they have something to say which is relevant to the decision to be taken. As Jeremy Waldron has written ('How Law Protects Dignity' [2012] CLJ 200, 210):
>
> > 'Applying a norm to a human individual is not like deciding what to do about a rabid animal or a dilapidated house. It involves paying attention to a point of view and respecting the personality of the entity one is dealing with. As such it embodies a crucial dignitarian idea—respecting the dignity of those to whom the norms are applied as beings capable of explaining themselves.'
>
> …
>
> 70. This aspect of fairness in decision-making has practical consequences of the kind to which Lord Hoffmann referred. Courts have recognised what Lord Phillips of Worth Matravers described as 'the feelings of resentment that will be aroused if a party to legal proceedings is placed in a position where it is impossible for him to influence the result': *Secretary of State for the Home Department v AF (No 3) [2010] 2 AC 269* , para 63.
>
> 71. The second value is the rule of law. Procedural requirements that decision-makers should listen to persons who have something relevant to say promote congruence between the actions of decision-makers and the law which should govern their actions: see eg *Fuller, The Morality of Law*, revised ed (1969), p 81, and *Bingham, The Rule of Law* (2010), ch 6."

35. In *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 464 the claimants in four cases were given leave to enter or remain in the UK as Tier 1 migrants under the points-based system provided for by Part 6A of the Statement of Changes in Immigration Rules. As such, they were entitled under paragraph 245CD of the Rules to apply for indefinite leave to remain ("ILR") after five years, on condition that they demonstrated a minimum level of earnings in the previous year. Where there was a substantial discrepancy between the earnings claimed by an

applicant and the earnings which the applicant had previously declared to the revenue in a tax return, it was SSHD's policy to refuse the application in reliance on paragraph 322(5) of the Rules, on the ground that it would be undesirable to permit the applicant to remain in the UK in the light of his conduct. The claimants' applications were all refused on that basis. They sought judicial review of the Secretary of State's decisions on grounds of (among other things) procedural unfairness.

36. Underhill LJ delivering the judgment of this Court considered the requirements of procedural fairness at [45]-[61]. He began by citing a number of passages from the judgment of Singh LJ in *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812, [2018] 4 WLR 123 at [68]-[71] in which Singh LJ had cited (among other authorities) Lord Mustill's statement in *Doody* and Lord Reed's judgment in *Osborn* at [67]-[68]. Underhill LJ went on at [55]:

> "… we have come to the conclusion that where the Secretary of State is minded to refuse ILR on the basis of paragraph 322(5) on the basis of the applicant's dishonesty, or other reprehensible conduct, he is required as a matter of procedural fairness to indicate clearly to the applicant that he has that suspicion; to give the applicant an opportunity to respond, both as regards the conduct itself and as regards any other reasons relied on as regards 'undesirability' and the exercise of the second-stage assessment; and then to take that response into account before drawing the conclusion that there has been such conduct."

It is unnecessary for present purposes to rehearse the remainder of what he said in that section of his judgment.

37. In *Pathan v Secretary of State for the Home Department* [2020] UKSC 41, [2020] 1 WLR 4506 the applicant was in the UK with limited leave to remain ("LTR") as a Tier 2 migrant sponsored by his employer. Before his LTR expired, he applied for further LTR, relying on a CoS provided by his employer. That application was put on hold by SSHD while it carried out an investigation into the employer. Before the investigation was concluded, the applicant's LTR expired, although it was extended by virtue of section 3C of the 1971 Act pending the determination of his application. As a result of the investigation the employer's sponsor licence was revoked, which had the effect of invalidating the applicant's CoS. Consequently, the applicant's application for further LTR was bound to fail unless he varied it, for example by relying on a CoS from a different employer. However, the applicant was not informed of the revocation of his employer's sponsor licence until his application for further LTR was refused three months later. He applied for judicial review of the decision to refuse his application, contending that, as a matter of procedural fairness, SSHD had been required (i) promptly to inform him of the revocation of his employer's sponsor licence and (ii) to grant him a reasonable period of time in which to react to that information before refusing his application. The Supreme Court (either unanimously or by a majority depending on how one interprets Lord Briggs' judgment) upheld contention (i), but (by a majority) rejected contention (ii). Although the issues were to some extent intertwined, it is the reasoning with respect to issue (i) that is most pertinent for present purposes.

38. The first judgment was given by Lady Arden. It is worth noting that, at [46] she cited with approval from the judgment of Underhill LJ in *Balajigari*. Having cited Lord Reed's observations from *Osborn* at [68] and [71], she said at [52]:

> "Procedural fairness is thus an important matter. It makes the law more just and at the same time improves the standards with which decision-makers are expected to comply in the 21st century."

39. Lady Arden went on at [55]:

> "Procedural fairness is adaptable to the environment in which it is applied. Procedural unfairness does not entail that the decision-maker must comply with a pre-designed set of rules."

In support of this proposition, she cited Lord Mustill's statement in *Doody*, and she repeated point (5) later in her judgment at [61].

40. She concluded that, in the circumstances of that case, fairness required not merely that the applicant be promptly notified of the revocation of his sponsor's licence, but also that he be given a reasonable opportunity to react to that notification.

41. In their judgment Lord Kerr of Tonaghmore and Lady Black addressed at [118]-[130] the issue of pointlessness. After some preliminary remarks, they said at [120]:

> "120. There is ample authority on the issue of whether the duty to afford the opportunity to make representations arises where any such representations are bound to fail. Thus, as Lord Briggs JSC has pointed out, in *Cinnamond v British Airports Authority* [1980] 1 WLR 582, 593, it was said that no one could complain of not being given an opportunity to make representations if it would have achieved nothing. A somewhat similar view was expressed in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700, para 179 in the passage from Lord Neuberger of Abbotsbury PSC's judgment cited by Lord Briggs JSC at para 161 below. (It is noteworthy, however, that in that passage Lord Neuberger PSC was at pains to point out that any argument advanced in support of pointlessness 'should be very closely examined, as a court will be slow to hold that there is no obligation to give the opportunity, when such an obligation is not dispensed with in the relevant statute'.)
>
> 121. Pointlessness can have two dimensions. The first is that there is no possibility of bringing about a change of mind on the part of the authority on the terms of the decision that has been made. So, for instance, in the present case, Mr Pathan's application, so long as it was based on a CoS issued by a company which had ceased to have authority to issue such a certificate, could not succeed in any circumstances. The second dimension is different. It involves an examination of whether, on becoming aware of the decision, there was simply nothing that the affected

> person could do to achieve his aim. In other words, there was no other avenue which he or she could explore to avoid the impact of the adverse decision."

42. Having cited from Lord Reed's judgment in *Osborn* at [68], they quoted at [125] a passage from Elliott and Varuhas, *Administrative Law: Text and Materials* (5th ed, 2016) at 10.2.5 commenting on a paragraph of Lord Reed's judgment that I have omitted from the quotation above:

> "Referring to the dictum from *R v The Chancellor of Cambridge* (1723) 1 Stra 557 … concerning God's willingness to grant Adam a hearing, Lord Reed continued (at para 69): 'The point … is that Adam was allowed a hearing notwithstanding that God, being omniscient, did not require to hear him in order to improve the quality of His decision-making.' On this view, the notion of procedural fairness which would 'make no difference' becomes a contradiction in terms, since it rests on an exclusively outcomes-oriented view which overlooks the much wider role played by procedural fairness in an administrative state that seeks to build constructive relationships between individuals and public bodies by casting the former as participants in the process of governance."

43. Lord Kerr and Lady Black concluded at [131]:

> "We are of the view that the duty to give notice of a decision to someone who will be adversely affected by it cannot be defined solely by the consideration that it is pointless for that person to make representations with a view to reversing or avoiding the effect of the decision. The duty to give notice is an accepted element of the duty to act fairly. …"

44. Thus they agreed that SSHD had been under a duty promptly to notify the applicant of the revocation of his sponsor's licence. Nevertheless they did not agree that SSHD had been under a duty to give the applicant a reasonable opportunity to react to that information before refusing his application.

45. In his judgment Lord Briggs, having cited from Lord Reed's judgment in *Osborn* at [65], noted that the Court was concerned with the principle of *audi alteram partem*, which he said at [158] "enshrines the healthy notion that a matter should not be decided against a party without that person being offered a fair opportunity to present their case to the decision maker". He went on at [161] to cite Lord Neuberger's statement in *Bank Mellat* at [179]. As he explained at [162] his view was that the instant case was "a perhaps rare example of pointlessness" for reasons he proceeded to set out.

46. Even so, it appears from what he said at [145] and [194] that he agreed that it was procedurally unfair for SSHD not promptly to inform Mr Pathan of the revocation of his sponsor's licence, although he did not agree that that in itself rendered the decision to refuse the applicant's application for further LTR unlawful.

47. Finally, Lord Wilson essentially concurred with Lady Arden (and she expressly agreed with his judgment). He considered that, as he put it at [218](a), "[i]t was fundamental to the duty of procedural fairness that, prior to the determination of his application, Mr Pathan should be afforded a reasonable opportunity to avoid the consequences of the revocation of his sponsor's licence". Like Lady Arden, he considered that the applicant had been deprived of that opportunity.

48. In *R (J's Supermarkets Ltd) v Secretary of State for the Home Department* [2026] EWCA Civ 1147 Dingemans LJ discussed procedural fairness at [55]-[58]. Having briefly referred to *Osborn* and *Doody*, he said in [55] that *Pathan* "emphasised that the requirements of procedural fairness are flexible". He went on:

> "56. Procedural fairness will often require that where a decision-maker considers that a person might be acting dishonestly or in a reprehensible manner and is minded to make a finding to that effect, then the person suspected of dishonesty or reprehensible conduct should be given an opportunity to answer the charge of dishonesty or reprehensible conduct, before a final decision is made. …
>
> 57. These general principles of procedural fairness were applied in *Balajigari* ….
>
> 58. The principles were applied to the revocation of sponsor licences in *Prestwick*. …"

Section 31(2A) of the Senior Courts Act 1981

49. Section 31(2A) provides:

> "The High Court—
>
> (a) must refuse to grant relief on an application for judicial review, and
>
> (b) may not make an award under subsection (4) on such an application,
>
> if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred."

50. Dingemans LJ summarised the correct approach to section 31(2A) in *J's Supermarkets* at [61]:

> "The following propositions appear from the terms of section 31(2A) of the Senior Courts Act and relevant authorities. First there is a statutory obligation on the Courts, pursuant to section 31(2A) of the Senior Courts Act, to refuse to grant relief on an application for judicial review 'if it appears highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred' unless

> the court considers, pursuant to section 31(2B), those requirements might be disregarded for 'reasons of exceptional public interest'. Secondly this statutory test replaces the previous discretion of the court hearing a claim for judicial review to refuse to grant relief where the decision-maker would 'necessarily' have made the same decision. This means that a narrow construction of 'conduct' is not appropriate. Thirdly the threshold remains a high one, see [*R (Public and Commercial Services Union) v Minister for the Cabinet Office* [2017] EWHC 1787 (Admin), [2018] ICR 269] at paragraph 89, and courts still have to be cautious about straying into the forbidden territory of assessing the merits of a public law decision challenged in judicial review proceedings."

TJ Trading's grounds of challenge

51. TJ Trading initially advanced four grounds of judicial review, but only pursued two grounds at the substantive hearing. The first was that, in revoking TJ Trading's sponsor licence on ground C1(o) without giving it an opportunity to make representations, SSHD had acted in a procedurally unfair manner. The second ground was that SSHD's conclusion on ground C1(z) that there were reasonable grounds to consider that the role in question was not a genuine vacancy was inadequately reasoned or irrational.

The judge's judgment

52. The judge upheld both grounds, in the case of the second ground on the basis that the decision was inadequately reasoned. She also held that the Decision was not saved by section 31(2A).

53. The judge's reasoning with respect to the first ground is set out in the following passage in her judgment:

> "59. In my judgment an allegation of a breach of ground (o) is capable of being an allegation of dishonesty. The facts of this case illustrate why. The Secretary of State's case was that the conclusion that the Claimant had assigned a CoS to a close relative under ground (o), taken together with the failure to make a note on the system as required by paragraph C1.38, gave the decision-maker reasonable grounds to believe that the vacancy was not genuine under ground (z). In other words the suspected conduct of the Claimant under (o) was all said to be part of the same dishonest scheme reflected in ground (z).
>
> 60. In any event, as Mr Malik KC highlighted, the wording of *Balajigari* at [55] illustrates that the general principle it sets out extends beyond allegations of dishonesty to cases of 'other reprehensible conduct'.
>
> …

> 62. An allegation that a level 1 user has assigned a CoS to a close relative and failed to make a note of that on the system, as part of a scheme involving a vacancy that was not genuine, is, in my judgment an allegation of 'reprehensible conduct', 'bad faith' or 'disreputable conduct' even if it is not, or not also, an allegation of dishonesty. It therefore falls within the rule in *Balajigari* at [55].
>
> 63. There is also force in Mr Malik KC's submission that the rule ultimately derives from *Bank Mellat* at [179], such that the test is whether the Claimant would be 'significantly affected' by the decision, which applied here.
>
> 64. The decision in [*R (New Hope Care Ltd) v Secretary of State for the Home Department* [2024] EWHC 1270 (Admin), [2024] 1 WLR 4504] was based on these wider common law principles, rather than a conclusion that the alleged conduct could be characterised as dishonest or something similar …
>
> 65. I therefore reject the argument that the nature of the conduct suspected under ground (o) meant that there was no duty to afford the Claimant the opportunity to make representations in advance."

54. As for section 31(2A), the judge rejected SSHD's argument that the Decision made it clear that the licence would have been revoked on ground C1(o) irrespective of any breach of ground C1(z) for reasons she expressed as follows:

> "90. *First*, … I have concluded that there was a 'fundamental departure from the standards required by the common law'. There was also a failure to interpret the Secretary of State's Guidance in accordance with these standards.
>
> 91. *Second*, … 'it has repeatedly been recognised that it is difficult, and often impossible, to uphold a Defendant's s.31(2A) argument where there has been a decision-making process which is not in accordance with the law: and this 'must be a fortiori the position when considering an immateriality argument at common law, since the acceptance of such an argument requires the Court to be even more confident about what the outcome would ("inevitably" or "necessarily") have been' ….
>
> 92. *Third*, had the Claimant had the opportunity to make representations, 'mitigating arguments [which the licence holder believes] exist': could have been advanced as envisaged by paragraph C9.11 of the Guidance. This indicates that 'whether or not the Claimant was guilty of breaching the [G]uidance, and if so which aspects of it, was only one of two central issues that needed to be determined. The other was, in effect, whether revocation of a licence would be a justified and proportionate

sanction for the breach, bearing in mind any relevant mitigation'.

93. As noted at [37] above, it has been accepted by the Secretary of State that even a policy stating that certain conduct 'will' lead to revocation carries with it the residual possibility of an exception being made. That could have occurred here, and a sanction lesser than revocation imposed. Paragraph C9.15 of the Guidance provides a series of such options, including downgrading the licence to an A or B rating, issuing an action plan, imposing sanctions such as preventing the sponsor from issuing any new CoS or from using any unassigned but unused CoS. The evidence that the Claimant could have provided, if given the chance to do so, could have been accepted; and could have led to the conclusion that any breach of ground (o) was not deliberate and that there had been no breach of ground (z). Such a finding could have led to a different sanction being selected.

94. *Fourth*, while revocation was still a 'serious possibility', that is a 'long way from being satisfied that revocation is "highly likely" which is a "high hurdle"': see [*R (Cava Bien) v Milton Keynes Council* [2021] EWHC 3003 (Admin)] at [52](ii). As Megarry J pointed out in *John v Rees* [1970] Ch 345 at p.402, 'there are many cases in which apparently "open and shut" allegations turn out not only to be answerable but actually wrong, once the person accused is given a chance to respond'."

SSHD's grounds of appeal

55. SSHD appeals on two grounds. Ground 1 is that the judge erred in concluding that SSHD acted with unlawful procedural unfairness in respect of the finding under Annex C1(o) and her determination of the content of the duty to act fairly, including that she:

i) incorrectly applied *Balajigari* principles to a breach of Annex C1(o);

ii) failed to consider or misapplied the terms of the Guidance and the nature of the sponsor system in deciding on the content of the requirements of procedural fairness in cases of immediate revocation; and

iii) incorrectly held that there was an obligation to provide an opportunity for mitigation in cases involving a mandatory breach, outside the terms of the Guidance.

56. Ground 2 is that the judge reached an irrational conclusion in respect of the application of section 31(2A), given TJ Trading's acceptance of the relevant breach, and the mandatory consequences that flowed from this.

57. There is no challenge by SSHD to the judge's conclusion that, in so far as it relied on ground C1(z), the Decision was unlawful because it contained inadequate reasons to justify the finding that there were reasonable grounds to consider that there was no genuine vacancy.

Ground 1: procedural fairness

58. SSHD contends that the judge was wrong to hold that ground C1(o) is capable of involving an allegation of dishonesty, or other reprehensible conduct, and did so in this case. SSHD accepts that ground C1(z) can involve such an allegation (although not that it necessarily does so in all cases), and does not challenge the judge's conclusion that it did so in the present case. But she says that there is a clear contrast between these two grounds. Unlike ground C1(z), ground C1(o) may well involve mere ignorance or carelessness on the part of the sponsor. SSHD also submits that the judge's reasoning conflated or elided what are two distinct grounds with different rationales and effects.

59. As counsel for SSHD pointed out, the 41 grounds in Annex C1 are diverse. They were, he submitted, accurately described by HHJ Tindal sitting as a High Court Judge at first instance in one of the two cases considered by this Court in *J's Supermarkets*, *R (Prestige Care Services) Ltd v Secretary of State for the Home Department* [2025] EWHC 2860 (Admin) at [51(i)] (emphases in the original):

> "… it is clear that Annex C1 is a miscellany of quite different conduct treated as 'mandatory grounds' for revocation. For example, alongside Ground (z), there are grounds protective of sponsored workers, such as Ground (s) on job descriptions and Ground (aa): underpaying a sponsored worker considered in [*R (Treal Care (UK) Ltd) v Secretary of State for the Home Department* [2025] EWHC 1797 (Admin), [2025] 4 WLR 89]. But there are also grounds relating to immigration – both relating to the worker (e.g. Ground (w)) and the sponsor e.g. civil penalties (Grounds (g), (h) and (i)). Then there are purely 'regulatory' grounds relating to the sponsor, such as insolvency, or cessation of trading (Ground (c)), loss of planning permission (Ground (d)) or food business authorisation (Ground (f)). Some purely relate to sponsors who have previously been 'downgraded' as an alternative to revocation for Annex C2 or C3 grounds (e.g. Annex C1 Grounds (l), (m) and (n)). In Annex C1, such 'strict liability' grounds stand alongside grounds which expressly do *always* entail dishonesty or reprehensible conduct (e.g. giving false information in Grounds (a) or (r)). Therefore, one cannot say that all the Annex C1 Grounds, or even most of them, require dishonesty or reprehensible conduct: it is a mixture, just as I have found that 'non-genuine roles' in Ground (z) itself can *include* some dishonest or reprehensible conduct (the examples in C1.46), but Ground (z) does not always *require* it."

60. Accordingly, SSHD contends, the judge erred in applying *Balajigari* to ground C1(o) as opposed to C1(z).

61. Counsel for TJ Trading barely defended the judge's reasoning at [59]-[62], and I accept SSHD's submission that she fell into error in this respect for the reasons I have summarised above.

62. That is not the end of this ground of appeal, however, because TJ Trading nevertheless contends that the judge reached the right conclusion for reasons she gave at [63]-[65].

63. An initial problem with this contention is that it is not clear that the judge's reasons at [63]-[65] are independent of the reasons in [59]-[62]. Certainly, she did not express them to be alternatives. I shall nevertheless assume that that is how they should be interpreted.

64. Counsel for TJ Trading made two core submissions in support of this contention. The first is that the Court of Appeal in *Balajigari* did not enunciate a principle which is confined to allegations of dishonesty, or other reprehensible conduct. Rather, what the Court did in that case was to apply general principles of procedural fairness to a factual context which involved allegations of dishonesty, or other reprehensible conduct. I did not understand counsel for SSHD to dispute this submission, but in any event I consider that it is clearly correct.

65. The second submission is that the law was definitively stated in Lord Neuberger's judgment in *Bank Mellat* at [179] (quoted in paragraph 30 above). In this regard, he emphasised Lord Neuberger's use of the word "rule".

66. Counsel for TJ Trading went on to argue that the "rule" clearly applied in the present case because TJ Trading was "significantly detrimentally affected" by the revocation of its sponsor licence. It was immediately deprived of its ability to assign a CoS, and it became subject to a 12 month "cooling-off" period before it could apply for a licence again (paragraph L9.17 in Part 1 of the Guidance).

67. Furthermore, he argued, there could be no question of either of the two exceptions to the "rule" identified by Lord Neuberger applying. The Guidance was not based on statute, and no doubt for that reason it had never been suggested by SSHD that there was any express or implied exclusion of the "rule". As for pointlessness, this had been relied on by SSHD before the judge, but she had rejected that argument in her judgment (at [66]-[74]) and SSHD had not advanced any ground of appeal directly challenging that conclusion (although ground 1(c) does challenge part of her reasoning, as does ground 2 since she repeated some of it in the context of section 31(2A)).

68. Counsel for SSHD disputed the submission I have recorded in paragraph 65 above, and in my judgment he was correct to do so for the following reasons. First, although Lord Neuberger used the word "rule", I strongly doubt that he intended to use that word in the hard-edged sense contended for by counsel for TJ Trading. I consider that it is far more likely that he intended to enunciate a general principle. Secondly, like any judicial utterance, Lord Neuberger's statement must be read in context. The context of *Bank Mellat* was far removed from the context of the present case, involving as it did the exercise of a draconian power in effect to shut a UK business down. Thirdly, Lord Neuberger's statement in [179] cannot be divorced from the remainder of his reasoning. He had just cited point (5) of Lord Mustill's statement in *Doody*, and there is no suggestion that he was intending to depart from that statement of the law. Given that the golden thread of the jurisprudence at least since *Doody*, if not before, is that the requirements of procedural fairness always depend on the context, if Lord Neuberger had intended to renounce that golden thread he would surely have said so. Fourthly, even if Lord Neuberger was intending to depart from *Doody*, he was in the minority. The majority cited and applied it.

69. Although counsel for TJ Trading also relied on *Pathan* as reinforcing Lord Neuberger's statement of the "rule" in *Bank Mellat*, I do not accept that reading of the judgments. Although there was near unanimous agreement that procedural fairness required SSHD promptly to notify the applicant of the revocation of his sponsor's licence, there was considerable disagreement as to how much further, if at all, the requirements of procedural fairness extended. Furthermore, none of the justices of the Supreme Court treated Lord Neuberger's statement as a hard-edged rule. Lady Arden cited and applied *Doody*, and Lord Wilson essentially concurred with her. Although Lord Briggs, and Lord Kerr and Lady Black, cited Lord Neuberger's statement, they appear to have treated it as a statement of general principle the precise application of which depended on the specific context. If they had intended to treat it as laying down a hard-edged rule, they would have had to address the points I have made in the preceding paragraph. Furthermore, none of the judgments in *Pathan* purported to depart from the majority judgment in *Bank Mellat*.

70. I would add that Dingemans LJ's judgment in *J's Supermarkets* is a recent re-affirmation by this Court of what I have described as the golden thread in this area. Many other decisions of this Court to the same effect could be cited.

71. I turn therefore to consider whether, in the present context, the requirements of procedural fairness required SSHD to afford TJ Trading the opportunity to make representations before revoking its licence on ground C1(o). In my judgment the following features of this specific context are significant.

72. First, there is the general nature of the sponsorship scheme laid down in the Guidance and the case law summarised in *Prestwick*. A sponsor licence is a privilege, not a right, and it is a privilege conditional upon compliance with the Guidance. A sponsor is obliged to discharge its responsibilities with the same rigour and vigilance as the immigration control authorities.

73. Secondly, Annex C1 sets out circumstances in which SSHD will revoke the licence. As paragraph C10.4 of Part 3 explains (emphasis added):

> "… these are known as 'mandatory' grounds of revocation. If any of these circumstances arise, we may revoke your licence *immediately and without warning*. If we do not revoke your licence immediately, we will suspend your licence pending further investigation."

Annex C1 is to be contrasted with Annexes C2 and C3 where revocation is less certain to be the outcome.

74. Thirdly, there is the nature of ground C1(o). It lays down a hard-edged rule: a CoS must not be assigned to a close relative as defined (without a note). Furthermore, as discussed above, breach does not imply any dishonesty, or other reprehensible conduct, on the part of the sponsor. It may well have been due to ignorance or carelessness.

75. Fourthly, in the present case, the breach was, as the judge found at [66], "indisputable". Nor has TJ Trading attempted in these proceedings to dispute the indisputable.

76. Fifthly, it follows that the only conceivable purpose of giving TJ Trading the opportunity to make representations would have been to allow it to present mitigation with a view to persuading SSHD not to revoke its licence, but rather to impose a lesser sanction. The mitigation which was relied on by TJ Trading before the judge was evidence that there had been a genuine misunderstanding, and that Mr Ragunathan honestly believed that it was open to TJ Trading to assign the CoS to Mr Sivalingam. It was not suggested that Mr Ragunathan was not aware that Mr Sivalingam was his brother-in-law. Accordingly, the only basis for the suggested misunderstanding can have been a failure diligently to read the relevant parts of the Guidance. It is difficult to see that that amounts to mitigation. Rather, it is confirmation that TJ Trading did not take the care expected of it. Reliance was also placed on the consequences for TJ Trading, but as noted above TJ Trading was able to re-apply for a licence after 12 months. As counsel for SSHD pointed out, unlike revocation under ground C1(z), revocation under ground C1(o) would not have significantly impaired TJ Trading's ability to obtain a new licence, although TJ Trading would no doubt be expected to show that it had taken steps to ensure no further breach. In any event, it follows from the reasoning of this Court in *Prestwick* that SSHD was under no obligation to consider any mitigation, and if she did consider it, she was under no obligation to give it any weight.

77. For the reasons given above, I conclude that, if and in so far as the judge concluded that the requirements of procedural fairness required TJ Trading to be given an opportunity to make representations before revoking its licence on ground C1(o), as distinct from C1(z), she was in error.

78. I would therefore allow the appeal on ground 1. That does not assist SSHD, however, unless she also succeeds on ground 2.

Ground 2: section 31(2A)

79. SSHD's argument based on section 31(2A) is straightforward: the Decision expressly stated in paragraphs 11 and 13 that each of grounds C1(o) and C1(z) alone was sufficient to revoke the licence, and furthermore expressly stated in paragraph 16 that they were relied upon both individually and cumulatively. SSHD accepts the judge's conclusion that revocation on ground C1(z) was unlawful because the Decision was, in that respect, inadequately reasoned. SSHD contends it is not merely "highly likely", but inevitable, that the Decision would have been the same if only C1(o) had been relied on. The Decision itself said so.

80. Counsel for TJ Trading's response to this argument was to point out that there was only one decision in the Decision, namely revocation of the licence, and to argue that the statement in paragraph 14 that revocation was based on "the issues described above" meant the decision was based on both issues together. Accordingly, he submitted, the Court did not know what SSHD might have decided if only ground C1(o) had been under consideration, and it was not for the Court to usurp SSHD's role as the decision maker.

81. I am unable to accept that reading of the Decision. In referring to "the issues described above" paragraph 14 is referring back to, in particular, paragraphs 11 and 13. Each of those expressly states that that issue is alone sufficient. Furthermore paragraph 16 confirms that they are relied upon individually and cumulatively.

82. With respect to the judge, her reasoning does not really address this point.

83. I would therefore allow the appeal on ground 2 as well.

Conclusion

84. For the reasons given above, I would allow the appeal and set aside the judge's order. Counsel for TJ Trading submitted that, in that event, this Court should nevertheless give effect to the judge's unchallenged conclusion that the Decision was unlawful in so far as it relied on ground C1(z). I agree with this. I consider the appropriate way in which to do so is to substitute a declaration to that effect.

Lady Justice Elisabeth Laing:

85. I agree.

Lady Justice Asplin:

86. I also agree.