



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 13

P520/25

OPINION OF LORD RICHARDSON

in Petition of

PRESTINE HEALTHCARE GROUP LIMITED

Petitioner

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Petitioner: Moses Johnson, Lay Representative**  
**Respondent: Dewart; Office of the Advocate General**

27 February 2026

**Introduction and background**

[1] The petitioner is a company which provides staffing services to care homes and other care institutions throughout Scotland. The petitioner supplies skilled workers who provide care services to third party institutions.

[2] The petitioner held a Sponsor Licence in terms of section L9 of the “Workers and Temporary Workers: guidance for sponsors”. That licence was granted on or around 30 August 2022. Under the terms of the licence, the petitioner was able to issue certificates of sponsorship to skilled workers who provided care services.

[3] The guidance under which the licence was granted is issued by the Home Office.

The guidance creates a scheme whereby companies, such as the petitioner, may employ individuals who do not have immigration permission to work in the UK. The authorisation to do so is known as a "Sponsor Licence" and the employers who hold a licence are known as "sponsors". The Home Office operates a Sponsor Management System. This is an online function which enables sponsors to carry out day-to-day activities and report changes.

[4] On 4 January 2025, the petitioner suffered a major data breach. The petitioner was informed of this breach by Police Scotland who advised the petitioner to contact the Home Office. As a result of this data breach, the petitioner was required to take all of its systems off-line. As a result, the petitioner lost access to the Sponsor Management System together with all of its HR systems. On 10 February 2025, the respondent confirmed that it had revoked the petitioner's access to the Sponsor Management System.

[5] On 10 January 2025, officers of the Home Office arranged a meeting with Mr Moses Johnson, a director of the petitioner, to discuss the petitioner's Sponsor Licence.

[6] From 14 January 2025, the petitioner continued to attempt to update changes in the sponsorship status of a variety of its skilled workers to the respondent by email. The respondent's officers provided an email address to the petitioner for this purpose on 18 February 2025. The petitioner continued to use email to update the respondent until 1 April 2025.

[7] The petitioner's difficulties at this time were undoubtedly heightened by the fact that its head of administration and Authorising Officer, Dr Constance Johnson, was unable to work having suffered a traumatic injury on 18 August 2024 which had left her paralysed from the waist down and without the use of her hands.

[8] On 20 January 2025, officers of the respondent visited the offices of the petitioner in order to assess its suitability to continue to hold a Sponsor Licence. This was a compliance check. Following the visit, by letter dated 11 February 2025, the respondent informed the petitioner that it had been suspended from the register of licensed sponsors. This decision was made on the basis of the observations made by the respondent's officers during the visit on 20 January 2025. As a result, Mr Johnson made representations to the respondent by letter dated 28 February 2025.

[9] Thereafter, the respondent issued a revocation notice dated 2 April 2025 informing the petitioner that it had been removed from the register of licensed sponsors.

[10] The present proceedings concern a challenge by the petitioner of the respondent's decision dated 2 April 2025.

#### **The respondent's letter dated 11 February 2025**

[11] In its letter dated 11 February 2025, the respondent identified a number of issues which had led it to suspend the petitioner's licence to sponsor. These issues included:

- First, the respondent had concluded that the petitioner, rather than operating as a nurse agency, was operating as an employment agency supplying sponsored care workers to care homes managed by third parties. This was contrary to respondent's guidance (at L5.12).
- Second, and relatedly, the respondent was not satisfied that roles being carried out by the workers sponsored by the petitioner were genuine vacancies within the petitioner itself (see C1.38, 1.44 and 1.46 of the respondent's guidance).
- Third, two workers who had been sponsored by the petitioner as carers were found to be working in the petitioner's office and kitchen respectively. This

gave rise to a concern on the part of the respondent both as to the genuineness of the roles being carried out and because no change of employment application had been submitted in respect of either worker (see C1.38, 1.44 and 1.46; and S9.13 and 9.14).

- Fourth, it was apparent to the respondent that the workers sponsored by the petitioner were not being offered the number of working hours detailed on their certificates of sponsorship. As a result, sponsored workers were not receiving the salaries detailed on their certificates.
- Fifth, it appeared to the respondent that the petitioner had failed to report a salary reduction for its sponsored workers which was contrary to the respondent's guidance (see C1.13 of the respondent's guidance).
- Sixth, the respondent did not consider that the petitioner met the requirements for the role of Authorising Officer (see L4.34).
- Seventh, it appeared to the respondent that the petitioner was not properly monitoring staff attendance and recording absences as required by Appendix D of the respondent's guidance (see C1.33).
- Eighth, the petitioner was also not complying with its reporting duties by notifying the respondent when it was no longer sponsoring individuals (see C1.13).
- Ninth, the petitioner was not keeping an up-to-date record of its sponsored worker contact details as well as an historical record (see C1.33 and Appendix D).
- Tenth, the petitioner failed to demonstrate that it was carrying out Right To Work checks contrary to C1.33 of the guidance.

- Finally, the petitioner had failed to record visa expiry dates for sponsored workers again contrary to C1.33 of the respondent's guidance.

[12] In light of these issues, the respondent advised that it considered that the petitioner was failing to comply with its sponsor duties. However, prior to beginning revocation action, the respondent suspended the petitioner's licence in order to give the petitioner a period of 20 working days within which to make representations, including submitting evidence, in response to the notice. The respondent did advise the petitioner that if it failed to make representations or adequately to address the issues within the time allowed, its sponsorship licence would be revoked.

#### **The petitioner's representations dated 28 February 2025**

[13] In its letter dated 28 February 2025, the petitioner sought to address the issues raised by the respondent. The petitioner clarified that it was the employer of all the workers sponsored by it. The petitioner acknowledged that, as a result of a change in market conditions, it had been unable to offer 40 hours' work per week to its sponsored workers and undertook to review the number of workers it sponsored in order to ensure that all remaining workers received their guaranteed hours. The petitioner acknowledged there had been a failure to report a salary reduction for its sponsored workers and advised that all employees' salaries had been reinstated to the original contractual value. In respect of record keeping and reporting obligations, the petitioner acknowledged further that it had not met its obligations. In this regard, the petitioner drew attention to the data breach and the injuries suffered by its head of administration (see [4] and [7]). The petitioner advised that a series of measures had been implemented to ensure compliance. The petitioner also drew attention to health challenges being suffered by its managing director Mr Moses

Johnson, the author of the letter. The petitioner concluded by requesting that its sponsorship licence be reinstated and asked for “3 to 6 months to implement and demonstrate these improvements.”

### **The respondent’s revocation notice dated 2 April 2025**

[14] The respondent was not satisfied with the representations received from the petitioner. As a result, the respondent took the decision to revoke the petitioner’s sponsorship licence. Having set out its findings the respondent concluded as follows:

“156. We maintain that the issues described above constitute a failure by your client to comply with their sponsor duties, and as a result, their sponsor licence has been revoked. There is no right of appeal against this decision.

157. 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:

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.

158. 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, is a necessary basis for revocation: General Sponsor Duties 1 (Annex C1, x), General Sponsor Duties 2 and 3 (Annex C1, z) and General Sponsor Duties 4 (Annex C1, aa) as well as the other issues noted within this letter: General Sponsor Duties 5 (Annex C2, a), Record Keeping and Recruitment (Annex C2, m), Migrant Tracking and Monitoring 1 (Annex C2, b), Migrant Tracking and Monitoring 2, Maintaining Migrant Contact Details and Monitoring Immigration 1 and 2 (Annex 2, b).”

**The petitioner's arguments**

[15] Shortly before the substantive hearing (as first fixed), the petitioner's agents withdrew from acting. Thereafter at the hearing itself, one of its directors, Mr Moses Johnson, appeared and sought leave to conduct proceedings as a lay representative under section 97 of the Courts Reform (Scotland) Act 2014. However, it appeared that Mr Johnson was not, in fact, in a position to proceed with the hearing. He had not considered and, indeed, did not have copies of the various documents which had been lodged on behalf of the petitioner. Mr Johnson also sought the opportunity to obtain new legal representation. In the circumstances, I continued the hearing.

[16] At the continued hearing, the petitioner was once again represented by Mr Johnson. He explained that he had been unable to obtain legal representation but was in a position to proceed with the hearing. Accordingly, he once again sought leave to conduct proceedings as a lay representative. This was not opposed by the respondent and I granted leave.

[17] Mr Johnson had the benefit of a full written note of argument which had been previously prepared by counsel on behalf of the petitioner. At the outset of the hearing, Mr Johnson adopted this note.

[18] The starting point for the petitioner was that the respondent's decisions to suspend and then to revoke the petitioner's licence had to be seen in the context of the exceptional circumstances which had, in the petitioner's submission, preceded them. The petitioner placed particular emphasis on, first, the data breach which had led to the respondent revoking the petitioner's access to the respondent's Sponsor Management System. The use of this system was mandatory for reporting changes in a worker's circumstances (C1.14). The petitioner also drew attention to the injuries suffered by its Authorising Officer. The petitioner highlighted that, in these circumstances, the petitioner's ability both to obtain

information about sponsored workers and to report changes to the respondent had been removed through circumstances beyond its control. The petitioner had attempted to address this by providing information by email to the respondent. However, the respondent's decision to suspend the petitioner's licence had been issued when the petitioner still did not have full access to either the Sponsor Management System or its own HR systems.

[19] Against this background, the petitioner's first ground of challenge was that the respondent had failed properly to take account of the way in which these exceptional circumstances had impacted on the petitioner's ability to comply with its duties as a sponsor. The petitioner highlighted that in the revocation notice the respondent had founded upon the fact that the petitioner had failed properly to notify changes using the Sponsor Management System. The petitioner submitted that, in this respect, the respondent's approach was irrational. The respondent was penalising the petitioner for failing to do something which the respondent knew was impossible. The respondent ought not to have even suspended the petitioner's licence without at least some further inquiry into the petitioner's circumstances.

[20] The petitioner's second argument was that the respondent had failed properly to exercise its discretion in considering whether to extend the period of the suspension of the petitioner's licence. The petitioner accepted that, in terms of the guidance, the respondent had no discretion in respect of the mandatory grounds of revocation (set out in Annex C1 of the guidance). However, there was no dispute that the respondent retained a discretion in respect of the suspension period. Insofar as the petitioner had requested such an extension in its representations dated 28 February 2025, the respondent had failed to consider this.

[21] Separately, but relatedly, the petitioner submitted that it had a legitimate expectation that the respondent would consider its request for an extension to the period of suspension. That expectation was founded in the express wording of the respondent's own procedure at paragraph 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."

The petitioner had, it was submitted, set out why its circumstances were exceptional in its representations dated 28 February 2025. The respondent's actions in moving directly to the revocation of petitioner's licence were not proportionate (*Bank Mellat v HM Treasury (No 2)* 2013 UKSC 39 at paragraph 74, per Lord Reed JSC).

[22] Third, the petitioner challenged the respondent's reliance on the ground set out in Annex C1(x) of the guidance which provides: "You are, or you are acting as, an employment agency or business and you have supplied a worker you are sponsoring to a third party as labour." The respondent had failed to take account of the fact that the guidance provided for various circumstances in which the supply of labour to a third party was permitted. The respondent had failed properly to investigate whether the petitioner had "full responsibility" for the workers which the petitioner provided to third parties (see S1.28). The respondent had failed properly to consider the terms of the petitioner's contracts with those third parties in terms of which the petitioner was fully responsible for the workers in question. The respondent had also failed to investigate this issue by consulting with other branches of government (C9.13).

[23] Separately, the respondent had taken into account irrelevant considerations by referring to one particular provision in the petitioner's contract with Bigsam Dynasty Limited (revocation notice at paragraph 11). Properly construed, this provision did not demonstrate that the petitioner's circumstances fell outwith the exceptions to the Annex C1(x) ground.

[24] Fourth, the petitioner challenged the respondent's reliance on the ground set out in Annex C1(z) of the guidance which provides:

"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"

[25] The respondent had failed to give adequate reasons for this part of its decision. The respondent had merely stated that none of the sponsored worker roles represented "genuine vacancies" within the petitioner. The respondent had sought to rely on an alleged contradiction in the petitioner's representations. There was no such contradiction, and the respondent had not taken account of the fact that the petitioner had had no legal representation when preparing its submissions.

[26] In short supplementary oral submissions, Mr Johnson explained that the petitioner had been granted a sponsorship licence in 2002. The respondent had carried out appropriate checks at that time, including with the police and Companies House. From that point until the inspection following the data breach in January 2025, there had been no inspections by the Home Office. The petitioner's difficulty with the January inspection was that it had simply occurred too soon after the data breach.

**The respondent's arguments**

[27] The respondent submitted that the petition should be dismissed. The respondent's decision was reviewable only on *Wednesbury* grounds but the petitioner had failed to identify any error of law, irrationality, unreasonableness or procedural impropriety in the decision. Accordingly, the court ought not to interfere with it.

***The sponsorship scheme***

[28] The background to the present proceedings were the rules made by the respondent in terms of the power vested in her by section 3(2) of the Immigration Act 1971 to allow foreign workers to enter the UK if sponsored by an employer. The sponsorship scheme was heavily dependent on the respondent having trust in the sponsoring employers. Ensuring compliance with the scheme formed part of the respondent's responsibility for ensuring immigration control.

[29] The sponsorship scheme was set out in non-statutory guidance. The respondent made three general points about the sponsorship scheme. First, sponsorship was a privilege not a right. Significant trust was placed in the sponsor. Second, a potential sponsor, like the petitioner, required to undertake to comply with the terms of the scheme in order to be given power to sponsor employers. Compliance with the scheme was onerous. If a sponsor did not meet the terms of the guidance, its licence might be downgraded, suspended while investigations are carried out, and or revoked. Third, sponsoring employers are all aware that if they fail to meet the requirements of the guidance, they will face the consequences set out therein.

[30] Counsel stressed that the guidance set out the duties which were incumbent on the sponsor. These included reporting in respect of the sponsored workers and keeping and maintaining records. Given the role, as part of the immigration control system, which was entrusted to sponsors by the Home Office, the need to keep records was obvious. The guidance referred to the Sponsor Management System as the means by which a sponsor was to report most issues.

[31] The guidance also set out the steps which could be taken following compliance checks if a breach of the rules had been detected. Where the breach was a relatively minor issue and the sponsor was willing and able to correct it, the Home Office would in most cases support the sponsor by downgrading their licence and issuing a time-limited action plan setting out the steps required for the licence to be retained. If the Home Office considered the breach were more serious, the Home Office would either suspend a sponsor's licence, with a view to revocation, while they investigated further; or revoke the licence without prior suspension. The guidance contains an annex (Annex C1: circumstances in which we will revoke your licence) which details the circumstances in which the Home Office will either immediately revoke a sponsor's licence or suspend it pending further investigation or consideration. Annexes C2 and C3 provide for less serious circumstances where the Home Office will first consider downgrading.

[32] The respondent submitted that the relevant principles applicable to the system of sponsorship had been recently summarised by the English Court of Appeal in *R (Prestwick Care Ltd) v Secretary of State for the Home Department* [2025] EWCA Civ 184 per Baker LJ at paragraphs 19-24). The respondent submitted that the following propositions could be derived from the authorities:

- First, participation in the scheme is entirely voluntary. If a sponsor chooses to benefit from the scheme, it requires to comply with its terms. The guidance is “in reality conditions of participation, and sponsors seeking the advantages of a licence cannot complain if they are required to adhere to them” (*R (New London College Ltd) v Home Secretary* [2013] 1 WLR 2358, per Lord Sumption JSC at paragraph 29, cited in *R (Prestwick Care Ltd)* at paragraph 20).
- Second, being authorised to grant such a certificate of sponsorship places a high degree of trust in the sponsor, to fulfil its responsibility in implementing and policing immigration policy (*R (Prestwick Care Ltd)* at paragraph 21, citing Haddon-Cave LJ in *R (St Andrews College) v Secretary of State for the Home Department* [2018] EWCA Civ 2496 at paragraph 29; *R (Raj and Knoll Limited) v Secretary of State for the Home Department* [2016] EWCA Civ 770, endorsing the principles set out by Mr Justice Haddon-Cave at first instance recorded at paragraph 21).
- Third, the sponsor is expected to perform its responsibilities “with all the rigour and vigilance of the immigration control authorities” and “must maintain its own records with assiduity”. “The importance of proper record-keeping and the ability on request to produce documentary evidence of compliance with the relevant procedures is not just obvious but is in any event clearly spelled out in the Guidance” (*R (Prestwick Care Ltd)* at paragraph 21; *R (St Andrews College)* at paragraph 29). The importance of maintaining a proper record, and providing that information to the SSHD as requested, is a key part of the scheme.

- Fourth, the respondent is entitled to, and is required to, enforce the requirements of the scheme in order to fulfil her responsibilities of maintaining immigration control. In doing so, she is entitled to take a proactive ‘light trigger’ approach in deciding when and with what degree of firmness to respond to potential breaches (*R (Prestwick Care Ltd)* at paragraph 21, citing Haddon-Cave LJ in *R (St Andrews College)* at paragraph 29).

[33] Against this background, the role of the court was a supervisory one. The courts should respect the experience and expertise of the immigration authorities when reaching conclusions as to a sponsor’s compliance with the guidance. There was no enhanced standard of review as might, for example, be applicable in immigration cases (see *R (Prestwick Care Ltd)* at paragraph 23). The respondent submitted that the role played by the licensing scheme and the high degree of trust placed on sponsors as part of that scheme were relevant to determining what fairness demanded in this particular context.

#### *The petitioner’s first ground*

[34] Turning to the particular grounds relied upon by the petitioner, the first ground was that the respondent had acted irrationally by penalising the petitioner for failing to submit documents via the Sponsor Management System when the respondent knew that the petitioner could not do so. Counsel submitted that this ground proceeded on a misreading of the revocation notice. The petitioner was correct that within the revocation notice there were various references to failures by the petitioner to have carried out various actions via the Sponsorship Management System. However, these comments were responses by the respondent to submissions made by the petitioner in its letter dated 28 February 2025. The fundamental issues founded upon by the respondent as grounds for revocation were not the

failure to report but, rather, were the first four grounds identified in the letter dated 11 February 2025 (see [11] above) which are referred to in paragraph 158 of the revocation notice (see [14] above). These were the Annex C1 grounds which the respondent founded on.

*The petitioner's second ground*

[35] The petitioner's second ground was that the respondent had, in some way, unlawfully failed to exercise her discretion by refusing to extend the period of the suspension of the petitioner's licence. Counsel submitted that paragraph C9.11 of the guidance which was founded on by the petitioner (see above at [21]) was clear: the period of extension referred to there was in order to provide a sponsor with more time to respond to the notice of suspension. This paragraph did not envisage a sponsor being provided with additional time to enable the sponsor to achieve compliance which was what the petitioner sought here. In any event, the petitioner had not, in fact, sought any extension of time to make further submissions. On this basis, it could not be said that the respondent had acted unlawfully.

[36] As to the petitioner's argument based on its legitimate expectations arising from the terms of C9.11, the petitioner's argument suffered from the same flaw. The purpose of the paragraph was to enable the Home Secretary, in exceptional circumstances, to provide additional time to a sponsor to respond to the notice of suspension. Whereas, in the present case, the petitioner had sought the reinstatement of its sponsorship powers and a period to implement its proposed improvements. This was not the purpose of the paragraph. In these circumstances, there was no basis to found any legitimate expectation on the part of the petitioner that the respondent would consider the petitioner's request. It was inconsistent

with the guidance in terms of which suspension was used pending further investigation or consideration (C9.7), not to enable a sponsor to achieve compliance.

*The petitioner's third ground*

[37] In relation to the petitioner's criticisms of the respondent's reliance on the ground set out in Annex C1(x), the respondent submitted that she had been entitled to reach the conclusion she did on the basis of the evidence which she had considered. This challenge related to the respondent's finding that the petitioner had been operating as an employment agency. The question was broader than simply "full responsibility". It involved a factual consideration of the way in which the petitioner had supplied workers to third parties.

[38] Paragraph S1.28 of the guidance which was referred to by the petitioner required to be read in context:

"Working on a contract basis

S1.24 Where a person is, or will be, working on a contract basis (being supplied as labour by one organisation to another), the sponsor must be whoever has full responsibility for all of the duties, functions and outcomes or outputs of the job the worker will be doing.

S1.25. If you are the sponsor, and the worker is employed by you to do work for a third party to fulfil a contractual obligation on your behalf, they must be contracted by you to provide a service or project within a certain period of time. This means a service or project which has a specific end date, after which it will have been completed or the service provided will no longer be operated by you or anyone else, [...]

S1.26. You cannot sponsor a worker if you will not have full responsibility for all the duties, functions and outcomes or outputs of the job they will be doing, or if:

- the job amounts to the hiring out of the worker to another organisation (third party) who is not the sponsor to fill a position with them, whether temporary or permanent, regardless of any genuine contract between you and the third party; or
- the worker will be contracted to undertake an ongoing routine role or to provide an ongoing routine service for a third party who is not the sponsor,

regardless of the nature or length of any arrangement between you and the third party

[...]

S1.28 If we find you are supplying the worker, or workers, as labour to another organisation to undertake a routine role or you do not have full responsibility for their duties, functions and outcomes or outputs, we will revoke your licence.”

[39] In the revocation notice, the respondent had set out the basis for her finding that the petitioner was operating as an employment agency (paragraphs 3 to 13). This included information relating to the petitioner’s registration with the Care Inspectorate, the petitioner’s website, statements made by Mr Johnson during the compliance visit; and interviews conducted with the petitioner’s employees. The revocation notice then summarises the submissions of the petitioner in the letter dated 28 February 2025. The relevant part of the revocation notice concludes as follows:

“In the absence of documentary evidence confirming that Prestine Healthcare Group is not supplying sponsored workers as labour to care homes, we are not satisfied that you have addressed this issue.”

[40] On this basis, it could not properly be said that the respondent had failed to take account of the petitioner’s submissions to the effect that the petitioner was fully responsible for its employees. It was clear from the revocation notice that the respondent had considered these submissions. However, it was equally apparent that the respondent was not satisfied with the explanation that had been put forward. The submissions put forward by the petitioner did not address the full requirements of the relevant test as set out in the guidance. Moreover, the respondent was also not satisfied with the documentary evidence which had been provided by the petitioner in support of its submissions. The respondent had carried out sufficient inquiries to reach this conclusion. Counsel stressed that in a revocation case, it was incumbent on the sponsor to satisfy the respondent that it was

complying with its sponsorship duties (*R (Hartford Care Group Limited) v Secretary of State for the Home Department* [2024] EWHC 3308 (Admin) at paragraph 52).

[41] As to the petitioner's argument in respect of the reference within the revocation notice to the contract with Bigsam Dynasty Limited, it could not properly be said the terms of the petitioner's contract with a third party to whom it supplied labour were irrelevant. In any event, the assessment of relevance was for the decision maker subject only to irrationality (*R (DSD) v Parole Board* [2019] QB 285, at paragraph 141).

#### *The petitioner's fourth ground*

[42] In respect of the petitioner's challenge to the ground based on Annex C1(z), the respondent's reasoning in this part of the revocation notice was adequate. The issue here was that, following the inspection, the respondent did not consider that the sponsored work roles represented genuine vacancies with the petitioner. The Home Secretary had set out the basis of her approach in the letter dated 11 February 2025 (at paragraphs 16 to 19).

Mr Johnson had responded, on behalf of the petitioner, in his letter dated 28 February 2025.

Mr Johnson's position was, in summary, simply to dispute the respondent's finding:

"The Home Office has also stated that they are unsatisfied that sponsored worker roles represent genuine vacancies within Prestine. The sponsored workers within Prestine hold roles appropriate to my business as they make sense, considering our business model, business plan, and scale. We are, therefore, under the impression that these are conducive to 'genuine vacancies' and are not against the guidance for sponsors."

[43] In the relevant part of the revocation notice, the respondent had quoted the above passage and then had said the following:

"36. However, the following two statements within your representations contradict the statement above:

- *I will review the number of CoS workers under my sponsorship and, where necessary, streamline and reduce my workforce to ensure I can meet my commitments and ensure all remaining sponsored workers receive the guaranteed hours as per their CoS terms.*
- ...
- *Reduction of workforce to align with available work hours...*

37. Considering the absence of evidence provided to alleviate the issues in General Sponsor Duties 1, added to the statements above which highlight that you do not have the necessary work available to your sponsored workers, we are not satisfied that you have addressed this issue.”

[44] Counsel submitted that the respondent’s reasoning was clear: its concern was the fact that the sponsored workers were not, in fact, working for the petitioner itself. Instead, they were working for third parties and the petitioner was acting as an agency. Counsel noted that in preparing the letter dated 28 February 2025, it also appeared that, at that stage, Mr Johnson had understood the respondent’s reasoning.

[45] For these reasons, the respondent’s position was that the revocation notice was not unlawful and that the petition should be dismissed.

## **Decision**

[46] Having heard what Mr Johnson had to say about the circumstances he, as managing director of the petitioner, found himself in at the beginning of 2025, it is impossible not to feel sympathy for him. However, having carefully considered the arguments challenging the respondent’s decision to revoke the petitioner’s sponsorship licence put forward on the petitioner’s behalf, I am satisfied that they are without merit.

[47] Both the respondent’s decision and the petitioner’s arguments need to be considered in the legal context of the sponsorship scheme. I respectfully agree with the summary of relevant principles set out by Lord Justice Baker in *R (Prestwick Care Ltd)* (at paragraphs 19 to

24) and the four propositions which counsel for the respondent derived from that summary (see [32] above):

- First, participation in the sponsorship scheme is voluntary, but, if a sponsor seeks to benefit from the scheme, it requires to comply with guidance issued by the respondent.
- Second, being authorised to issue certificates of sponsorship places a high degree of trust in the sponsor.
- Third, the sponsor is expected to carry out its responsibilities with the rigour and vigilance of the immigration authorities.
- Fourth, the respondent is both entitled and required to enforce the requirements of the scheme in order to fulfil her own responsibilities of maintaining immigration control.

[48] The factual background to the respondent's decision began with the visit by the respondent's officers to the petitioner's premises on 20 January 2025. Following that visit, the respondent issued the letter dated 11 February 2025 (see [11] and [12]). For present purposes, it is important to note that within the letter dated 11 February 2025, the respondent identified four failures by the petitioner to comply with its sponsorship duties which fell within Annex C1 of the guidance and, as such, each constituted a basis for immediately revoking the petitioner's licence. These were the first four issues detailed in the letter (see [11] above). On this basis, the respondent would have been entitled to proceed immediately to revoke the petitioner's licence (C7.26). Instead, the respondent elected to suspend the petitioner's licence, with a view to revocation, in order to provide the petitioner with an opportunity to make representations.

[49] The petitioner subsequently did make representations in its letter dated 28 February 2025 (see [13] above). However, the respondent was not satisfied with the representations which it had received and revoked the petitioner's licence relying on the four C1 grounds.

[50] Against this legal and factual background, I am unpersuaded by the petitioner's arguments.

[51] First, the petitioner argues that the respondent's decision in the revocation notice is irrational because the respondent was penalising the petitioner for failing to do something – report to it using the Sponsor Management System – which the respondent knew that the petitioner could not do because of the data breach which it had suffered.

[52] This argument proceeds on a misreading of the revocation notice. While it is correct that there are a number of references in the revocation notice to failures by the petitioner to have used the Sponsor Management System, those references are essentially comments on steps which Mr Johnson had indicated were to be carried out in the letter dated 28 February 2025. More importantly, the respondent did not found on any failure by the petitioner to report using the Sponsor Management System. As is clear from paragraph 158 of the revocation notice (at [14]), the respondent founded upon four issues which it considered constitute "mandatory" grounds in terms of Annex C1 of the guidance.

[53] Second, the petitioner contends that the respondent failed lawfully to exercise its discretion by failing to consider an extension of the suspension period. The petitioner argues, separately, that it had a legitimate expectation that the respondent would consider its request for an extension of the suspension period.

[54] There are a number of significant problems with the petitioner's second argument. To begin with the petitioner presupposes that there is a power, within the sponsorship scheme, for the respondent to extend the period of suspension in exceptional circumstances.

In fact, no such power exists. It is clear from part C9 of the guidance that suspension is intended to provide a short period to enable investigations to be completed by the respondent and for representations to be made by sponsors. The absence of the very power which the respondent is said to have failed to use is fatal to the petitioner's argument.

[55] The closest one comes to such a power is the reference in C9.11 (quoted above at [21]). This concerns the respondent's discretion to provide a sponsor with time, in addition to the initial 20 working day period, to respond to notification of suspension.

However, the second, related, problem for the petitioner is that it did not seek any additional time to make representations in its letter dated 28 February 2025. Instead, the petitioner sought the reinstatement of its licence and a period of between 3 to 6 months to implement steps to comply with the guidance.

[56] These same two points are equally destructive of the petitioner's alternative formulation of this argument. In short, there is no basis to found any expectation on the part of the petitioner that a request for an extension of the suspension period, other than for the purpose of seeking additional time to make representations, would either be considered or granted.

[57] Third, the petitioner's challenge directed to the ground set out in Annex C1(x) is also unfounded. Within the respondent's letter dated 11 February 2025, the respondent has set out in some detail the basis for her conclusion that the petitioner was, in her view, operating a care employment agency supplying workers to care homes managed by others. In those circumstances, it was incumbent on the petitioner to satisfy the respondent that it was, in fact, complying with its obligations under the sponsorship scheme. Having considered the relevant part of the revocation notice (paragraphs 17 to 30), I do not consider that any valid criticism can be made of the respondent's approach. The fact that the petitioner had made

representations on the “full responsibility” it had for its employees did not address the broader test set out in the guidance underlying whether a sponsor is acting as an employment agency. For example, the petitioner’s representations did not address whether the roles its employees were filling were time limited (S1.25) or whether the employees were being contracted to undertake an ongoing routine role (S1.26).

[58] Furthermore, I can see no tenable basis for contending that the respondent’s consideration of the terms of one of the petitioner’s contracts, with Bigsam Dynasty Limited, could be regarded as irrelevant to questions raised by the Annex C1(x) ground.

[59] Finally, I do not consider that there is any merit in the criticism made by the petitioner of the respondent’s reasoning in respect of its decision based on the ground set out in Annex C1(z) of the guidance. In summary, that ground relates to the respondent having reasonable grounds for believing that the roles in respect of which the sponsor has assigned a certificate are not genuine. In the relevant section of the revocation notice (at paragraphs 35 to 39), the respondent gave two reasons for its conclusion on this point. First, the respondent highlighted the fact that the petitioner had indicated in its representations that it intended to reduce the number of certificated roles under its sponsorship to align with available work hours. It is reasonably clear that the respondent was inferring that, insofar as the petitioner intended to reduce the number of certificated roles because these did not align with available work hours, it followed that, at the time of writing, the roles certificated by the petitioner were not genuine. Second, the respondent refers back to its conclusions in respect of the Annex C1(x) ground. Again, it is clear that the respondent’s position was that, insofar as it had concluded that the petitioner is operating as an agency, it followed that the worker roles being sponsored by the petitioner did not represent genuine roles for the petitioner but were, instead, roles which involved working for third parties.

**Disposal**

[60] For these reasons, I will sustain the respondent's third plea-in-law and dismiss the petition. I reserve all questions of expenses meantime.