

ENGLAND AND WALES / JUDGMENT

J's Supermarket Limited, R (on the application of) v The Secretary of State for the Home Department

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KING'S BENCH DIVISION IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE
ADMINISTRATIVE COURT Duncan Atkinson KC, sitting as a Deputy High Court Judge

[2025] EWHC 68 (Admin) & His Honour Judge Tindal [2025] 2860 (Admin) EWHC Royal Courts of
Justice Strand, London, WC2A 2LL Date: 04/09/2026 Before : LORD JUSTICE PETER
JACKSON LADY JUSTICE ASPLIN and LORD JUSTICE DINGEMANS (Senior President of
Tribunals)

- ----- Between : THE KING (on application of J'S SUPERMARKET LIMITED)
- and - THE SECRETARY OF STATE FOR THE HOME DEPARTMENT And Between THE KING (on the application of) PRESTIGE SOCIAL CARE SERVICES LTD
- and - THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
- -----
- ----- Appellant Respondent Appellant Respondent Zane Malik KC and Jay Gajjar (instructed by KT Solicitors Limited) for J's Supermarket Limited Matthew Howarth (instructed by Government Legal Department) for the Secretary of State for the Home Department Zane Malik KC, Jay Gajjar and Muhammad Zahab Jamali (instructed by SAJ Legal) for Prestige Social Care Services Ltd Matthew Howarth and Thomas Yarrow (instructed by Government Legal Department) for the Secretary of State for the Home Department Hearing date : 16 June 2026
- ----- Approved Judgment This judgment was handed down remotely at 12.00, noon on 04/09/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD Lord Justice Dingemans, Senior President of Tribunals : Introduction and issues 1. 2. 3. 4. 5. 6. These are appeals against the dismissals of claims for judicial review to quash decisions of the respondent Secretary of State for the Home Department (the Secretary of State). The claims were brought by J's Supermarket Limited (J's Supermarket) and Prestige Social Care Services Ltd

(Prestige). J's Supermarket's claim was dismissed by a judgment of Duncan Atkinson KC sitting as a Deputy High Court Judge dated 25 July 2025, and Prestige's claim was dismissed by a judgment of His Honour Judge Tindal sitting as a Judge of the High Court dated 11 November 2025. These two appeals raise issues about the circumstances in which the Home Office may revoke a sponsor licence granted to an employer. It enables this court to consider the proper application of the principles of procedural fairness addressed in *Balajigari v Secretary of State for the Home Department* [2019] EWCA Civ 673; [2019] 1 WLR 46 (*Balajigari*), and applied in *R(Prestwick Care Ltd) v Secretary of State for the Home Department* [2025] EWCA Civ 184; [2025] 1 WLR 4761 (*Prestwick*) to employers with sponsor licences. The appeals also raise issues relating to the proper construction of the Secretary of State's "Workers and Temporary Workers: guidance for Sponsors" ("the Home Office sponsor guidance"). The appellant in the first appeal is J's Supermarket, a retail grocery business which held, before it was revoked, a sponsor licence permitting it to sponsor persons under the Skilled Worker route. The appellant in the second appeal is Prestige, a care provider which also held, before it was revoked, a sponsor licence permitting it to sponsor persons under the Skilled Worker route. J's Supermarket grounds of appeal are that: (1) the judge was wrong to uphold the Secretary of State's decision that two roles carried out by employees did not constitute genuine vacancies for the purposes of annex C1(z) of the relevant guidance because of

- (a) procedural unfairness; (b) unjustified conclusions about the absence of a correlation between the job description and certificates of sponsorship (CoS); (c) the absence of evidence to show that the Secretary of State had taken into account witness evidence sent to the Secretary of State by J's Supermarket; and (d) inadequate and irrational reasoning by the Secretary of State; and (2) the judge was wrong in his approach to the application of section 31(2A) of the Senior Courts Act 1981. Prestige's grounds of appeal are that: (1) the judge was wrong in his approach to the application of section 31(2A) of the Senior Courts Act 1981; (2) the judge wrongly construed "threat to immigration control" in paragraphs C7.3 and C10.1 of the Home Office sponsor guidance; and (3) the judge wrongly construed Annex C2(a)-(b) of the Home Office sponsor guidance. The Secretary of State challenges, by way of Respondent's Notice, the judge's finding that the Secretary of State's decision to the effect that one of the vacancies was non-genuine for the purposes of the Home Office sponsor guidance was irrational, and that the flaw in that decision could not be saved by use of section 31(2A) of the Senior Courts Act 1981. The Secretary of State resists the appeals and submits that the evidence clearly showed that the Secretary of State was right to revoke the sponsors' licences for both J's Supermarket and Prestige because there was clear evidence of breaches of the Home Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD 7. 8. 9. 10. 11. Office sponsor guidance. The judges had properly applied the principles of procedural fairness and had interpreted the Home Office sponsor guidance correctly. The Secretary of State has, by a respondent's notice, cross-appealed in the appeal of Prestige. There are two grounds for the cross-appeal: (1) in making the finding that Prestige's recruitment of Ms K had been incompetent, but that finding did

not rationally entitle the Secretary of State to conclude that Ms K's role had not been genuine, the judge was wrong to consider that Ms K's recruitment into a role which required her to drive when she could not drive and did not terminate her employment earlier was not the antithesis to the definition at paragraph C1.44 of the Guidance (a job that 'requires the jobholder to perform the specific duties and responsibilities for the job'); (2) alternatively, if the judge was right on that matter, he was thereafter wrong to conclude that the Secretary of State was unable to rely on section 31(2A) of the Senior Courts Act 1981 in respect of that particular 'conduct complained of' insofar as the judge relied on the proposition that Prestige had not had a fair opportunity to make representations. On the facts of this case, Prestige was on clear notice about the Secretary of State's concern with respect to Ms K's role. I am very grateful to Zane Malik KC, Jay Gajjar and Muhammad Zahab Jamali on behalf of the appellants, and to Matthew Howarth and Thomas Yarrow on behalf of the respondent, for the very helpful written and oral submissions. Both judges made detailed findings of fact on the materials before them which I will not repeat, but it is necessary to set out some of the facts so that the issues on the appeals can be understood. Relevant facts for J's supermarket J's Supermarket, the director of which is Mr Jalatheepan Ramachandran, runs a medium-sized supermarket in Tooting specialising in South Asian foods and employing about 10 people. The Secretary of State granted a sponsor licence to J's Supermarket on 16 January 2023 to employ skilled workers in its business. CoS were issued by J's Supermarket to Naveen Chandrasekaran and Manoj Chandrasekar in 2023 and they were subsequently granted leave to remain as skilled workers. A compliance officer at the Home Office undertook a compliance visit on 2 May 2024, which was rearranged to take place on 9 May 2024 when Mr Ramachandran would be at the supermarket. The visit identified discrepancies between the job descriptions on the CoS for Mr Chandrasekaran and Mr Chandrasekar and the employees' own descriptions of their duties when they were spoken to by the Home Office official. The Home Office considered that both Mr Chandrasekar and Mr Chandrasekaran were only carrying out low skilled duties. 12. By letter dated 22 August 2024 the Secretary of State suspended J's Supermarket sponsor licence, giving J's Supermarket 20 days to respond to the Home Office's concerns. The letter identified the concerns with Mr Chandrasekaran as follows: "On 17 January 2023 you assigned a certificate of sponsorship (CoS) to Mr Naveen Chandrasekaran (C2G4L88052W) to work as a Retail Manager, under standard occupation classification Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD (SOC) code 1190 Managers and Directors in Retail and Wholesale. The job description on the CoS assigned to Mr Chandrasekaran states his duties as: Organize store operations and allocate responsibilities to personnel; Supervise and guide staff towards maximum performance; Monitor stock levels and purchases and ensure they stay within budget; Deal with complaints from customers to maintain the stores reputation; Inspect the areas in the store and resolve any issues that might arise; Plan and oversee in-store promotional events or displays; Ensure the store fulfils all legal health and safety guidelines. During his interview Mr Chandrasekaran stated his duties and responsibilities as: Clean & check quality of the vegetables ready to display before the shop opens; Works on the till serving customers; Checks stock level

before placing order with the Rep; Check all deliveries against orders deals with promotions but will check with KC before displaying the promotion.” 13. The letter continued noting that there were several discrepancies between the job description set out on the CoS and the description of duties provided by Mr Chandrasekaran. It was stated: “It is clear from the above that Mr Chandrasekaran is undertaking low skilled duties and not duties for which the CoS was assigned. We therefore believe that the role of Retail Manager does not constitute a genuine vacancy within your business, and that the role has been created in order to facilitate Mr Chandrasekaran’s leave to remain in the UK.” Reference was then made to paragraph C1.38, C1.44 and C1.46 of the Home Office sponsor guidance. 14. The letter addressed Mr Chandrasekar’s position and stated: “The job description on the CoS assigned to Mr Chandrasekar states his duties as: Keeping a record of sales and restocking the store accordingly; Managing and training store staff; Planning promotional campaigns for new products or specials; Ensuring that the store is kept clean and organized; Mediating any confrontations between staff and clients, and de-escalating the situation. During his interview Mr Chandrasekar stated his duties and responsibilities as: Clean & check quality of the vegetables ready to display before the shop opens, throwing the bad ones away; Refill vegetables & shelves throughout the day; • Tell the manager which stock is low.” 15. The letter continued stating: “It is clear from the above that Mr Chandrasekar is undertaking low skilled duties and not duties for which the CoS was assigned. We therefore believe that the role of Shopkeeper does not constitute a genuine vacancy within your business, and that the Judgment Approved by the court for handing down. J’s Supermarket v SSHD Prestige Soc Car v SSHD role has been created in order to facilitate Mr Chandrasekar’s leave to remain in the UK.” Reference was again made to paragraphs C1.38, C1.44 and C1.46. It was further reported that J’s Supermarket had not provided evidence that Mr Chandrasekaran and Mr Chandrasekar had opted out of the company’s pension scheme, and they were not being paid a pension, and there was no evidence about their suitability for their roles. It seems that Mr Ramachandran had travelled to Sri Lanka for the school holidays but had difficulties with a SIM card, and on his return did not see the suspension decision. There was no response to the Home Office letter. The licence was subsequently revoked on 10 October 2024. The revocation removed J’s Supermarket from the register of licensed sponsors, maintained pursuant to the Immigration Rules. This removed J’s Supermarket’s ability to continue sponsoring migrant workers under the Workers and Temporary Workers Scheme. The statements set out in the letter informing J’s Supermarket that its sponsor licence would be suspended were then set out again in the decision revoking J’s Supermarket’s sponsor licence. The Secretary of State therefore determined that the Appellant’s licence was liable to revocation on the mandatory ground set out in Annex C1(z) of the Home Office sponsor guidance. The Secretary of State also identified certain discretionary grounds for revocation under Annex C2 of the Home Office sponsor guidance as there had been a number of failures by J’s Supermarket to comply with its duties as a sponsor under the scheme, and failures to provide evidence to the Secretary of State. On 26 October 2024, legal representatives for J’s Supermarket sent a pre-action protocol letter challenging the decision to remove J’s Supermarket from the register of licensed sponsors. In that letter it was

identified that the Home Office had raised seven compliance issues and had “asserted that Mr Chandrasekaran’s interview indicated that he was not carrying out the responsibilities in the CoS job description and was only providing low skilled duties with reference to C1.38 and Annex C1(z) of ‘Workers and Temporary Workers: guidance for sponsors Part 3: Sponsor duties and compliance’ (Version 03/24 – 8 March 2024)” and that the Home Office also said “Mr Chandrasekar’s interview also revealed discrepancies with the CoS job description and was only carrying out low skilled duties with reference to C1.38 and Annex C1(z) of ‘Workers and Temporary Workers: guidance for sponsors Part 3: Sponsor duties and compliance’ (Version 03/24 – 8 March 2024)”. The Secretary of State agreed to reconsider the matter on 11 November 2024 and, after conducting that reconsideration, issued a further decision on 12 November 2024 upholding the revocation of the licence. J’s Supermarket then applied for permission to apply for judicial review of the Secretary of State’s decision to remove it from the register of licensed sponsors. 16. 17. 18. 19. 20. 21. 22. Judgment Approved by the court for handing down. J’s Supermarket v SSHD Prestige Soc Car v SSHD 23. 24. 25. 26. 27. Relevant facts for Prestige Faith Chipatiko was the director of Prestige. Prestige sponsored, among other employees, two employees who were referred to as “Ms K” and “Mr F”. Prestige operated as a care provider, which it is common ground is an employment sector characterised by the high turnover of employees. Prestige had a sponsor licence permitting it to assign CoS to overseas employees to come and work in the UK. By letter dated 26 March 2024 the Secretary of State suspended Prestige’s sponsor licence because of concerns about high attrition rates among employees which exceeded the sector average attrition rate, and recruitment irregularities. Reference was made to paragraph C7.26 of the Sponsors guidance which provided “where there is a more serious breach indicating ... you pose a serious threat to immigration control ... we may decide ... to suspend your licence ...”. The letter said that “we have concerns that: 1. You have assigned or intend to assign a volume of certificates of sponsorship that is disproportionate to the profile of your company. A total of 111 certificates of sponsorship were assigned since August 2021.

2. Your sponsored workers are not occupying genuine vacancies ...”. The letter continued to refer to a concern that Prestige was supplying sponsored workers as labour to third-parties or operating as a recruitment agency, but that allegation was not pursued in the light of further materials. The letter went on to request further information including a current staff list, copies of contracts and the like. By letter dated 10 May 2024 Prestige responded addressing the allegations against it. By letter dated 18 June 2024 the Secretary of State wrote further to the representations made by Prestige and asked for “additional information to address our concerns”. The letter noted that “over 40% of your sponsored workers are no longer sponsored by your business” which was said to demonstrate a failure of recruitment practices because a more robust recruitment process would have resulted in a significantly improved worker retention rate. There were 66 listed workers who were no longer sponsored. Four sponsored workers were reported to have had their visa applications refused. It was recorded that Prestige had stopped sponsoring Ms K because she was unable to drive, noting that it was Prestige’s responsibility to request and assess evidence showing

that they were suitable for the role. Mr F did not pass the English Language Test and there was no basis for concluding that he was likely to pass the test. Reference was made again to paragraph C7.26, C1.38 and to L2.1 of the sponsor guidance. Prestige was given 20 days to explain the issues, and they were warned “if you fail to appropriately do so” and “if you fail to alleviate our concerns” the sponsor licence would be revoked. 28. Prestige responded by letter and documentation dated 16 July 2024 with extensive evidence explaining that turnover and attrition were endemic in the care sector, driven by market conditions, working hours, and employee mobility. Prestige contended that its recruitment practices were structured and compliant, and that individual cases relied upon by the Secretary of State represented either isolated errors or ordinary employment outcomes, rather than evidence of abuse of the sponsor regime. 29. By letter dated 14 October 2024 Prestige pointed out that the Secretary of State’s delay in responding was causing financial and reputational loss. Judgment Approved by the court for handing down. J’s Supermarket v SSHD Prestige Soc Car v SSHD 30. 31. 32. 33. By letter dated 15 October 2024 the Secretary of State reported that Prestige’s sponsor licence had been revoked with immediate effect. The Secretary of State responded to points made, acknowledging an error in that two of the four persons alleged to have had visas refused were later granted visas. This still left two persons and this was said to be a failure of recruitment practices. The figure for staff no longer working was recalculated to be 60%, and the calculations were shown, and reference was made to a House of Commons report from 2022/23 showing average staff turnover of 28.3% for that year. As for Ms K who was unable to drive, the Secretary of State quoted Prestige’s response and referred to documentation showing that the worker had ticked the box showing that she could not drive, and concluded “given that you had no work for non-drivers, [the worker] was recruited for a role she was unable to carry out”. The letter stated that considering each of the issues detailed “we conclude that at least some of the vacancies you have filled are non-genuine”. There was then pre-action protocol correspondence in December 2024 and January 2025, and Prestige then commenced proceedings seeking permission to apply for judicial review. The Home Office sponsor guidance The Home Office sponsor guidance was updated during the course of relevant events concerning J’s Supermarket and Prestige, but the material parts of the guidance were identical in both editions of the sponsor guidance. The Home Office sponsor guidance set out below is taken from the latest edition, much of which was set out by the judge in his judgment in J’s Supermarket, which I have gratefully reproduced with very minor amendments. The Guidance consists of four parts. The relevant part for present purposes is “Part 3: Sponsor duties and compliance”, which provides guidance for employers and organisations that hold a sponsor licence “...on your duties and expected behaviours as a sponsor of workers on the Worker and Temporary Worker immigration routes and the action we may take against you if you breach these duties or behave in a way that is not compatible with being licensed by us”. The worker routes included “skilled worker”. 34. The guiding principles are set out in Part 3 at paragraphs C1.3-5, as follows: “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, whilst others are specific to those licensed under certain routes. Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD C1.5. The objectives of these duties include, but are not limited to:

- preventing abuse of immigration laws and sponsorship arrangements
- capturing early any patterns of behaviour that may cause concern
- addressing possible weaknesses in process which can cause those patterns
- monitoring compliance with the Immigration Rules, all parts of the Worker and Temporary Worker sponsor guidance, and wider UK law (such as employment law)
- ensuring sponsors do not behave in a way that is detrimental to the wider public good". 35. An employer or organisation to whom a licence is granted is entitled to assign a CoS to a worker from overseas. Before a worker could make a successful immigration application, the sponsor had to assign them a valid CoS. At paragraph C.1.9, it is made clear that the sponsor's duties include reporting and record keeping duties, and the duty to comply with immigration law. Each of these duties is explained in detail. It is made clear at paragraph C1.11 that the reporting duty encompasses reporting changes of circumstances for a sponsored worker, including reporting if they do not start to work in the sponsored role (paragraph C1.13). Similarly, the record keeping duty (at paragraph C1.33) includes the maintenance of certain documents, which are listed in Appendix D to the Guidance. These include documents such as job descriptions. 36. Under the heading "Complying with our immigration laws", paragraph C1.38 stated, "You must comply with our immigration laws and all parts of the Worker and Temporary Worker sponsor guidance." A list of specific obligations included the following: "you must ... not assign a CoS where there is no genuine vacancy or for a role which does not meet the specific eligibility criteria for the route – if you do, we reserve the right to suspend your licence, pending further investigation, which may result in your licence being revoked." 37. Under the heading "Genuine vacancy: definition", paragraph C1.44 provided: "A genuine vacancy is one which:
 - requires the jobholder to perform the specific duties and responsibilities for the job and meets all of the requirements of the relevant route
 - does not include dissimilar and/or predominantly lower-skilled duties Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD
 - is appropriate to the business in light of its business model, business plan and scale." 38. Paragraph C1.46 provided (so far as is relevant): "Examples of vacancies that are not considered to be genuine include, but are not limited to:

- a role that does not actually exist
- one which contains an exaggerated or incorrect job description to deliberately make it appear to meet the requirements of the route when it does not, or is otherwise a sham
- a job or role that was created primarily to enable an overseas national to come to, or stay in, the UK" 39. 40. 41. 42. Paragraph C1.48 addresses the duty to comply with wider UK law, which encompasses compliance with UK employment law, for example relating to National Insurance and, where required, enrolment on a pension scheme. The scheme is operated, and communication from sponsors are effected through the Sponsorship Management System. Paragraph C7 of the guidance is headed "compliance checks" and included paragraph C7.3 which contains the phrase "threat to immigration control" which features in Prestige's appeal. So far as is material paragraph C7.3 provides: "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 ..." Paragraph C9 of the guidance addresses the suspension of a sponsor licence. This may occur, as is explained in paragraph C9.1, "if we believe that you are breaching your sponsor duties and/or pose a threat to immigration control, or are engaging in behaviours or actions that are not conducive to the public good...". The approach to how a decision to suspend a licence is reached depends on the circumstances that apply. This is addressed at paragraphs C9.7 and C9.8, as follows: "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 or consideration. C9.8. If any of the circumstances listed in Annex C2 or Annex C3 arise, we will first consider downgrading your licence. However, we may decide to suspend your licence without first downgrading it. This could be where there has been sustained Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD non-compliance over a period of time, or where there have been a number of breaches which are minor in themselves but, taken together, indicate a more serious or systematic failing." 43. Before turning to the relevant provisions of those Annexes, it is right to note three further provisions of paragraph C9 of the Guidance, which address next steps after a decision has been taken to suspend. They provide: "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. C9.14. If we do not receive a response within the time allowed, we will go ahead with whatever action we believe is appropriate and tell you of our decision in writing. C9.15. Appropriate action may include one or more of the following – we may:
 - re-instate your licence with an A-rating

- re-instate 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” 44. Paragraph C10 addressed revoking licences. It contained the wording “threat to immigration control” the proper meaning of which is raised in the grounds of appeal by Prestige. So far as is material it provides: “C10. Revoking your licence This section tells you about the circumstances in which we will, or may, revoke your sponsor licence. Overview 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 Judgment Approved by the court for handing down. J’s Supermarket v SSHD Prestige Soc Car v SSHD
 - 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 ...” 45. The Guidance has annexes. One of the annexes is annex C1, which is headed “circumstances in which we will revoke your licence”. Annex C1(z) provides: “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”. 46. Annex C2 is headed: “circumstances in which we will normally revoke your licence”. Annex C2(a) and (b) provide as follows: “(a) You fail to comply with any of your sponsor duties set out in section C1 of this document.
- (b) As a result of information available to us, we are not satisfied you are using a process or procedure necessary to fully comply with your sponsor duties.” 47. The judgment below in J’s Supermarket The claim for judicial review was heard on 1 July 2025 and dismissed on 25 July 2025. Both parties agreed by the time of the hearing of the claim for judicial review that the critical issue to be determined was whether the Secretary of State’s decision that the roles of Mr Chandrasekar and Mr Chandrasekaran were not genuine vacancies, for the purposes of the Home Office sponsor guidance, was lawful. The judge found that there was no public law error in the Secretary of State’s conclusion under Annex C1(z) of the sponsor guidance concerning the relevant roles. The judge also held that it was open to the Secretary of State to conclude that there was a material mismatch between the roles described by Mr Chandrasekar and Mr Chandrasekaran to the Home Office and the roles described on the CoS. The judge also held that the mismatch was one which the Secretary of State was entitled to find to be deliberate, and it was highly likely that the revocation of the licence would have been justified under Annex C1(s) of the Home Office sponsor guidance, and for that reason relief would have been refused in any event under section 31(2A) of the Senior Courts Act

1981. The Secretary of State's case that the job descriptions set out in the CoS for Mr Chandrasekar and Mr Chandrasekaran were not genuine vacancies but had been created to facilitate entry of the employees was made clear to J's Supermarket which was given, and took, the opportunity to respond. The Secretary of State addressed that response and set out her reasons for upholding the revocation. It was a reasoned and rational decision reached with procedural fairness in accordance with *Balajigari* and *Prestwick*. Judgment Approved by the court for handing down. *J's Supermarket v SSHD Prestige Soc Car v SSHD* 48. 49. 50. 51. 52. 53. The judge also considered whether, even if the Secretary of State's decision was flawed in relation to Annex C1, it was highly likely that the outcome would not have been substantially different if the error had not occurred. He found that if the court was considering the application of section 31(2A) to a decision reached by reference to Annex C2, it would not be able to conclude, on the balance of probabilities, that it was highly likely the Secretary of State's decision would not have been substantially different if the error had not occurred. The judgment below in *Prestige* The judge found that the Secretary of State was entitled to come to the conclusion that there were failings on the part of *Prestige* which justified the removal of *Prestige's* sponsor licence. The judge identified an error in relation to the reliance on Annex C1(z) relating to Ms K because the fact that Ms K could not drive did not mean that the job was not a genuine vacancy, but refused relief pursuant to section 31(2A) of the Senior Courts Act 1981, concluding that the outcome would inevitably have been the same based on Annex C2(a)-(b). The judge set out the concerns identified by the Home Office during its monitoring of *Prestige's* sponsorship activities, and noted that the Secretary of State relied upon a number of matters, including a notably high turnover of sponsored workers, recruitment practices said to be inadequate, and instances in which sponsored workers appeared unsuitable for the roles to which they had been assigned. Particular attention was paid to Ms K whose role required driving despite the worker not being able to drive. The Home Office regarded these matters as evidence that *Prestige* had failed to discharge its sponsor duties and that certain vacancies were not genuine within the meaning of the sponsor guidance. The judge undertook a detailed examination of the relevant legislative and policy framework governing sponsor licences and considered the authorities dealing with "genuine vacancies". A substantial issue arose as to whether a finding that a vacancy was not genuine required proof of dishonesty or deliberate abuse of the immigration system. *Prestige* argued that the authorities established a connection between findings of non-genuine vacancies and conduct involving deception or bad faith. The judge rejected the proposition that dishonesty is always a necessary element. The judge held that a vacancy may be regarded as not genuine where it lacks the characteristics required by the sponsor guidance, even if the underlying failure results from serious incompetence or defective recruitment processes rather than deliberate misconduct. The concept of a non-genuine vacancy is therefore broader than fraud or dishonesty, although findings involving allegations of dishonesty require heightened procedural fairness. Applying those principles, the judge concluded that some aspects of the Secretary of State's reasoning were open to criticism. In particular, the conclusion that the vacancy for Ms K was itself a non-genuine vacancy could not be justified on the evidence. The court regarded

that episode as demonstrating a significant recruitment error rather than proving that the position was fictitious or improperly created. However, the challenge failed overall. The judge held that the Secretary of State was entitled to rely on the wider pattern of evidence concerning Prestige's recruitment and sponsorship practices. The findings regarding unusually high staff turnover, failures Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD 54. 55. 56. 57. 58. adequately to assess candidates' suitability, and broader deficiencies in compliance with sponsor obligations were rationally open to the decision-maker. Those matters provided independent grounds for revoking the licence under the relevant discretionary provisions of the sponsor guidance. The court therefore concluded that, even if the finding concerning the particular vacancy could not stand, it was highly likely that the outcome would have been the same. Applying section 31(2A) of the Senior Courts Act 1981, the court refused relief because the revocation decision rested on alternative and legally sustainable grounds. Relevant principles of law An issue about procedural fairness in public decision-making is an objective question to be determined by the court. This means that the court's function is not merely to review the reasonableness of the decision-maker's judgment of what fairness required, see *R(Osborn) v Parole Board* [2014] AC 115 at paragraph 65. The requirements of fairness, however, depend upon all the circumstances of the case. In *R v Secretary of State for the Home Department Ex p Doody* [1994] 1 AC 531 at page 560 Lord Mustill noted that "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". This approach was followed in the Supreme Court in *Pathan v Secretary of State for the Home Department* [2020] 1 WLR 4506 which emphasised that the requirements of procedural fairness are flexible. 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. These principles apply across the law in many different circumstances, for example it is established that an allegation of fraud needs to be clearly pleaded in civil proceedings so that the trial process can be fair. For similar reasons, parties are required to put any case of dishonesty to a witness in cross-examination. These general principles of procedural fairness were applied in *Balajigari* where it was held that if the Secretary of State was minded to refuse indefinite leave to remain to an applicant on the basis of dishonesty or other reprehensible conduct by that applicant, the Secretary of State was required to indicate that suspicion clearly to the applicant, to give them an opportunity to respond, and then had to take that response into account before concluding that there had been such conduct. The principles were applied to the revocation of sponsor licences in *Prestwick*. *Prestwick* was an appeal in which the primary issue was whether the Secretary of State was required to assess the potential impact of the revocation on the care provider's business, its employees, those who received care services and the wider social care industry. The court held that there was no such requirement, but there was also a ground of appeal relating to

procedural fairness. The Court held that if the Secretary of State was minded to rely on dishonesty as a ground for revoking a sponsor licence, the Secretary of State had to indicate clearly to the sponsor that the Secretary of State had that suspicion of dishonesty so that the sponsor had a fair opportunity to respond. The Secretary of State then had to consider any representations in response before drawing Judgment Approved by the court for handing down. *J's Supermarket v SSHD Prestige Soc Car v SSHD* 59. 60. 61. the inference that the explanation for the discrepancy between the job description in a CoS and the role actually being performed by the worker was that the sponsor had deliberately exaggerated the relevant role in order to facilitate the proposed employee's stay in the United Kingdom. Section 31(2A) of the Senior Courts Act 1981 provides that the High Court "must refuse to grant relief on an application for judicial review... 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". The threshold of "highly likely" is a high threshold, see *R(Public and Commercial Services Union) v Minister for the Cabinet Office* [2017] EWHC 1787 (Admin); [2018] ICR 269 (R(PCSU)) at paragraph 89. When applying section 31(2A) courts should bear in mind that Parliament has not altered the fundamental relationship between the courts and the executive. Courts should still be cautious about straying, even subconsciously, into the forbidden territory of assessing the merits of a decision under challenge in judicial review proceedings. This is because the merits of a decision are not for the court, the court is concerned only with the legality of the decision. The task of the court is to consider whether, if the unlawful conduct had not occurred, it is highly likely that the outcome would not be substantially different. The court is concerned with evaluating the significance of the error on the decision-making process, see *R(Bradbury) v Brecon Beacons National Park Authority* [2025] EWCA Civ 489;

[2025] 4 WLR 58 at paragraph 71, where the court held that the loss of an opportunity to make representations following a report which should have been provided to the planning authority was highly likely to have made no difference. That was because of the representations which had already been made, and the contents of the relevant report when it was provided. 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(PCSU)* 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. *J's Supermarket's appeal* Whether the

judge was wrong to uphold the decision that the two roles were not genuine vacancies – ground 1 in J's Supermarket's appeal 62. It is submitted on behalf of J's Supermarket that the judge was wrong, for a number of different reasons, to uphold the Secretary of State's decision that two roles carried out Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD 63. 64. 65. by employees did not constitute genuine vacancies for the purposes of Annex C1(z) of the relevant guidance. The first reason why it was said that the judge was wrong is because of procedural unfairness. Mr Malik submitted on behalf of J's Supermarket that the factual position in J's Supermarket's appeal mirrored that in Prestwick. There, the Secretary of State had failed to set out with any clarity the Secretary of State's suspicion that the appellant had deliberately exaggerated the employee's role to facilitate her stay in the country, and the first time the appellant knew of that allegation was in the final revocation letter. It is contended in this appeal that no allegation of dishonesty was made by the Secretary of State in either the suspension decision or, when that was not answered, the original revocation decision. Mr Howarth on behalf of the Secretary of State submitted that the factual circumstances in this case were different from Prestwick. In the case of J's Supermarket, the Secretary of State had made it abundantly clear throughout why the Secretary of State had concluded that the roles were not genuine. Both the suspension decision letter and the original revocation decision letter had set out the CoS job descriptions for each worker, set out what the workers said that they did, and pointed out the discrepancies between the two. As already set out above in paragraphs 55 and 56, what procedural fairness requires will vary in each case. In this case the differences between the job description on the CoS assigned to Mr Chandrasekaran and what he told the Home Office compliance officer he was doing, were stark. In my judgment the differences were fairly pointed out in the suspension letter and the original revocation letter to J's Supermarket. The CoS described a retail manager's position which included "organise store operations and allocate responsibilities to personnel", whereas Mr Chandrasekaran's report of what he did, which included "clean and check quality of the vegetables ready for display before the shop opens; works on the till serving customers", was that of a supermarket floor worker. The suspension letter made it clear what the Secretary of State's concerns were when it stated "it is clear from the above that Mr Chandrasekaran is undertaking low skilled duties and not duties for which the CoS was assigned. We therefore believe that the role of Retail Manager does not constitute a genuine vacancy within your business, and that the role has been created in order to facilitate Mr Chandrasekaran's leave to remain in the UK". The same relevant details were given in relation to Mr Chandrasekar, who was recruited as a shopkeeper. The complaint about an absence of procedural fairness was not sustainable and was rightly rejected by the judge. The second reason why it is said that the judge was wrong was the conclusion in paragraph 63 of the judgment below that there was "no real correlation" between the job description on the CoS and the job as described, or in finding that such a conclusion was justified. Mr Malik on behalf of J's Supermarket pointed out that the Secretary of State had not used the words "no real correlation" and had referred only to several discrepancies. In any event such a finding was not justified on the

evidence. Mr Howarth on behalf of the Secretary of State submitted that the judge was right to characterise the fact that there was “no real correlation” between the job description on the CoS and the job as described by the employees and that the Secretary of State had made the position clear by saying in terms that the roles had been “created” in order to facilitate leave to remain in the UK. Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD 66. 67. 68. 69. It is right to record that the Secretary of State did not use the words “no real correlation” in either the suspension letter or the original decision letter and referred to “discrepancies”. The Secretary of State had, however, made it clear that there was a stark difference between the high level managerial duties which the employees were purportedly recruited to carry out, and the actual shop-floor tasks which they described they were doing. The judge was simply paraphrasing the gist of the Secretary of State's decision. The finding of the Secretary of State about the material differences between the roles on the CoS and what was being done by the employees was a permissible finding. The Secretary of State was entitled to take account of the fact that no job description was provided when requested, and the Secretary of State was entitled to place no reliance on the WhatsApp screenshots because they were unattributable and the photographs that were provided did not evidence the duties carried out by the employees. The third reason why it is said that the judge was wrong was because there was no evidential basis for the judge to conclude that the Secretary of State had taken into account the witness statements which had been sent in to the Secretary of State on behalf of J's Supermarket. Mr Malik on behalf of J's Supermarket particularly emphasised that the Secretary of State had not positively pleaded in written submissions that the witness statements had been taken into account, and if they had been taken into account the Secretary of State would have instructed counsel to make that submission. Mr Malik also submitted that the revocation decision suffered from the same defects as in *Prestwick*, namely no clear finding of dishonesty. Mr Howarth on behalf of the Secretary of State pointed out that the witness statements had been sent in with the pre- action protocol letter challenging the original revocation decision (which the Secretary of State agreed to revisit because J's Supermarket had through oversight not responded to the suspension letter as appears above). That letter had contained representations based on the witness statements and the Secretary of State had responded to those materials. It was clear that the statements had been taken into account. It is clear that relevant parts of the witness statements had been referred to in the text of the letter challenging the original revocation decision. The judge accepted that there was no express reference to the witness statements in the reconsideration decision dated 12 November 2024 but pointed out that the Secretary of State's letter did say “we have considered the representations received with the PAP letter” and then had set out and addressed those representations in the reconsideration decision. Substantial parts of the representations, which were based on the materials in the witness statements, were set out in the reconsideration decision. In my judgment, on any fair reading of both the PAP letter and the decision letter, it is clear that the Secretary of State had considered all the materials adduced on behalf of J's Supermarket. The essential difficulty for J's

Supermarket is that it was common ground that the records of what the employees had said about their duties to the Home Office compliance officer were accepted, that the CoS job description was for retail managers but the employees were carrying out only shop-floor duties, and that there was no proper evidence to show that they had ever done anything else. 70. The fourth reason why it was contended that the judge was wrong was in finding that the Secretary of State's decision was adequately reasoned and rational. Mr Malik on behalf of J's Supermarket submitted that the revocation decision suffered from the same Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD 71. 72. 73. 74. defects as that in Prestwick. The Secretary of State had drawn inferences of dishonesty or deliberate wrongdoing solely on the basis of alleged discrepancies, when other factors were in play. Mr Howarth submitted on behalf of the Secretary of State that the Secretary of State had made clear the position that there were no genuine vacancies and that the role had been created to facilitate the employees' leave to remain in the UK. In my judgment the letters sent by the Secretary of State, and the revocation decision letter did make it clear that the Secretary of State had found that roles had been created in order to facilitate the employees' leave to remain in the UK. This was a clear and adequate statement of the behaviour which the Secretary of State found against J's Supermarket, and which J's Supermarket had been given proper opportunity to answer. It is obvious that, as Mr Malik had pointed out, a retail manager might on occasions have to cover the work of a shop floor worker who had not turned up for a shift, but this was not the position. There were no records to show that the employees had ever undertaken the retail management positions for which they had been purportedly recruited. They were not being paid the pension that they were entitled to at the time of the compliance visit. In my judgment the judge was right to uphold the Secretary of State's decision that the roles of the employees did not constitute genuine vacancies for the purposes of Annex C1(z) of the Home Office sponsor guidance. Mr Chandrasekaran and Mr Chandrasekar had been purportedly recruited to perform skilled work as a retail manager and shopkeeper, but they were actually performing shop floor level work. The Secretary of State was entitled to revoke J's Supermarket's sponsor licence. Conclusion on J's Supermarket's appeal This conclusion on ground one is sufficient to dispose of J's Supermarket's appeal. This means that it is not necessary to address the second ground of appeal relating to section 31(2A) of the Senior Courts Act 1981 although, as appears below, some of the points which were raised on behalf of J's Supermarket feature in Prestige's appeal. Prestige's appeal and the Secretary of State's Respondent's Notice An irrational finding about Ms K's vacancy – Ground 1 of the Respondent's Notice in Prestige's appeal It is convenient to deal with the grounds raised by the Respondent's Notice first. This is because the points arise logically prior to consideration of the grounds advanced on behalf of Prestige. Mr Yarrow on behalf of the Secretary of State contended that the judge erred because he had correctly found that Prestige's recruitment of Ms K had been "incompetent", but had then gone on to find that the Secretary of State was not entitled to conclude that her role was not genuine. Mr Yarrow submitted that Ms K's recruitment into a role which required her to drive when she could not drive, and the failure to terminate

her employment earlier, was the opposite of a job that 'requires the jobholder to perform the specific duties and responsibilities for the job'. The judge should have upheld the Secretary of State's reliance on Annex C1(z). Mr Malik on behalf of Prestige submitted that the judge was right to find that there was a non-sequitur in the reasoning of the Secretary of State. This is because it did not follow that Ms K was recruited into a job which required an ability to drive, when she had made it clear that she could not drive, did not mean that the job did not exist and was not genuine. Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD 75. 76. 77. In my judgment the judge was right to identify that it did not follow that just because Ms K could not fulfil the requirements of the role, the role did not exist. It suggested, as the judge found, "very poor recruitment" practice for that role, rather than a role that was not genuine. The judge addressed in terms the fact that an inference might have been drawn that, because Ms K could not drive, and declared that to Prestige but was still recruited, an inference could be drawn that the driving requirement was not genuine. The difficulty with that approach was, as the judge pointed out in paragraph 73 of the judgment, that there was evidence showing that Ms K's sponsorship had been withdrawn after only two months, which might suggest that the requirement to drive was a genuine requirement. I would dismiss the first ground of the Respondent's Notice. Judge's rejection of section 31(2A) to save reliance on Annex C1(z) – ground two of the Respondent's Notice in Prestige's appeal The second ground of the Respondent's Notice was that, even if the judge had been entitled to come to the conclusion that it was irrational to conclude that the role was not genuine just because Ms K could not drive, the judge was wrong to conclude that the Secretary of State was unable to rely on section 31(2A) of the Senior Courts Act 1981. Mr Yarrow submitted that in respect of the "conduct complained of", the judge had found that Prestige had not had a fair opportunity to make representations that Ms K's role was not genuine but, on the particular facts, Prestige had been on clear notice about the Secretary of State's concern with respect to Ms K's role. Mr Malik submitted that the judge had been correct to reject the attempt to rely on section 31(2A) of the Senior Courts Act 1981. This was because the allegation that Ms K's role was not genuine had not been fairly put to Prestige so that they could answer it. Indeed the Secretary of State had made allegations, then withdrawn them, and then resurrected them in the final decision without proper notice. The relevant approach to be taken to section 31(2A) of the Senior Courts Act 1981 is set out in paragraphs 60 and 61 above. In this case the judge was right to find that the Secretary of State's case under Annex C1(z) (assigning a CoS for a role that is not genuine) could not be saved because, as a matter of procedural fairness, this point had not been put to Prestige. As the judge explained in paragraph 75 of the judgment below, what the judge referred to as the minded to find letter would normally be sufficient to satisfy basic standards of fairness. In the particular circumstances, however, of this case the minded to find letter withdrew the original reliance on Annex C1(z), but then resurrected it without warning in the decision letter. This meant that reliance on section 31(2A) to save the decision in relation to Annex C1(z) was not appropriate. 78. I would therefore dismiss the second ground of the Respondent's Notice and the cross appeal of the Secretary of State. This

brings me to ground one of Prestige's appeal. Judge's reliance on section 31(2A) in relation to Annex C2 – ground one of Prestige's appeal 79. Prestige's first ground of appeal is that the judge was wrong in his approach to the application of section 31(2A) of the Senior Courts Act 1981 to permit reliance on Annex C2(a)-(b) having rightly ruled out reliance on Annex C1(z). Mr Malik on behalf of Prestige submitted that the judge's reliance on Annex C2(a)-(b) of the Home Office sponsor guidance was impermissible. This is because the judge considered that the Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD words "outcome" in section 31(2A), set out in paragraph 61 above, was the revocation of the sponsor licence. In fact the outcome had been revocation of the sponsor licence on grounds set out in Annex C1, which involved a finding of dishonesty or deliberate wrongdoing, whereas the judge's conclusion had been revocation of the sponsor licence on grounds set out in Annex C2. A revocation based on Annex C1 would have different consequences for Prestige if they, after the mandatory one-year period where no application was permitted for any revocation (whether on grounds in Annex C1, C2 or C3) applied for registration as a sponsor. Mr Malik also submitted that in Prestwick the court recorded that there was procedural unfairness in the reliance on Annex C1(z) and although the Secretary of State had also found a breach of Annex C1(s), the court concluded "the unfair procedure leading to the decision as to dishonesty vitiated the overall revocation decision". Reference was made to other cases in the High Court where it had been noted to be difficult to uphold reliance on section 31(2A) of the Senior Courts Act 1981 where the decision-making process had not been in accordance with the law. The judge had strayed into forbidden territory and assumed the role of decision-maker by assuming that breach of Annex C2(a) and (b), the starting point for which is that the Secretary of State would normally revoke the licence rather than the starting point in relation to Annex C1, which was that the Secretary of State would revoke the licence.

80. Mr Howarth on behalf of the Secretary of State submitted that the outcome was revocation of the sponsor licence, whatever the ground for revocation, as the judge had correctly found. There was in this case no finding of dishonesty or reprehensible conduct made by the Secretary of State. The authorities relied on by Mr Malik were different, and the judge was right to conclude that it was highly likely that revocation of the sponsor licence would have occurred, regardless of the irrational conclusion about a non-genuine vacancy. 81. 82. I note that the decision letter from the Secretary of State specifically stated that "we are satisfied that each of the following, individually, is a necessary basis for revocation: non-genuine vacancies (Annex C1(z) as well as the other issues noted within this letter; (Annex C2(a), Annex C2(b))". Annex C1 is headed "circumstances in which we will revoke your licence", Annex C2 is headed "circumstances in which we will normally revoke your licence" and Annex C3 is headed "circumstances in which we may revoke your licence". The judge did quash the decision made by the Secretary of State to find that the vacancy was not genuine for the purposes of Annex C1(z), as appears from paragraphs 74 and 75 above, meaning that the Secretary of State could no longer rely on Annex C1(z). However, as the judge pointed out, the Secretary of State did not find dishonesty or deliberate wrongdoing on the part of

Prestige but an incompetent recruitment process for Ms K. Ms K had told Prestige that she could not drive by ticking the specific box asking about her ability to drive, but Prestige granted her a CoS meaning that she could obtain leave to enter the UK to be recruited for a job that she could not perform. Prestige's failure of process was inconsistent with the guiding principles as set out in C.1.3 of the Home Office sponsor guidance (set out in paragraph 35 above) to the effect that "sponsorship is a privilege and not a right" and that employers who bring in overseas nationals "should play their part in ensuring the immigration system is not abused". Recruiting persons to perform jobs that they cannot do undermines confidence in the immigration system. Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD 83. 84. In my judgment, the judge was entitled to conclude that if the Secretary of State had not found that there was no genuine vacancy for Ms K, it would have made no difference to the outcome of removing Prestige's sponsor licence, and that Prestige's sponsor licence would have been removed under Annex C2(a)-(b). This is because the Secretary of State's essential complaint was about the incompetent recruitment process, whereby Prestige was bringing in Ms K to perform a job that she could not do, together with the other failings in the recruitment process relating to Mr F (who failed the English language test, and where there was nothing to suggest that Prestige might reasonably believe that he would pass it) together with the fact that turnover of staff was at least 40 per cent (using the lower of the two figures calculated by the Secretary of State) as against the average for the care sector of 28.3 per cent. The Secretary of State's original reliance on Annex C1(z) was unlawful, but the outcome of removal of the sponsor licence was still justified because it is highly likely that the Secretary of State would have removed the licence pursuant to Annex C2(a) and (b). This conclusion now appears on the record if Prestige do address their failings, and make an application for a future sponsor licence. I reject the submission that reliance could not be placed on section 31(2A) of the Senior Courts Act 1981 where there has been an unlawful process. Section 31(2A) is only relevant if the original decision to remove the sponsor licence relying on Annex C1(z) was unlawful (because of irrationality or some other public law failing). The court then has to apply the statutory wording set out in section 31(2A) having regard to the relevant principles and the high threshold for its application. There will be many cases where the legal error making the decision unlawful means that section 31(2A) cannot be applied without the court crossing lines to become the decision maker, see generally *BUJ v Bromley LBC* [2026] EWCA Civ 888, and the judge's own conclusion about whether the Secretary of State could rely on section 31(2A) in relation to Annex C1(z), but the decision of the judge in relation to Annex C2(a) and (b) is a proper use of section 31(2A) of the Senior Courts Act 1981. The Secretary of State had specifically identified Annex C2(a) and (b) as individual grounds for revocation of the sponsor licence in the decision letter. 85. In this case the judge considered properly the relevant tests and came to a decision which was right in relation to section 31(2A). I would dismiss this ground of appeal. Threat to immigration control – ground two of Prestige's appeal 86. The judge found that the Secretary of State's findings about Prestige's failings in relation to high staff turnover, recruitment of Mr F and Ms K were proper factual findings. Staff turnover was recalculated by the Secretary of State at 60 per cent (rather than the 40

per cent originally calculated), both of which were substantially higher than the 28.3 per cent average for the care sector within which Prestige carried out its operations. Prestige employed Mr F who failed the English language test, and there was no information available to Prestige suggesting that he would be able to pass the English test. They recruited Ms K to drive, but she had ticked the specific box saying she could not drive.

87. Mr Malik submitted on behalf of Prestige that threat to immigration control was different from threat of a breach of immigration control. Mr Malik also pointed to safeguards in other parts of the immigration rules, under which the Secretary of State Judgment Approved by the court for handing down. *J's Supermarket v SSHD Prestige Soc Car v SSHD* 88. prohibits the grant of leave where the Secretary of State has reasonable grounds to believe that the sponsor has chosen a less appropriate occupation code. Mr Yarrow on behalf of the Secretary of State submitted that the judge's findings were unimpeachable, and that the judge found that there was more than a threat to immigration control, there was a significant or systematic failing. The fact that there were other provisions in the rules requiring the Secretary of State to refuse leave to enter in certain circumstances did not weaken the importance of duties on Prestige as a sponsor. The judge accepted in paragraph 80 of the judgment below that if there had only been two isolated failures there might have been a real debate about whether Prestige's recruitment processes were a threat to immigration control but in the light of the failings as a whole the Secretary of State's conclusions were rational. The phrase "threat to immigration control" in the Home Office sponsor guidance has to be construed according to the ordinary meaning of the words appearing in the Home Office sponsor guidance, which is guidance and not a statute. In my judgment the judge was right to find that Prestige's recruitment practices posed a threat to immigration control, because Prestige recruited persons who were plainly unsuitable for their roles, because they could not pass the English language test and there was no reason to think that they might pass the test, in the case of Mr F, and could not drive when that was a requirement of the job, in the case of Ms K. The staff turnover rate was much higher than might reasonably be expected in the sector, and there was no good reason given for the excessively high rate. All of this justified the judge's conclusions about "threat to immigration control" as well as significant and systemic failings in recruitment. I would dismiss this ground of appeal. Annex C2(a)-(b) – ground three of Prestige's appeal
89. Mr Malik submitted on behalf of Prestige that the judge's conclusions in relation to Mr F and Ms K were insufficient for the judge to uphold the Secretary of State's decision that Annex C2(a)-(b) were engaged. This was because the Home Office sponsor guidance makes it clear that revocation in such circumstances will normally occur where the Secretary of State is not satisfied that "you are using a process or procedure necessary to fully comply with your sponsor duties". Mr Malik pointed out that it was impossible for any process or procedure to be entirely immune from error, Prestige had issued 139 CoS and the judge failed to consider whether the incidents in relation to Mr F and Ms K were isolated or indicative of a systemic problem with Prestige's process or procedure. Mr Yarrow on behalf of the Secretary of State submitted that the Secretary of State carried out a detailed and thorough analysis which

disclosed clear and obvious failings in recruitment practices. 90. It is apparent that the Secretary of State identified failings in relation to the recruitment of Mr F and Ms K, together with evidence showing a general failure of Prestige's recruitment process because of the unexpectedly high staff turnover. The failure in relation to Ms K was properly described as a severe failure in recruitment practice. There was no explanation to show why Ms K was recruited to carry out a job which required her to drive, in circumstances where she had told Prestige on her application form that she could not drive. Similarly there was no explanation given about why Prestige should have assumed that Mr F would pass the English language test, and why he should have been recruited. Finally there was no explanation as to why Prestige Judgment Approved by the court for handing down. J's Supermarket v SSHD Prestige Soc Car v SSHD should have had such high staff turnover when compared to other care providers. The judge was entitled to make the findings that he did.

Conclusion

91. For the detailed reasons set out above I would dismiss the appeals of J's Supermarket and of Prestige. I would dismiss the grounds raised in Secretary of State's Respondent's Notice in the appeal of Prestige. Lady Justice Asplin : 92. I agree. Lord Justice Peter Jackson : 93. I also agree.

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