Neutral Citation Number: [2017] EWHC 423 (Admin)

Case No: CO/3511/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 March 2017

Before:

Ms SARA COCKERILL QC
(Sitting as a Deputy High Court Judge)

- -

Between:

THE QUEEN **(on the application of LONDON SCHOOL OF SCIENCE AND TECHNOLOGY)**	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Mr Michael Biggs (instructed by **Mayfair Solicitors**) for the **Claimant**
Miss Sasha Blackmore (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 22 February 2017

- -

Approved Judgment

Ms Sara Cockerill QC:

Introduction

1. In this case the Claimant ("LSST") seeks judicial review of the Defendant ("SSHD")'s decision of 10 June 2016 to revoke LSST's Tier 4 sponsor licence, and revocation of LSST's Tier 2 licence which occurred at the same time.

2. Permission to claim judicial review was given by Mrs Karen Steyn QC sitting as a Deputy High Court Judge on 28 November 2016.

3. The backdrop to this case concerns the Visa Sponsorship licensing system. In summary (and with apologies to Tomlinson LJ (*The Queen on the Application of Raj and Knoll Limited* v. *The Secretary of State for the Home Department* [2016] EWCA Civ 770) and Lord Sumption (in R (*New London College Ltd)* v. *Secretary of State for the Home Department* [2013] 1 WLR 2358) on whose summaries the next paragraphs lean heavily) the position may be outlined as follows.

4. The SSHD has responsibility for the maintenance of the United Kingdom's immigration controls. Legislation has over the years been introduced which permits businesses to take a role in that system. There are three Tiers: Tiers 2, 4 and 5 which are addressed to different areas. Only Tiers 2 and 4 are relevant in this case.

5. The "Tier 2" System is a scheme which covers the employment sector, enabling skilled workers from outside the European Economic Area, the "EEA", to enter and remain in the UK to fill particular jobs which cannot be filled by settled EEA workers. Employers who are licensed by THE SSHD sponsor an applicant migrant by the issue to him or her of a Certificate of Sponsorship – "COS".

6. The Tier 4 scheme, which is the primary focus of this case, is a system for licensing educational institutions to sponsor students from outside the EEA. Under this scheme an applicant is deemed to meet the points criteria if a "Confirmation of Acceptance for Studies" (or "CAS") has been issued in respect of a course of study satisfying the academic requirements set out the rules. A CAS is an entry made by the sponsor in an electronic database to which the sponsor and the UK Border Agency's staff both have access.

7. There are two key aspects of the relationship thus created which are to some extent in tension. On the on hand the status of a licensed sponsor is (as Lord Sumption has observed) of great economic importance to the institutions which possess it as it enables them to market themselves to international students as being able to ensure that they can enter the United Kingdom for the duration of their studies. Their status may indeed be key to their continued functioning as a business.

8. On the other hand the role licensed sponsors play is a critical one in the process of immigration control. It is this aspect which has brought into being lengthy and comprehensive guidelines ("the Guidance") covering matters pertinent to each Tier, including in each case detailed record-keeping and reporting, and which ensures that compliance is monitored by the SSHD. The Guidance is frequently updated. The relevant versions in this case are 04/16 (in force at the time of the decision

complained of), 11/2015 (in force at the time of the relevant actions) and 11/2014 (in force when the CAS was assigned).

9. Putting this into context, my attention was drawn by the SSHD to its published data which indicates that there are annually approximately 200,000 study visas granted, some 1,300 Tier 4 sponsors, some 30,000 Tier 2 and Tier 5 sponsors, approximately 100,000 applications by migrants on the basis of Certificates of Sponsorship from employers, and approximately 20,000 restricted COS.

10. The serious responsibility of a sponsor is stated in the Guidance. At paragraph 2.1 of the Sponsorship Duties Guidance 04/2016, "Guiding Principles".

> "Sponsorship is a privilege and not a right. Sponsors benefit directly from migration and are expected to play a part in ensuring that the system is not abused. Sponsors must therefore fulfil certain duties, in order to ensure that immigration control is maintained. Providers must be able to show that they can fulfil, and are fulfilling, these sponsors duties in order to gain and retain a Tier 4 Licence…"

11. This principle has received repeated judicial recognition, for example:

    i) *London St Andrews College* v. *SSHD* [2014] EWHC 4328 per McGowan J: *"*the SSHD imposes a high degree of trust in the establishment to fulfil its responsibility in implementing and policing immigration policy in respect of the students whom it grants Confirmation of Acceptance for Studies… It must be understood that the grant of [sponsor] status is a fragile gift, constant vigilance about compliance is a minimum standard required for such sponsors. The burden of playing an active role in the support of immigration control is a heavy one. The SSHD is entitled to review purported compliance with a cynical level of supervision."

    ii) *R (on the application of Westech College)* v. *Secretary of State for the Home Department* **[**2011] EWHC 1484 (Admin) per Silber J: the "fundamental principle of the sponsorship system requires the UKBA to trust the sponsor to a very substantial extent... a significant reason why the trust imposed on the sponsor is considerable is the wish and determination of many students to act in breach of their leave conditions… In return for this trust imposed in the sponsor, UKBA has to monitor the performance of the sponsor with great care as any failures by the sponsor could lead to interference with immigration control".

    Both of these passages were incorporated into Haddon-Cave J's summary of the principles at first instance in *Raj and Knoll* [2015] EWHC 1329 (Admin), a judgment which has itself been repeatedly cited since and was endorsed by the Court of Appeal in the same case at [2016] EWCA Civ 770.

12. The interplay between this trust and the importance of compliance is summarised pithily by Lord Sumption in in *R (New London College Ltd)* v. *Secretary of State for the Home Department* at 2372:

> "There are substantial advantages for sponsors in participating [in the Tier 4 scheme], but they are not obliged to do so. The rules contained in the Tier 4 Guidance for determining whether applicants are suitable to be sponsoring institutions, are in reality conditions of participation, and sponsors seeking the advantages of a licence cannot complain if they are required to adhere to them."

13. As of the date of the revocation decision, the relevant guidance for Tier 4 Sponsors was in 3 parts. It is headed "Tier 4 of the Points Based System: Guidance for Sponsors". Document 1 covered applying for a Tier 4 licence, Document 2 covered "Sponsorship Duties", and Document 3 covered compliance assessments and sanctions for non-compliance and was entitled "Tier 4 Compliance". There is also Guidance for Tier 2 and 5 sponsors, called "Tiers 2 and 5: Guidance for Sponsors".

The Facts

14. LSST is a limited company trading as private provider of higher education. It sponsored both non-EEA students and non-EEA employees (as both tutors and administrative staff). In order to provide courses of study to students who are not EEA citizens it needs a Tier 4 sponsor licence. In order to employ people who are not EEA citizens it needs a Tier 2 sponsor licence. Prior to the events in question it had held a joint Tier 2 and Tier 4 sponsor licence since 2008.

15. LSST was made a Highly Trusted sponsor in September 2013. It passed a number of compliance visits in the period after 2008. In the academic field it has achieved a number of positive reports from its inspecting body.

16. On 14-17 September 2015 representatives of the SSHD attended LSST's premises and conducted a compliance visit regarding Tier 4 and Tier 2 sponsor licences.

17. On 8 March 2016 Mr Box for the SSHD wrote to LSST stating that the SSHD intended to revoke LSST's Tier 4 sponsor licence, and informing LSST that its tier 4 sponsor licence was suspended. The letter set out various concerns as to LSST's compliance with its duties as a Tier 4 sponsor. The SSHD invited LSST to provide representations and evidence in response within 20 working days.

18. LSST responded by letters dated 5 April 2016 and 6 May 2016. The timing of these representations is explained by the fact that the SSHD's March letter included an erroneous appendix as regards the SSHD's concerns in relation to English language testing. Both letters indicated an awareness on the part of LSST that under the terms of the Guidance revocation of the Tier 4 licence would entail simultaneous revocation of the Tier 2 licence held jointly. In particular LSST suggested the possibility of surrendering the Tier 4 licence without effect on the Tier 2 licence.

19. On 10 June 2016 the SSHD, having considered those representations, sent the revocation letter which is the subject of challenge in these proceedings ("the Decision Letter"). It runs to just over 19 pages and 105 paragraphs. In the light of the representations made some of the concerns raised in the 8 March 2016 letter were considered to have been addressed and were no longer relied upon. For example Mr Box says, and the wording of the letter reflects, that in the case of two students he was

satisfied that they demonstrated progression in their academic course and the new courses could represent deeper specialisation.

20. The grounds given fell under seven headings:

    i) Academic Progression;

    ii) Educational Testing Services (ETS);

    iii) Attendance;

    iv) Reporting Duties;

    v) Sponsor Related Changes;

    vi) CAS Discrepancies; and

    vii) Record Keeping Duties.

    Of these breaches were only alleged in relation to (i), (iii), (iv), (v) (ETS is dealt with further below).

21. By a letter of claim dated 21 June 2016 LSST responded to the Decision Letter pursuant to the pre-action protocol applicable to judicial review claims. One of the issues raised in that letter was that the SSHD had "automatically" revoked the Tier 2 sponsor licence without identifying any particular concerns with respect to it at any point.

22. The SSHD replied by a letter dated 5 July 2016. This letter rejected the challenge to the Decision Letter although one further issue was dropped in the light of the materials provided.

23. The Deputy Judge in granting permission considered that LSST had 2 main grounds of challenge:

    i) Academic Progression: Whether the SSHD acted unreasonably, or made an error of law, or failed to act consistently with her policy in relation to the assessment of academic progression.

    ii) Fetter of discretion: Whether the SSHD has fettered her discretion, acted unreasonably, failed to consider material matters or been procedurally unfair by revoking the Tier 2 licence because the Tier 4 licence was revoked.

24. There are also a number of subsidiary grounds of challenge.

25. The evidence before the Court on the hearing comprised a witness statement of Mr Zaidi of LSST and supporting documents, a witness statement of Mr Box an Executive Officer at UKVI who was the principal case handler and a witness statement of Ms Annan a Senior Executive Officer in the Home Office whose job is to update and review the Policy Guidance for Tier 4.

Academic Progression

26. The main ground relied upon in the Decision Letter (as had been the case in the March letter) related to academic progression. The SSHD stated that LSST had "…failed to assess students' ability to follow a course of study, their intention to undertake and complete the course and also failed to demonstrate that the course you had assigned a CAS for represented academic progression".

27. What was said to be a non-exhaustive list of occasions where this had occurred was given. This listed 8 students (down from 10 in the March letter). The SSHD's concern was that these students, who had all been unable to complete their last course because their previous sponsor's licence had been revoked, had been issued CAS to study a new course at the same academic level as their last course. The SSHD considered that the evidence suggested that the students had obtained places of study in order to remain in the UK rather than with the intention of studying.

28. This alleged breach or series of breaches is the key constituent in the Decision Letter because, as will be explained further below, it is identified in the Guidance as a matter where breach will be regarded as a "serious breach", and will usually lead to the revocation of the sponsor's licence and several instances of breach have been identified. While Mr Biggs for LSST did not concede that the revocation decision, as regards Tier 4 at least, was bound to be justified if a breach of this part was established, he rightly accepted that his position in that eventuality was very much more difficult.

29. The relevant parts of the Guidance in place at the time of revocation which relate to academic progression are as follows:

> "5.21. The academic progression rule is in place to ensure that students are progressing academically if they wish to study a further course in the UK, and are not merely seeking to extend their stay in the UK.
>
> …
>
> **How can a student demonstrate academic progression?**
>
> 5.23. To demonstrate academic progression, the student's new course must normally be above the level of the previous course for which they were given Tier 4 leave. For example, if a student's previous course was at QCF or NQF6 (and equivalents) their next course should be at least at level QCF or NQF7.
>
> 5.24. If the student's new course is at a lower level than the previous course, it will not represent academic progression and any application to extend their leave will be refused.
>
> 5.25. In order to demonstrate academic progression a student must have either successfully completed (meaning they have achieved the qualification for which they were studying) the

course for which they were last granted Tier 4 leave or, if they have changed courses with the same sponsor, the course they changed to. A student can demonstrate this by having received the award or through formal written confirmation from their sponsor.

5.26. If a student has failed to successfully complete their previous course, they will not be able to demonstrate academic progress and will have to apply from overseas if they wish to make a Tier 4 application to study a new course…

...

5.30. The following circumstances are examples of where the student meets the academic progression rule:

- Student is progression from A-levels (AQF 3) at an independent school to bachelor's degree (NQF 6) at an HEI
- Student is progressing from a bachelor's degree (NQF 6) to a master's degree (NQF 7)

Studying at the same level

5.31. If the student's new course is at the same level as the previous course, it may exceptionally be considered to represent academic progression if the course is at degree level or above; the sponsor teaching the course is an HEI with Tier 4 Sponsor Status and;

a. the new course is related to the previous course for which the student was given Tier 4 leave (meaning that it is either connected to the previous course, part of the same subject group, or involves deeper specialisation);

or

b. the student's previous and new course combined, support the student's genuine career aspirations.

…

5.33. In order to establish whether or not a student applying to study a course at the same level meets this requirement, UKVI will take into account all relevant factors, including the following points. This is not an exhaustive list, and will not be appropriate in every case:

- The level of the course
- The subject matter of the new and previous courses.

- The applicant's education history

- The credibility of the applicant's rationale for wishing to study the new course.

- Whether the HEI sponsor sufficiently explains why the student is applying to study a course at the same level.

5.34. The following circumstances are examples of where the student is likely to be considered to meet the exception to the academic progression rule, as long as their sponsor provides a strong justification:

- Student has completed a master's degree in Modern Languages (NQF 7) and wishes to study a master's degree in Latin American Studies (NQF 7) in order to deepen their specialist knowledge or to better prepare for doctoral study or a career in academic and research. In this case, there is a clear connection between the previous course and the new course.

- Student has completed a master's degree (NQF 7) in Environmental Policy and wishes to study a Master of Business Administration

5.35. An example of where the study is unlikely to meet exception to the academic progression rule is where a student has completed an accountancy qualification (NQF 7) and is applying to study a master's degree (NQF 7) in music, as the two fields are unrelated.

Sponsor duties

5.36. When assigning a CAS to a student required to show academic progression, the sponsor must conform on the CAS that the student meets the requirement and how. Where the sponsor is an HEI which has chosen exceptionally to assign a CAS to a student wishing to extend their leave is applying to study a second course at the same level, the HEI must justify its decision by explaining its rationale on the new CAS. This explanation must include confirmation that either a. or b. in paragraph 5.31 applies and why. Abuse of this exception to the requirement to be moving up an academic level will be regarded as immigration abuse and compliance action may be taken against the sponsor.

5.37. UKVI may take compliance action against a sponsor if:

- They assign a CAS without properly assessing a student's academic progression

- They are required to confirm a student's academic progression on the CAS, and do not

- They abuse the exception to the requirement to be moving up an academic level."

30. The relevant Guidance in place at the time the CAS in question were assigned states:

> "106. Since 4 July 2011, if you assign a CAS to a Tier 4 (General) student to take a course in the UK after they have finished another course in the UK under Tier 4 (General) or as a student prior to the introduction of the Points Based System, it must represent academic progression from the previous course. This applies whether the student is applying from overseas or in the UK...
>
> 108. To show academic progression the student's new course should normally be above the level of the previous course for which we gave them permission to stay in the UK as a student. For example, if a student's previous course was at QCF or NQF6 (and equivalents) we expect their next course to be at least at level QCF or NQF7.
>
> 109. However, academic progression may involve further study at the same level. In these cases, you must confirm that the new course complements the previous course. For example, a student may be moving from a taught master's degree to an MBA or research-based master's degree, or taking a course to develop a deeper specialisation in a particular field. If the course is at the same level we may request an explanation to confirm why the student has been approved by you for this course.
>
> 113. If you are required to confirm the student's academic progression on the CAS, and you do not, we will refuse the student's application. We will also take action against you if:
>
> a) you cannot show how you assessed the progression, or we are concerned about how you assessed it; or
>
> b) we find, after you have assigned a CAS stating that there is academic progression, that there is no academic progression.
>
> 130. Before you assign a CAS you must assess a student's ability to follow a course of study. You must state on the CAS what evidence you have used to make this assessment. For example, you might:

> a) confirm any qualifications the student already has which make them suitable for the course you are offering, such as checking a master's degree if they are going to do a PhD; or
>
> b) base the assessment on their progress in their existing course or a recently completed course. You must take reasonable steps to ensure that you are satisfied through your assessment that the applicant's qualifications are authentic. One method of doing this would be to contact the awarding body.
>
> 131. Before you assign a CAS you must be satisfied that the student intends and is able to follow the course of study concerned."

31. LSST's challenge to the decision on this head fell into two limbs:

i) It submits that the SSHD's concerns about the assessment of academic progress of the students identified in section B of the decision letter are unreasonable. It says that it advanced a clear and sufficient explanation which the SSHD was unreasonable to reject.

ii) It says that the Defendant should have recognised but did not that the evaluative judgment as to academic progression was essentially a matter for LSST, not for the SSHD and that the SSHD only had scope to look behind LSST's evaluation if that decision was perverse, or something close to perverse.

I shall take this second point first.

The scope of the SSHD's review

32. In support of its case that the judgment as to academic progression is an evaluative (and essentially subjective) academic judgment and is essentially a matter for the sponsor, not for the SSHD, LSST relied on the dictum of Jackson LJ in *Pokhriyal* v. *Secretary of State for the Home Department* [2013] EWCA Civ 1568 at [46]-[47] and [57]-[59] (Jackson LJ) and [89] (Vos LJ):

> "[46]. Whether a particular course constitutes academic progress is not a hard edged question. It involves comparing the new course with the student's previous academic achievements and then making a value judgment. There is a degree of subjectivity which is inescapable. Paragraph 120B of Appendix A [of the Immigration Rules] makes it clear that it is for the college, not the Secretary of State, to carry out the assessment. It is unsurprising that colleges are trusted to make this particular decision. The colleges have the requisite expertise. Also they have been approved by the Secretary of State to act as sponsors under the PBS. If any college steps out of line, its authorisation will be withdrawn. See *R (New London College Ltd)* v. *Secretary of State for the Home Department* [2013]

> UKSC 51; [2013] 1 WLR 2358 and *R (WGGS)* v. *Secretary of State for the Home Department* [2013] EWCA Civ 177.
>
> [47]. In the ordinary way the Secretary of State cannot go behind the college's assessment of academic progress. The Secretary of State must accept that assessment and then go on to decide the various matters which lie within her own domain. I say "in the ordinary way" because different considerations might arise if, for example, there were fraud, or if the college made an assessment which was plainly inappropriate on the face of the documents. It would be better to leave further consideration of such situations to a case in which they arise."

33. It was pointed out by the SSHD, and LSST accepted, that:

    i) This dictum had since been treated with some scepticism in *Kaur* v. *SSHD* [2015] EWCA Civ 13 (Lord Justice Pitchford, Lord Justice Burnett and Sir Timothy Lloyd). That case points out that *Pokriyal* concerned a student relying on a college's acceptance letter, not the issue of review of the College's compliance and expressly sets out the conflict between Jackson LJ, Longmore LJ and Vos LJ at paragraph 24. The Court of Appeal then goes on to discuss the judgment and concludes that "…While the assessment is for the academic institution, it is also uncontroversial that the licence to act as a Tier 4 sponsor would be vulnerable to revocation if confirmation were to be given erroneously, as the guidance threatened";

    ii) It runs contrary to the following dictum in *London St. Andrews College* v. *SSHD* [2014] EWHC 4328, where the Court held that: "Whether something amounts to academic progression is a question of judgement which the Sponsoring college is expected to make in a robust and cautious manner. Equally it is open to the SSHD to disagree with that assessment if she is not satisfied that the subsequent course does actually amount to academic progression. If the SSHD is not satisfied that all proper caution is being exercised then she must be entitled to call the Sponsor to account, as in the revocation letters in this case."

34. LSST nonetheless submitted that, just as the SSHD invests sponsors with trust, trust goes both ways; the SSHD is not expert in academic assessments and therefore must respect that of the sponsor at least as regards academic judgment (even if its ability to challenge is more general in other areas). LSST cited in support of this the approach taken by Parliament in the Higher Education Act 2004 ss. 12-13 and by the courts to matters of academic judgment, where it is clearly established that the court will not interfere with the exercise of academic judgment, at least unless such a judgment is perverse: see *R (Mustafa)* v. *Office of the Independent Adjudicator for Higher Education* [2013] EWHC 1379 (Admin). LSST also submitted that there was a material difference in the way that the Guidance was worded between the two iterations under consideration.

35. The SSHD in countering this argument drew my attention to a number of other authorities which, they say present a consistent picture of the courts recognising that

the question of compliance in all contexts including that of academic progression is one where the SSHD is entitled to exercise her judgment. In particular she notes:

i) *GSP College Ltd* v. *SSHD* [2015] EWHC 526 (Admin) per Laing J (in the context of academic progression): "This is an area in which the Secretary of State, not the courts, has the experience and expertise necessary to decide in which cases it is appropriate to revoke a sponsor licence."

ii) McGowan J in *R (City of London Academy)* v. *SSHD* [2015] EWHC 749 (Admin): "It is for the SSHD reasonably to calibrate what level of proper suspicion justifies investigation and it is not for this court to override that judgment if it is fairly based on the expertise and experience of the Defendant in these matters."

iii) Again both these passages were cited by Haddon Cave J in *Raj and Knoll* and in the cases which cite this judgment.

In short, she says, that there is no basis from any of these cases to suggest that when the SSHD is inspecting and supervising a sponsor's compliance that the SSHD's judgment is limited to that of reviewing for perversity any decision made.

36. The SSHD also submitted that the position taken by the courts is echoed in the Guidance. They submit that one can see from this that the expectation is that the SSHD will exercise her own judgment. This is implicit in such phrases as "in order to establish whether or not a student applying to study a course at the same level meets this requirement, UKVI will take into account all relevant factors" [2015] and "we find, after you have assigned a CAS stating that there is academic progression, that there is no academic progression" [2014].

37. On this issue it seems to me that the SSHD is plainly right.

38. The Guidance is clear about the review which will be done by the SSHD and indicates in both iterations that it will not be limited to a public law review but have substantive content. This of course also reflects the balance which the SSHD has to hold as the entity responsible for controlling immigration.

39. The approach indicated by the Guidance has been endorsed in numerous cases, and it was implicitly accepted by LSST that they were asking me to find much authority in this Court was in effect wrong. The basis for doing so, given that *Pokhriyal* is plainly distinguishable is manifestly insufficient.

40. As a final argument on this aspect LSST suggests that I should be slow to reach this conclusion because "universities and colleges would be at the mercy of the defendant's non-expert and less informed difference of view, leading to an unworkable and unfair level of uncertainty and risk of arbitrations".

41. The SSHD rightly urges me to dismiss this argument as playing to the gallery and as contrary to authority in two respects.

42. Firstly, it is well known that the SSHD does not act without checks. She is (as this hearing demonstrates) required to act in accordance with her public law duties. That

means that she cannot reach a decision which is unreasonable without risking it being challenged, and if wrong as a matter of public law, quashed.

43. Secondly it is also well established, as some of the authorities cited above indicate, that the Court gives deference to the SSHD's officers, in part because it is known that they have experience and expertise in assessing sponsors.

44. It should also be noted that before any decision is made it is open to the sponsor to make such submissions as they see fit, and (as this case again demonstrates) the SSHD considers these before reaching a final decision.

45. In a sense this is a matter of commentary and not an issue in and of itself. If (as I have found) the law indicates one conclusion I could not find differently because of a submission of this nature. However I am not troubled by the spectre which Mr Biggs tries to raise in this respect, essentially for these reasons. The structure in place is one which is founded in detailed and clear guidance, which provides checks and balances and which is far from leaving colleges in an unfair or unworkable position.

The decision on the facts: unreasonable?

46. The next issue is whether LSST succeeds in demonstrating that on the basis that the SSHD's review is not confined to perversity, the conclusions reached was nonetheless unreasonable.

47. Before turning to the facts it is appropriate to touch briefly on the role of this court in questions of this nature and the approach which I should therefore take to this question.

48. It was not in issue that the Court should not adopt an overly forensic approach to the construction of decision letters:

    i) Lord Brown-Wilkinson in *Reg.* v. *Bishop Challoner School, Ex p. Choudhury* [1992] 2 AC 182, 197E "It is essential that in exercising the very important jurisdiction to grant judicial review, the court should not intervene just because the reasons given, if strictly construed, may disclose an error of law. The jurisdiction to quash a decision only exists when there has in fact been an error of law. Moreover, the court should not approach decisions and reasons given by committees of laymen expecting the same accuracy in the use of language which a lawyer might be expected to adopt."

    ii) Per Haddon-Cave J in *Raj and Knoll*: "it is important to read such decision letters fairly and with common sense. They are generally written by busy non-lawyers, in an administrative office, who are seeking to impart the import of a decision, and the reasons for the decision, in a reasonably succinct, informative and readable manner. They are not a statute or to be read in a vacuum. They are also to be read in their proper context…"

    iii) Per Laing J in *GSP College Ltd* v. *SSHD* [2015] EWHC 526 (Admin): "So there are undoubted flaws in the decision letter. But the decision letter was written by officials, not by lawyers. Like other such decision letters, it is not to be construed like a statute"

49. As for the standard of review, the existing authorities indicate that the court's decision is confined to interfering if the decision maker has behaved in an unlawful way:

    i) *Bradley* v. *The Jockey Club* [2004] EWHC 2164 (QB) per Richards J (repeatedly cited with approval elsewhere): "The function of the court is not to take the primary decision but to ensure that the primary decision-maker has operated within lawful limits…the essential concern should be with the lawfulness of the decision taken: whether the procedure was fair, whether there was any error of law, whether any exercise of judgment or discretion fell within the limits open to the decision maker, and so forth… The decision is unlawful only if it falls outside the limits of that discretionary area of judgment. ...if it falls outside the range of reasonable responses to the question of where a fair balance lies between the conflicting interests".

    ii) *London St Andrews College* v. *SSHD* per McGowan J: the Court's discretion is "only to interfere if the discretion has been exercised in any unlawful way... a decision was not necessarily unreasonable or irrational if subsequent inquiry demonstrates that the position on that individual ground is not as extreme as was first thought."

50. LSST did seek at the hearing to advance a case that the correct approach for this court is to adopt a heightened standard of review, inter alia because the SSHD's decision-making power is not scrutinised by Parliament. The SSHD objected to this unpleaded point being run and I indicated that I concurred in her objection. Such a point should have been included in the Grounds of Review, not least because (i) it would have affected hearing length (ii) it would have had an impact on evidence and (iii) it would have had an impact on whether the hearing was considered deputy-suitable. No good reason was given for its being raised at the door of the court. No application to amend was ultimately made and the point was therefore not pursued in argument.

51. Finally and consistently with the authorities considered above on the nature of the SSHD's review there is a plethora of authority which indicates that she is entitled to look for strict compliance from sponsors. For example:

    i) *London St Andrews College* v. *SSHD* per McGowan J***:*** "It must be understood that the grant… is a fragile gift, constant vigilance about compliance is a minimum standard required of such colleges. The burden of playing an active role in the support of immigration control is a heavy one. The SSHD is entitle to review purported compliance with a cynical level of supervision"

    ii) Per Neil Garnham QC in *R (The London Reading College Ltd)* v. *Secretary of State for the Home Department* [2010] EWHC 2561 (Admin): "the UKBA entrusts to Colleges the power to grant visa letters on the understanding, and with their agreement, that they will act in a manner that maintains proper immigration control. The capacity for damage to the national interest in the maintenance of proper immigration control is substantial if Colleges are not assiduous in meeting their responsibilities. In those circumstances, it seems to me that the Defendants are entitled to maintain a fairly high index of suspicion as they go about overseeing colleges and a light trigger in deciding when and with what level of firmness they should act."

iii) Again both of these cases were cited by Haddon Cave J and subsequent authorities.

52. In terms of the points deployed in support of an argument that the decision was unreasonable Mr Biggs for LSST concentrated primarily orally on what he contended were new points raised in the Decision Letter, which had not been in the March letter, and in relation to which LSST were therefore said to be deprived of an opportunity of comment. He also relied on the April representations and the Pre-Action Protocol letter as raising such cogent answers that the substance of the decision made was unreasonable.

53. I shall deal with this broader point first, before turning to the narrower issue of "new points".

54. The individuals identified in the 10 June 2016 letter are (anonymised):

i) AZMA

ii) ZN

iii) AK

iv) NK

v) NS

vi) TAS

vii) HBN

viii) MNB

55. All were pursuing courses at the same level as previously, so there was no prima facie progression. They essentially fall into two groups. The first is the group who the SSHD suggests had little crossover. Thus:

i) AZMA moved from Leadership and Management in the Health and Social Care sector to Strategic Management and Leadership. The explanation given was that there were equivalent modules in the two courses. The SSHD considered this did not demonstrate complementing the previous course or allow deeper specialisation. The interview notes do not reflect any consideration of academic progressions. They indicate that he was not asked why his previous course was not completed, and had no knowledge of the course structure;

ii) ZN moved from ACCA to Strategic Management and Leadership. A similar explanation was offered for her. The SSHD considered a course at the same level as the previous course in an unrelated subject did not demonstrate progression from the previous course. The interview notes similarly do not deal with academic progression and indeed indicate that it was considered that she would find the new course easy because she had already taken an MSc.;

iii) AK made a similar move to AZMA (Tourism and Hospitality Management to Strategic Management). Again the explanation given was that there were "equivalent modules" on the both courses. The SSHD considered that the move did not allow for progression from the previous course or lead to a deeper specialisation in the field previously studied. The interview notes do not deal with this, or her uncompleted course and indicate that she already had an MSc. in International Business Management;

iv) NK was making the exact same move as AK. The same explanation was given, this time with an addition which indicated that LSST had noted that she already had another Level 7 qualification (i.e. that this would be her third consecutive Level 7 course). Again the SSHD was unimpressed with this explanation. Again the interview notes do not indicate any examination of the apparent stalling of her academic development or the change in field;

v) HBN was making a similar move (Healthcare Management to Strategic Management). The same explanation of equivalent modules was provided. The SSHD considered this did not complement the old course or demonstrate specialisation.

56. The second group (NS, TAS and MNB) is a group which raised red flags with the SSHD for failing to complete ACCA or CIMA studies, instead taking up the Extended Diploma in Strategic Management and Leadership. In each case there seemed to have been no examination of why the ACCA course was not being completed, or whether the new course followed from completed parts of the old so as to demonstrate some progression.

57. On reviewing the documents I conclude that the SSHD's view on these students was by no means irrational. The basis for concern, and that the issues identified were not isolated but systemic, appears to have been justified. In this context I note also that:

i) LSST's responses focussed on the students' intentions to follow their course of study;

ii) LSST did not say, and does not say in terms now in Mr Zaidi's witness statement, that consideration was given to academic progression at the time of accepting students;

iii) LSST's systems do not seem to have had regard to this question or the question of moving on from an incomplete qualification. Motivation, commitment and language skills are targeted. The scoring form is a basic 0-3 range over essentially these criteria. The box for additional comments is aimed at providing feedback to the applicant and seems to have been very rarely used.

58. Having carefully reviewed the Decision Letter as regards academic progression in the light of the detailed arguments advanced I can see no justiciable fault with it. I reject the submission that there was no reasonable basis for criticism of LSST's assessment of academic progression in light of the representations and documents provided following 8 March 2016, and the submission that these representations showed that LSST had considered all material circumstances as to academic progress.

59. The Decision Letter appears to reflect a careful consideration of the facts in the light of the submissions made. There has been ground given where explanations have been considered adequate. The reasons reached are rational and reflect the guidance, and indeed appear compelled by an assessment of the evidence in that light of that guidance.

60. The fact is that eight examples remain of academic progression not being adequately dealt with, given the exceptional nature of a same level CAS designation, and the guidance about the careful thought required to be given to that. Mr Box and his colleagues were, it seems to me, entirely entitled to conclude that there were issues with these cases which indicated a breach; and that given those cases, and the response of LSST to the concerns raised, that that breach was likely to be systemic.

61. I should add that I do not accept that the SSHD's reasoning appears (as LSST contended) to have been based on any view that it is more difficult for a student to show academic progression where he or she was unable to complete his or her last course at a Tier 4 sponsor because that sponsor's licence was revoked. It is not irrational to expect an evaluation of how academic progression is manifested in such cases, and in particular whether completion of the existing course had been considered.

62. The focus then turns to the enforcement action which follows from this finding.

63. The relevant provisions of the Guidance state:

> "3.4. UKVI will always take action when it considers that a sponsor poses, or may pose, a risk to immigration control. ...
>
> 3.5. When UKVI reasonably believes that a sponsor has breached its sponsorship duties, UKVI will consider the nature of the suspected breach.
>
> 3.6. Where the breach is an isolated or minor issue, the sponsor is willing and able to correct it, and the sponsor poses no continuing threat to immigration control, UKVI will in most cases support the sponsor in making the relevant improvements by issuing an action plan, which sets out the steps that the sponsor must take in order to retain its Tier 4 licence.
>
> 3.7. However, where there is a serious breach indicating a significant of systematic failing, the sponsor no longer meets the eligibility or suitability requirements for holding a Tier 4 licence, or UKVI considers that the sponsor constitutes a serious threat to immigration control, UKVI may decide to revoke the sponsor's licence. This may occur where there has been sustained non-compliance over a period of time, or where there have been a number of breaches which are isolated or minor in themselves but – taken together – indicate a serious or systematic failing.
>
> …

3.9. UKVI will take into account any representations that a sponsor makes. However, as set out above, UKVI places great weight on the importance of trust in the operation of the Tier 4 sponsorship system, and the need to ensure that sponsors take their duties seriously.

3.10. Accordingly, if UKVI believes:

- A serious breach has occurred; and/or
- That there has been sustained non-compliance over a period of time; and/or
- That a number of isolated or minor breaches have occurred which taken together indicate a serious failing;

It is unlikely to consider that the provider should retain its Tier 4 licence

3.11. As set out below, this is the case even if action is proposed, or has been taken, in order to remedy the situation, which means that the sponsor no longer poses, or will no longer pose, a risk to immigration control. This is because where a sponsor has breached its duties in the past, the sponsor may not be trusted to comply...

…

3.14. Any breach of the sponsor guidance which suggests a serious or systematic failing, a sponsor is no longer eligible or suitable to hold a Tier 4 licence, or that a sponsor poses a risk to immigration control is likely to be regarded as a serious breach, including where this arise from the commission of a number of isolated or minor breaches.

3.15. The following is a non-exhaustive list of failings which are likely to be considered a serious breach:

Compliance failings

…

- Assigning CAS to students without properly assessing… their academic suitability
- Failure to properly assess a student's academic progression, ...

…

- Giving UKVI cause to believe that you do not or cannot comply with a sponsorship duty, when failure to comply

> suggests a serious or systematic failing or indicates a threat to immigration control. Operating in a manner that poses a risk to immigration control, such as failing to take steps to ensure non-EEA students have leave to remain in the UK."

64. In the circumstances, on the plain words of the Guidance, the SSHD was entitled to consider that a serious breach had been established in relation to each of the individuals and that prima facie revocation was the appropriate sanction. Given the number of examples and the issues of system which they appear to disclose, the SSHD's decision to revoke was not merely not irrational, but appears plainly justified.

65. Indeed even if LSST were correct about the question of the SSHD's powers of review, it seems to me that this was a clear case that a sponsor had not properly assessed academic progression such that, even on LSST's approach to review, the SSHD would have been entitled to find a breach. The SSHD would have had material available which would have enabled it to say that LSST's decision making was flawed in that it was not taking steps to ensure that academic progression was taken into account in cases such as these.

66. The other issue raised by LSST is whether the Decision Letter contained new grounds upon which LSST had not had an opportunity to comment. This point does not affect the complaints listed above, but requires to be considered separately as if any public law issue arises in relation to this, one then has to consider what effect it has on the overall process.

67. The legal backdrop to this was largely common ground. LSST pointed out that procedural fairness requires that a sponsor be afforded a reasonable opportunity to respond to concerns raised in support of a decision to revoke a Tier 4 sponsor licence at least before a final decision to revoke is taken. It cited the decision of Neil Garnham QC in *R (London Reading College)* v. *SSHD* [2010] EWHC 2561 (Admin) at [37]:

> "[37]. … on the facts of this case, it does not much matter whether the procedures adopted by the Defendants are seen as two separate procedures or a single complete whole. What matters is whether, before taking their decision, the [sic] Claimant's had been given fair notice of what was concerning the Defendants so that the Claimants could attempt to deal with the points. That was necessary both as a matter of fairness but also to ensure that the Defendants were in a position to take a rational decision, a decision based on a proper appreciation of all the facts."

68. the SSHD relied on later passages in the same judgment ([40-1]) indicating that what procedural fairness demands varies with the circumstances, that there is an irreducible minimum of information which a licence holder needs if he is to have a proper chance to respond, but it is sufficient if the essence of the complaint is identified even if further material then leads to the point being put in more detail. This seems to me to fairly reflect the position on the authorities, including *Doody* and *O'Reilly* v. *Mackman*.

69. LSST also cited the decision in *New London College* at paragraphs 56-7. That decision arose in slightly different circumstances, in the context of a suspension decision with no prior notice at all. LSST says that a revocation decision demands a higher standard of consultation, whereas the SSHD submits that the fact of a suspension decision, with an opportunity for subsequent representations makes a revocation decision such as the present one subject to a lesser hurdle

70. I subscribe to neither of these views as a matter of generality. All depends on the facts.

71. LSST's complaint here is that they say that there was a material variation of reasoning between the March letter and Decision Letter in that in the former no concerns were expressed about the students not being able to complete courses and that this led to the unfairness. On a close examination of the documents I reject this reasoning. While the point was arranged and put in a slightly different way in the Decision Letter, the essence of the concern regarding the absence of enquiry into the possibility of the students completing their current course with a new sponsor was there in the March letter as well. In each case three elements were flagged (i) the uncompleted course (ii) the possibility of a sponsor for the completion of the course and (iii) the possibility that the student's motivation was to prolong his/her stay.

72. Further it is wrong to say that the Decision Letter was a final end date in terms of the SSHD considering LSST's submissions regarding the issues. It is clear, for example, that representations after the Decision Letter resulted in the withdrawal of concerns over student JM who originally featured as a CAS discrepancy case (see further below).

Alleged Fetter of Discretion in revoking joint licence in Tier 2 as well as Tier 4

73. LSST secondly asserts that the SSHD revoked the Tier 2 licence without separate consideration and that in so doing she has fettered her discretion and acted unreasonably and unfairly. In that there was no assessment of whether revocation of the valuable entitlement of Tier 2 was appropriate LSST says the SSHD cannot demonstrate she acted reasonably.

74. The background against which this decision was taken is the relevant para of the Guidance which states: "5.7. Where a sponsor's Tier 4 licence is revoked, and the licence is a joint licence covering other Tiers, the revocation will also apply in relation to those Tiers".

75. LSST prays in aid the fact that despite extensive and repeated inspections no issue was ever raised with Tier 2 compliance and submits that bracketing the two together is unreasonable in circumstances where, while there are some common features between the Tiers, Tier 2 covers a different area of regulation with different considerations from Tier 4.

76. LSST argues that the SSHD's policy was itself unreasonable in that it was expressed in terms which did not allow for exceptions. LSST says that it is no answer to argue that as a matter of law even an unequivocal policy mandating a decision does not amount to a fetter so long as the decision-maker is open to departing from the policy. That is because in this case it is common ground that the SSHD did not separately

consider whether to revoke the claimant's Tier 2 sponsor licence at all; she took her decision solely on the basis of the mandatory terms of the policy as set out in the Guidance.

77. It is submitted for LSST that it was necessary to consider whether it was appropriate to revoke the Tier 2 licence, which would have required a careful consideration of all factors relevant to that Tier.

78. The SSHD says that this argument proceeds on a misapprehension; it was not necessary for her to consider Tier 2 at all in all joint licence cases. She relies on the wording of the Guidance and says that on the plain wording of the Guidance therefore Tier 2 revocation followed from Tier 4 revocation. There was a general discretion not to follow this Guidance, but there was no obligation to exercise that discretion in each case such that not exercising it was unreasonable or otherwise a public law error.

79. On that basis, she submits, the only question is whether it was permissible for the SSHD to state a policy in such terms. On this, she relies on the dicta of Lord Dyson in *R (West Berkshire District Council and another)* v. *SSCLG* [2016] EWCA Civ 441 **(**Lord Dyson MR, Laws and Treacy LJJ). Lord Dyson explained that:

> "16 …It is important first to notice a distinction in this area of the law which is at the core of the debate in this appeal. It is between these two principles. (1) The exercise of public discretionary power requires the decision-maker to bring his mind to bear on every case; he cannot blindly follow a pre-existing policy without considering anything said to persuade him that the case in hand is an exception. See *British Oxygen Co Ltd* v. *Board of Trade [1971] AC 610* , in which Lord Reid and Viscount Dilhorne cited the classic authority of *R* v. *Port of London Authority, Ex p Kynoch Ltd [1919] 1 KB 176* , 184, per Bankes LJ.
>
> 17 But (2): a policy-maker (notably central government) is entitled to express his policy in unqualified terms. He is not required to spell out the legal fact that the application of the policy must allow for the possibility of exceptions. As is stated in *De Smith's Judicial Review*, 7th ed. (2013), para 9-013:
>
> > 'a general rule or policy that does not on its face admit of exceptions will be permitted in most circumstances. There may be a number of circumstances where the authority will want to emphasise its policy … but the proof of the fettering will be in the willingness to entertain exceptions to the policy, rather than in the words of the policy itself.'"

80. As to the other aspects of the argument, she submits that these are disposed of by two facts. The first is that the SSHD agrees that exceptions can be considered and the case law and the evidence makes clear that exceptions are in fact made. For example in *R (West London Vocational Training College Ltd)* v. *SSHD* [2013] EWHC 31 (Admin), Lord Justice Toulson recorded that:

> "It is alleged that the defendant unlawfully fettered her discretion. I am not persuaded of that on the evidence… UKBA recognise that there may be instances when the circumstances of a case are so compelling that rigid application of a mandatory requirement may be disproportionate to the overall aim. In such cases UKBA would consider applying some form of discretion, but those instances would be limited to a small number of cases where the application of discretion can be clearly justified…"

81. This was echoed in the evidence of Mr Box who confirmed that it is theoretically possible for a Tier 2 licence not to be revoked and explained that he had addressed his mind (in the context of giving his evidence in this case) to circumstances in which that might be appropriate.

82. Secondly the SSHD says that LSST was patently aware that its Tier 2 licence would be revoked if its Tier 4 licence was revoked, yet made no relevant representations. There was therefore no error of law in not considering them. Further, in any event, this is not a case with facts such as to suggest there was some reason why the Guidance should not be applied in this case.

83. In the end this seems to me to come down to a question of whether the policy of the SSHD can be impugned; and whether, if not, that policy nonetheless requires a consideration of the exercise of the residual discretion in every single case. Absent the policy, LSST's arguments would certainly have much greater force in that it might well be argued that the different range of Tier 2 compliance issues and the clean September Tier 2 inspection might suggest that revocation of one licence would prompt a detailed consideration of the appropriateness of revocation of the other.

84. However it is common ground that the policy does and at all material times did exist, and it is not suggested that LSST was not at the time aware of it (as it should have been from reading the Guidance).

85. Nor, given the fact that it is clear that there is a residual discretion which is on occasion exercised, can it realistically be said that the policy offends against the legal principles on fettering discretion. LSST did not explain clearly how it was said to do so. The Guidance, the authorities and the facts of the case, including LSST's own correspondence, speak with one voice: there is a policy expressed in clear terms but there is no absolute fetter. The policy therefore does not offend against the legal principle.

86. Can it therefore be said that there is a requirement that the SSHD asks in each case whether the residual discretion should be exercised? There is nothing in the authorities which suggests so; and indeed to impose such a requirement would effectively denude the policy of practical effect.

87. The only question which remains is whether in this case it was unreasonable for the SSHD not to consider whether this was an exceptional case in which the residual discretion should be exercised. I do not consider that this can be said. No case has been made out then or now for why an exceptional or unusual course should have been taken in this case by the SSHD of its own motion (and indeed the thrust of the

argument, directed to the differences in the schemes, implicitly accepts that there is none). Further such an approach would seem to run contrary to principle (see Lord Dyson: "he cannot blindly follow a pre-existing policy without considering anything said to persuade him that the case in hand is an exception", which indicates that the impetus to treating as an exception comes from outside).

88. Furthermore while LSST did ask the SSHD to consider allowing them to surrender their Tier 4 licence leaving the Tier 2 licence in place it never addressed the question of why Tier 4 revocation only should be considered. Again, this points to an implicit acceptance that there was nothing exceptional about this case. I note, though I have placed no weight on it in reaching my answer, that this was the conclusion to which Mr Box came ex post facto in reconsidering the case for the purposes of his evidence for this hearing.

89. There is one final point on this aspect. LSST also submits that it was unfair to proceed without offering it an opportunity to comment and says that it was waiting for a reply to its letters of April and May in which the surrender of the Tier 4 licence was floated.

90. I do not accept this submission. It appears that LSST was well aware that revocation of the Tier 2 licence would be the usual outcome, and it addressed this in its representations, which are the formal means for raising such issues in this process. The later correspondence never complains of being denied an opportunity to make representations, it merely (in the pre action protocol letter) makes a point, later rightly dropped, that there had been no specific notification of intent to revoke the Tier 2 licence. Further it was clear that LSST's own solution (surrender of Tier 4 only) would be ineffective: paragraph 5.8 of the Guidance provides that surrender of a licence is treated as a revocation, with the same consequences.

91. I therefore conclude that LSST's case on fettering is not sustainable.

Other Grounds

92. LSST also relied on a number of alleged defects in the other grounds relied on by the SSHD. Given my conclusion on the academic progression issue these are substantially irrelevant. However as they might become relevant if a different conclusion were taken on that issue, I shall address them in turn.

TOEIC/ETS

93. LSST rely on the passage of the Decision Letter which relates to TOEIC/ETS and say that in the light of the explanations provided it was wrong of the SSHD to take this into account.

94. I regard this complaint as misplaced. TOEIC was raised as a concern in the March letter where the SSHD indicated that LSST had been linked to a number of TOEIC cheats and indicated that she considered that poor student assessment was a historic and current problem. However the letter did not identify this as a breach of the Guidance – at paragraph 67 of the letter the SSHD instead laid down a marker that there was an obligation to assess student ability before assigning a CAS.

95. In the Decision Letter the SSHD reiterated that it was not going to deal with LSST's explanations on this head because "we have not relied on this in our intention to revoke letter". It further made clear that "notwithstanding the above ETS issues we feel there are still areas which are of concern to UKVI and where we feel you have breached your sponsorship duties". The letter is not the height of clarity, but it is in my judgment sufficiently apparent that the SSHD was saying that she was not relying on this head – but did consider that there were breaches elsewhere. It is noteworthy that this is also how LSST seem to have read the letter at the time, judging by their PAP letter which asserted that ETS had not been relied on.

Attendance

96. The SSHD contended that LSST had breached its duties regarding monitoring attendance of its students, referring to one student, TK. In particular the SSHD stated that:

> "Based on the evidence provided, whilst it is accepted that LSST has a Student Attendance Policy & Procedure in place for the three hour lecture slot and for Home/EU Students, there still appears to be an issue with a failure to keep the correct documents, and as such, this brings into question your ability to effectively monitor student attendance…"

97. The essence of LSST's complaint is that while a plethora of issues were raised under this head in the March letter, in the Decision Letter the SSHD only sought to rely on an allegation, said to have been made for the first time, that LSST did not retain documentation in the form of medical evidence regarding a student's absence, as required by Appendix D. LSST says this is procedurally unfair as it had not been provided with an opportunity to respond to this distinct particular reason for refusal. It also says that Part 6 of Appendix D of the policy only provides, at (c), that a Tier 4 sponsor must retain a: "Record of the migrant's absence/attendance, this may be kept either electronically or manually." It says that there is therefore no requirement to retain medical evidence used to excuse attendance.

98. The SSHD says that in the light of the terms of the March letter there is no procedural unfairness; the March letter raised squarely the question of what appeared to be partial but not systematic retention of medical certificates and conflicts between the attendance record and the doctors' certificates. Retention of medical evidence was, therefore, live and the necessary gist of the complaint was therefore notified to LSST.

99. Further, if this were a new point, the SSHD points out that LSST has gained an opportunity to respond in these proceedings, in its PAP letter and its witness statement accompanying its grounds of challenge. She says that as is manifest from the facts on JM, the SSHD did review and consider the material presented in the judicial review challenge.

100. The SSHD says that her concern in LSST's not retaining such documents was not, as LSST alleges, irrational and unreasonable and inconsistent with the Defendant's own policy.

101. The SSHD reminds me that failure to monitor student attendance effectively is a particular and major immigration concern. It poses a real and particular risk to immigration control, reflected in numerous cases, which is partly why the SSHD is particularly concerned to ensure that whatever record-keeping practices are adopted by a sponsor, that they are robust, conscientious and assiduous; she submits that the inconsistencies highlighted in this case indicate that LSST's practices do not meet this bar.

102. The SSHD also notes that this was not the most serious issue. It was identified as a "compliance failing" but taken alone it would probably not have resulted in revocation. She submits that it cannot be said to have been unreasonable to have relied on the issues in relation to TK together with other issues.

103. On this issue I consider the position to be considerably less clear than on some of the other issues. The Guidance does not make clear what attendance records are to be kept; it might perhaps have been open to LSST (as LSST tacitly suggested) simply to produce its attendance record and nothing else. However I doubt this. Paragraph 3.15 of the Guidance identifies failure to monitor student attendance effectively as a failing which is likely to be considered a serious breach. It is highly questionable whether a tick box attendance form, without checking medical absences (and retaining medical records) would be sufficient. But certainly given the anomalies identified in this case I do not consider that the SSHD's concerns were irrational or unreasonable. From the materials which were produced she was perfectly entitled to conclude that the case suggested that there were gaps in record-keeping.

Reporting duties

104. This point is more or less a non-issue. It is common ground that LSST failed to report matters concerning student MSB. Both parties characterised this as a non-serious breach.

105. LSST submitted that this concern alone is not sufficient to justify revocation and any reliance on this point by the SSHD in this respect is unreasonable.

106. While I accept that reliance on this as a sole ground for revocation would have been unreasonable, it is plain that the SSHD did not rely on it as the sole ground for revocation. LSST here attempts to create a basis for unreasonableness by conflating revocation and reliance. No basis is put forward for saying it would be unreasonable to rely in the round on any established failings, and it is hard to see how this could be argued. As a breach had been established it was not unreasonable for the SSHD to consider it in the round as part of the evidence when deciding whether to revoke.

CAS Discrepancies

107. In the Decision Letter the SSHD stated that the information provided on a number of CAS by LSST was not accurate. Reliance was placed on the cases of two students: JM and MAMF.

108. With regard to JM, LSST submits that the SSHD had no adequate basis for refuting the representations of LSST and relies on the fact that the SSHD has since ceased to rely on this case. The SSHD accepted that she placed no reliance on this issue.

109. However the facts are that LSST informed the SSHD that JM's previous sponsor's licence was revoked in August 2014, which led to the SSHD's concern about why the course had not been finished. LSST then submitted that the course had in fact been finished; however this did not address the question about why it had been said she could not finish the course due to the revocation of the previous sponsor's licence in August. It was only later that LSST informed the SSHD that the previous sponsor's licence had actually been withdrawn in April, not August. In view of the lack of clarity in the material, and the obligation on sponsors to maintain robust records I do not consider that the concerns expressed in the Decision Letter were unfounded. Indeed I note that LSST's position in the Grounds and in their skeleton argument remains slightly inconsistent as to whether JM's course was completed or not.

110. In relation to MAMF the concern identified was that the claimant's CAS specified that the student's last course, studied at Bradford Regional College, was at level 7 when it was in fact at level 8. LSST provided evidence with its representations showing that the documents provided by the student - including a document purporting to be the previously assigned CAS, and bearing the same CAS number - stated that the previous course was at level 7. It appears that this document may have been a fraudulent document.

111. LSST's complaint here is that it says that it cannot reasonably be criticised for relying on the documentation provided to it indicating that this student's course was a level 7 course. In addition LSST says that it interviewed MAMF in order to verify his application. LSST says that in the circumstances the SSHD's view that the information provided on this student's CAS indicated a breach of Tier 4 sponsor duties was unreasonable.

112. The SSHD maintains that her actions were reasonable. In particular she notes that the reply to the March letter simply denied the accuracy of the allegation, maintaining that the previous course was a Level 7 course. There was no indication in that letter that the steps which LSST now says it made had been made. Indeed, even in the PAP letter, it appears that it was not saying that it had made such checks, but simply said it had been the victim of a forgery.

113. The SSHD says that the breach of the Guidance relied on is that LSST failed to disclose information, not complying with a sponsorship duty, and operated in a manner that poses a risk to immigration control. She says that the acceptance of the CAS and the failure to do any apparent checking qualifies as a breach and notes that:

    i) A check with the SSHD would have disclosed the issue;

    ii) Any more than cursory review of the student's academic experience would have put a reasonable institution on notice. Any reasonable College would have acted with greater assiduity to satisfy itself, in particular in circumstances where at the very least MAMF was about to do a third Level 7 course in a row.

114. I do not place any very great weight on either of these issues. I have no evidence about how the CAS might be checked with the SSHD, and it would be wrong to fault LSST on this basis. The latter points actually go more to academic progression than to the issue relied upon; and this student was not identified as part of the academic progression cohort.

115. The question here is, given that the SSHD relied on the duty to act honestly and disclose all relevant information in asserting breach, did she act unreasonably in so doing based on the information available to her in June? The facts are that the SSHD knew that MAMF's previous course had been Level 8. MAMF was therefore prima facie dropping down a course. The SSHD had identified this to LSST. LSST simply denied this without giving grounds for why it was confident that its own records were more accurate than the SSHD's.

116. In relation to this student I am not convinced that I would have come to the same conclusion as the SSHD; however I bear in mind the nature of the court's role in reviewing such decisions. I cannot conclude that the decision reached by the SSHD was unreasonable or based on irrelevant considerations or infected by any other public law fault.

Action inconsistent with policy

117. As the next stage of its argument LSST submits that Document 3 of version 04/2016 of the Tier 4 guidance for sponsors provides that the SSHD will not revoke a Tier 4 sponsor licence in the absence of a serious breach of a sponsor's duties. It submits that the SSHD has acted inconsistently with the approach specified. It is said that she has failed to assess whether LSST's breaches of the sponsor guidance were serious in accordance with this policy, and/or has failed to appreciate that, in accordance with this policy there were no serious breaches so that revocation of the Tier 4 sponsor licence was not appropriate.

118. I do not accept that the Decision Letter has not considered whether or not a breach is a "serious breach" or that the SSHD was not entitled to conclude there had been a serious breach or breaches. The March letter specifically flagged up the question of serious breach, its consequences and that the SSHD was minded to conclude that there had been such breaches.

119. The first paragraphs of the Decision Letter are drafted in terms of serious breach and state in terms "we continue to be of the belief that the college has seriously breached their sponsor duties". Paragraph 60 of the letter then specifically highlights the guidance indicating that academic progression is a serious breach; as do paragraphs 70 and 88 regarding attendance records and CAS discrepancies respectively. This guidance is reiterated at paragraph 90 of the letter, before setting out at paragraph 98 that the "individual circumstances" have been considered in this case, but that "given the extent and seriousness of the issues identified we have decided on this occasion to ban your organisation from the register of licensed sponsors in line with this guidance."

120. Finally LSST submits that this case is akin to *Minster Care Management Ltd* v. *Secretary of State for the Home Department* [2015] EWHC 1593 (Admin) in that THE SSHD has belatedly withdrawn a number of reasons relied upon in support of the 10 June 2016 revocation and a number of her reasons at least are unsustainable due to public law errors. It follows that it is not highly likely that the 10 June 2016 decision would still be to revoke Tier 4 sponsor licence (or Tier 2 sponsor licence) if these errors or any of them had not arisen, so that the 10 June 2016 decision should be quashed.

121. In the light of the conclusions I have reached above I do not accept this argument. The changes between the SSHD's position in the Decision Letter and the position as it stood before me are very minor (particularly given that the TOEIC ground was not, as I have found, relied on in the Decision Letter) and take this case far from *Minster* (which was in any event decided prior to the enactment of s.31 of the Senior Courts Act 1981).

122. Had it been necessary to do so I would also have concluded that the same decision which the SSHD reached would have been highly likely so long as the academic progression argument remained intact.

Conclusion

123. For the reasons given above, LSST's application is refused.