

ALP Chairman condemns decision to abolish GLA

24 April, 2005

Speaking at the Annual Meeting of the Association of Labour Providers today, Mark Boleat, the Chairman of the Association, condemned the decision to abolish the Gangmasters Licensing Authority –

“The GLA formally came into existence on 1 April 2005, two weeks after the Treasury announced that it would be merged into the HSE. This decision was taken on the basis on no analysis and with no consultation; policy-making at its worst. It would mean losing the features of the GLA that give it a chance of being successful. The Association has formally objected to this decision, calling for the publication of an options paper followed by a proper consultation exercise. The GLA may well have a life of three years even if the HSE option goes ahead, but this really is a distraction that we can do without.”

He criticised enforcement agencies for concentrating their attentions on those trying to operate in the formal economy rather than those operating outside the law –

“Enforcement agencies seem to concentrate their efforts on those who try to operate within the formal economy and ignore those who are outside it. The single main complaint that I receive from my members is that their records and books are crawled over by a number of government agencies while illegal operators are ignored. In respect of tax matters, those labour providers who do not register with the Inland Revenue or Customs and Excise are unlikely to have their records examined, assuming that they have any, whereas those who register and try to do everything by the book will be subject to investigation and no doubt to the finding of some faults.”

He also commented on the difficult market position facing labour providers–

“They are being told by their customers that they must comply with the code of practice for labour providers, which among other things means paying the minimum wage and making the necessary allowance for national insurance contributions, holiday pay and sick pay. They also have to run their own business. This cannot be done for nothing. Where a labour provider also provides transport then something in the region of £6.30 an hour is necessary to cover just the legal costs of complying with the minimum wage of £4.85, but labour providers sometimes find themselves in the position of being told that if they won't work for £5.80, £5.60 or even £5.40 an hour then there plenty of others who will. Those labour users who take this attitude are, in the words of Defra, condoning illegality.”

Mark Boleat concluded by confirming the commitment of the ALP to removing illegality, but warning that illegality will merely be displaced –

“The ALP remains fully committed to the twin objectives of removing illegality and reducing the unfair burden that its members now face. Substantial progress has been made in the past year with the establishment of the GLA and the introduction of the code of practice, but there is much further to go. And to the extent that illegal practices are driven out of part of the food supply chain they will reappear elsewhere, and dealing with that is the real challenge for policymakers.”

Notes:

1. The ALP was founded by 18 labour providers at a meeting in Cambridge in January 2004. The Association now has over 90 members. Compliance with the Code of Practice for Labour Providers is a condition of membership
2. The Association is recognised as the trade association for labour providers. It has nominated two representatives to the Gangmasters Licensing Authority, its Chairman sits on the Home Office Illegal Working Stakeholder Group, and it is a co-sponsor of the Code of Practice for Labour Providers.

3. At the Annual Meeting on 25 April an elected Executive Committee will take over from the initial committee established by the founding members.
 4. The Association has an independent Executive Chairman – Mark Boleat the former Director General of the Building Societies Association, the Council of Mortgage Lenders and the Association of British Insurers.
 5. The Association operates as a virtual organisation with no fixed premises. Information is provided to members and others through a website www.labourproviders.uk.
 6. The Association has issued a number of policy papers and responses to consultation documents all of which are on its website.
 7. The full text of Mark Boleat's comments is appended.
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Address by Mark Boleat, Chairman, at ALP Annual Meeting, 25 April 2005

A little over a year ago, labour providers had just a single lone voice, in the form of Zad Padda, representing their interests on a number of important policy issues. Now, labour providers have an effective trade association to represent their interests. The Association owes its existence and success to a number of people, the contribution of each of whom has been essential to what has been achieved.

Firstly, Zad Padda who started the process a couple of years ago. Secondly, the eighteen labour providers who, at a meeting in Cambridge in January 2004, had the vision and wisdom to establish the trade association, and particularly to the representatives of those companies and to those who joined subsequently who have comprised the first Executive Committee of the Association. They have provided the leadership and the industry knowledge without which no trade association can succeed. Thirdly, Jennifer Frances has played a huge role, by providing sound academic research on issues that previously were clouded in mystery, and also in getting the Association off the ground, including by participating in Executive Committee meetings. Finally, Defra could not have been more supportive. Lindsay Harris began the work by getting labour providers together, and this has been carried on by Geoff Webdale and his colleagues. Defra has been supportive in a number of ways, including financially, but more importantly from the beginning has regarded the ALP as the representative body for labour providers. The working relationship between Defra and the ALP is excellent. Where Defra wants a response from the ALP at short notice it gets it, and equally when the ALP asks for something from Defra then the matter is considered promptly and efficiently.

The establishment and work of the ALP has been warmly welcomed by all stakeholders in the food supply chain. The NFU has, for example, kindly provided its facilities today free of charge. The supermarkets have been very supportive as have the trades unions and, in their own ways, a number of government departments.

Now, labour providers are not seen as being the problem and a group of organisations to whom things should be done, but rather as an essential part of the solution to significant malpractices throughout the food supply chain, and for which no one group of institutions can take the whole of the blame.

If I may conclude on domestic issues, I can report that having been founded by 18 companies the ALP now has over 90 members. The ALP is firmly inside the decision taking process. It has nominated two members to the Gangmasters Licensing Authority. It is consulted by the Home Office on immigration issues and the Chairman is a member of the Illegal Working Stakeholder Group. The Association is also a co-owner of the code of practice for labour providers and significantly involved in the many issues that are arising in the day-to-day

operation of the code. Finally, the Association has provided its members with essential information to help them comply with the law and with a limited range of services.

In short, from a standing and unpromising start, the Association has developed into a highly effective and efficient trade association, serving not only its members but also a number of major public policy objectives, to which I will now turn.

The Gangmasters Licensing Authority

The Association has welcomed the Gangmasters (Licensing) Act and the establishment of the Gangmasters Licensing Authority, but we have also made the point that this would not have been necessary had the existing law been enforced by the existing law enforcement agencies. Whatever happened at Morecambe Bay was contrary to the law and perhaps contrary to a number of laws. The obvious solution is not to pass yet another law but rather to make the existing laws work. In the long term the Act will be effective only if it facilitates this. The Association is not so much interested in whether people are prosecuted for being a gangmaster without a licence. It is interested in seeing those labour providers who operate outside the formal economy, evading tax and using illegal workers, put out of business, but they will be put out of business not by the GLA alone but rather by the Inland Revenue and the Home Office.

I suspect that history will show that the Act, to the extent that it is successful, will have been so through three important provisions –

1. The legal obligation placed on labour users to use only licensed labour providers. This is likely to be difficult to enforce but already it has had a desirable effect in emphasising to labour users that they have some responsibility in dealing with the problems in the food supply chain.
2. Joined up government is an oxymoron. It is frequently argued by government departments that they are not permitted to share information with other departments. Also, each government department has its own targets and the chances of the targets of two coinciding in a way that will facilitate joined up working are small. The Act is important because it provides for the sharing of information about labour providers between the GLA and all other government agencies. This sharing should remove an excuse for joint action and will put labour providers on notice that they cannot assume, as they can at present, that the enforcement agencies hardly speak to each other.
3. The GLA is set up as a non-departmental public body and has appointed top quality people as Chairman and Chief Executive. They will be able to do things that a government department simply could not do. They should be able to encourage the existing enforcement agencies to enforce the existing law more effectively. If they do not, I believe they will fail.

The GLA formally came into existence on 1 April 2005, two weeks after the Treasury announced that it would be merged into the HSE. This decision was taken on the basis on no analysis and with no consultation; policy-making at its worst. It would mean losing the features of the GLA that give it a chance of being successful. The Association has formally objected to this decision, calling for the publication of an options paper followed by a proper consultation exercise. The GLA may well have a life of three years even if the HSE option goes ahead, but this really is a distraction that we can do without.

Enforcement action generally

I came to this business in a position of almost complete ignorance just over a year ago. One thing that has really struck me it is just how ineffective and wrongly targeted enforcement action has been. Enforcement agencies seem to concentrate their efforts on those who try to operate within the formal economy and ignore those who are outside it. The single main complaint that I receive from my members is that their records and books are crawled over by a number of government agencies while illegal operators are ignored. In respect of tax matters, those labour providers who do not register with the Inland Revenue or Customs and

Excise are unlikely to have their records examined, assuming that they have any, whereas those who register and try to do everything by the book will be subject to investigation and no doubt to the finding of some faults.

So it is with migration checks. Labour providers report having to argue the toss over marginal cases while wholesale illegal working continues perhaps a few hundred yards away. Here I must once again call for the abolition of the iniquitous Accession States Workers Registration Scheme. This scheme requires workers from the Accession States to register with the Home Office, paying a £50 fee for doing so. The scheme has no value from a policy perspective, the figures are implausible and if anything the scheme actually acts as a deterrent to workers being in the formal economy and paying taxes.

The law has also thrown up extraordinary anomalies, the effect of which has been accentuated by the way that enforcement action works. Let me describe just one of many.

Public transport is scarce in many parts of the country and non-existent in others. Labour providers, because there is no public transport, frequently have to provide transport to enable their workers to get to and from their places of work. Minibuses are the most effective way of doing this. They can be seen in this respect as being works buses, similar to those that many other businesses have to move their staff when they need to do so. However, for reasons which cannot be gone into here, labour providers are deemed to be operating public service vehicles, notwithstanding the fact that the public have no entitlement to use them. In turn, this requires them to have PSV operators' licences and their drivers have to pass a test equivalent to that needed to drive a large truck or a 50 seater coach. All of this is for perhaps an hour's driving of a nine seater minibus twice a day. To add to the complexity none of this is written down clearly and the advice from the Department for Transport is that labour providers should obtain independent legal advice on what the law requires. There are ways labour providers get round this. Some use seven or eight seater vehicles where there are no rules. Some have taken seats out of larger minibuses. The more disreputable do not bother with a minibus but instead have a white van with no seats in which it seems quite in order for 15 workers to be transported.

It cannot be right that one particular group of businesses transporting their workers are deemed to require PSV licences with all of the costs that go with that, while most businesses are not. I have tried with no success to get this issue looked at at a public policy level. I will continue trying.

Market conditions

A second major problem that labour providers face is simply trying to achieve a satisfactory operating margin. They are being told by their customers that they must comply with the code of practice for labour providers, which among other things means paying the minimum wage and making the necessary allowance for national insurance contributions, holiday pay and sick pay. They also have to run their own business. This cannot be done for nothing. Where a labour provider also provides transport then something in the region of £6.30 an hour is necessary to cover just the legal costs of complying with the minimum wage of £4.85, but labour providers sometimes find themselves in the position of being told that if they won't work for £5.80, £5.60 or even £5.40 an hour then there plenty of others who will. Those labour users who take this attitude are, in the words of Defra, condoning illegality. The supermarkets now recognise this and themselves are taking steps to ensure that their labour users are not meeting the cost reductions they require by requiring their labour providers to operate illegally, although perhaps the message has not fully got through on this.

Concluding comments

Some final thoughts. I can now count well over 30 years experience in trade associations, and at various times have been director general of five and chairman of two.

The ALP is, for its size and resources, by far the most effective trade association I have ever been involved in. Like others who have studied the position of labour providers in detail, I am

firmly committed to the cause. There is no better indictment of the public policy process than the formalisation of the word “gangmaster” in legislation, a decision incidentally which will make the legislation far more difficult to implement. Of course, there is illegality by labour providers, in some cases appalling illegality, but there is also malpractice in other parts of the industry which needs equal attention.

The ALP remains fully committed to the twin objectives of removing illegality and reducing the unfair burden that its members now face. Substantial progress has been made in the past year with the establishment of the GLA and the introduction of the code of practice, but there is much further to go. And to the extent that illegal practices are driven out of part of the food supply chain they will reappear elsewhere, and dealing with that is the real challenge for policymakers.