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GLA Licence Fees

Response by the Association of Labour Providers to the GLA consultation on licence fees for 2008/09

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Introduction

On 8 November 2007, the Gangmasters Licensing Authority (GLA) published a consultation document on its proposals for licence fees for 2008-09. This is accessible at http://www.gla.gov.uk/embedded_object.asp?id=1013241.

Comments on the consultation document are sought by 21 December 2007.

This paper is the response of the Association of Labour Providers to the proposals. The ALP was founded by 18 labour providers in January 2004. Its membership has subsequently grown to 180 labour providers. It is generally recognised as the representative body for those labour providers that are regulated under the Act.

Executive summary

The ALP strongly objected to the more than doubling of fees that the GLA implemented in 2007/08. The Secretary of State wrote to the GLA saying that he expected to see a reduction in costs and “substantial reductions in fee levels” for 2008/09.

The principle of regulators being expected to recover the cost is logically untenable and capable of having serious distortionary effects.

The consultation is unsatisfactory in that minimal information is given and only one option is put forward.

The GLA is budgeting for a 16% increase in costs. Like commercial organisations the GLA should be able to increase its efficiency rather than simply operating on a cost plus basis.

The GLA is proposing to increase annual fees by 8 – 11% except for the smallest businesses where the fee would remain unchanged. This cannot be justified. Either the GLA should reduce its costs or the increase in costs should be funded by other stakeholders.

Late applicants currently enjoy a financial advantage in that they do not have to pay for the period when they should have been licensed but were not. This perverse incentive should be removed. The GLA must prevent abuse of the fee structure through licence holders falsely declaring turnover and closing down one business and setting up a new one.

If these measures are implemented there should be no need for any increase in the fee scale.

History

The ALP was critical of the GLA's proposals for licence fees for 2007/08. Its response to the consultation made the following points –

- The consultation was not meaningful as adequate information was not provided and the GLA's costs were regarded as given.
- The costs to be met by annual licence fees more than doubled compared with the previous year. There was no proper explanation for this increase.
- Accordingly, the GLA proposed to more than double annual licence fees. There was no explanation of the reasons for such an increase, which was unacceptable.
- The existing structure of the scale should be retained and the increase in fees limited to 15%.
- An application fee should be charged to all applicants for licences, sufficient to cover the costs of processing applications and those initial inspections that were considered to be necessary.
- A penalty charge of £5,000 should be levied on applicants who applied for a licence while trading illegally.

In approving the actual increase in fees for 2007/08 the Secretary of State for Defra wrote to the Chairman of the GLA as follows -

Your proposals will lead to a substantial increase in underlying licence fees of up to 133% for Band C businesses. This has given rise to a number of concerns amongst stakeholder organisations. However with the licensing scheme in its infancy I do not think that it would be realistic to expect you to make significant cost reductions at this stage. I am also reluctant to set aside the GLA's cost recovery target. In view of this I can confirm our agreement to the proposed fee increases from 1 April 2007. However, for the future I would be grateful if you would bring forward early proposals to reduce the GLA's cost base from 1 April 2008, which deliver substantive reductions in fee levels while maintaining the effectiveness of the GLA's compliance activities.

With the exception of the minimum figure (fixed at £400 rather than £600) the actual fees implemented were those proposed by the GLA initially.

The principle of regulators recovering their costs from the regulated

The consultation paper states that "as a public body, the GLA is expected to recover its operating costs through licence fees". This is not of the GLA's making and accordingly this part of the response is directed at Defra which, with the GLA, makes the decision on fees.

The ALP Chairman has analysed this issue in detail in his paper *Regulator fees -irreconcilable objectives* (2005) available at -

http://www.boleat.com/pdfs/regulator_fees_irreconcilable_objectives_2005.pdf. The executive summary of this paper is set out below -

"It is government policy that regulators should cover their costs through the fees they charge, although in the case of a new regulator start-up funding is generally made available by the relevant department.

Regulated institutions have some protection from being charged excessive fees through the consultation process, the sponsor department and oversight bodies, in particular the National Audit Office, the Public Accounts Committee and Parliamentary select committees.

The arrangement works reasonably well in large sectors such as financial services and communications. The arrangements do not work well in small sectors as there is no reason why the costs of regulation divided between industry participants should result in reasonable fees.

Regulators may need to trade off standards as against viability.

There is a particular problem for new regulators, as estimating the size of the regulated population is very difficult.

The Security Industry Authority, the Gangmasters Licensing Authority and the proposed regulator for claims management activities all illustrate these problems.

The public benefit resulting from regulation should be recognised and that there should be no automatic assumption that regulators should cover their costs. Anything above 0.1% of turnover may be viewed as excessive as a regulatory charge.

For small regulators, regulatory fees should be fixed separately from regulatory budgets, with both fees and budgets being reviewed by the Better Regulation Executive.”

There is another reason why in this particular case full cost recovery is inappropriate. It is government policy that only part of the labour provider market is covered by the Gangmasters (Licensing) Act. Logic would suggest that if there is to be regulation of employment businesses then it should be of all employment businesses rather than those serving the market for which Defra has some responsibility. The available evidence suggests that any malpractice is just as prevalent in other sectors. It is appropriate that government should meet most of the costs for adopting this partial approach.

Related to this, the point is frequently made that the legislation is the result of a coalition which covered the whole of the supply chain, with labour providers being very modestly and at times not represented at all. The rest of the supply chain gains a benefit from the Act in that it can rely on the fact that a labour provider is licensed. It is therefore reasonable that those who benefit in this way should pay part of the price. It might not be possible to do this by statutory means but it is appropriate that those who share the benefits of the licensing regime should be asked to make a voluntary contribution to the costs.

The consultation process

The consultation process is capable of improvement. Specifically –

- It is normal practice for organisations presenting a budget to show the budget for the previous year, the estimated outturn and the budget for the following year all in a single table, with any variations from the budget, changes in definitions and increases from one year to another being clearly identified and justified. The GLA has not done this. It has just given the 2008/09 budget and padded this out by giving monthly figures which, with a few exceptions, are all identical. The budget cannot be compared with current year figures. This is unsatisfactory for a public body. The GLA should publish a proper analysis.
- The paper takes the costs of the GLA as given and then offers two options, one of which it rejects.
- The Impact Assessment is virtually non-existent – under 100 words – and the evidence base minimal.

Perhaps not surprisingly there is not even an attempt to pose questions in the document (other than “consultees are invited to comment on the proposed fee levels”) nor is government policy on consultation complied with.

The GLA’s costs

There is no breakdown of costs between functions and no comparison with the current year so it is difficult to comment on whether the GLA’s costs are reasonable. Last year the ALP commented that “generally however, the GLA seems has an excessive cost base for the function it has. It should be able to operate effectively with a budget at least 30% smaller.” In the absence of evidence to the contrary the ALP stands by this. It was also clearly the Secretary of State’s view that the GLA should be able to operate on a lower cost base.

The ALP has drawn together the figures in last year’s consultation document with those in the current document to do a limited comparison. The figures are shown in the table below.

<i>Item</i>	<i>2007/08 £000</i>	<i>2008/09 £000</i>	<i>Change %</i>
Pay costs	1,301	1,416	9
Non pay costs	751	974	30
Total costs	2,052	2,390	16
Less Defra funded enforcement costs	902	1,013	12
Equals costs to be met by licence holders	1,151	1,377	20

It will be seen that net of Defra funded enforcement costs the costs to be met by licence holders are planned to increase by 20% on a year on year basis. No explanation is given for an increase of this magnitude. The GLA has not responded the Secretary of State's request for "proposals to reduce the GLA's cost base from 1 April 2008, which deliver substantial reductions in fee levels while maintaining the effectiveness of the GLA's compliance activities".

Fee Structure

The consultation document proposes retaining the current banding, based on turnover. The basic proposal is for an across the board increase of fees of between 9% and 11% except for the minimum fee which will be unchanged. The Association is content with the structure and the banding. It is the absolute levels and increases that are of concern.

Turnover	Fee 2007/08	GLA Proposed Fee 2008/09	Increase %
Under £1m	£400	£400	-
£1 - £5m	£1,750	£1,900	8.6
£5 - £10m	£4,500	£5,000	11.1
£10m	£9,000	£10,000	11.1

Charges for applications

The GLA seems to be proposing to merge the annual fee with the application fee for new applications. There is no explanation for this change of practice although it will allow application inspections to be stopped without affecting fee income.

Removing abuse

There are two forms of abuse of the current arrangements –

- Businesses declaring turnover below the actual level. Given the discontinuities in the scale this is to be expected and is probably very costly to the GLA. For example, if just 5% of businesses in the smallest size band have turnover that should put them in the next band the loss of fee income would be £75,000.
- Businesses falsely declaring that they are new businesses when in practice they are existing businesses in all but name. The GLA has encouraged such phoenixing by not seeking details of businesses in which directors of applicants were previously involved, through the significant discontinuities in the fee scale and because a new business allows the slate to be wiped clean.

The ALP is not aware of all the procedures that the GLA adopts, but does suggest that the GLA put in place arrangements to verify turnover figures by various means and to penalise those companies that give false figures (eg by requiring back payments).

The phoenix issue should be dealt with by borrowing two tactics from the Claims Management Regulator –

- Asking on the application/renewal form for details of directors and any other person involved in the management or direction of the business and the involvement of these people in any other business in the sector in the previous five years.
- Counting as turnover the turnover of any other business in which these people have been involved.

Late applications

The GLA continues to receive a steady stream of applications for licences from businesses that have been trading illegally, in some cases since the day the licensing requirement was introduced. Indeed, the consultation document says that the GLA is expecting 37 applications from businesses which in the previous year had turnover in excess of £1 million, that is they were trading illegally to a significant extent. In some cases this has been innocent, with the businesses reasonably arguing that they did not know they had to be licensed. In some cases the businesses should have known but did not, while in other cases the businesses knew they had to be authorised but decided to run the risk and continue operating without a licence.

The GLA could have chosen to prosecute all such businesses. It has properly taken a pragmatic and proportionate approach. Once the business is told by the GLA that it should be licensed then if it applies immediately and its application is in order it will be licensed with no disruption to the business.

This means that far from there being no risk from not being licensed there is actually a significant financial benefit in that the business has not been paying a licence fee for the whole of the time it has been trading illegally. In effect those businesses that have sought licences have been paying that for those that chose to trade illegally. This is perverse. Such businesses should pay an application fee that should include an additional amount at least equal to the fee that they should have paid.

Accordingly, the ALP proposes that the fee rules should include an additional provision in the application fee section along the following lines -

"Where a business has been trading prior to applying for a licence when it should have had a licence then its application fee shall be increased by an amount equal to its annual licence fee for each year or part of a year for which this situation applied".

This device is used by other regulators, the Claims Management Regulator for example.

Overall position

The ALP believes that the licence fees should remain unchanged as the GLA should be able to increase its fee income sufficiently by removing abuse and charging appropriately for late applications. To the extent that this cannot be done then the GLA, like any other business, should reduce its administrative costs.