

## GLA Labour Provider and Labour User Liaison Group Meeting

7 July 2011 - Nobel House, Defra, London

### MINUTES

#### ATTENDEES

**GLA Representatives:** Margaret McKinlay (Chairman Designate), Paul Whitehouse (Chairman).

**Labour Provider Representatives:** Mark Boleat (ALP), David Camp (ALP), Marshall Evans (Staffline), Terry Godfrey (Gangmasters Alliance), Chris Gorton (Heads), Claude Peters (Van Stomp), Ben Farber (REC), Mark Taylor (Interaction). Joanne Young (GI/RFS).

**Labour User Representatives:** Tom Easson (Ringlink Scotland), Colin Hall (50 Club), Doug Mitchell (Forestry), James Potter (NFU), Tina Rutter (Emmetts UK), Jon Tugwell (Fyffes), Shayne Tyler (Manor Fresh).

**Apologies:** Fergus Morgan (2SFG), Sarah Edwards (Emmetts UK), Nigel Jenney (FPC), Sharon Cross (G's), Claire Joyce (Langmead Farms), Wendy Woolfe (Lincs FP), Hayley Cambell-Gibbon (NFU), Sue John (Produce World), Sarah Brooksbank (Industrious).

#### ACTIONS

Meeting	Action	Comment
7/7/11	GLA to publish briefs on Employing and Supplying Romanian and Bulgarian nationals; How Licensing applies to businesses based outside the UK.	
7/7/11	GLA to finalise and issue Employment Status brief which states the GLA position on agricultural workers on contracts for services.	
7/7/11	GLA to review media policy and stakeholder communication and to consider whether short and frequent releases should be made to the GLA Brief distribution list.	
7/7/11	GLA to work with industry representatives and trade associations to explain its scope across "grey areas".	
7/7/11	GLA to produce guidelines regarding release of information to retailers as part of Retailer/Supplier protocol and discuss with FPC/ALP	
7/7/11	TG to provide contact in Lincolnshire Police to MB. MB/ALP to continue to raise this issue with Low Pay Commission and to relevant government departments.	

## MINUTES

A round table introduction was conducted. No additional agenda items were added.

1. Declarations of interest - None
2. Minutes of last meeting - No adjustments to previous minutes were requested.
3. GLA LP/LU Liaison Group Draft Terms of Reference - No adjustments were requested.
4. Previous Actions

GLA Briefs progress – Employing and Supplying Romanian and Bulgarian nationals; How Licensing applies to Businesses based outside the UK; Transfer of Licences - Paul Whitehouse explained that these briefs will be completed as soon as possible. However, there was never going to be a brief for the transfer of licences as this

**ACTION - GLA to publish briefs on Employing and Supplying Romanian and Bulgarian nationals; How Licensing applies to Businesses based outside the UK.**

5. Updates
  - a. Operational Update - PW explained that this cannot be done and has not been done before - however ST stated that the LU meeting had received operational updates before and it is certainly covered within the Retailer protocol meetings. PW explained that this information is supplied to GLA board members and can be communicated by them as they see fit.
  - b. GLA Licensing Standards Review – Consultation timetable - PW explained that after the next board meeting a 3 month consultation process will take place. PW expressed concern though that with the exception of a few responses from either board members or some people within this group the GLA does not receive much feedback.
  - c. BIS review of workplace-rights, compliance and enforcement. PW explained that Peter Stephens from BIS had stated that they are still aiming to publish a written Ministerial statement on initial findings by October.
  - d. Employment Status and Agricultural Wages Order – Update on GLA position.

DC advised that this had been an ongoing discussion matter since December 2006. The GLA's draft paper on Employment Status has yet to be finalised and issued. The Agricultural Wages Act and consequently the terms in Agricultural Wages Orders apply to "employees" and not "workers". Defra and the GLA have not always been clear on this distinction. Recently the GLA has informed individual licence holders that it accepts this distinction and that its inspectors will apply a range of tests to determine employment status. If the inspector asserts that the workers are in fact "employees" then the AWO terms will be deemed to apply. DC stated that this is the correct position for the GLA to take but that there is a requirement for this position to be made public so that there is a level playing field.

Tom Easson reminded the meeting that whilst the AWO was to be repealed in England and Wales this was not yet the case in Scotland.

There was significant debate and the matter widened to the scope of licensing which is recorded at 7(a) below.

**ACTION – GLA to finalise and issue Employment Status brief which states the GLA position on agricultural workers on contracts for services.**

- e. Macrory penalties – progress - This has been put on hold by the current government.
- f. Travel Schemes and Umbrella Companies – update/questionnaire. PW explained that at the last board meeting the HMRC had stated that they would be issuing a technical brief but that this was to be completed. PW further explained though that the HMRC had stated that while other schemes seemed to have emerged, none were compliant. PW stated that at present there had been a 30% response rate to the questionnaire.
- g. Sentencing - the GLA had written to relevant parties and is awaiting responses.

## 6. GLA Performance

- a. Monthly Performance Report – DC asked whether the GLA Monthly Performance Report was to be reissued. PW advised that this matter was not for this meeting but that Board members may raise this separately.
- b. Delays regarding GLA licence applications / post GLA inspection investigations – DC stated that there seemed to be increasing delays in the processing of GLA licence applications and licensing decisions following GLA inspection. PW stated that he had no figures with him so couldn't help but expressed the need for the GLA to take the necessary steps to ensure that all decisions made were robust and sustainable. ST then asked if he can imply from that response that the GLA is under pressure regarding recent decisions made. PW only confirmed that all decisions must be robust and sustainable. PW did however explain that the cuts in spending will affect the speed of applications and investigations.
- c. Media Policy - The group expressed concern at the lack of effective communication from the GLA. PW explained that as part of the government cuts the media officer for the GLA had left and that government departments do not see a media person as a 'frontline' role so is unlikely to be replaced. He agreed with the group that in reality the media role is front line.

DC advised that whilst the GLA had actually increased the number of licence revocations there had been very few press releases in 2011. A policy of issuing frequent straightforward press releases on licence revocations was a more effective method of communicating the actions of the GLA and reminding the industry they are still present.

ST added that a current policy which seems to be chasing the "headline" is not working and is affecting the general perceptions of the GLA. Concerns were raised about several matters most high profile of which was a recent article in the Daily Mail regarding the West Midlands "Child Labour" issue. PW explained that he had no control of the actions of other government bodies, but what the GLA had reported of the existence of children in the fields of Worcestershire was accurate.

PW explained that the GLA will always answer a question directly if questioned by a reporter. He gave an example - "Are you investigating a LP on the site of LU x" - if they GLA are then they will answer yes.

The group also felt that information of an operational nature based on region specific would be beneficial to help communicate the GLA message and also tackle exploitation within the supply chain.

**ACTION – GLA to review media policy and stakeholder communication and to consider whether short and frequent releases should be made to the GLA Brief distribution list.**

## 7. Independent Farming Regulation Task Force report – GLA recommendations

- a. Clarification of scope of GLA licensing (Exclusions) The group reiterated the Task Force findings that the GLA needed to provide clarification on a number of areas where the scope

of GLA Licensing was unclear. DC stated that DEFRA legal had provided an opinion in 2010 on 12 separate industry activities that were "grey areas" which the ALP published in September 2010. There were other issues with agricultural contractors, land agents, supply of volunteers, supply of apprentices and so on. TG added that there was also a recent issue that had come to light regarding transfer of land that needed to be dealt with.

ST raised the particular issue of hygiene companies. In 2010 DEFRA legal stated that when cleaning processing equipment that they are included under the scope of the Act; however no definition, strategy, communication or awareness has been provided by the GLA.

The importance of the GLA providing clarity to industry, wherever this is possible was reiterated by JP (NFU), ST (FPC) and others.

**ACTION - GLA to work with industry representatives and trade associations to explain its scope across "grey areas".**

- b. Addressing perception rather than principle discussed and minuted in Media Policy above.
- c. GLA should move its inspection regime to a more targeted, risk-based approach using the principles of earned recognition - PW explained that the GLA already adopts an intelligence-led approach and risk based tasking of operational activities. The forestry pilot is examining the issue of "earned recognition".

#### 8. GLA Supermarket Protocol

- a. Good Practice Guide revision update progress - No changes were requested by the group.
- b. GLA policy on release of confidential information to Retailers - ST expressed growing concern of a real risk of the GLA losing integrity in the management of confidential information and the potential effect these have on LP and LU businesses. For example - A LU calls the GLA for support regarding a potential issue and the GLA then begins an investigation. The GLA then informs Retailers as part of "Alerts" that this investigation is taking place. ST explained that the LU should be consulted before any communication takes place with a retailer so they can manage their business relationship. The GLA has a responsibility to the industry and the retailers are a commercial organisation with a "brand" to protect. They will naturally respond and could make knee-jerk reactions on that LU. If the GLA continues with its policy of feeding of information to retailers based on a LU asking for support, the GLA will lose the trust of the industry, the concerns raised in the MacDonald report will be enhanced. ST further explained that this rule should also apply to LP - if a LP asks for the support of the GLA this must not be discussed with the LU unless the LP is aware beforehand.

DC stated that all stakeholders need to be reassured that the GLA will manage confidential information appropriately.

PW stated that sometimes the GLA will have to communicate to the Retailers because they may have information of a wider problem, but understood the point raised and that the FPC and ALP should discuss this topic with Neil Court and Ian Livsey.

**ACTION - GLA to produce guidelines regarding release of information to retailers as part of Retailer/Supplier protocol and discuss with FPC/ALP**

#### 9. GLA position on authorised deductions from wages for optional use of transport.

DC advised that there had been a number of reports from labour providers where the HMRC has dropped its NMW case against labour providers who have made authorised deductions from wages for optional use of transport. DC had asked the GLA whether it would be reverting to its pre April 2009 position on this matter. David Nix confirmed that he had checked with HMRC who stated that no cases have been dropped and the GLA's position remains the same as HMRC's, i.e. authorised

deductions from wages for optional use of transport would reduce what counts towards NMW pay.

DC stated that the HMRC interpretation was flawed and worked against the interests of workers. However as HMRC always drop or settle these matters the law is never tested or proven.

TG expressed concern that HMRC's interpretation had had on workers safety with unsafe vehicles being used to transport workers without any control by the gangmaster.

PW expressed his view of agreement with the sentiment of the meeting.

Mark Boleat informed the meeting that he had raised this topic to various government departments as part of his various roles and had found a general level of apathy. He had recently written back to Ed Davey MP on this matter and would continue to pursue it.

**ACTION – TG to provide contact in Lincolnshire Police to MB. MB/ALP to continue to raise this issue with Low Pay Commission and to relevant government departments.**

10. Any other business - None

Before the meeting was closed Margaret McKinlay then read a statement from a government select committee which confirmed her as the preferred candidate to become chair of the GLA. The final decision is likely to be imminent and in favour of Margaret McKinlay.

ST then on behalf of the FPC congratulated Margaret McKinlay and wished her well in the final decision process. He then went on to pass on gratitude and thanks to Paul Whitehouse for his efforts during his time as GLA chair. This was then seconded by David Camp and echoed by the group.

11. Next meeting – PW advised that better support from the GLA executive can be given if the meetings are held in Nottingham - date and time to be agreed.

The meeting was closed.

## Agenda Item 5 – for information

### [The report of the independent Farming Regulation Task Force](#)

#### **Striking a balance: reducing burdens; increasing responsibility; earning recognition**

#### **A report on better regulation in farming and food businesses - May 2011**

#### **Gangmasters licensing scheme**

4.56 The Gangmasters (Licensing) Act 2004 created the Gangmasters Licensing Authority (GLA). Under the Act the GLA is required to establish and operate a licensing scheme and create a register of labour providers ('gangmasters' in the terminology of the Act). The Act makes it a criminal offence to act as a labour provider without a licence – and to use labour other than that supplied by a licenced labour provider. Many farmers and food-processors are labour users and are thus obliged to use licenced labour providers.

4.57 There were mixed views on the gangmasters licensing system. A number of consultees suggested abolishing the Gangmasters Licensing Authority altogether. Many felt that its existence was unfair, putting the agricultural and horticultural industries in a negative light. Other consultees believed that the GLA is working well.

4.58 A clear perception problem, from labour users at least, surrounds who the GLA inspects and how they inspect them. Some feel that GLA literature tarnishes the reputation of horticulture. Despite Defra guidance, many respondents are unclear which activities are within and which are outside the GLA's scope.

There is also the perception that the GLA targets labour users. Some labour users also believe that they have to register with the GLA. This is incorrect: labour users can voluntarily 'sign up' for additional services to assist them with their own due-diligence checks. However, we heard that labour users increasingly prefer not to do so via the GLA website, as they think this will guarantee them a GLA inspection.

4.59 At the outset, we want to make clear that we do not agree with calls we received for the abolition of the GLA. The GLA was included as part of the Government's recent Arms Length Bodies Review. We endorse its conclusion that the GLA should be retained. We believe that the GLA has an important role to play in protecting worker welfare. We do not take a view on whether the GLA's responsibilities should be integrated with those of BIS in relation to employment agencies. In the light of the broad endorsement by the Hampton Review team, we also believe that many problems identified during our evidence gathering relate to perception rather than principle. Accordingly, our recommendations on the GLA fall into three broad areas: communications and perceptions (paragraphs 4.61–63); inspections and enforcement (paragraphs 4.64–69); and an alternative to licensing (paragraph 4.70).

4.60 The GLA's enforcement and compliance role is included within the remit of the Government's recent review of workplace-rights, compliance and enforcement arrangements. This is part of a wider review of employment law that is taking place during the current Parliament. The review is examining the scope for streamlining and increasing the effectiveness of workplace-rights compliance and enforcement.

There is significant overlap in the terms of reference of this review and the types of recommendations that we make regarding gangmasters licensing. Accordingly, we urge those leading the review to consider our recommendations as a means of reducing the burden of administration and inspection when enforcing workplace rights.

#### Communications and perceptions

4.61 As we make clear in paragraphs 5.20–22, guidance must help users to comply and thus must be usable. There is no point in unread, unclear or unhelpfully complicated guidance. We appreciate that the GLA discuss draft guidance with a labour-user group. But we received evidence that the GLA needs to produce more easy-to-use information available on what are excluded activities. We are encouraged that the GLA is revising its website structure and hope it will do so with the consideration of making it clear and accessible for labour users.

4.62 We expect the GLA to continue to work with industry and trade associations in drafting guidance.

Given that it is labour users (e.g. growers) who appear to be particularly concerned, we recommend that the GLA continues to work with the National Farmers Union (NFU) and other representatives of labour users to lead drafting of future guidance specific to labour users. In line with our strategic recommendation (paragraphs 2.18–19), we recommend that the GLA and NFU jointly own this guidance.

There should also be an onus on trade associations to evolve and communicate this guidance effectively with their membership.

4.63 Evidence we have received suggests that the horticultural industry perceives that the GLA is actively targeting labour users. In reality, we believe that the GLA is targeting labour providers, but simply inspects the place of work of the labour (i.e. the labour user's farm). We accept that the GLA has to enforce the offence of using an unlicensed labour provider. To improve its relationships with the farming and horticultural industry, we recommend that the GLA should better communicate its priorities (enforcement against rogue gangmasters) and further engage with labour users on its enforcement approach. Planned amendments to its website structure (paragraph 4.61) should also help.

## **Inspections and enforcement**

4.64 We appreciate the GLA's dedication to worker welfare and the commitment of its inspectors to enforcing the criminal offences in the Gangmasters (Licensing) Act. However, a more targeted approach to inspection and enforcement benefits needs to evolve. So we welcome GLA's pilot to test lighter-touch regulation in the forestry sector, which it deems to be low risk. This pilot runs for a year from 6 April 2011.

We understand that, in the light of the outcome of the pilot, the GLA will decide whether to roll out the pilot more widely. We welcome the GLA's pilot, and recommend that it be extended to low-risk activities in farming and growing.

4.65 The forestry pilot appears to be taking the approach of earned recognition (for which see paragraphs 3.12–30) – offering a 'lighter touch' for those meeting certain criteria, e.g. membership of industry groups and those subject to audits by their supply chain. We are encouraged by this and believe that the GLA should move its inspection regime to a more targeted, risk-based approach using the principles of earned recognition.

4.66 The GLA samples when conducting its inspection; we understand that its guideline is for inspectors to interview 10% of workers. However, there is a perception among labour users whose gangworkers are interviewed that inspectors sometimes do not follow this guideline. In a similar vein to our recommendations on sampling in inspections (e.g. paragraph 3.04), only if a number of workers interviewed identify problems should further workers be interviewed. We recommend that the GLA ensures that its inspectors are clear as to the guidelines that are in place when conducting inspections.

4.67 One common complaint from labour users is that unexpected inspections of gang labour affect delivery of commercial commitments (e.g. because workers are interviewed rather than working). We appreciate that it is efficient for the GLA to inspect a labour provider's activities at the place of work of their workers (e.g. a farm), particularly where information suggests worker exploitation but no workers are known. We understand that the GLA will interview workers at their accommodation, and elsewhere if the workers have approached the GLA and request that approach. However, we recommend that the GLA explores further alternative means of interviewing gang workers without disrupting farm businesses as far as possible and without adversely affecting its ability to identify worker exploitation. This would improve the GLA's relationship with labour users, would help mitigate the perception that labour users feel they are inspected and would allow 'normal' work to continue with minimal disruption.

4.68 We understand that labour users who have unintentionally used an unlicensed labour provider are still in breach of the law and that ignorance is no excuse for non-compliance. However, we are concerned by the suggestion received during our evidence gathering (paragraph 4.58) that farmers are not voluntarily registering to receive information from the GLA or for the labour provider active check service because they think that it may lead to them being inspected. This is clearly counterproductive for the GLA as it constrains awareness among labour users of GLA guidance and other material. Moreover, it is short-sighted of labour users, as they are unable to take advantage of the services that the GLA offers them.

4.69 We recommend that the GLA and trade associations should work together to better communicate the advantages of a labour user voluntarily registering on the GLA website as a labour user.

We also recommend that the GLA make clear that labour users that voluntarily register on the website are at no higher risk of inspection than if they do not register. This will further encourage good growers to participate.

### **An alternative to licensing**

4.70 We are aware that Defra Ministers recently confirmed to Parliament that they have no plans to move away from the current system of licensing. We are also aware that BIS is leading a Government review of workplace enforcement. In this context we note that a licensing regime may not be the most efficient and effective way to deliver the desired outcome of worker welfare. This led us to consider whether a move to a 'registration and enforcement' model might be a more effective approach. Under this model, we envisage that all businesses falling under the current GLA mandate would be required to register (for a small annual fee). Under this approach, as now, enforcement could be risk based, be led by intelligence and additionally use earned recognition, which the GLA is considering. We recommend that Defra explores the costs and benefits of a 'registration and enforcement' model as an alternative way of delivering desired outcomes.

## Agenda Item 5a Clarification of Scope of GLA Licensing - for information

### EXTRACT FROM ALP NEWSLETTER 75 – September 2010

Following a request by the Association, Defra lawyers and the GLA have helpfully provided guidance as to whether a GLA licence is required or not in a number of “grey areas” in food processing and packing.

Whether a person is acting as a gangmaster is defined in regulation 4 of the Gangmasters Licensing Act 2004. The Gangmasters Licensing (Exclusions) Regulations 2010 detail the circumstances in which a person does not require a licence to act as a gangmaster.

Please be aware that the information below is guidance only and has no legal status. Whether a licence is required or not will be defined by the particular circumstances of the role, the nature of the labour supply and an appropriate interpretation of the legislation.

Where there is doubt as to whether a licence is required the GLA should be contacted and/or advice taken from legal advisers. The ALP Legal Support Service is expert in Gangmaster legislation and may be contacted for advice through the Association.

#### 1. Halal Blessers

For the purposes of licensing, the sole act of blessing the meat processing does not require a licence. However if the Blesser is involved in any other activity involving the processing of the meat or poultry e.g. the Blesser kills the birds / animals, and the Blesser is supplied to the labour user by another organisation, a licence is required.

#### 2. Factory Cleaners (including from a Facilities Management Company) - Distinction between cleaning the production line; night hygiene cleaners who clean the production line; cleaners who only clean the factory floor/walls.

Those engaged in cleaning the production area would be covered by the scheme whether or not it was operating. However, those undertaking cleaning activities away from the immediate production line are unlikely to be covered. A Facilities Management company which employed workers to clean the production area of a food processing plant would be covered by the licensing scheme as they would, in effect, be using a worker to provide a service. If they only clean floor/walls then the work would not be covered.

#### 3. Hand pallet/Fork lift truck drivers who remove completed pallets from the end of the line.

This work is unlikely to be covered by the scheme.

#### 4. Warehouse Repack Operations (Separate premises from production) - Operators breaking down pallets of food into cases/part pallets.

This activity would only be excluded if taking place in a wholesale or retail environment, or if a distribution warehouse. Otherwise it would be covered by the licensing scheme.

#### 5. Warehouse Repack Operation (Separate premises from production) – Putting packed food items into other containers e.g. Confectionery into Christmas selection boxes / stockings or putting a mixture of food and non-food items gift packs/hampers.

This activity would only be excluded if taking place in a wholesale or retail environment, or if a distribution warehouse. Otherwise it would be covered by the licensing scheme.

#### 6. Engineers that work on machinery while the line is ‘live’ in production / On-line Engineering technicians who have a production machine minding role.

a. An engineer supplied by an agency to act as a site based engineer to support the operation of the production line in either of the circumstances would fall within the scope of the scheme as the work is an integral part of the production process.

b. An engineer supplied by a labour provider into the employ of the food processing company could be excluded under the specialist worker exclusion (provided all the criteria in the exemption are met);

c. An engineer supplied by a labour provider or employed by a maintenance contractor who went to the processing plant to carry out repairs and servicing on an ad hoc basis would fall outside of the scope of the scheme;

#### 7. Pet food / Animal Feed production

Pet food and animal feed production is covered by the licensing scheme as the food/feed will be made either from produce derived from agricultural work or from shellfish or fish products.

#### 8. Tray wash operatives - work within a dispatch department not in the production area i.e. production operatives bring out dirty trays and take back clean ones.

These workers are covered by the licensing scheme because the activity, while not undertaken in the production area, provides clean trays on which the product can be moved from that area to the dispatch department.

#### 9. Workers doing waste control activities in a food factory including collecting food waste bins and separating waste for recycling/animal feed/landfill.

Produce sold or used for any purpose, including animal feed, is consumable produce. Processing consumable produce is work to which the Act applies irrespective of whether it is for human consumption. Removing waste from a food production line is likely to be an integral part of the overall processing work and therefore in scope. For workers who purely handle waste that goes to landfill outside the normal production line this will require more detail to confirm whether it is in or out.

10. Fish farming - including trout lakes

This is not normally regarded as falling within the scope of the definition of agriculture therefore it is not covered by the scheme. However, workers supplied to a fish processing plant on the same site are likely to fall within the scope of the scheme.

11. Abattoir/Slaughterhouse activity – Dressing of carcass post slaughter by licensed slaughterman and others. The dressing of a carcass is covered by the scheme as it falls within s3(1)(c) of the 2004 Act as the carcass is derived from agricultural work.

12. Production of food for airline catering meals / snacks

Para 1(b) of the 2006 Exclusions Regulations required that food delivered to the consumer be ready for consumption without further preparation. As most airline meals need to be reheated before they are served this type of food processing did not benefit from this exclusion.

Under the 2010 Exclusions Regulations the definition of a catering establishment has been refined so that in addition to the requirement that food must be in a condition to consume without further preparation, ownership of the food must pass directly from the producer to the consumer. Consequently labour providers who supply workers to companies which prepare food for airline passengers are likely to need a Gangmasters licence.

## **Other Areas**

1. Agricultural contractors
2. Land agents
3. Apprentice suppliers
4. Section 4(5) of the Gangmasters (Licensing) Act 2004 states: “A person (“A”) acts as a gangmaster if he uses a worker to do any of the following work to which this Act applies for the purposes of a business carried on by him:-
  - (a) harvesting or otherwise gathering agricultural produce following-
    - (i) a sale, assignment or lease of produce to A, or
    - (ii) the making of any other agreement with A, where the sale, assignment, lease or other agreement was entered into for the purpose of enabling the harvesting or gathering to take place,
  - (c) processing or packaging agricultural produce harvested or gathered as mentioned in paragraph (a).”