

**MINUTES OF THE THIRD MEETING OF THE LABOUR PROVIDER LIAISON GROUP –
5 NOVEMBER 2009, HELD AT DEFRA, NOBEL HOUSE, LONDON**

Present:

Paul Whitehouse	Chairman, GLA
Andrew Lazenby	Industrious People
Anne Fairweather	REC
Chris Gorton	Heads UK
Claude Peters	Van Stomp
David Camp	ALP
Mark Boléat	ALP
Mark Rye	DKM Labour
Marshall Evans	Staffline
Robert Vitols	À la Carte
Terry Godfrey	Gangmasters Alliance
Darryl Dixon	Director of Strategy, GLA
Almut Gadow	Policy Officer, GLA
Julia Brereton	SASTAK

Apologies:

Lewina Farrell	REC
Michael Bayne	Borders Machinery Ring

1	Declarations of interest	Note: <ul style="list-style-type: none"> AL, CG, CP, MR, ME, RV and declared an interest as licence holders
2	Minutes of last meeting	Note: <ul style="list-style-type: none"> Agreed
3	Update on actions	Note: <ul style="list-style-type: none"> GLA will publish guidance on travel schemes' compatibility with GLA licensing standards shortly GLA has raised its concerns around travel schemes with supermarkets GLA will consult on enforcement strategy after it has secured powers to impose Macrory penalties After an inspection, LPs can reasonably expect a response from GLA within one month providing all the evidence is available. LPs who have not received a response after a month should contact GLA. REC/ALP have not been alerted to any recent cases in which the GLA unduly delayed notifying LPs of inspection outcomes. GLA has raised the issue of transport deductions with HMRC/BIS. HMRC has confirmed that all transport deductions reduce national minimum wage pay. It is irrelevant whether the worker has a choice about using transport, whether the worker agrees to the deduction or whether the employer makes a profit or loss on the transport. This supersedes discussions at the Labour Provider Group meeting of 27 June 2008 regarding GLA enforcement on transport deductions. GLA has not changed its approach to tasking AMW breaches, as

		<p>strong representations were received from both trade unions and the Gangmasters Alliance.</p> <ul style="list-style-type: none"> • GLA will not routinely send inspection reports to LPs as the decision letter should give LP sufficient explanation of reasons for decision. GLA notes ALP/REC's dissatisfaction with this decision. GLA will consider specific examples of inadequate decision letters which ALP/REC may raise in the future. • LPs are required to notify GLA of changes to their circumstances as per Licensing Standard 1.4 within 20 working days. Other details regarding 'fit and proper' criteria (including bankruptcy, disqualification from being a company director, actions under Proceeds of Crime Act, and criminal investigations/charges/convictions) are updated at the time of licence renewal, or if identified on inspection as an issue. • GLA's policy on overseas issues has not changed. • GLA is considering options for professional external inspection of its GLA inspection process. An ALP survey would clearly be insufficient to establish the full picture. • GLA expects all licence holders to pay all workers on time every time, even if the licence holder has not been paid by the labour user. Where an LP foresees that he will not be able to pay workers for reasons beyond his control (e.g. a LU will not comply with his obligations), GLA will consider raising this failure with the relevant supply chain, depending on the circumstances of the case. In these cases, it is essential that licence holders contact GLA before any payment due to workers is missed. This principle holds good in any other similar circumstance – in other words it demonstrates good faith. • It was agreed a single issue Brief on AWO is no longer required • The amendment to the Public Register to show ALCs against a register entry is in the next phase of development – scheduled date unknown • GLA is in discussion with HMIC over external independent inspection <p>Action</p> <ol style="list-style-type: none"> 1. GLA to consider whether it is possible to collate and publish data on response times following inspections 2. ALP/REC to consider tabling a paper on transport deductions at January Board meeting 3. DC to send his comments on SAWS agents to AG 4. DC to send examples of instances where GLA advice on scope of licensing regime has been inconsistent to AG 5. DC to send his comments on press release policy to Tim Carter
4	Travel schemes	<p>Note:</p> <ul style="list-style-type: none"> • GLA will publish guidance on travel schemes' compatibility with GLA licensing standards shortly. GLA has worked with HMRC to develop a joint position and wording for the Brief. • Industry concerned that LPs who operate travel schemes can unfairly undercut those who do not. Whether existing travel schemes operated by licence holders are compatible with Licensing Standards will become clearer once Brief is issued. Joint GLA/HMRC operations on LPs operating travel schemes will be held thereafter.

		<ul style="list-style-type: none"> • Industry concerned that LPs who use umbrella companies can unfairly undercut those who do not. Umbrella companies employing workers in the regulated sector need a licence; use of unlicensed umbrella companies is a criminal offence. GLA has recently refused licence applications from two umbrella companies, and revoked the licence of another. • REC has written to the Treasury Minister about travel schemes; some of REC's concerns have been addressed with the subsequent publication of HMRC Brief 50/2009. • ALP has not met or corresponded with HMRC regarding travel schemes. ALP members have opposing views on travel schemes dependent on whether they run such schemes or not. It is ALP's understanding that travel and subsistence schemes are legitimate and legal if run in accordance with the legislation. <p>Actions</p> <ol style="list-style-type: none"> 6. GLA to publish Brief on Travel Schemes asap, giving REC, ALP and Gangmasters Alliance sight of the document 48 hours in advance. 7. GLA to add to Best Practice Guide for Labour Users a recommendation that LUs check whether LPs use an umbrella company.
5	Agricultural minimum wage	<p>Note:</p> <ul style="list-style-type: none"> • At the group's second meeting, ALP had indicated its policy is for the abolition of AMW. REC had asked GLA not to enforce AMW. Unions strongly objected to that request at October Board meeting and the status quo remained. • Gangmasters Alliance considers there is a rationale for AMW: by law, agricultural workers should be rewarded with higher pay and more leave for doing physically demanding, dangerous work in all weathers. • Gangmasters Alliance is concerned about insufficient, inconsistent enforcement of AMW. Many LPs do not pay workers in accordance with the law; many LUs refuse to pay charge rates that reflect AMW; Defra does not effectively enforce AMW; GLA's enforcement has been inconsistent. • TG raised a case in which a licence holder was failed under LS 2.2 for not complying with bad weather payments under AWO, a more obscure aspect of AWO that is rarely complied with or enforced. <p>Action:</p> <ol style="list-style-type: none"> 8. TG to forward details of the case he raised to AG. 9. REC/ALP/Gangmasters Alliance to forward examples of inconsistent enforcement of AWO by GLA to AG. 10. GLA to do an analysis of LS 2.2 failures, and confirm to group how many, if any, relate purely to particular less well known aspects of AWO. 11. GLA to produce a policy statement confirming what aspects of AMW it will enforce, and forward to Gangmasters Alliance/ REC/ ALP.
6	PAYE	<p>Note:</p> <ul style="list-style-type: none"> • Gangmasters Alliance concerned that LPs who are behind in their PAYE/ VAT payments, but have agreed arrangements for payment with HMRC, risk losing their licence. This is because in the

		<p>Gangmasters Alliance’s experience the HMRC helpline offers LPs no written confirmation or reference number, while GLA will not accept that arrangements are in place unless a reference number or written confirmation is presented.</p> <ul style="list-style-type: none"> • It is the GLA’s understanding that HMRC will always confirm arrangements in writing, or at least provide a reference number of the notes of any telephone conversation. Any comments from the helpline may not be considered to be an agreement, but advice to pay to reduce amounts owing. Licence holders who have entered arrangements with HMRC for delayed payment of PAYE/ VAT but been refused written confirmation or a reference number thereof should notify the GLA of their situation immediately. Note the principle at Minute 3 above. <p>Action</p> <p>12. TG to send examples of specific cases to AG</p> <p>13. GLA to raise these cases with HMRC</p>
7	Employment status	<p>Note:</p> <ul style="list-style-type: none"> • GLA apologised for not responding sooner to REC’s submissions regarding employment status • REC/ALP concerned that GLA has asked LPs to alter contracts if GLA deemed workers to be employed, not self-employed. This has far-reaching implications for LP (application of AWO, unfair dismissal, etc.). With regard to Employment Status REC/ALP considers that Employment Tribunals are more appropriate places for these decisions. • GLA considers that employment status is a question of fact which the GLA can assess. Determining employment status is prerequisite to assessing compliance with a range of other GLA Licensing Standards. • While BIS inspectors do not assess workers’ employment status, GLA inspectors do. This is because GLA inspectors interview workers and are thus able to gain a clearer understanding of workers’ actual terms of engagement. <p>Action:</p> <p>14. GLA to respond to the specific points raised by ALP/REC in writing as soon as possible, with a detailed explanation of its position both on determining employment status and on the REC model contract.</p> <p>15. GLA to provide a copy of the legal advice received</p> <p>16. GLA to produce a Brief on employment status, and for discussion at the next meeting of this group before publication.</p>
8	Transfer of licences	<p>Note:</p> <ul style="list-style-type: none"> • GLA apologised for not responding sooner to ALP/REC’s submissions regarding transfer of licences. • REC/ALP consider that GLA should allow transfer of licences in cases of business restructure. • GLA will not normally allow transfer of licences. A licence is issued to a particular person. If another person takes over business from the licence holder, that other person or entity must apply for a licence in their own right. New businesses arising out of genuine business restructures will typically be able to obtain a licence. Companies

		<p>arising out of improper phoenixing will normally be refused a licence.</p> <ul style="list-style-type: none"> • REC/ALP dissatisfied with GLA position. <p>Action:</p> <p>17. GLA to respond to ALP/ REC's submissions as soon as possible, and forward explanations to ALP/ Gangmasters Alliance.</p>
9	New enforcement resources	<p>Note:</p> <ul style="list-style-type: none"> • 10 new enforcement officers (dual role) who have been allocated as follows: • North – 1; West – 4; East – 5 • Future recruitment: • 5 Community Support Officers (home based on a fixed-term contract) based in Lincolnshire, Devon and Cornwall, London, Cambridge/Peterborough and the West Midlands – Reporting to Operational Heads; • 4 Regional Intelligence Officers (home based on a fixed-term contract) based in Angus, Cambs/Lincs, London and the South east and the West Midlands - Reporting to the Intelligence Manager; • 3 staff in the Operational Support Unit (permanent office based staff) – reporting to the Operations Manager; • 2 Intelligence staff (permanent office based staff) – reporting to the Intelligence Manager • Question was raised regarding the number of inspections. It was explained that the inspection list is updated when an inspection is submitted. Inspections were becoming more lengthy due to the nature of some of the issues being raised.
10	Hampton Report	<p>Note:</p> <ul style="list-style-type: none"> • Recommendations of Hampton Implementation Review and 2009 GLA Annual Review have been incorporated into the work programmes of various GLA departments. • This will include a statement on the licensing decision process, similar to the Enforcement statement. • It, like all regulators, is considering how to produce meaningful indicators of its outcomes, rather than outputs.
11	Use of GLA name and logo in advertising	<p>Note:</p> <ul style="list-style-type: none"> • Licence holders may state in their marketing material that they are 'GLA licensed'/ a 'GLA licence holder', etc. • Licence holders are not prohibited from displaying copies of their GLA licence or from sending these to LUs, nor providing a copy of the current licence certificate at the request of the LU (which may follow the LU becoming aware the LP has been inspected). However, LUs should rely on the public register/ active checks as the definitive guide on whether a LP can operate legally. • Licence holders may not use the GLA logo. • No business should describe itself or its operations as 'approved' by or as a 'member' of GLA. • No business or organisation should claim to have a level of involvement in GLA governance which it does not have. • No organisation should create the impression that it is acting as or on

		<p>behalf of the GLA when it is not.</p> <ul style="list-style-type: none"> GLA reserves the right to publish corrections where businesses or organisations wrongly create the impression that they are acting in a GLA capacity or hold special GLA endorsement. <p>Action:</p> <p>18. GLA to put on the front page of its website clarification that LUs should rely only on the public register. And that it is a matter for LPs whether they provide a copy of their current licence certificates in response to a LU request.</p>
12	Any other business	<p>Note:</p> <ul style="list-style-type: none"> ALP is still campaigning for abolition of WRS, abolition of accommodation offset rule, and legalisation of transport deductions. Gangmasters Alliance concerned about price of vehicle insurance to cover 'hire and reward', and the fact that some policies commonly sold to gangmasters in fact exclude 'hire and reward'. GLA considers it the licence holder's responsibility to have necessary insurance in place; the price of insurance is a matter between LPs and their insurers. REC would advise GLA against translating Agency Worker Regulations into a Licensing Standard. This is because the GLA would not be able to assess whether agency workers and permanent staff are treated equally without investigating treatment of permanent staff. REC would welcome confirmation whether GLA intends to incorporate requirements under the Regulations into Licensing Standards. The Group asked PW to continue as chair for its future meetings.
13	Next meeting	Monday 1 February 2010, 11 am, DEFRA, London.