

MINUTES OF THE SEVENTH GLA LABOUR PROVIDER GROUP MEETING – 27 JUNE 2008 HELD AT THE GANGMASTERS LICENSING AUTHORITY, NOTTINGHAM

Present:

Marshall Evans	Staffline Recruitment
Mark Boleat	Association of Labour Providers
David Camp	Association of Labour Providers
Michael Bayne	Borders Machinery Ring
Anne Fairweather	Recruitment & Employment Confederation (REC)
Gus Ferenczy	Recruitment & Employment Confederation (REC)
Gary Norman	One Call Recruitment
Nick Graff	Smart Group
Darryl Dixon	Director of Operations, GLA
Neil Court	Head of Projects and Assurance, GLA
David Nix	Head of Policy and Communications, GLA
Almut Gadow	Policy Officer, GLA
Dr Sam Scott	Lecturer, University of Liverpool

1. Review of previous actions

AWO issues: GLA to produce single issues Licensing News confirming position on agricultural minimum wage. Await outcome of appeals DN

Application of LS 9.1 where not all workers have NI numbers: DD confirmed that GLA officers will not fail labour providers under LS 9.1 in cases where workers have applied for but not received their NINo. GLA to check current position where workers have not applied. DD/NC

GLA to chase DWP and HMRC for confirmation and notify group via email.

NMW and deductions for transport: DN to forward emailed advice from HMRC to group. DN

DD/ NC confirmed that GLA will not currently enforce LS 2.8 in relation to transport deductions.

AWO rates/ holiday entitlement: see AWO issues above.

GLA position on when to revoke with immediate effect: A revised document "When to revoke with immediate effect" will be prepared in line with the revised licensing standards. DD

Publication of ALC's on the GLA website: DD to discuss with GLA's IT department and prepare a revised document outlining the proposed process for discussion. DD

Information sheet: NC to produce and circulate draft document "information sheet" / booklet for inspectors to give to licence holders at inspection to explain process and what happens next. DC requested that the document clarify (1) what standard of evidence is required at inspections, (2) how soon the licence holder can expect a response from the GLA, and (3) what opportunity labour provider has to respond to inspector's findings. NC

Streamlined AI process for those reapplying after inadvertently missing renewal date: In situations where a labour provider has forgotten to renew their licence the GLA confirmed that if they have no information to suggest a particular risk, it is unlikely that another inspection of the labour provider will be carried out.

DC raised a number of issues i) Must the LP cease trading ii) Is there an expedited application process iii) Does a full Application fee need to be paid iv) what about situations where the GLA are at fault.

Rolled-up holiday pay: MB expressed his objections to GLA position on rolled-up holiday pay. The ALP considers the GLA approach disproportionate; rolled-up holiday pay did not mean exploitation or workers. Indeed, it guaranteed that holiday pay was actually paid.

Various members expressed dissatisfaction with the way the GLA approach was introduced. It is good practice to give 12 weeks notice of change in guidance; labour providers who had been paying rolled-up holiday pay would not have had systems in place to change holiday pay; paying temporary migrant workers after they leave the country may be impracticable; the approach goes against Labour Provider Group recommendations.

DN accepted comments about the way in which the GLA position was communicated but pointed out that the GLA approach to rolled-up holiday pay reflected existing law and was not a new rule. MB pointed out that it reflected a new interpretation of an existing law which had the same practical effect as a new rule.

"Minimum charge rates": GLA to ensure inspectors and GLA publications refer to minimum charge rates in a way which makes very clear that these are not recommended rates. DN

Guidance on website: GLA to consider as part of the ongoing review of its website. See point 6.

Use of Licensing News: GLA to ensure Licensing News makes clear which articles are guidance, reminders, notification of changes in GLA practice etc. DN

Testing written contracts at inspections: GLA to arrange training for staff on the different types of contract. NC/DD

GF suggest that REC be consulted on the content of this training.

WRS: GLA has told inspectors not to raise WRS during inspections, and not to fail businesses under LS 10.1 because of WRS issues.

GLA to check all inspection records to see if WRS was a factor in any failures under LS 10.1. AG

GLA handling enquiries: GLA helpdesk staff have been reminded to acknowledge enquiries. All enquiries should now be acknowledged and turned around relatively quickly. Labour Provider Group to bring to GLA's attention any instances where this is not the case.

Images of inappropriate transport: Photos have been published in Licensing News. GLA apologised for not circulating images to Labour Provider Group before publication.

The GLA's position re: overseas agents set out in the October 2006 paper remains unchanged.

2. Concerns re: lack of action on previous agenda items

Various members expressed their dissatisfaction at the lack of progress on actions agreed in previous meetings of the group. DN/ DD explained that delays are largely a question of resources.

GLA to assign priorities to actions in future action logs.

AG

3. Supermarket protocol – update on progress

GLA to keep Labour Provider Group updated about ongoing negotiations. It was requested that the GLA review which supermarkets appear most frequently at the top of the supply chain of offending labour providers and raise the issue with the supermarkets.

AG

4. GLA strategy on unlicensed gangmasters / phoenixing

DD explained that the GLA will over the next few months be investigating companies which started but never completed applications. Secondly enforcement will focus on former licence holders who have not renewed their licence ostensibly because they ceased trading.

Intelligence-driven work continues, and the GLA continues to contact companies suspected of operating without a licence. GLA to check how many companies applied for a gangmasters licence after being approached by GLA enforcement.

DD

MB reiterated his objection to the GLA's policy on retrospective charging. The ALP had never suggested backdating licences but rather wanted a penalty fee where a labour provider had been trading illegally. Other regulators found no difficulty in doing this. DN suggested that, having taken legal advice and presented a paper to the Board, the GLA had exhausted its options. MB to write to minister. DN to forward DEFRA legal advice on retrospective charging to MB and GF.

MB
DN

5. GLA labour user and labour provider groups

DC suggested merging the GLA's labour provider and labour user group. GLA to keep this option under review. GLA to forward labour user group minutes to labour provider group.

AG

6. GLA guidance consolidation project

DC asked that all GLA guidance be brought together in a single document or through a single point of access.

DN to liaise with DC to discuss options and agree format.

DN/DC

7. Dual licence holding – clarity on arrangements

The group is aware of a number of circumstances in which one company might hold more than one licence, including

- successful appeals
- business mergers
- small licence holding businesses bought up by existing licence holders
- shelved licence holding businesses bought by another licence holding company
- different parts of the same business required to apply for separate licences.

GLA to review if existing policies on dual licence holding are adequate or if a specific policy is needed to ensure licensing arrangements are appropriate and consistent. DC asked for clarity on refund of Application fees in the event of a successful appeal by a labour provider.

DN

8. Implementation of new licensing standard interpretations / differential enforcement of regulations

Following on from discussions about the GLA's new approach to rolled-up holiday pay, MB requested that the GLA consult and inform members of the Labour Provider Group before changing its interpretation or application of licensing standards. MB also noted that while the law on rolled-up holiday pay applies to all sectors it is only enforced for labour providers in GLA regulated sectors.

MB said that this raised the more general question of regulations which applied generally but which were enforced only by the GLA. This created distortions and in some cases made it difficult for labour providers to comply with a multitude of rules some of which were unclear and were in effect changed with little or no notice. If such rules were generally enforced then they would be seen to be inappropriate and would be changed. There was a need for a joined-up approach within government rather than a silo mentality. The issue was enforcement of rules not the existence of rules.

9. PR protocols

DN confirmed that the PR protocol has not changed.

10. Accommodation standards and safety

Various members of the group highlighted that labour providers could not realistically offer accommodation at £30.10/ week. Hence labour providers cannot provide accommodation, leaving workers liable to be exploited by private landlords.

DD confirmed that the GLA will not enforce the accommodation offset rule unless workers are exploited, accommodation is unsafe, illegal or let far above market rent. MB did not accept that the GLA's non-enforcement could resolve the problem as GLA inspectors would refer cases to HMRC who in turn might enforce the accommodation offset.

DN explained that the Low Pay Commission had created the accommodation offset rule for very specific circumstances (e.g. hotel staff living on site while on call or working split shifts). The rule had not been intended as a provision governing normal private sector

rental.

AF suggested raising the matter through various stakeholders with the minister.

PW and DN are to meet Low Pay Commission on September 16th to discuss these matters. ALP will forward their draft submission to the Low Pay Commission to the GLA.

DN

11 Complaint process – for action of inspectors

DD confirmed that a complaint process is in place. All complaints about inspectors' actions will be investigated by the Deputy Chief Executive and Director of Finance who is completely removed from the GLA's inspections and operational activities.

12. Applicability of the AWO

DN to seek general guidance from Defra on the applicability of the agricultural minimum wage to different work situations such as packhouses.

DN

DC advised that he has notified Judith Marsden at Defra that the guidance [Employing workers on a farm or in a packhouse - your obligations explained](http://www.defra.gov.uk/corporate/publications/pubcat/ag.htm#employ) - which should be at <http://www.defra.gov.uk/corporate/publications/pubcat/ag.htm#employ> does not link through.

13. Inspections and vehicle licences

GF raised the case of a REC member who was told by a GLA inspector to contact VOSA for advice, was given VOSA advice which differed from the inspector's interpretation of VOSA rules, and was told to contact VOSA again. DD was aware of the cases and suggested that the licence holder had been given conflicting advice on his first approach to VOSA only because he was disingenuously selective with information provided to VOSA.

GLA to ensure inspectors do not refer licence holders to other government departments unnecessarily when reference should be to licensing standards or the GLA office.

14. AOB

MB asked that the labour provider group be given fair warning should the GLA change its position on the enforcement of minimum wage and deductions for transport or accommodation.