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GLA Licence Fees

Response by the Association of Labour Providers to the GLA consultation on licence fees for 2009/10

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Introduction

On 17 November 2008, the Gangmasters Licensing Authority (GLA) published a consultation document on its proposals for licence fees for 2009-10. This is accessible at <http://www.gla.gov.uk/index.asp?id=1012775>. Comments on the consultation document are sought by 2 January 2009.

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 over 260 labour providers. It is generally recognised as the representative body for those labour providers that are regulated under the Act.

Executive summary

The GLA is proposing a significant reduction in fees for larger businesses following a review of the principles on which the rules are based.

The ALP is pleased that representations it has made over the last few years seem to have been accepted and the result – a significant reduction in fees for many labour providers – is greatly appreciated and warmly welcomed.

The Association has no comments on the proposed fee scale.

The Association believes that the GLA can do more to remove current abuse by businesses declaring turnover below the real level and by “phoenixing”.

The Association also continues to argue that the GLA should charge those applying for licences that have been trading illegally a higher fee – not a penalty.

GLA proposals

The GLA’s proposed fees for 2009/10 follow a policy decision by Defra and the Treasury that in future the GLA should seek to recover from licence holders only the cost of licensing and not the whole of the GLA’s costs. As a result the GLA is proposing significant reductions in costs for those labour providers that have been paying more than the minimum £400 fee. The following table shows the position –

Turnover	Fee 2008/09	GLA Proposed Fee 2009/10	Decrease %
Under £1m	£400	£400	-
£1 - £5m	£1,900	£1,200	37
£5 - £10m	£5,000	£2,000	60
£10m	£10,000	£2,600	74

History

The ALP has been critical of the GLA's proposals for licence fees for the last two years, in particular the more than doubling of fees for 2007/08 without adequate explanation being given and generally the lack of information about the GLA's finances. The ALP was heartened by the letter the Defra Secretary of State sent to the GLA saying that he expected to see a reduction in costs and "substantial reductions in fee levels" for 2008/09. This did not materialise; indeed fees were increased further.

In its submission last year the ALP argued that the policy of requiring regulators to recover the whole of their costs from the businesses they regulated was logically untenable and was capable of having significant distortionary effects.

In its response to the consultation on fees for the current year the ALP concluded: "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."

General position

The ALP is naturally very pleased at the response of the GLA, Defra and the Treasury to the representations it has made over the last few years. Its arguments seem to have been accepted and the result – a significant reduction in fees for the larger labour providers – is greatly appreciated and warmly welcomed.

Given that the GLA's costs are no longer the only determinant of fees the ALP sees no point in commenting on those costs. The overall level of fees is reasonable in relation to the benefit to labour providers of being regulated and in relation to the fees charged by other regulators.

Removing abuse

In its representations last year the Association identified two forms of abuse with 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 in 2008/09.
- 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 require companies found to have given false figures to back pay the full amount that they should have paid. For the avoidance of doubt this would not be a penalty but merely payment of the fee due.

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. As an analogy the Claims Management Regulation fee rules include: "Where the regulator is satisfied that the applicant or those who control the applicant have previously had control of another authorised business then the regulator may require the applicant to pay an annual fee calculated by reference to the annual turnover of all of those businesses."

This issue has become even more important as those involved in businesses that have had their licences revoked seem able to apply for a new licence and thereby pay the minimum fee. This seems perverse.

Late applications

The GLA continues to receive a steady stream of applications for licences from businesses that have been trading illegally. The GLA could choose 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 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 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.

In its representations last year, the ALP proposed 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 has been used by other regulators, the Claims Management Regulator for example.

The GLA duly considered this issued and seemed to accept the logic of removing this perverse incentive. However, its chosen method was to look at the option of backdating licences, something which the ALP had never contemplated and which seemed to it the wrong way of approaching the issue. It was no surprise that this option was rejected, partly on the grounds that it was open to legal challenge including on the basis that "there is no power to impose a fine (or other legal penalty) for illegal trading within the Rules as they refer to the application fee". The GLA Board paper on the subject referred to advice given by Defra lawyers. The Association requested a copy of the advice. The GLA agreed that the ALP should have that advice. However, it then transpired that the advice consisted of a telephone call.

The ALP remains concerned about the present position and the approach of the GLA. Section 9 (2)(h) of the 2004 Act allows the GLA to make rules which "require the payment of such fees as may be prescribed or determined in accordance with the rules." There seems no reason why the GLA rules should not include a provision that those businesses that have been trading without authorisation should pay a higher fee (not a penalty).