REVIEW OF GLA LICENSING STANDARDS
Initial proposals by the ALP - 11 March 2008

Introduction

The GLA is about to embark on a review of it's licensing standards.

This paper sets out a series of issues which the ALP would like to be considered in that review. This is not a comprehensive list and the Association looks forward to responding formally to the GLA consultation in due course.

Principles

The ALP considers that seven principles should guide the review of licensing standards -

1. The need to reduce the administrative burden on businesses in line with government policy.

2. The licensing standards should be directly related to the GLA's central objective of safeguarding the welfare and interests of workers. The standards should not seek to ensure compliance with every law and regulation.

3. The GLA should not gold plate other legislation, in particular by transforming non statutory guidance into binding rules or adding requirements not included within The Gangmasters (Licensing Conditions) (No.2) Rules 2006

4. The licensing standards should not lead to laws and regulations being disproportionately enforced against labour providers compared with other employers. This needs a little explaining. Almost any survey of businesses' compliance with various legal provisions shows significant non-compliance. There is also very little enforcement of many rules and regulations simply because the resources are not available. If all rules and regulations were enforced all the time then business would probably grind to a halt. It is unreasonable for laws and regulations that apply to all businesses to be enforced only against those subject to a specific regulatory regime because the resources exist to secure enforcement. This point is very relevant to the agricultural minimum wage discussed subsequently.

5. The licensing standards should not seek to require documentation or to require proof that labour providers had done something where this is not an existing legal requirement, subject to Point 4 that labour providers should not be treated disproportionately.

6. The experience over the last few years has been that there is a steady succession of new regulations, guidance, interpretations, and court judgments all of which impact on the business of labour providers. The GLA should not seek to enforce anything other than laws and regulations without consultation with the industry, careful consideration and considerable notice.

7. The Licensing Standards should be written in such a way to facilitate consistent interpretation and application by Compliance Inspectors.

Use of the word Gangmaster

The licensing standards refer throughout to gangmasters, an expression that is both inaccurate and insulting. Paragraph 7 of the licensing standards gives a wholly unconvincing explanation as to why the term has been used. Other regulators do not have any such difficulty. The FSA refers to "firm" not "loan sharks" and the Claims Management Regulator refers to "businesses "not" ambulance chasers". The standards should use a neutral expression such as "labour provider", "business", "person" or "firm".

Reportable and Correctable Licensing Standards

As stated previously the licensing standards should be directly related to the GLA's central objective of safeguarding the welfare and interests of workers. The standards should not seek to ensure compliance with every law and regulation.

Reportable and Correctable are the lesser rated non compliances scoring 4 and 2 points respectively. Currently Reportable and Correctable non compliances are not counted when assessing the score for refusal or revocation of a licence.

It is proposed that Reportable and Correctable non compliances be done away with by removing, combining or (in limited cases) upgrading those that exist within the current Licensing Standards.

Only Critical and Major Licensing standards will then remain. This will allow for simpler and faster inspections; a focus on the more significant non compliances and greater clarity.

Other standards allow for 'Observations' by which the inspector can share Best Practice, without any enforcement overtones. This extends the purpose of the inspection from merely policing to encouraging improvement.

Agricultural Minimum Wage

In a number of areas, in particular, standard 2.8, reference is made to payment of the agricultural minimum wage. The agricultural minimum wage provides benefits to workers over and above those conferred by the national minimum wage. In particular it provides for overtime payments and higher rates for qualified workers. It is therefore not concerned with the poorest workers on the minimum wage. The agricultural minimum wage regulations are full of anomalies, distortions and loopholes, a number of which work against the interests of workers. A newly introduced anomaly is that a worker working just one day a week is seemingly entitled to the equivalent of three months paid holiday. An example of where workers are adversely affected is that the rules in relation to overtime are such that labour users generally stipulate that no overtime will be available and workers are thus denied the opportunity to work for more than 39 hours a week. It is true that the agricultural minimum wage applies to many workers other than those subject to GLA oversight, but the fact is that the agricultural minimum wage is scarcely enforced except by the GLA. The arguments in respect of the agricultural minimum wage are spelt out fully in a paper which the ALP has submitted to Defra calling for its abolition. This is appended to this submission.

The Association proposes that all reference to the agricultural minimum wage should be deleted, so compliance would simply be against the national minimum wage.

Entitlement to Work in the UK

This license standard should simply say that "all workers are legally entitled to be in the UK and do the type of work offered."

The current standard goes on to say that employers will be required to show that they have complied fully with section 8 of the Asylum and Immigration Act. In fact that this section has now been repealed but in any event the requirement is illogical as section 8 is concerned with providing a defence in the event of prosecution. This is a classic example of gold plating.

The Immigration, Asylum and Nationality Act 2006 states that a statutory excuse against civil penalty can be established by conducting certain checks but that employers are not legally required to conduct these checks. This should not form part of the licensing standards.

GLA inspectors have been zealously checking not only entitlement to work documents but also documents in relation to the Workers Registration Scheme which have nothing to do with immigration and appear nowhere in the standards. If there is evidence that workers are not legally entitled to work in the UK then this should be a breach of the licensing standards, but whether the documentation is in place or has been checked to establish the statutory excuse should not be a part of the standards.

The standard as currently drafted also shows the dangers of referring to a specific piece of legislation which may be repealed As it stands labour providers are now in the position of being required to show that they have complied with a piece of legislation that has been repealed.

Detailed Points

Standard 1.1 refers to the licence holder remaining fit and proper. The licence holder is invariably a business not an individual and it is difficult to see how "fit and proper" can refer to a business. The GLA also needs to indicate the criteria by which it is judging "fit and proper". The Association has separately expressed concern at the GLA's limited ability to deal with "phoenixing". Standard 1.1 could be amended to deal with this by requiring that the directors, partners or sole proprietor or any other person able to have a significant influence on the policy or management of the businesses should not have been guilty of any criminal offence or had any involvement in a labour provider which has had its licence been revoked or refused a licence.

Standard 1.2 requires that license details are "up-to-date with all relevant changes of circumstances notified within proper timescales". There is no reference to what the relevant changes are. These need to be specified. It should be specified what and when licence holders classified as New Businesses are required to notify the GLA.

Standard 1.3 requires the licence holder to provide his unique reference number to various parties. This standard should be removed as the information is available on the GLA website.

Standard 2 guidance refers to "express written permission". The word "express" is unnecessary and can be removed. It is not used in the standard itself.

Standard 2.1 requires evidence that the labour provider is registered as an employer with HM Revenue and Customs. This seems superfluous as the information is checked prior to an inspection.

Standard 2.4 requires evidence that a labour provider has an accurate pay roll system in place, whether in paper or electronic form. This is superfluous and can be removed. What matters is that payslips are accurate, a point covered in a subsequent standard.

Standard 2.5 - the words in brackets "(e.g. for transport)" should be removed as they are confusing here.

Standard 2.7 uses the term "the worker only having worked during the period to which the payment relates". It is not clear what this means.

Standard 2.8 - reference to the agricultural minimum wage should be removed for the reasons already stated.

Standard 2.9 is frequently misapplied by inspectors and needs to be redrafted to avoid this. Inspectors have asked to see details of entitlements in contracts which is neither necessary nor what the standard says. The standard should reflect the requirements in the Gangmasters (Licensing Conditions) (No.2) Rules 2006

Standard 3.5 should be combined with 3.2 and 3.6.

Standard 3.8 requires that "the gangmaster properly deals with disciplinary matters or complaints". The expression "properly deals with" has no meaning.

Standards 3.9 and 3.10 on confidentiality should be removed in their entirety. These relate to compliance with the Data Protection Act. This is a peripheral matter that is not central to the key issue of the welfare of workers. There is nothing in the work of labour providers that suggests that these provisions are more significant for them then they are for any other business. Accordingly, the compliance regime for labour providers should be no different from that of other businesses. Where there are concerns this should be a matter for the Information Commissioner not for the GLA.

Standard 4 on accommodation should be removed completely. The expression "effectively provided" causes considerable difficulties in practice. Most labour providers that did provide accommodation have now ceased to do so because of the effect of the new interpretation of the accommodation offset arrangements under the minimum wage. Workers are open to exploitation by landlords and others who are not their employers. The standard has also proved very difficult to enforce and monitor. Where there is clear evidence that the accommodation provider is acting contrary to the law in respect of accommodation then the local authority should take the appropriate action.

Standard 5.1 needs rewording in line with the latest licensing news.

Standard 5.2 requiring evidence that any workers working in excess of 48 hours a week have freely signed an opt-out is a process point and should be removed.

Standard 6.1 should be rewritten to cover matters only under the control of the licence holder.

Standard 6.2 is complex and difficult to understand. It should be rewritten.

Standard 6.3 should be removed as being unnecessary.

Standard 6.5 should be removed as this is not within the control of the labour provider.

Standard 6.7 should be combined with 6.10 and written more clearly.

Standard 6.11 should be combined with 6.9 and updated to include legislative changes.

Standard 7.1 should be removed as there is no evidence that there is discrimination against applicants for employment and if there were to be it is covered by other legislation.

Standard 7.2 requires significant rewording. Reference to the identity of the worker could be removed as this is covered by 9.1, reference to experience etc should be combined with 6.2, reference to the worker being willing to work is covered by 3.6.

Standard 7.3 - the words “SSP and other benefits” should be removed as they are not in the rules.

Standards 8.3 & 8.4 should be removed as they are process points.

Standards 9.1 - the requirement to have copy of documentation proving entitlement to work in the UK not a legal requirement and should be removed for the reasons stated earlier in this paper. The requirement to have NI number should be removed as this is not a legal requirement and is the responsibility of the worker.

Standards 9.2 – 9.4 should be combined in one standard and moved to section 6.

Standard 10.1 – only the first sentence should remain reworded for the reasons already explained.

Standard 10.2 should be removed as it has nothing to do with abuse.