



Gangmasters  
Licensing Authority

# GLA43/11 Earned Recognition

**15 October 2014**

# **Board Paper Reference – GLA43/11 – Earned Recognition**

## **1. Purpose of the Report**

- 1.1 Following extensive commentary relating to the future direction of the GLA including the 2012 Ministerial Statement, the Red Tape Challenge and other reports, the GLA was asked to consider ways to reduce the burden on compliant business. The concept of earned recognition has been used in other arenas and research has been carried out to establish if it would be applicable in the GLA regulated sector without increasing risk to the workers it seeks to protect.

A recent task and finish group was held involving some board members and other interested parties to develop this conversation and determine the next steps. This report seeks to outline the relevant issues and to assist the board to reach some conclusions.

## **2. Recommendation**

- 2.1 Board members are invited to note the discussions of the task and finish group which acknowledged that the GLA can already demonstrate it is practising earned recognition.
- 2.2 Board members are asked to comment on whether the GLA practices sufficient earned recognition within its regulatory approach and therefore this issue can be closed as complete. In proposing this position the GLA recognises that its inspection approach will continue to be intelligence led, so that compliant businesses are not unnecessarily subject to review.
- 2.3 The Board receive a further report in 12 months that identifies further checks and balances which the GLA has introduced in furtherance of earned recognition.

## **3. Reasons for Recommendation**

- 3.1 Earned recognition is not well defined however some of the GLA's existing approaches and developing activity already meet the principle that a licence holder should accrue earned recognition for an extended period of compliance where no adverse information exists or action has been taken. No one single action or source of information is considered to represent the solution and a range of indicators would be needed. These indicators are already in place through the licensing standards, intelligence and inspection processes.

## **4. Summary of Key Points from the Task and Finish Group**

- 4.1 The GLA's current activity already fulfils the concept of earned recognition. It would however be useful to gain clarity over the contents of industry assurance schemes to determine their relevance or the development of new assurance approaches.

- 4.2 Discussions at the task and finish group indicated that there was uncertainty over what constitutes earned recognition, but that current processes may actually meet this threshold.
- 4.3 Further work on access to audit scheme results, assessment of their relevance, and consideration of the ‘find it tool’ in use by primary authorities could be considered as earned recognition (as used by Defra and Health and Safety Executive)
- 4.4 Whilst the 2012 written ministerial statement did not explicitly refer to “earned recognition” the third and fourth bullet points of that statement led to the consideration of that principle, as advocated in better regulation guidance and the new Regulators Compliance Code:

*“Reduce the burden on compliant labour providers and labour users...”*

*“Streamline the process for issuing licences and remove the general requirement for an application inspection and associated fee...”*

- 4.5 The Regulator’s Compliance Code states that:

*“3.4 Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.”*

- 4.6 To date, the GLA has introduced discretionary site visits for some application inspections, is considering longer licences (subject to a good compliance record, but dependant on future IT changes and resolution of future fees); and is working with the industry supply chain to raise awareness of what is required to demonstrate compliance. The GLA is also working towards developing external assurances of audit programmes that may have longer term benefits to enhance an “earned recognition” approach.

- 4.7 Examples of earned recognition by the Food Standards Agency and Defra include:

- Consideration of historic compliance records
- Membership of a farm assurance scheme
- Reduced frequency of visits by the regulator where the farm underwent inspections as part of an assured dairy scheme
- Use of external data to cross-match compliance records

- 4.8 The examples from the Food Standards Agency demonstrated that they worked with stakeholders to assess schemes and determine whether what is assessed in such assurance schemes effectively maps to the standards and criteria that they would inspect against. This would then validate the relevance of any scheme relied upon as evidence of earned recognition.

4.9 Duncan Johnson, Deputy Director at the Better Regulation Delivery Office, with responsibility for the development of primary authority collaborations, said recently: "It occurs to me that all regulators operate some form of risk assessment process, and on that basis compliant businesses already experience some degree of recognition. In that sense the fundamental concept of earned recognition is well established".

4.10 Other comments from the task and finish group included:

- The GLA already has a part earned recognition process as it takes a risk based approach
- The issues were:
  - What are the benefits for the GLA?
  - What are the benefits for labour providers?
  - What are the elements of earned recognition?
  - What is the risk to the work force, unfair competition, and reputational damage to supply chains of the use of earned recognition?
- There needs to be a shared understanding of what could constitute devolved trust and identify what is acceptable as low risk
- Membership of assurance schemes should be rewarded. The Red Tractor scheme was referred to where a study of its effectiveness suggested that those who are members of it are more likely to be generally compliant, but this relates to farmers – labour users and not labour providers. So an assurance scheme must have relevance to the regulatory environment being tested
- Supply chain audits could provide elements of such assurance if they reflected the elements of GLA's current regulatory approach; to be recognised they need to parallel what the GLA would do
- A quality of a farm does not equate to the quality of a labour provider
- How many suppliers who supply to themselves (by setting up specific supply companies) are compliant?
- Berry grower audits were mentioned but there remained questions as to who verifies the audit conclusions
- SMETA/SEDEX methodology was referred to, but it was agreed that all methodologies and schemes have gaps, and the GLA does not have access to SEDEX audit results
- Could worker satisfaction surveys be relied upon over time?

- An earned recognition approach could be based on a matrix of evidence generated from self-declaration, audits, and intelligence from different sources
- Earned recognition could help in that it drives “aspirational performance” for labour providers to work beyond basic compliance to a higher standard, but this would still not replace GLA interventions 100%
- For application inspections there is no evidence to rely on (unlike for compliance inspections) – should we consider a charter mark scheme to raise standards?
- Don’t “badge” earned recognition because there will be a perception it is “just a sticker in a window”
- Reference to the “approved economic operator” scheme was cited, suggesting that if you have it you must be 100% compliant (see - <https://www.gov.uk/authorised-economic-operator-certification>)
- Could the GLA offer, at cost, a compliance inspection, which may then be the gateway to a longer licence?
- Could such voluntary reports become discloseable? (Would a labour provider agree to its reports being published?)

## **5. Financial Implications and Budget Provision**

- 5.1 The development of accredited and appropriate training for the industry to develop its own processes and procedures that may be used as evidence towards earned recognition is costly and may in fact place added burden on businesses to develop. Further development of multi -source cross-match data on other compliance results, or access to the results from commercial audits, whilst being insightful, may also have cost implications for the GLA and may also meet reservation from the industry in sharing this data.

## **6. Organisational Risks**

- 6.1 The principle of earned recognition must be considered in any new development, and whether it represents an opportunity in austere times, to better focus finite resources on highest harm cases as was also referred to in the 2012 ministerial statement and which has been commented on by the Prime Minister, Home Secretary and others. If the GLA’s discretionary approach to inspections can be extended, with assurance, that could assist in improving the targeting of resources. However, if this cannot be extended without assurance it would increase risk, reputational damage, and increase costs without benefits for the GLA.

## **7. Policy Implications and Links to Strategic Priorities**

- 7.1 Further work, as suggested in the key points, would assist continuous demonstration of a focus on high harm, and support and delivery of the RTC conclusions as well as the modern slavery strategy.

## **8. Background Papers and Relevant Published Documents**

8.1 Previous GLA consultation:

<http://www.gla.gov.uk/PageFiles/923/Application%20and%20Inspections%20Consultation%2028%20January%202013.pdf>

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## **Appendix 1 Written Ministerial Statement by Jim Paice, 24 May 2012**

The Gangmasters Licensing Authority (GLA) has been considered under the Employment Theme of the Government's Red Tape Challenge. Last December, we announced that the Red Tape Challenge Ministerial Star Chamber had endorsed the need for the GLA to continue to enforce protection for vulnerable workers, while requiring it to look at reducing burdens on compliant operators. The GLA has been further considered within the Red Tape Challenge and I am today announcing the outcome of that process.

The GLA has done a great deal of valuable work since it was formally constituted on 1 April 2005 with cross-Party support. Seven years on, it is a good time to see where improvements can be made so that the Authority can become more focused on the worst excesses in the areas it regulates and work more closely with other agencies that tackle crime. I therefore propose to bring forward measures, including where necessary legislation, subject to public consultation, which will:

- Ensure GLA targets suspected serious and organised crime by working more closely with the Serious Organised Crime Authority and other specialist law enforcement agencies;
- Ensure that evidence of worker exploitation by unlicensed gangmasters or licence holders will contribute effectively to continued successful investigation and prosecution of organised crime groups and assist in the earlier identification of the victims of human trafficking;
- Reduce the burden on compliant labour providers and labour users and focus forensically on gross abuse of workers by unscrupulous gangmasters - whose crimes include tax evasion, trafficking, health and safety negligence and other serious crimes;
- Streamline the process for issuing licences and remove the general requirement for an application inspection and associated fee, aim to reduce fees and charges and extend the licensing period from twelve months to two years or more for highly compliant businesses;
- Remove from scope of the GLA, activities or sectors which are low risk, including:
  - apprenticeships
  - forestry
  - cleaning contractors
  - land agents; and
  - voluntary workers.
- Provide for those with exclusive rights to use the seashore for shellfish cultivation to be able use their workers to grade and gather shellfish stock without needing to be licensed

as a gangmaster. This measure would leave fully in scope of the Act activities such as the gathering of cockles from public shellfish beds;

- Introduce administrative fines and penalties for low-level and technical minor offences, including a measure similar to a Repayment Order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed;
- Adopt an approach in respect of a labour user who uses an unlicensed gangmaster proportionate to the circumstances of the offence, for example the financial advantage gained and whether or not there has been abuse of the workers; and
- Amend the structure of the Board of the GLA and introduce a smaller Board to provide clear strategic leadership and direction to the GLA.

These changes will free up resources within the GLA to provide for greater effort to be focused on identifying and eliminating criminality in those sectors and activities covered by the Authority, such as food processing, where exploitation of the most vulnerable workers is known to exist. In addition it will remove an estimated 150 current licence holders from the scope of the GLA, saving around £60,000 a year, and potentially reduce annual inspection charges from £300,000 a year to zero.