

GLA 31/8.2 Approach to Apprenticeship Training Agencies

12 October 2011

BOARD PAPER REFERENCE – GLA 31/8.2 Approach to Apprenticeship Training Agencies (ATAs)

Issue

1. Removal of apprenticeship organisations from the licensing requirement

Recommendations

2. Apprenticeship Training agencies are not required to hold a licence
3. A voluntary register of such organisations is maintained to assist labour users who may be concerned as to whether a licence is required.
4. A GLA Brief will be issued to explain the change (draft attached as **Annex 1**)

Background

5. The GLA has been considering its approach to a number of organisations who are defined as providing workers, and therefore require a licence, but who are considered as low risk, and caught by the regulations unintentionally.
6. These include:
 - Voluntary workers provided to wildlife trusts
 - Workers provided by organisations funded by Government as part of “back to work” schemes for the unemployed
 - Activities by Jobcentreplus’s EURES equivalent organisations across EU states
 - Land Agents
 - Apprenticeship training agencies (ATAs)
7. It is likely that such organisations may be part of future exclusion regulations proposed by Defra. However, until then such organisations would require a licence, and result in the deployment of resources to inspect for compliance. One such area is ATAs.
8. Currently if a recognised educational establishment provides workers to farms as part of a recognised apprenticeship a licence is not required as set out in exclusion 13 of the Gangmasters (exclusions)regulations 2010.
9. Another model - Group Training Agency – also exists. This is where a group of employers come together to provide training where the apprentices are employees of one of the organisations that is a member of the GTA. A GTA does not require a licence. Further information on the difference between an ATA and a GTA is provided in **Annex 2**.
10. However ATAs do require a licence. ATAs recruit and employ apprentices and hire them out to a host employer for the duration of the apprenticeship. The host employer pays the ATA a fee for the use of the apprentice. The ATA retains responsibility for the welfare, health and safety, training and development and all other terms of employment of their apprentices and is responsible for ensuring they remain in employment throughout their apprenticeship. ATAs fall within the scope of the 2004 Act as they supply apprentices to farmers for a fee while

retaining responsibility for fulfilling the requirements of their contract of employment.

Example model:

A college holds a contract with the Skills Funding Agency and is an approved training provider for apprenticeships.

Farmers local to college create a company with the specific purpose of employing a pool of apprentices, supplied by the college, which can be rotated around the farms as part of their training to gain an agriculture related qualification. This company is the "ATA".

The college is exempt from needing a licence under Exclusion 13. However, as the ATA is not an educational establishment, it is not exempt.

11. The GLA recently met with Defra, NFU, LANTRA, and the National Apprenticeship Service to discuss this issue.
12. The conclusion reached was that the manner in which apprenticeships are controlled creates a framework that ensures compliance and indicates that ATAs are a low risk. Details of that framework are set out in **Annex 3 and 4** (diagram).
13. The GLA therefore considers that it should exercise its discretion under section 1(3) of the Act: *"The Authority may do anything that it considers is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions."* and not require ATAs to hold a licence.
14. However, the GLA recognises that the simple application of discretion creates an informality that may be misinterpreted as a removal of control, or amnesty. It may be perceived by others (i.e. non-ATAs) that they too can avoid the licence requirement and create greater levels of unlicensed activity requiring investigation. Consequently, the use of section 1(3) must be underpinned by a formal process to prevent such perceptions proliferating.
15. It is therefore proposed that there will be a register of ATAs operating within the GLA's regulated sector that do not require a licence. This will be published on the GLA website. The GLA would also issue a GLA Brief to the industry to explain the change.
16. In producing such a Brief the GLA would wish to issue it with the support of the NFU, LANTRA, and the National Apprenticeships Service, and badged as such, utilising their communication channels to ensure maximum distribution.
17. This approach demonstrates the GLA's continuing commitment to a flexible and proportionate approach to regulation, and:
 - Operating a "lighter touch"
 - Continuing to develop its risk based approach
 - "Earned recognition" utilising evidence of compliance in other environments as evidence to reduce regulatory burdens

- “Supporting “co-regulation” in the development of new guidance, and the lighter touch that is proposed.

18. The GLA Board is invited to agree the proposed course of action.

19. If accepted, the GLA may consider similar approaches in relation to other activities as described in paragraph 5, presenting such proposals to the GLA Board.

Annex 1 Draft GLA Brief**GLA Brief**Issue X – 2011:
Apprenticeships

The Brief sets out how the GLA will regulate the supply of labour by Apprenticeship Training Agencies. This approach takes effect from the issue of this GLA Brief.

Introduction

This guidance has been developed with the assistance and support of:

**National Farmers Union****Land Based Training****National Apprenticeships Service****Current position**

Any person or organisation supplying labour to another party requires a GLA licence unless they satisfy one or more of the exclusion regulations.

Recognised educational establishments who provide apprentices do not require a licence as exclusion 13 of the Gangmasters (exclusions) regulations 2010 applies. However, Apprenticeship Training Agencies (ATAs) do because as they supply apprentices to farmers for a fee while retaining responsibility for fulfilling the requirements of their contract of employment.

New approach to ATAs

The GLA has discussed this situation with Defra, NFU, Lantra, and the National Apprenticeship Service. It has concluded that ATAs do not constitute a significant risk of exploitation to workers (the apprentices) and that an alternative approach is appropriate.

The GLA has decided to adopt a different approach for ATAs because of the compliance framework that exists which controls and monitors ATAs, including monitoring by the ATAs of the progress of the apprenticeships.

This framework provides the following controls and requirements:

- Meeting the criteria set by the National Apprenticeship Service
- Monitoring of performance and delivery by the Skills Funding Agency
- Contracting with a recognised qualification provider
- Both it and the qualification provider being subject to Ofsted inspection
- The qualification provider being a member of Landex and subject to inspection Landex

The GLA has therefore exercised its powers under section 1(3) of the Gangmasters (licensing) Act 2004 not to require a licence in such circumstances. However, in order to satisfy itself that organisations are not abusing this process, and irregularly marketing themselves as apprenticeship providers to avoid the licence requirement, a formal register will be created and maintained by the GLA.

From the issue of this GLA Brief ATAs that meet the criteria set out below will **not** require a licence. However, ATAs **will** need to register with the GLA. There is **no** cost for this registration process. The GLA will not undertake criminal investigation against any ATA that has not registered with the GLA providing it meets the criteria set out below (i.e. it is genuine ATA).

This registration assists labour users in identifying organisations that supply workers as apprentices which do not require a licence, It provides assurance to labour users that they are not using labour providers that may place them at risk of committing a criminal offence (section 13 of the Gangmasters(Licensing) Act 2004).

A register of ATAs that do not require a licence will be available on the GLA website:

(to be inserted in published version)

Apprenticeships Training Agencies (ATA)

A group of employers may decide to work together to train and supply apprentices within the industries regulated by the GLA. The apprentices may be supplied to work for one or more of the employers who set up the ATA, or a different employer, in order to develop the experience necessary to complete an apprenticeship. Such organisations will not require a licence if they:

- have been approved as an apprenticeship provider by the National Apprenticeship Service (and meet their criteria)
- Have a contract with a recognised qualification provider, who is a member of Landex
- Have funding provided by the Skills Funding Agency

- Have contracts with labour users, and apprenticeships, covering employment law, health and safety matters, and how the ATA will monitor the apprentices progress and treatment

If the ATA loses its status as an apprenticeship provider, and no longer meets the above criteria, but continues to supply workers it classifies as apprenticeships it **will** require a licence, and may risk prosecution for operating as an unlicensed Gangmaster.

This brief supersedes any advice and guidance previously issued by the GLA on this subject.

Further information

If you would like any help or guidance, more information is available on the GLA website, www.gla.gov.uk. You can also contact our helpdesk:

Email: enquiries@gla.gsi.gov.uk

Telephone: +44 (0) 845 602 5020

If you have received a hard copy of this Brief but would prefer electronic versions in future, please email communications@gla.gsi.gov.uk

Annex 2

What is an Apprenticeship Training Agency and a Group Training Associations

Apprenticeship Training Agency (ATA)

This is an organisation set up to recruit and employ apprentices, who are hired out to a host employer whilst they undertake the apprenticeship. The host employer pays the ATA a fee for the services of the apprentice.

This type of agency can be set up where small employers are not able to guarantee that they can employ an apprentice for the full period of their apprenticeship or offer the full range of work activity necessary. It is the role of the agency to ensure the apprentice continues in employment throughout their apprenticeship by finding them another host employer if circumstances change.

The ATA also has responsibility for the welfare, health and safety, learning and employment of the apprentice, which can be attractive for the host employer.

The ATA is responsible for making sure the host employer understands the apprenticeship and will be able to support the apprentice throughout the apprenticeship.

The ATA will work with the training provider to ensure the appropriate training takes place. The training can only be through a Skills Funding Agency contracted provider.

The ATA must be aware and comply with relevant employment law and regulation.

Group Training Associations (GTA)

This model is where a group of employers come together to access, manage or deliver training to a group of employees. The training may be towards an Apprenticeship, a vocational qualification or 'non-accredited' training that does not lead to a qualification.

In this model apprentices will be employed by individual employers/businesses but they may be a distance away from their local provider so they come together for delivery of provision. Many GTAs deliver training but some work with training providers on behalf of members. By working together, employers are better able to deliver economies of scale or can create enough demand to encourage training providers to develop courses that meet their needs.

(Information provided by LANTRA, 24/02/11)

Annex 3 Apprenticeship Training Agency Framework

(Information provided by the National Apprenticeship Service)

January 2011

The Apprenticeship Training Agency model is intended to support the delivery of a high quality Apprenticeship programme involving employers who are unable to take the business risk of directly employing the apprentice; this could be for a number of reasons including them not being able to commit to employment for the period of the full framework, short term restrictions on employee numbers, uncertainty about the value of an Apprenticeship.

The main focus of the ATA will be on allowing access to Apprenticeship opportunities with smaller employers who might otherwise not be able to engage.

The ATA will not replace the traditional model of Apprenticeship delivery based on direct employment of the apprentice, into a permanent job role, by an employer and linked to high quality training delivered by an accredited training provider.

The ATA is designed to create new Apprenticeship opportunities not to displace existing programmes.

Traditional Apprenticeship can offer clear progression routes for the individual within the employer or on to further qualifications. A focus of the ATA will be progression into permanent employment. Whilst it will not necessarily guarantee a permanent job at the end of the Apprenticeship an ATA Apprenticeship will give an employer the opportunity to get to know the apprentice in the work environment. ATA's will offer support on progression opportunities as the Apprenticeship nears the end.

Purpose of the Framework

The framework is intended to help all those involved with an Apprenticeship delivered through the ATA model make a judgement as to the extent to which their experience is reflecting the best practice available.

It sets out the core features which underpin the ATA model and gives examples of the behaviour apprentices, employers, training providers and others should expect to see.

The framework is not part of a formal regulatory system. Aspects of the ATA delivery model will be regulated through the normal work of bodies such as the Employment Agency Standards Inspectorate, Ofsted and Awarding Bodies. The framework will set out standards against which other interested parties can make judgements. The National Apprenticeship Service will review the model as part of its wider responsibility for Apprenticeship development and quality.

Key features

1. An ATA is a business whose core function is the employment and development of apprentices. Under the model the apprentice will be hired out

to host employers who provide the productive employment key to the Apprenticeship. Training will be delivered by an SFA contracted training provide.

2. An ATA will always aim to contribute to a high quality Apprenticeship experience. To ensure this they will make the quality of the apprentices working and learning experience central to all they do, working closely with training providers and host employers.
3. An ATA will focus on the creation of new Apprenticeship opportunities with employers who would otherwise be unable to recruit an apprentice. They should complement, not displace, Apprenticeships directly employed by an individual employer.
4. An ATA will agree clear terms and standards with all the employers, providers and apprentices that they work with. These terms and standards should underpin the delivery of a high quality Apprenticeship.
5. ATAs must be aware of and comply with all relevant employment law and regulation including those appropriate to Employment Agencies and Employment Businesses where these apply.

Key behaviours associated with an ATA

1. **An ATA is a business whose core function is the employment and development of apprentices. Under the model the apprentice will be hired out to host employers who provide the productive employment key to the Apprenticeship. Training will be delivered by a Skills Funding Agency (SFA) contracted training provider. This can be recognised by the ATA:**
 - Being a distinct entity established to recruit and employ apprentices with the intention of hiring them out to host employers to support the Apprenticeship. The ATA has ultimate responsibility for the welfare, health and safety, learning and employment of the apprentice
 - Operating a business model that offers sustainability over the longer term and is based on a commercial charge on the host employer and in some instances on the training provider. Income should not be dependent on SFA funding which is designed to support the delivery of training.
 - Having clear and robust systems to support their role as an employer. The workforce will include 16-18 year old apprentices, an age group that brings with it the need for greater support and structure and the systems should reflect this fact as well as the nature of the operating model.
 - Offering full time employment of the apprentice as the norm. Part time employment is only available in limited circumstances based on the apprentice's individual circumstances. There will be a contract of employment giving clarity around all aspects of their employment. The contract length should ensure the individual has sufficient time to complete the

Apprenticeship with scope for an extension to allow for any delay. An apprentice must not be employed under any form of self employment

- Agreeing a wage in conjunction with the host employer which must be at least the legal minimum Apprenticeship wage of £2.50 per hour. In line with the ATA delivering a high quality Apprenticeship they should not to be promoted as a minimum pay model
- Ensuring clarity on responsibilities as an employee set out for the apprentice in some form of handbook or guidance document.

2. An ATA will always aim to contribute to a high quality Apprenticeship experience. To ensure this they will make the quality of the apprentices working and learning experience central to all they do. This can be recognised by the ATA ensuring;

- Where appropriate there should be independent advice and guidance (IAG) for the apprentice before embarking on a framework
- The host employer(s) offers the apprentice productive employment which supports the Apprenticeship framework. The majority of the apprentice's time should be spent in productive employment with a host employer not through simulated work place activity.
- That the host employer vacancy should be clear from the outset and where possible offer productive employment for the length of the Apprenticeship. Given that a feature of the ATA is that it allows employers who cannot commit for the full period to engage with Apprenticeships there will be examples where the offer of productive employment is for part of the length of the Apprenticeship.
- Where it is clear from the outset that the vacancy cannot offer the range of productive tasks or the full period of the Apprenticeship then the ATA (working with the training provider) should agree a combination of host employers to offer a structured Apprenticeship programme.
- Where there is an interruption in employment with a host employer, there is an agreed period of continued employment with the ATA whilst suitable alternative arrangements are made with an appropriate alternative host employer.
- Being part of any Apprenticeship Agreement in place covering all aspects of the training and including all parties (apprentice, host employer, provider and ATA).
- Training provision supports the employment opportunity offered by the host employer. (the Apprenticeship should be based on the job role not on the training available.)

- The length of the programme should support the beneficial outcomes associated with Apprenticeships, including those gained from working in productive employment. ATA's will encourage the development of Apprenticeships driven by good Apprenticeship training practice.

3. An ATA will focus on the creation of new Apprenticeship opportunities with employers who would otherwise not be able to recruit an apprentice. They should complement not displace directly employed Apprenticeships. This can be recognised by the ATA having;

- A clear rationale, for the services offered, that they are able to share with employers. This will include the focus on employers who genuinely could not take on apprentices themselves due to the nature of their business or uncertainty about their future. Employers who wish to recruit directly would be referred through to NAS or appropriate training providers.
- A close working relationship with organisations currently engaged in the promotion of Apprenticeships to employers. This will include the National Apprenticeship Service, colleges and independent training providers, Sectors Skills Councils, National Skills Academies and other organisations.
- A clear engagement strategy and engagement criteria to secure host employers. There will be a focus on ensuring employers both understand and are committed to Apprenticeships and to supporting the apprentice for the period of the Apprenticeship.
- Clear systems to ensure the host employer can give necessary and appropriate support to the apprentice during their Apprenticeship.
- A focus on engagement with employers looking to recruit into future jobs rather than on employers who use the ATA as a source of temporary agency staffing or offering temporary work experience.
- Having systems in place that allow the host employer to recruit the apprentice directly during the period of the Apprenticeship should the opportunity arise.
- A focus on securing employment for the apprentice at the end of the Apprenticeship. This could be with the host employer, other employers linked with the ATA or through support on job search by the ATA
- Systems in place to ensure that those applying for an ATA Apprenticeship are encouraged to maintain their search for an Apprenticeship if not successfully placed with a host employer within a reasonable period. (including registration with Apprenticeship vacancies and other sources).

4. An ATA will agree clear terms with all the employers, providers and apprentices that they work with. These terms should reflect best practice in the delivery of an Apprenticeship. This will be recognised by the ATA having:

Apprentice

- An engagement strategy and criteria to attract suitable apprentices.
- A clear process to recruit suitable apprentices based on a link with real vacancies and training opportunities. The Apprenticeship vacancies system should be a key feature of the recruitment process
- A clear process to match suitable apprentices with vacancies and training opportunities. The AV system can support this process.
- Ensured that the apprentice fully understands the position of the ATA and is clearly aware of the nature of the employment.
- Ensured that the apprentice is clear on the role and responsibilities of the ATA, training provider and host employer and who they should contact for support.
- Ensured that the apprentice is clear about their responsibilities in relation to the Apprenticeship delivery.
- Systems in place, so that should a hosting arrangement break down, the ATA should aim to find the apprentice a new host whose business activity complements the training programme. During any such break the ATA is expected to maintain the employment and training programme for an agreed period. ATAs should have plans and provision to facilitate this.

Host Employer

- A formal agreement in place between the ATA and the host setting out the roles and responsibilities of both parties. (there may be some variation depending on the sector and/or employer characteristics). The ATA should have systems in place to withdraw the apprentice where the host does not discharge their roles and responsibilities appropriately.
- Made clear the key role the employer plays in the delivery of the Apprenticeship. The host should understand their role in supporting the apprentice and where necessary be supported by the ATA and training provider to ensure work place activity is appropriately linked with training.
- Clear agreements in place with host employers to ensure that moves between host employers can be managed. This to include an agreed notice period to be given by the host employer

Training Provider

- A strategy and systems in place for selecting high quality training providers. (providers must as a minimum be SFA accredited). Where ever possible associated providers should be named
- Agreements in place with all associated providers to ensure clarity on roles and responsibilities.

General

- Systems in place to monitor the quality of the Apprenticeship experience from the perspective of the apprentice, host and training provider. The ATA should

be able to evidence the success of the Apprenticeship programme measured in terms of successful completion and progression into a job.

5. ATAs must make themselves aware of and comply with all relevant employment law and regulation including those included in the Employment Agency regulations. ATA will show they have:

- Clarity on their status in relation to Employment Agency Regulations and the Employment Agency Standards inspectorate.
- Governance structures that include access to appropriate expert advice.
- Risk strategies that include the position of their apprentices and how they can be best protected.

Annex 4: Framework

