

GLA 26/7.3

Transport charges and deductions

21 April 2010

BOARD PAPER REFERENCE – GLA 26/7.3 Transport Charges and Deductions

Issue

1. Deductions and charges for transport paid from workers to labour providers.

Recommendation

2. The Board is invited to decide the GLA's position on payments for transport and the minimum wage,
 - (a) whether the GLA's enforcement approach should deviate from that of HMRC, as requested by the ALP
 - (b) if so, whether to allow deductions, charges, both or neither
 - (c) if so, whether to cap allowable transport charges/ deductions.

In seeking the Board's view the GLA recommends Option 2.

Background

3. Many work places in the GLA regulated sector are not easily accessible to workers who do not have their own transport, given their sometimes remote, rural locations and unusual shift patterns. Some labour providers transport their workers to work, typically in minibuses or cars.
4. At present, some labour providers charge workers for this transport while others offer it free of charge.
5. In the past, some of those labour providers who charged for transport did so by way of a deduction from workers' wages while other levied a charge outside the payroll system, e.g. at the bus door, by direct debit or through the sale of tickets.
6. Current National Minimum Wage (NMW) rules allow labour providers to charge fares, but prohibit their deduction at source from workers' wages.
7. Until now, the GLA has always mirrored the position of HMRC's NMW Technical Team in its interpretation of GLA Licensing Standard 2.2, the requirement to pay workers at least minimum wage. The ALP has now asked the GLA to allow transport deductions as well as transport charges by treating neither as a breach of the Licensing Standard 2.2 (see paper attached). This would require the GLA to deviate from the approach of HMRC's NMW team.
8. Existing NMW rules do not limit the amount that workers may be charged for transport. As such, labour providers who charge fares have a competitive advantage over those who offer transport free of charge; labour providers who charge exorbitant fares have an advantage over those who charge more reasonable amounts.

9. The Commission on Vulnerable Employment's final report listed excessive deductions for transport costs among examples of extreme employment rights' violations. It cited the example of a worker whose topline earnings of £200 were reduced to £20 take home pay after deductions for accommodation, transport to work and administration costs. While GLA rules prohibit administration charges and cap rents, unlimited transport charges are currently permitted.
10. While the GLA can enforce payment of minimum wage under Licensing Standard 2.2, mirroring the NMW team's interpretation means that licence holders are allowed to claw back any amount they choose from workers in respect of transport costs.
11. Some regard the cost of transport as a worker's commuting expense and therefore the worker's liability. Others regard it as a labour provider's business overhead and therefore the labour provider's liability. Labour providers' business activities are contingent upon the labour providers' ability to deliver workers to places of work; workers' employment in the sector depends on workers' ability to reach their places of work.
12. Workers outside the regulated sector are responsible for the cost of their own transport to work. However, a direct comparison with other sectors may not be appropriate: Firstly, employers outside the regulated sector do not normally profit from cost of workers' travel to work. Secondly, the nature of the GLA regulated sectors often requires workers to travel substantially longer distances than other workers on or near minimum wage. Thirdly, transport provided by labour providers does not necessarily take workers from their homes to work. Rather, workers are often collected at a single pickup point, e.g. the labour provider's offices or a traffic junction.
13. Existing Licensing Standards stipulate that the provision of transport must be optional, i.e. a labour provider must not make an assignment conditional on the worker using and paying for transport. Notwithstanding, workers may not regard use of the transport as optional if they have no practical alternative, e.g. because no other means of reaching the place of work is available or because the labour provider does not routinely offer directions nor explain transport options at the beginning of an assignment.
14. Licensing Standards further stipulate that workers must agree voluntarily and in writing to transport charges. However, GLA inspectors find that workers who have signed such agreements are not always aware of their voluntary nature or charging arrangement. Such agreements are typically one of several documents that workers are asked to complete or sign when registering with a labour provider.
15. Labour provider representatives have argued that transport provided by labour providers tends to be workers' preferred option. GLA inspectors report that workers tend to describe such transport (and associated charges) as the only option available to them rather than a positive choice.

16. The provision of transport increases a labour provider's control over his workers' lives, and workers' dependence on the labour provider. There is some anecdotal evidence that workers value the independence of having their own transport, including the ability to seek work elsewhere if they wish.
17. The GLA is not aware of any evidence to suggest that transport arranged by labour providers is overall safer than workers' own vehicles or car sharing arrangements. GLA inspectors have come across instances of unsafe vehicles used by workers. GLA inspectors have also come across instances of unsafe transport provided by labour providers. The GLA has no reason to assume that one form of transport is safer than the other.
18. To workers, the format in which fares are payable (whether deduction or charge) is of secondary importance, compared to the amount charged. However, workers who physically hand over a fare at the beginning of a journey are far more likely to be aware of arrangements and charges than those whose fares are deducted from their wages.

Options:

Option 1: Allow neither charges nor deductions

Advantages: Level playing field. Clear and simple rule. Workers' income is protected at the minimum wage level without clawbacks.

Disadvantages: Potentially lower profit margins for labour providers who have previously charged fares and/or higher charge rates for their labour users.

Option 2: Allow charges but not deductions

Advantages: Consistent with HMRC's current interpretation of NMW regulations. Raises profitability of labour providers who receive additional revenue through fares, and lowers charge rates.

Disadvantages: Uneven playing field, favouring those labour providers who charge the highest fares. Encourages workarounds and effective transport deductions disguised as charges. Allows licence holders to claw back any amount they choose from low-paid workers.

Option 3: Allow both charges and deductions

Advantages: Minimises regulatory burden. Raises profitability of labour providers who receive additional revenue through fares, and lowers charge rates.

Disadvantages: Uneven playing field, favouring those labour providers who charge the highest fares. Allows licence holders to claw back any amount they choose from low-paid workers.

Option 4: Cap allowable charges and/or deductions

Advantages: Level playing field. Fares reflecting actual costs, fairer for workers and labour providers. Workers' income secured at a set level.

Disadvantages: NMW legislation does not currently provide for such a cap.

Conclusion

19. The GLA recommends that the Board support Option 2. It is not considered appropriate to deviate from the enforcement position of a GLA partner. However, the GLA recognises that workers may be exploited where there is no control over the charges that may be levied, and the method of that levy. A cap on such charges, as in option 4, would reduce the risk of exploitation. The GLA does not have the power to do this and could only provide indicative charge guidance, which may be complicated to produce. Therefore, the following actions will also be considered, subject to agreement to option 2 :

- The GLA will raise the matter with BIS/HMRC for those Departments to consider whether regulations ought to be revisited to consider how charges can be controlled in a similar manner to deductions
- Guidance should be issued to workers to explain their rights; that they must be free to choose their method of transport; must not be coerced into using the LPs preferred choice; nor deceived, or forced, into a belief that they must continue to pay even when the service is not used