

GLA 22/8.1

**Annual Review 2008 and Hampton
Review– GLA Response**

22 April 2009

BOARD PAPER REFERENCE – GLA 22/8.1 – Annual Review 2008 and Hampton Review – GLA ResponseIssue

1. This paper sets out the GLA position in response to the Universities of Liverpool and Sheffield's recommendations in the review (the "Liverpool / Sheffield" review or report) published on 15 March 2009 and to the initial findings of the Hampton Implementation Review (HIR), conducted by the Better Regulation Executive (BRE) week commencing 9 March 2009.

Recommendation

2. The Board is invited to note the response to the HIR's findings and the Liverpool / Sheffield report recommendations.

Background

3. The BRE is conducting HIRs for all regulators. The purpose is to assess how well a regulator is following the Hampton principles of better regulation and the characteristics of effective sanctions defined by the Macrory review. The HIRs are intended to encourage best practice and continuous improvement among regulators. For the GLA, the HIR is an important step in securing a range of new sanctioning powers provided by the Regulation and Enforcement Sanctions Act.
4. The GLA's final HIR report is currently being finalised. However, this paper takes account of the anticipated findings. The feedback from the HIR review team was very positive about how the GLA operates.
5. The GLA commissioned researchers based at the University of Sheffield and University of Liverpool to independently review the Authority's effectiveness and impact. The review was published on 15 March 2009 and followed a baseline report, published in August 2007, assessing the nature of the industry as licensing commenced followed by a review assessing the impact of the GLA during its first operational year (published in November 2007).
6. There is also considerable read across from the recommendations in the Liverpool / Sheffield research and the results from the GLA's HIR. With this in mind, any future work required with these recommendations will be integrated into an action plan for fulfilling the findings of the HIR.

Proposed Actions

7. The list at annex A summarises the issues pertaining to the recommendations / actions points from both the Liverpool / Sheffield report and the HIR. This notes what has been recommended and what action the GLA intends to take.

Next Steps

8. The final HIR report will be circulated to the Board as soon as it is published. The Board will be updated on progress in fulfilling the proposed actions.
9. In terms of future evaluation studies, conducting such extensive reviews on a rolling annual basis would produce up to date insightful assessment of the GLA's impact. The series of reports by Liverpool / Sheffield have provided an excellent analysis of the GLA as well as wider issues affecting the licensable sectors. The recommendations in the 2007 and 2008 reviews have helped guide the GLA's work.
10. However, there could be diminishing returns in terms of what research for 2009 would show. Therefore, it would be better to conduct future research in 2 or 3 years time – this would maximise the return on the research costs. In the meantime, more focussed research could be conducted, for example by conducting the worker survey which was first run as part of the 2008 research

Annex A

Issue 1: Evolution of the GLA Board

Source

Liverpool and Sheffield recommendations 1 and 2

- The labour user, labour provider and worker representation groups should develop more strategically, for example convening around a particular issue rather than just meeting on a regular basis out of habit. The GLA should invite people to propose issues to be discussed and select and steer the agenda accordingly. This way something significant is being offered in terms of communicating with the GLA, but it is up to those who would like to be consulted to come forward with agendas. *(Recommendation 1)*
- The effective development and use of representation groups should allow the GLA to reduce the size of its Board. *(Recommendation 2)*

HIR findings

- There needs to be a strategic view on the where the GLA Board will be in three years time.
- Do GLA Board members cascade and consult those they represent?
- The Board's Terms of Reference should be reviewed.

Proposed Action

- Paper 22/7.1 proposes formalising the Authority representation group as strategic liaison committees to the Board.
- The size of the GLA Board is a matter for Defra / Government.
- Consideration will be given to reviewing the Board's Terms of Reference (which include considering the point raised about consultation).

Issue 2: Managing Outcomes

Source

Liverpool and Sheffield recommendations 8 and 19

- Certain targets / outputs could be reconsidered in terms of their fit with the overall GLA mission. Specifically, there is some evidence that targets set for inspections were too output-orientated. *(Recommendation 8)*

- The Composite Performance Index should be subject to a review by the GLA's board and independent evaluation, and indicators added, amended and removed accordingly. (*Recommendation 19*)

HIR findings

- The GLA needs to demonstrate how it can maximise outcomes for workers in the next three years.

Proposed Action

- The CPI is incorporated in the GLA Business Plan and will be reviewed as part of the annual planning process. The CPI will be subject to external evaluation during future independent evaluations.
- Future Corporate and Business Plan targets will have an outcome focus rather than just output.

Issue 3: Robustness of the Application Inspection / licensing decision process

Source

Liverpool and Sheffield recommendations 3, 4, 5 and 9

- The inspection process should be independently evaluated to assess if the licensing standards work properly, and to ensure that issues are not being missed due to misinterpretation or via an uneven application of the standards. We would also suggest that inspections are used to collect worker intelligence (possibly using a version of the survey within this report). (*Recommendation 3*)
- The high number of businesses now listed on the LAWS database as 'revoked', 'ceased trading', or 'refused' (which add up to several hundred) should be subjected to sample survey to answer questions about 'what happens next' (phoenixing, unlicensed activity, displacement). (*Recommendation 4*)
- The GLA should continue to explore how new labour providers (businesses and individuals) can be better inspected for compliance given their limited track-record in the GLA sectors (e.g. greater cooperation with BERR, HMRC, REC). (*Recommendation 5*)
- The GLA should try to gather more information (i.e. on LAWS) on the extent to which operators that it licences work across sectors (something indicated in the labour provider survey). (*Recommendation 9*)

HIR findings

- The GLA should make sure there is an effective use of resources as well as analysing the use of a possible prohibition model.

Proposed Actions

- On Liverpool / Sheffield recommendation 3, the GLA has enhanced its internal processes to make sure there is consistency with inspections. All GLA inspectors recently underwent training on the new licensing standards, particularly on how to interpret and implement the standards during an inspection. Furthermore, internal quality control checks have been improved by the GLA Heads of Operations reviewing all inspection reports before they are submitted to the Licensing Team for a decision. The questions asked during worker interviews do cover most areas of the survey used in the research. The survey questions not covered will be reviewed to see if there is value in adding to the GLA's worker interviews. In terms of an independent evaluation, the GLA will explore with industry representatives, including REC and ALP, options to get feedback from inspected businesses.
- On Liverpool / Sheffield recommendation 4, the GLA will undertake further analysis of companies that have left the sector to check "what happens next".
- On Liverpool / Sheffield recommendation 5, the inspection process has been reviewed and new sources of information will continue to be explored, including Companies House type information.
- On Liverpool / Sheffield recommendation 9, the GLA licence application form has been amended to capture this information. Existing licence holders will be asked for this information at renewal.
- The GLA has revised its approach to inspections to minimise resource expended, whilst retaining robust checking, appropriate to risk factors, building on existing processes already implemented. There will be a longer term view of the prohibition approach.

Issue 4: New Sources of Intelligence / Analysis***Source***Liverpool and Sheffield recommendations 6, 7, 10 and 18

- The feasibility and costs of gaining more information on company accounts should be examined. (*Recommendation 6*)
- The collection of intelligence data could be better managed so as to allow more detailed analysis (this is the main source of information available to gauge the scale and scope of the GLA's task). (*Recommendation 7*)
- Data on, and estimates of, unlicensed activity could be improved by more active HMRC cooperation. (*Recommendation 10*)
- The GLA should develop GIS –based capacity to follow up concentration of illegality and of GLA activity. (*Recommendation 18*)

HIR findings

- The GLA should consider knowledge that may be held/tapped within Defra (Meat Hygiene Service, Animal Health and Plant Health Inspectorate) as well as local authorities (Environmental Health).

Proposed Actions

- Work will be undertaken to explore what information is held within the "Defra family"
- The GLA will develop closer links with local authorities, including raising awareness of the GLA intelligence requirement to be produced with LACoRs, focusing on Environmental Health, Trading Standards, and HMOs.
- There will be ongoing work to consider new sources of information on companies through existing Government and private portals.
- There will be active liaison with HMRC on specific evasion schemes to assist tackling unlicensed activity.
- GIS systems will be introduced.

Issue 5: Consultative Approach

Source

HIR findings

- The GLA should seek early views on potential proposals.
- There needs to be greater explanation where external suggestions are not accepted.

Proposed Actions

- This issue is linked to the development of the Board liaison committees.

Issue 6: Revocation, Appeals and Regulatory Approach

Source

Liverpool and Sheffield recommendations 14 and 15

- The GLA should make more of its excellent (97%) success rate at appeal in order to try and reduce and deter those gangmasters who might wish to appeal against a revocation. (*Recommendation 14*)

- The GLA currently has one successful conviction but there are 207 prosecution cases now open. The 2009 Annual Review should visit these cases in depth and examine the challenges faced by the GLA in terms of prosecuting illegal operators. This is especially important given the Macrory penalties. (*Recommendation 15*)

HIR findings

- There is a need for greater clarity on why / when revocation will be considered.
- There is a need for greater clarity on who handles appeals internally, and how that demonstrates objectivity.

Proposed Actions

- The advice and guidance available on the GLA website will be reviewed to improve the way these issues are covered, including considering publishing appeal decisions.
- As point of clarification, there are 207 investigation cases rather than *prosecution cases* – not all of which are prosecuted, or suitable for prosecution, some of which warrant no action or warnings.
- Post Hampton development of proposals on Macrory penalties is underway

Issue 7: Awareness and Media Approach

Source

Liverpool and Sheffield recommendations 12 and 13

- The GLA should continue covert operations and high-profile media campaigns to ensure the visible threat of detection remains strong. (*Recommendation 12*)
- Some awareness raising amongst agency workers would be useful. This is perhaps best done via CAB and Unions and might have only a limited impact given the complex organisational infrastructure in the UK relating to agency worker protection. More generally, a single body protecting vulnerable workers would address this awareness issue, but the GLA is not in a position to lobby for this. (*Recommendation 13*)

HIR findings

- The GLA should consider whether the current use of the media is more tactical rather than strategic and whether a change of style might generate more intelligence.

Proposed Actions

- The business plan for 2009-10 includes a target “to carry out a series of high profile operational projects and planned enforcement activity which will disrupt and deter non-compliant labour providers” (see target 1.1). Business plan target 2.1 covers media coverage: “securing high level media coverage for GLA operations”. Paper 22/7.2 (“External Communications Strategy”) sets out plans to continue the GLA’s proactive media engagement.
- The GLA’s approach to raising awareness with workers and gathering intelligence will be co-ordinated with BERR’s work in promoting the vulnerable worker single enforcement helpline.

Issue 8: Shellfish

Source

Liverpool and Sheffield recommendation 11

- The specific issues around shellfish could be at least partly addressed by closer links between the individual and gang-based permit systems.

Proposed Action

- The GLA believes standardising individual permits across the UK would greatly assist compliance. Previous submissions to Defra on regulating orders have advocated this point. The GLA will continue to explore the possibilities for this point.

Issue 9: Overseas Labour Providers

Source

Liverpool and Sheffield recommendation 16

- The problem of regulating foreign-based gangmasters will not go away and the GLA must have visibility at the EU-level. The case involving the Bulgarian authorities demonstrates the importance of international inter-agency collaboration but this remains a considerable challenge.

Proposed Action

- The GLA will seek to formalise arrangements with other EU member state counterparts by building on initial contacts.

Issue 10: Future Annual Reviews

Source

Liverpool and Sheffield recommendation 17

- Future Annual Reviews would benefit from a partnership approach to information gathering. Our experience has led us to conclude that an independent and multi-agency research observatory to monitor vulnerable work across the EU would be invaluable.

Proposed Approach

- The GLA agrees better coordination of research would be beneficial, especially in helping devise appropriate policy responses. The Fair Employment Enforcement Board (FEEB) could be best placed to develop this idea – the GLA will raise this issue with the FEEB.