

**GANGMASTERS LICENSING
AUTHORITY**

**ANNUAL REVIEW: EXECUTIVE
SUMMARY**

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A. LABOUR MARKET REGULATION

The UK government, in establishing the Gangmasters Licensing Authority (GLA), has shown a willingness to act against exploitation of workers and business fraud. There is a very simple consensus: events like Morecambe Bay, which provide occasional glimpses into an underworld of worker exploitation, should never again be allowed to happen; and that, whatever your political persuasion, there are simply certain working conditions and business practices that are unacceptable.

During the course of our research we saw evidence of workers earning £100 per month and being forced to scavenge in fields for food (the case of Baltic Workforce Ltd: see Chapter 6). In a country where a room in a standard privately rented house can cost over £100 per week, and where a legally enforceable minimum wage exists, this level of income (and therefore income poverty) was shocking. We also found that only 6% of labour providers surveyed felt that worker exploitation was not an issue in the temporary agency worker sector.

The Annual Evaluation of the Gangmasters Licensing Authority aims, at a broad level, to provide insight into the effects that licensing has had over the past 12-months: has it reduced the chances of an agency worker being exploited; increased the chance of an unscrupulous employer being caught; and made tragic events like Morecambe Bay less likely?

B. THE GLA

Let us say a little bit about the GLA and temporary agency working in the UK (the majority of which now appears to be migrant-based) before we summarise the main findings of the Annual Review. First, the UK accounts for up to one-third of all temporary agency employment in the EU and has one of the “freest markets in Europe” (Demos 2007: 10). Employer prosecutions are also much lower than analogous EU economies such as Germany, the Netherlands, France and Scandinavia. Second, the GLA is responsible for governing a very specific temporary agency labour market: agriculture, horticulture, food packing/ processing and shellfish gathering/ processing. Third, it was set up in April 2005, following the Gangmasters (Licensing) Act 2004, ‘opened for business’ (i.e. could receive licence applications) from April 2006, and gained legal powers of enforcement in late 2006/

early 2007. Fourth, the GLA has the task of reducing worker exploitation and business fraud (which are invariably linked), in sectors of the economy with long-traditions of informal business activity and very limited union penetration. Finally, the sectors the GLA governs are seen by many as some of the toughest and most fiercely competitive in the UK, with profit margins tight and pressures for efficiency savings intense.

The GLA Mission Statement is contained in Appendix 1. In terms of logistics: it has circa 55 full-time equivalent staff; # enforcement staff; a budget of £3,191,000 for 2007-08; has licensed around 1,100 labour providers; and covers an estimated 6000,000 temporary agency workers and 7,000 labour users (GLA 2007d). The GLA governs only a small part of the UK agency sector, which is estimated to be worth £25 billion overall: a four-fold increase on the 1994 figure (Demos 2007: 26-27).

C. REPORT STRUCTURE

This is the context within which the Annual Review is set. It is intended to be a formative review that will help the GLA to become a better regulator. It is also intended to complement the GLA's own internal monitoring and evaluation system: the 'High Level Milestone Plan'. Details of this plan, as well as the Authority's objectives for 2007-08, are contained in the GLA's 2007 Annual Report (GLA, 2007c: 8-16).

The aim of the Annual Review is to: 1) identify the strengths and weakness of licensing as a tool to combat exploitation and fraud; and 2) assess the effectiveness of the GLA as a regulatory body. A secondary aim of the report is to provide broader insight into the economic sectors governed by the GLA and the particular labour market issues affecting these sectors and their constituent supply-chains.

Our findings are based on primary evidence drawn from five main data sources:

- 1 Labour Providers/ Gangmasters (Chapter 2)
- 2 Labour Users (Chapter 3)
- 3 Stakeholders (Chapter 4)
- 4 Case Studies (Chapter 5)
- 5 Compliance and Enforcement Update (Chapter 6)

The methodology employed to collect this evidence is outlined in a separate report.

Following the Introduction (Chapter 1) Chapter 2 reviews the evidence presented to us from labour providers or ‘gangmasters’. This evidence comes from a labour provider survey – one in five labour users responded to this survey – and from in-depth interviews with a selection (20) of gangmasters. Chapter 3 – based on 15 in-depth interviews – examines the views and opinions of labour users (large and small) with respect to the labour supply trends, workplace standards, and business tactics currently impacting upon GLA-governed businesses. Labour users were also asked about their experiences of the licensing system and of working with the GLA.

The GLA, as noted in the August 2007 Baseline Report, emerged out of a unique consensus between stakeholder groups (government bodies, businesses, and voluntary organisations). Chapter 4 explores this consensus, identifies how stakeholders felt the GLA had performed in its first year, and presents stakeholders’ suggestions regarding future progress.

Chapter 5 focuses on four specific case-studies. The first looks at the issue of licensing within the shellfish sector. This sector played a key role in the formation of the GLA (which emerged in the aftermath of the 2004 Morecambe Bay tragedy) but is still characterised by considerable informality. The second case-study looks at temporary agency labour in counties around the Wash, because this is where gangmaster activity is the most concentrated in the UK, and where migrant workers are most likely to be employed in GLA-governed industries. The third case-study looks at the challenges of licensing in Northern Ireland. Uptake has been low in this part of the UK and we examine reasons for this. The fourth and final case-study focuses on forestry. It is included within the GLA’s remit (under ‘agriculture’) but it is a very distinct sector that has been resistant to licensing; we explore why.

Chapter 6, the penultimate chapter, highlights the progress made, and challenged faced, by the GLA with respect to recent compliance and enforcement activity.

D. REPORT FINDINGS

Chapter 2: Labour Providers

The labour providers we surveyed and interviewed broadly welcomed the GLA and felt that, overall, licensing had had a positive impact on the UK food industry. The core message, then, was very positive.

Our labour provider survey – completed by one in five licensed gangmasters – sought to identify key industry characteristics. We were surprised to find that 3 in 10 so-called ‘gangmasters’ are women, and that one in six are migrants. This reflects the broader diversity of the industry: with at least eight modes of labour provision evident (see Table 12). Understandably, therefore, the gangmaster label is not universally accepted. The most obvious distinction was between the smaller and more informal field-gangs and the larger professional labour suppliers. In terms of risk of non-compliance, the former were seen as being least likely to have a licence, whilst the latter were seen as being the ones most likely to be involved in more organised forms of criminality (with a licence).

‘Churn’ within the labour provider industry was high: 60% of survey respondents had been in the industry for less than five years; and most workers appear to remain with a gangmaster for less than six-months before moving on. This fluidity clearly makes the GLA’s job a challenging one. (Nevertheless, there is a stable core within the industry: one-quarter of gangmasters surveyed had been working in the sector for over a decade.) Adding to the problem of industry ‘churn’ is: 1) the increased complexity of an industry now dominated by migrant workers (91% of gangmasters employ migrants in some capacity, with 13% using overseas agents to recruit workers); and 2) the continued informality of worker recruitment (90% of gangmasters use word-of-mouth to find their workers).

In terms of GLA enforcement, there was a strong feeling that people were still ‘getting away with it’ both in terms of the continued presence of unlicensed operators (widely thought to be smaller-scale field-gangs) and the double standards of ostensibly reputable businesses. In terms of the latter, particular concerns related to: ‘Phoenix Gangmasters’ re-emerging after prosecution or bankruptcy and also to well-known ‘crooks’ running licensed agencies from behind the scenes using legitimate front-men. The extent to which the GLA is able to control overseas gangmasters, and the overseas recruiters working for UK gangmasters, was also questioned. The general complaint voiced by licensed operators was that the ‘good guys’ were being penalised and that more enforcement was needed to catch the ‘bad guys’.

Less than 12 months into licensing, our survey showed that 40% of labour providers felt the GLA had reduced business fraud, and that 45% felt that the GLA had improved working conditions. It is also clear that the GLA has much work still to do: with only 6% of gangmasters believing that worker exploitation is not an issue in GLA

sectors. In terms of the money to be made in the UK food industry, most felt that conditions were tough and operating margins tight. They also felt that ostentatiously wealthy gangmasters must be breaking the law somehow because the money was not there to be made for those doing everything 'by the book'.

Chapter 3: Labour Users

Like the gangmasters that supply them, labour users felt that operating conditions were tough and that profit margins had tightened over recent years. Business success, we were told, depended on increasing turnover to accommodate for a shrinking profit margin, with consolidation an inevitable result. Against this fairly uniform economic context (see also GLA, 2007a: Chapter 2.2), there were considerable differences in the types of labour users we interviewed. Some were able to exert significant control in supplier-buyer exchanges. Others, however, seemed very much hostage to their customers (larger buyers and/ or the multiples). The latter type of labour user invariably grew/ processed basic low-value-added goods, and supplied these to one or perhaps two of the multiples. The specific supermarket and the individual buyer employed by the supermarket also appears to impact upon the power dynamic between labour users and their customers. It is not the GLA's job to comment on these different supplier-buyer relationships: it is the GLA's job, however, to be aware of the different impacts that such relationships might have on the supply-chains it governs.

Labour users are subject to a range of ethical trading checks above and beyond the GLA licence scheme, and see licensing as one component within a much larger audit process. Some labour users felt that the pressures they are under from multiples' ethical trading teams to regulate their labour supply are in conflict with the pressures they are under from multiples' buyers and category managers to minimise costs. Irrespective of this conflict, there may be scope for greater consistency between multiples to reduce the regulatory burdens on labour users.

Increasing workforce efficiency is the main way in which labour users have sought to trim operating costs and maintain profits. This has meant the increasing use of flexible labour over recent years, most of which is now migrant-based. In some instances, we found that downward pressure on costs had led to the permanent use of 'temporary' minimum-wage labour. In other instances, however, companies had worked out that minimum-wage labour and extreme flexibility did not necessarily equate to cost savings. In particular, labour users with more bargaining power in the

food supply-chain were able to secure high enough profits (usually based on huge turnovers and/ or higher value-added products) to allow for pay rates above the minimum wage and found that this in turn ensured a more productive workforce with greater levels of loyalty and reliability. Many labour users felt that worker quality would be an increasingly significant issue over the medium-term as the impact of the 2004 migrant 'bonus' begins to diminish.

Although all labour users we spoke to felt that the impact of the GLA had been broadly positive for the industry, and that licensing had helped professionalise labour providers, a number of concerns were raised. These included:

- Quality issues over TLWG gangmasters who, for cost reasons, had not been subject to a GLA audit;
- The continued presence of small-scale unlicensed operators;
- Illegal activity by ostensibly legitimate licensed gangmasters, some of which is connected to broader organised crime;
- The presence of Phoenix gangmasters and front-men/ figureheads to secure a licence and mask previous (and likely future) illegality;
- Problems of getting robust, reliable, and fresh intelligence from labour users and from temporary workers, with the perceived costs of giving evidence to the GLA outweighing the perceived benefits (seen by most as negligible);
- Questions over who should fund the GLA, and whether the principle of the gangmaster paying for regulation which is of industry- and society-wide benefit is a fair one;
- Need for more unannounced compliance/ enforcement visits;
- More awareness of the viable labour provider rate across the industry, which sources estimated to be 28-32% above the national minimum wage;
- Quicker condemnation by multiples of illegal labour providers and gangmasters (some felt that the 'Bomfords' case demonstrated that supermarkets would only de-list an illegal supplier having secured alternatives).

Labour users also felt that GLA licensing had a number of key strengths:

- Where labour supply was once chaotic and disorganised it has given the industry a basic framework to rely on,;
- Gangmasters have professionalised in-line with the broader UK food industry;
- The number of rogue operators has declined since licensing;
- The GLA has provided very good guidance/ advice;

- Labour provider rates have increased and are now nearer to the 28-32% margin than in the past;
- Labour users also felt that the GLA's use of this rate as a heuristic device to gauge potential illegality was sensible (but felt that increases in costs associated with a more realistic labour provider rate would be difficult to pass up the supply chain);
- Finally, given their broadly positive views on licensing as a tool to combat exploitation and fraud, labour users could not understand the moral case for the sector-specific remit of the GLA.

Chapter 4: Stakeholders

Respondents were very clear: the continued success of the GLA will depend on the effective maintenance of the stakeholder coalition that underpinned the GLA's development. Licensing must be seen as an industry-wide and not just a GLA effort. A tripartite approach – involving the GLA working closely with the business sector (BRC, ALP, REC, FPC, etc), the voluntary sector (T&G, TUC, NCAB, etc), and other public sector agencies (HMRC, HSE, BERR, etc) – helps it to 'punch above its weight'. This is vital given the mismatch that currently exists between the size/budget of the GLA and general expectations over its ability to prevent (eradicate) worker exploitation and business fraud.

In terms of specifics, Chapter 4 interrogated the tripartite consensus underpinning the GLA and looked at the benefit of the GLA linking with Unions, other Government Departments, and employers/ employer associations.

- Greater union involvement in the industries governed by the GLA would make the job of intelligence gathering easier; both in terms of collecting testimonies from exploited employees, and in relation to the legal loopholes being used to reduce the rights and entitlements of agency workers. However, the level of union penetration in GLA sectors has been historically low and this remains the case, particularly amongst agency and migrant workers
- There are a considerable number of Government departments responsible in one way or another for preventing worker exploitation and reducing business fraud. This complexity brings benefits and challenges. Different government departments appear to approach regulation in different ways, and are often motivated by different sets of internal targets (even if the ultimate aim is the same). Whilst no-one we spoke to advocated a one-stop-shop for gangmaster

regulatory activity, there might be merit in re-examining how enforcement is measured across government and whether or not a common set of deliverables could be developed. The government stakeholders we spoke praised the GLA for taking the lead in building partnerships at a local and national level, and saw both the independence of the organisation (as an NDPB), and its 'newness', as key to this

- It pays for employers/ employer associations to work in partnership with the GLA, just as it pays for the GLA to work in partnership with employers/ employer associations. A great deal of good practice currently exists, but more can be done to maximise the exchange of intelligence between the GLA and suppliers/ retailers. There are some attendant dangers, however. The GLA must be aware of what is termed 'regulatory capture', and must also ensure it is seen to be treating all employers fairly irrespective of size/ profile.

Chapter 5: Case-Studies

The four case-studies underline the substantial geographical variation that currently exists in respect to licensing uptake, and in terms of the barriers to effective enforcement. This variation can be explained by different industry- and place-based gangmaster cultures across the UK.

The shellfish case-study identifies the long tradition of tight-knit, small-scale, cash-based and highly seasonal gang systems that have operated in shellfish picking areas like Morecambe Bay. This, at times violent, and certainly relatively closed culture, makes enforcement particularly challenging: the GLA has so-far received only 11 licence applications. Of most concern is, first, the GLA's ability to prove that a picker is part of a wider gang system, and second, to link this gang system to a specific labour user. Effective compliance and enforcement activity will be contingent upon penetrating this complex, cash-based world, where verbal contracts and gang rivalries form the base of the shellfish supply-chain.

The Wash, our second case-study, is the historic home of the gangmaster system and the contemporary centre for industrial agriculture in the UK. It is where gangmasters are most concentrated, and where temporary migrant workers are commonplace, with the vast majority employed in GLA-type occupations. Around 1,600 A8 migrants arrive in the rich agricultural fenland around the Wash each month; in many districts over three-quarters of these migrants are employed in GLA-type occupations; in most districts the figure is well over 50%. Our research also

identified a number of ongoing agency employment issues: the marginalisation of low-skilled British workers; sub-standard accommodation tied (increasingly informally) to employment; restricted benefit access for migrants due to out-dated WRS status; overly-complex contracts; no contracts; excessive deductions; the discriminatory impact of piece-rate for certain types of workers; and, a reluctance of exploited workers to come forward to the GLA for fear of losing their job/accommodation, and with no obvious incentive available for providing intelligence.

The Northern Ireland case-study, as with our Wash case-study, uncovered a distinct local gangmaster culture. The Troubles, and associated paramilitary activity, along with an open land-border with the Republic (where GLA licensing is not enforceable), appear to have combined to create a situation of low level compliance amongst gangmasters. The difficulties faced by the GLA in Northern Ireland are further complicated by the recent influx of temporary migrant workers, many now working in the food industry, and the lack of established infrastructure to deal with the issues around this.

The fourth and final case-study looked at the UK Forestry sector. As with shellfish, it revealed a distinct industry-based gang culture that acted as a barrier to regulation and enforcement. Only 20 forestry contractors have so far applied for a GLA licence, and we traced this to two particular mindsets within the industry. First, the Gangmasters (Licensing) Act 2004 subsumes forestry within agriculture, but many in forestry claim that this was a legislative mistake and/ or not to have realised forestry was covered by the agricultural provisions of the Gangmasters (Licensing) Act 2004. Second, forestry contractors (like shellfish gatherers) have traditionally been part of a tight-knit, small-scale, cash-based and highly seasonal gang system, and there was great reluctance to apply for a licence because of the bureaucratic and financial costs involved in doing so. Very simply, forestry contractors were accustomed, like their counterparts in the shellfish sector, to an 'organic' system of temporary labour supply and were very reluctant to engage in GLA-initiated professionalization.

Chapter 7: Compliance and Enforcement Update

The final chapter before the conclusions and recommendations updates the compliance and enforcement data, building upon the figures contained in Chapter 4 of the August 2007 GLA Baseline Report (see: <http://www.gla.gov.uk/index.asp?id=1013062>). It is clear from the statistics that the GLA has already tackled a number of unscrupulous gangmasters through both

compliance activity (with licensed operators) and enforcement activity (with unlicensed operators). Of all the licenses the GLA has so-far revoked only one labour provider appeal has been upheld: the GLA has clearly acted only with sufficient evidence and has managed to defend its decisions to revoke. Also noteworthy, is the GLA's decision to target compliance and enforcement activity around themed projects based on an assessment of when/ where risk of worker exploitation and business fraud is likely to be greatest.

We do have concerns, however, about the pace of enforcement activity but note the cases currently being prepared for the Crown Prosecution Service and Procurator Fiscal. Furthermore, certain business structures (subcontracting), employment statuses (self-employment), and business practices (Phoenixing and cash payments) make the task of compliance and enforcement particularly difficult. The GLA faces a considerable challenge in this respect, both in terms of being able to take decisive action against illegal businesses, and in terms of managing expectations about the scale, speed and outcomes of this action.

E. CONCLUSIONS AND RECOMMENDATIONS

Drawing the findings of Chapters 2-6 together, GLA licensing - as perceived by gangmasters, labour users and stakeholders – appears to have a number of main advantages and disadvantages. Based on these advantages/ disadvantages, and the evidence contained in Chapters 2-6, we make 13 specific recommendations for the GLA to consider:

Advantages:
<ul style="list-style-type: none"> • GLA's independence from government and civil service because of its NDPB (Non-Departmental Public Body) status
<ul style="list-style-type: none"> • Gangmasters and labour providers have been 'professionalised' as a result of licensing and the GLA has succeeded in drawing businesses further (if not entirely) into the formal economy
<ul style="list-style-type: none"> • Contracts and workers' terms and conditions are now more transparent than was the case previously
<ul style="list-style-type: none"> • Health and safety at work is now taken more seriously
<ul style="list-style-type: none"> • Minor abuses of workers (e.g. deductions) have been reduced
<ul style="list-style-type: none"> • Transportation to work has been improved
<ul style="list-style-type: none"> • Sub-standard gangmaster accommodation is no longer so prevalent (at least

formally)
<ul style="list-style-type: none"> • The GLA has provided invaluable intelligence to other government departments, most notably the HMRC
<ul style="list-style-type: none"> • The Chairman of the GLA has been seen as a big plus: raising the profile of temporary agency work in the UK and representing the GLA as a dynamic, high-profile, and independently-minded NDPB.
<ul style="list-style-type: none"> • The computer system the GLA has in place appears to work well. It allows the authority to efficiently deal with a vast body of information and exchange this with partners
<ul style="list-style-type: none"> • Local enforcement staff are generally seen in a positive light by those 'on the ground'
<ul style="list-style-type: none"> • The GLA has responded to early criticism, notably it has: increased compliance and enforcement over recent months; published its role/ remit in a range of languages; launched awareness raising campaigns in English and other languages (see Figure 3); sought to develop closer working relationship with labour users and retailers; and, has spent considerable energy gaining insight into how to increase licensing uptake in challenging sectors (Shellfish and Forestry) and areas (Northern Ireland)
<ul style="list-style-type: none"> • The GLA is widely respected by labour providers, labour users and stakeholders, and licensing has broadly been welcomed by all parties

Disadvantages:

<ul style="list-style-type: none"> • Anecdotal evidence of unlicensed gangmasters (mainly field-gangs) and questions over whether more can be done to help very small operators comply
<ul style="list-style-type: none"> • Breaches of licence conditions amongst licensed gangmasters going unpunished because of their double-standards. Licensing does not necessarily ensure compliance
<ul style="list-style-type: none"> • Figureheads used as a front for 'dodgy' and 'criminal' businessmen, who run operations from the 'shadows'
<ul style="list-style-type: none"> • Prosecuting 'dodgy' and 'criminal' gangmasters takes too long
<ul style="list-style-type: none"> • Concern over how enabled the GLA is legally given the labour laws/ protections in the UK, and particularly given the complex contractual arrangements between employer and employee/ worker
<ul style="list-style-type: none"> • Debate over whether the benefits of regulation extend beyond the labour provider

sector, and if so, whether the costs should be spread accordingly
<ul style="list-style-type: none"> • Worries over displacement of labour providers to other sectors and/ or worries over the different sets of standards/ controls in these sectors and the lack of rationale for this
<ul style="list-style-type: none"> • The Gangmasters (Licensing) Act 2004 involved relatively limited new regulatory powers and more should be done to maximise the benefit of existing legislation
<ul style="list-style-type: none"> • Arguments over the extent to which licensing should be applied to more skilled and/ or paternalistic forms of labour supply (e.g. forestry)
<ul style="list-style-type: none"> • No system to reward intelligence, with workers only receiving compensation for reported abuses after lengthy tribunal processes
<ul style="list-style-type: none"> • GLA board possibly too large
<ul style="list-style-type: none"> • Language issues: although the GLA is investigating language support for its helpdesk at present, and has translated significant proportions of its publicity material, there may be merit in recruiting more multi-lingual staff with direct experience of the UK food industry (there is certainly a large enough recruitment pool available)

Recommendation 1: Link regulation of the workplace to regulation of accommodation

According to the stakeholders we spoke to, accommodation is an increasingly problematic area in terms of exploitation, particularly of migrant agency workers. The establishment of the GLA has meant that many gangmasters have stopped formally providing housing; but workers still need to live somewhere and so they have had to search elsewhere for privately rented accommodation. This accommodation is policed – principally through HMO legislation – at a local authority level.¹ We feel, however, that there may be scope for a temporary agency inspectorate to be given powers to tackle landlord exploitation. This is because when an exploited worker contacts the GLA there is also often an accommodation issue attached. The GLA should be more empowered to follow-up accommodation issues if it suspects a link with the employer/ gangmaster. Legislation outlawing illegal gangmasters/ labour users from operating and benefiting from involvement – formal or informal – in the accommodation as well as agency labour sectors, following conviction, might serve as a powerful deterrent. Some kind of joined-up regulation is needed given how often workplace and domestic exploitation is linked.

¹ HMO legislation is currently more extensive in Scotland than in England and Wales.

Recommendation 2: Re-consider how the GLA finances itself

Assess the extent to which beneficiaries of temporary agency legislation are required to meet the costs of enforcing this legislation. Specifically, is the reduction of worker exploitation and business fraud of benefit to UK society as a whole; is regulation a 'public good' and thus something that could receive greater support from the public purse? Further, do businesses that use agency workers (e.g. farmers, food packers/processors, shellfish buyers, logistics and distribution companies, supermarkets, etc) benefit from the regulation of these workers, and if so should they be expected to contribute to the costs of regulation? Very simply, is the principle of the gangmaster paying for his/her industry to be regulated fair? This is a particular issue given that evidence suggests that movement of money along industry supply-chains can be 'sticky'. The view of the major retailers, for example, was that if they were to pay suppliers more money there was no guarantee that this would increase workers' pay. Similarly, it is not difficult to envisage a situation whereby labour providers would struggle to pass the costs of GLA licensing up the supply-chain. It is also an important principle to debate given that the UK economy is now structured around a small number of large retailers at the top of particular product supply chains. In return for their position of power, and the potential profit margins stemming from this position, it could be argued that these companies have an obligation to act as industry custodians. This is a responsibility that they have been keen to pursue through the GLA and other ethical trading initiatives. This custodian role could involve direct financial support for GLA-type regulation, it could also simply involve the pooling of expertise between business and regulators, or, a commitment to end more punitive tactics (such as fines when suppliers fail to meet specified volumes, the reduction in buyer rotation, a commitment to minimum notice periods for orders, and a promise not to renege on agreed product prices).

Recommendation 3: A partnership approach to ensuring 'good work' for all

The GLA emerged from an industry-wide partnership and a recognition that effective regulation meant the coming together of statutory and voluntary mechanisms. The challenge now is to move this partnership ethos forward:

- Unions have been relatively slow at engaging with temporary agency and migrant workers and, given their *raison d'être*, need to engage more with this dominant form of twenty-first century employment.
- Businesses also need to recognise that regulation need not equal inflexibility and unjustified costs

An industry-wide approach – centred on a two-stage vision around what ‘acceptable’ and ‘good’ work should involve – would support the most ‘at risk’ workers in the UK economy and help industries ‘self-police’; with GLA enforcement a last, rather than only, resort for exploited workers. The GLA has a key role to play both in advancing union engagement in sectors it has so far found hard to access, and in persuading business that a ‘good work agenda’ should be a basic obligation of any decent employer, with regulation of businesses flouting this obligation a necessary threat.

Recommendation 4: Fine-tune the internal workings of the GLA

The GLA should develop an action plan to deal with concerns expressed about its ability as a regulatory body, whether based on perception or on direct experience. The major concerns/recommendations expressed to us during the course of this research focused on communication, resource-base, and partnership working.

4.1 Communication

- Increase feedback to those providing intelligence, and communicate local enforcement activities more in order to send out a strong locally-based message that rogue gangmasters are being pursued
- Develop regular lines of communication with businesses using agency workers: through, for example, national retailer and local supplier forums. These are likely to improve the flow of intelligence into the GLA, as well as allowing for the pooling of resources
- Be seen to be tackling the big issues and the high profile ‘Ferrari-driving’ gangmasters, rather than being overly concerned with minor indiscretions amongst licensed operators and/ or in catching small-scale field-gangs
- Report regularly on the tangible outputs from enforcement; some of which must be of direct relevance to exploited workers (e.g. wages recovered) in order to increase the size of ‘carrot’ for potential informants/ witnesses. These outcomes need not always be GLA-owned.

4.2 Resources

- The GLA should seek advice on how best to calculate its contribution to HM Treasury, through: workers entering the formal economy; businesses entering the formal economy; and, through recovery of tax revenue through compliance and enforcement activity. The GLA does not just raise revenue through licensing and it is important that its broader fiscal contribution is recognised.

- At present, the fee structure appears to place a greater regulatory burden on smaller companies. Consider whether the fee structure could be adjusted to draw more smaller-scale operators into the licensing system, possibly involving: a lower minimum fee; a new £0-£500,000 band; and a higher maximum fee.
- Re-assess the turnover banding and justify its advantage over a profit-based, per-head based, and/ or branch-based fee banding system
- Examine the resources-base of other similar regulatory bodies in the EU to establish whether or not the GLA is suitably funded. This is a particular issue as the GLA moves from licensing to more costly compliance, enforcement and prosecution activity
- Increase the size of the compliance, enforcement and prosecution resource and justify this as a proportion of the total GLA spend (there was perception amongst some that too much money was being directly to back-office 'civil service' tasks at the expense of front-line enforcement)

4.3 Partnerships

- Work closely with government partners but seek clarification as to who takes the lead in enforcement, how this is decided, how the tangible outcomes of enforcement are shared, and whether enforcement activity should be communicated in advance to local stakeholders based on community impact assessments
- Some stakeholders criticised the GLA because its remit appeared to extend into that of other agencies (HMRC, HSE, DWP, BERR, BIA, Police, Local Authorities) and beyond that outlined in the Gangmasters (Licensing) Act 2004. However, others felt that an integrated approach to the protection of temporary agency workers was exactly what was required
- Work closely, and in new ways, with labour users/ retailers to increase sector-based intelligence and pool resources
- Decide whether organised criminals who operate in GLA sectors – whilst also engaged in drugs trafficking, people trafficking, prostitution and other illegal activities – can actually be dealt with by the GLA. If the GLA can't ensure that they are being pursued – those we spoke to argued that these types of people were responsible for Morecambe Bay and yet the GLA was not in a position to deal with the extreme criminal end of the gangmaster fraternity – then develop high profile partnerships with local/ national police agencies
- Second staff to work between regulatory bodies

- Identify, and discuss how to overcome, problematic aspects of partnership working, specifically: the different internal targets that government agencies may have; and the particular cultures within organisations that may hamper enforcement activity. For example, the HMRC Labour Provider Unit was seen by stakeholders as a partner that was sometimes too secretive and/ or stuck too rigidly to its narrow revenue-raising, whilst the BERR Employment Agencies Inspectorate was seen as being anti-regulation and very reluctant to engage in any meaningful enforcement
- Continue fairness in the treatment of partners however powerful or politically influential they may be. This is vital to avoid charges of ‘regulatory capture’ – which occurs when a powerful stakeholder has undue, usually hidden, and undemocratic, influence on a regulator
- Whatever the detail of the specific partnership, ensure that all partners have the same objectives – to protect the basic human and employment rights of workers and prevent business fraud – and that the success of the partnership rests on achieving this, and is not judged on smaller internal targets that vary between agencies

Recommendation 5: Reduce the regulatory burden on labour users

Labour users who supply the multiples not only have to check that they are using licensed labour providers, they are also subject to various non-statutory ethical trading codes imposed upon them by the larger suppliers/ retailers above them. The GLA and the multiples should come together to consider the sense in having multiple ethics codes and the regulatory burden this is placing on suppliers. There may also be some scope for the simplification of GLA licensing standards and/ or greater prioritisation of certain standards – as advocated by the ALP and REC – in order to reduce the regulatory burden. However, we did not find any significant evidence that the GLA was an excessive burden on labour users.

Recommendation 6: Improve understanding of exploited workers

This would involve the GLA drawing up a very simple list of what exploitation means i.e. a working definition. It would also involve the GLA reaching out to temporary agency workers, many of whom do not speak English: and there may be a need for additional government language support here. Further, the GLA should be able to say to workers: ‘If you report an exploitative gangmaster, these are the provisions in place to support you and to help you recover financial costs incurred’. If there are no

support mechanisms in place, beyond simply the ability of an exploited worker to report, then legislation may need to be developed. Specifically, is the Employer Tribunal (ET) system as empowering to workers, and as rewarding and efficient, as it could be? Further, is there scope for the GLA working with business to establish a fund/ foundation to support exploited workers who, due to reporting their employer, face unemployment, destitution and potential retribution (through a combination of donations from labour users/ retailers and a bond from labour providers in-case their business closes with workers owed their wages)? We raise these questions because it is extremely naïve to think an exploited worker simply needs to be aware of a complaints mechanism. The GLA is charged with protecting the most vulnerable workers in the UK, who live insecure lives, on day-to-day contracts, with housing often tied directly (if not always formally) to employment. These workers do not have the time or the money to report an abusive gangmasters and put in jeopardy their already perilous working and domestic lives. One option that could be relatively cheaply developed is an online independent worker-based rating system for labour providers across the UK. This would, we expect, be most effective if developed by temporary workers/ worker representatives, but the GLA would certainly benefit from the informal intelligence generated (as, of course, would the workers).

Recommendation 7: Be clear about exploitation and fraud – that it is a systemic problem as much as the result of isolated criminal gangmasters

The GLA must be clear to all partners that there is a link between public pressure for low food prices and investor pressure for higher returns, at one end of the supply-chain, and tighter profit margins and very tough operating conditions at the other end. It must also stress that many (but certainly not all) labour providers and labour users are relatively powerless to determine their terms of trade within this system and so find it difficult to pass on any costs for fear of losing business. No profit has become better than no business, and for the companies facing this dilemma, the temptation to ‘cut corners’ is undoubtedly a strong one. We are not saying that worker exploitation and business fraud are inevitable as large suppliers/ retailers seek to increase their profits by reducing the margins of the companies below them, just that those responsible for the tough and challenging business environment that results should also have a responsibility for ensuring that their actions do not create an unwanted ‘ripple effect’ further down the supply-chain. It would be naïve, in arguably the most dynamic, integrated and efficient industrial sector in the UK, to think that the activities of criminal gangmasters occur in complete isolation from the profit maximising practices of the businesses these gangmasters serve. It would also be naïve to think

that increased pressure from powerful international suppliers/ multiples inevitably leads to increased exploitation and fraud lower down the supply-chain. It can, though, increase the risk of this happening.

Recommendation 8: Address the widely held perception amongst labour providers, labour users and stakeholders that multiples' ethical trading initiatives are in conflict with the targets they set for buyers and managers

Over recent years the UK multiples have been at the forefront of ethical and socially responsible trading and were central in the success of the Gangmasters Licensing Act and subsequent emergence of the GLA (see the GLA Baseline Report, 2007). They have also invested considerable money in ensuring ethically and socially responsible trading. There was a perception amongst most we interviewed, however, that retailers were being two-faced: that, on the one-hand, they wanted to be seen as ethical and expected their suppliers to conform to, and invest in, strict codes of conduct; but on the other hand, they were placing immense pressure on buyers/managers to squeeze the margins of suppliers, and that this pressure was often anything but ethical and left little room for the creation of good working environments. The GLA should work with supermarkets to address the paradox between the objectives of ethical trading teams and the targets of buyers and their managers. We stress, however, that it is not the job of the GLA to concern itself with supplier-buyer relations – a Competition Commission enquiry is currently doing this (see Competition Commission 2007e, 2007f) – but it is the job of the GLA to encourage the industry to support licensing and ensure that what is being given in one hand is not being taken away in the other (whether in reality or perception). Large retailers/suppliers are clearly aware of the business and moral case for ethical and socially responsible trading, but we feel that the above criticisms can only be addressed by an unequivocal resource commitment to the moral case for protecting the basic human rights of some of the UK's most vulnerable workers (irrespective of any business considerations). This shift in emphasis is needed to reflect the role of large transnational corporations as the custodians of the supply-chains they head, and of the labour market relations embedded within these supply-chains.

Recommendation 9: Monitor and seek to tackle the myriad business structures used to circumvent government legislation

A range of business strategies appear to have been adopted by gangmasters in response to GLA legislation, with some of these strategies also designed to make businesses more 'tax efficient'. Issues identified include:

- Increased direct recruitment of temporary workers by larger labour users (should labour users who employ temporary (but non-agency) workers be licensed?)
- Phoenix companies forming after a gangmaster has been forced to close due to enforcement activity by the GLA, HMRC, etc. This usually involves the former gangmaster starting up a new company, but operating 'behind the scenes' with a friend, colleague, or relative ostensibly fronting the new company. The big question here is: should the GLA be able to prevent illegal/ insolvent gangmasters from having any contact with, and deriving any benefit from, (formal or informal) the labour provider industry and associated worker accommodation for a defined period of time following their conviction? There may be scope for closer liaison between the GLA and Companies House in this area
- Phoenix companies forming in order to pay lower licence fees: because the GLA licence fee is based on turnover, there was a concern that a rapidly growing business may simply disappear and start again to stay within the lowest possible GLA fee band. Whilst we were unable to uncover specific cases of this, we suggest the GLA monitors the potential for abuse in the fee-band system
- A rise in self-employed temporary workers (a particular issue in the shellfish industry) who are not covered by GLA legislation
- A rise in the number of migrant workers registering themselves as companies before coming to the UK to avoid paying tax
- Agency workers taking shares in a company as a partner/ director with payment via a dividend
- Converting a proportion of workers' taxable pay into tax-free expenses via 'Mobile Worker' status
- Differences between 'contract of employment' and 'contract for services' relationship between the worker and the labour provider i.e. the contractual distinction between a labour provider supplying labour to a labour user (who then employs this labour) and a labour provider supplying and employing temporary workers
- Overseas gangmasters and overseas recruiters working for UK gangmasters
- The use of complex sub-contracting networks to generate false invoices for labour provision and to complicate compliance, enforcement and prosecution activity

These tactics, and others like them, if of benefit to the gangmaster are likely to spread within the sector. The GLA should work with the HMRC in particular to assess the desirability of such loop-holes.

Recommendation 10: Be open about enforcement and manage expectations

Given the difficulties of developing effective and efficient employment-based regulation within the current UK legislative context, the GLA must be clear about the problems it faces in prosecuting illegal gangmasters and protecting/ compensating exploited workers. Many people we interviewed were frustrated at the pace of compliance, enforcement, and persecution activity and almost everyone could tell us about a local rogue gangmaster – either in business but unlicensed, or with a licence but operating a ‘Janus-faced’ business – who they felt should have been put out of business by the GLA. Legitimate frustrations with the GLA are one thing, but the GLA must manage people’s expectations with respect to what they can do, how fast they can do it, and why some enforcement tasks may be beyond them until the legislative context changes. The issue of managing expectations is also important given the GLA’s limited budget – in 2006-07 this was £3,200,000, with the budget for 2007-08 £3,191,000 – and with cuts planned:

“...for the future I would be grateful if you would bring forward early proposals to reduce the GLA’s cost base from 1 April 2008, which deliver substantive reductions in fee levels while maintaining the effectiveness of the GLA’s compliance activities.” (David Miliband, February 2007 - in a letter sent to the GLA)

These figures should, however, be viewed within the context of the original costings envisaged for the GLA (Defra, 2004: Annex F) and it is also important to note that GLA enforcement activity is paid for separately through Defra.

Recommendation 11: Look at innovative and/ or targeted enforcement techniques

In terms of innovative enforcement, one possible approach would be to establish – in partnership with the HMRC, Police, and other government agencies – a labour provider company. Such an operation would give the GLA direct insight into the sector it governs as well as practical intelligence. The major risks of such a venture are obviously the potential exposure of the business as a ‘sham’, the long-term time commitment, and the cost involved. However, there would be no better way for the GLA to improve its knowledge base and build intelligence than to operate within the sector it governs.

In terms of targeted enforcement, our case-study analysis has shown the importance of a geographically sensitive appreciation of risk:

- Areas around shellfish beds accessible on foot/ by vehicle – Morecambe Bay, Three Rivers, Solway Firth, Dee Estuary – currently have low licence uptake and significant barriers to compliance
- Areas of cultivated forest – especially significant in Scotland – currently have low licence uptake and significant barriers to compliance
- Areas of intensive industrialised agriculture – The Wash – have high licence uptake but offer considerable scope for exploitative and fraudulent business practices due simply to the size of the food economy in the area
- Northern Ireland’s paramilitary tradition and land-border with the Republic makes it an area with lower than expected licence uptake and significant barriers to compliance

The four case-studies show how industry-specific and place-specific gang cultures exist in the UK, and we note with interest the moves by the GLA over the course of 2007 to target compliance and enforcement resource around 12 priority areas. This approach is consistent with the Hampton principles for better regulation (see Appendix 6)

Recommendation 12: Identify priorities for further research as part of the year two and year three reviews

This formative evaluation and the Baseline it builds upon (GLA, 2007a) are both quite extensive in scope. We suggest that the GLA now takes stock and reviews both reports to identify specific areas where more intelligence is required. Topics for focused research might include: an assessment of the long-term views of agency workers with respect to changing levels of exploitation; an analysis of the extent to which temporary agency workers in non-GLA sectors experience similar levels of exploitation; a review of approaches to temporary agency regulation in analogous EU countries; an investigation into where the cash comes from to sustain business fraud in GLA sectors; a study of the changing economic and employment base of the GLA-governed industries; and, a comparison of the different issues faced by migrant and British-born temporary agency workers.

Recommendation 13: The GLA should develop positions on ‘Global Issues’ beyond its direct remit

There are a number of issues outside the GLA’s control that have the potential to affect the future direction of licensing and we feel that it would be sensible for the

GLA to develop positions on these. Specifically, six 'global' issues stand out as pertinent:

1. No respondents we spoke to could justify the **sector-specific focus** of the GLA, and were unsure of why the economy-wide phenomenon of temporary agency work had been dealt with at a sector level by government given problems of displacement. The GLA has a sector-specific remit, but should use its expertise to advise on the appropriateness of licensing of temporary agency work more generally and/ or of licensing in other 'at risk' sectors (construction; hospitality; social care; cleaning; logistics, distribution and warehouse work). The GLA could, for instance, be used as a 'pilot' to gauge the appropriateness of more extensive vulnerable worker protection. At present "the government has no plans to bring forward legislation to extend the scope of the licensing scheme" (David Miliband, February 2007 - in a letter sent to the GLA). Organisations like the TUC are pushing strongly for its extension, however, and on June 13th 2007 Jim Sheridan tabled a 10 Minute Rule Bill to propose an extension of powers into construction. Tony Blair, speaking at Prime Minister's Question Time (PMQT), promised to look into this: "We will certainly consider carefully what is in the private Member's Bill. My honorary friend will know that we have already introduced certain protections. It is fair to say that concerns remain about the activities of some gangmasters, and it is important that we keep the matter under review. I am afraid that I cannot give my hon. Friend a commitment on the Bill today, but we will certainly consider carefully both the Bill and the debate that follows." (June 13th 2007, PMQT). There is an important secondary issue at stake here, and it links with our sixth and final point (see below): Defra is the GLA's current sponsoring Department because the GLA's focus is on the UK food sector. However, the Hampton Review means that the GLA will move to the HSE by 2009, whose remit is economy-wide. Our question is whether the remit of the GLA should be extended in line with the remit of the HSE, or whether the remit of the GLA should remain Defra-based even after the GLA has been included within the HSE?
2. There have been cases made for the establishment of a UK-wide **temporary agency worker / fair employment inspectorate** (e.g. by the TUC, CAB, and some Labour MPs). Once again, the GLA is arguably in one of the best positions of any UK government body to provide advice on the merits of such a scheme.
3. Questions have been raised over how helpful UK **labour market legislation** is in terms of protecting workers' rights and in ensuring effective and efficient compliance and enforcement activity. The GLA is in an excellent position to be able to advise on whether or not there is scope for making better regulation

through better legislation. One particular area it may want to explore is the Employment Tribunal system, and the extent to which this is able to encourage workers to inform on unscrupulous employers. For example, failure by an A8 migrant to keep his/ her WRS details up-to-date can make it more difficult to take a grievance case to an Employment Tribunal. Another way is through the equalisation of rights between permanent and temporary agency workers (an issue recently addressed in MP Paul Farrelly's Temporary Agency Workers (Prevention of Less Favourable Treatment) Private Member's Bill) and the EU's Temporary Agency Workers Directive.² There is also the question of the Gangmasters (Licensing) Act itself; which is seen by some as a "flawed piece of legislation" hastily drawn up on the back of a tragic event rather than out of a deeper and more considered commitment to better regulation (Boleat, 2006: *iii*).

4. Similarly, respondents talked of myriad business types and temporary worker contracts. The GLA could advise on whether there is scope for the **streamlining of business types and temporary worker contracts**, as this may simplify the protection of workers and also close off tax loop-holes; thereby making the GLA's job a great deal easier.
5. An **EU legal framework** to protect temporary agency workers and regulate EU labour providers would address the problems that the GLA has faced with respect to cross-border enforcement. The issue of EU-wide regulation is likely to increase as freedom of movement within the EU develops. It is also addressed in the EU Treaty via the Temporary Agency Workers Directive, although the UK position on this has not been particularly positive over recent years.
6. Finally, the GLA should be open with government about **where it believes it should be 'housed'**: should it stay as a NDPB, or be subsumed within a larger government department (e.g. HMRC, HSE, BERR)? This position is likely to depend on the GLA's view with regard to issues 1 and 2. At present, the government believes that the best location for the GLA is within the HSE: it has accepted the Hampton Recommendations of April 2005 that advocated a GLA/HSE merger by March 31st 2009. The GLA has identified a number of possible options with respect to its impending merger with the HSE (see Appendix 7). Many stakeholders, however, felt that the government's decision to restructure the GLA, taken even before the association had acquired its legislative powers, has created unnecessary uncertainty. A number have also questioned the whole process leading to the GLA/HSE merger. The ALP, for

² EU legislation in this area has proved controversial and has been consistently held up by a number of Member States (the UK being a principal objector).

instance, have called it “unsatisfactory” and want “an immediate announcement that the GLA will not be subsumed into the HSE (to) remove an unnecessary distraction.” (ALP, 2005). As for the GLA itself, its latest Annual Report noted that: “An unsettling element within the plans for the coming years is the ‘Hampton’ merger with the Health and Safety Executive (HSE) by 31 March 2009, which will require particularly careful handling to ensure a smooth transition” (GLA, 2007c: 5). It certainly appears strange to an outside observer that the GLA was restructured even before it was created.

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