

This Brief is issued to all labour providers, labour users, and worker representative organisations. It explains the GLA's approach to prosecution, and how this is applied where unlicensed trading is identified, when a new application for a licence is made, or when an application is made during a criminal investigation

Background

The number of successful GLA prosecutions continues to increase. It is therefore important that those organisations operating within the regulated sector understand the GLA's approach to prosecution.

It is an offence to operate without a licence under section 12 of the Gangmasters (Licensing) Act 2004. It is an offence to use the services of an unlicensed labour provider under section 13 of the Act. Obstruction of a GLA investigation is also an offence under section 18 of the Act.

Where an offence is identified or suspected a criminal investigation will be required. This is also required if unlicensed trading is identified as part of the inspection of a new application. The GLA considers a number of factors when it decides whether to prosecute. These are set out in the Prosecution statement.

GLA Prosecution statement

When GLA inspectors suspect the commission of any offence contained within the Gangmasters (Licensing) Act 2004 they will secure evidence relating to that offence with a view to prosecution.

The GLA recognises that criminal prosecution is a serious matter that should only be brought about after full consideration of the circumstances of the offence. The final decision regarding the bringing of criminal prosecution will be taken by Defra in England and Wales, the Procurator Fiscal in Scotland and the Public Prosecution Service in Northern Ireland.

In the first instance, however, the GLA will consider each case on its merits in order to determine whether to pursue a prosecution, issue a formal warning or take no further action.

The GLA will consider a number of factors in determining the appropriate course of action. These factors will include, but are not restricted to:

- Whether an alternative sanction will achieve a similar outcome to prosecution
- The circumstances of the offence
- The intent of the offender, individually and/or corporately
- The antecedent history of the offender
- The level of financial gain or commercial benefit obtained by, the offender
- Whether a failure to prosecute or take other enforcement action might undermine public confidence in the regulatory regime
- Attitude of the offender

If the GLA discovers or suspects unlicensed trading any existing or subsequent licence application will be postponed.

The licensing application will only be considered by the GLA when the criminal matter has been concluded.

Identification of unlicensed trading during an application inspection

Where an application for a licence is made an application inspection is required to test the applicant's compliance with the licensing standards, and enable a licensing decision to be made.

Any inspector who, whilst undertaking an application inspection, discovers or suspects unlicensed trading will suspend the inspection process and take steps to secure all readily available evidence of the commission of the offence. Their action continues as a criminal investigation.

Similarly, if an application is received after a criminal investigation has already commenced it will also be postponed until the criminal matter is resolved.

This initial investigative process may include preliminary interviews, under caution, with the suspected offender(s) and interviews with witnesses, such as workers. Where appropriate they may issue an "Enforcement Notice", which explains the consequences of identified unlicensed trading for labour providers and labour users.

All instances of unlicensed trading will be considered by the GLA in order to determine the appropriate means of dealing with the case.

Resumption of the application process

Any postponed application will not resume until the criminal matter is resolved.

The GLA may determine that the circumstances merely warrant a warning. In such cases the warning will be administered promptly to enable the application process to resume without unnecessary delay.

Similarly the GLA may conclude that the circumstances of the case do not require any further action, in which case the application process will be resumed without delay.

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