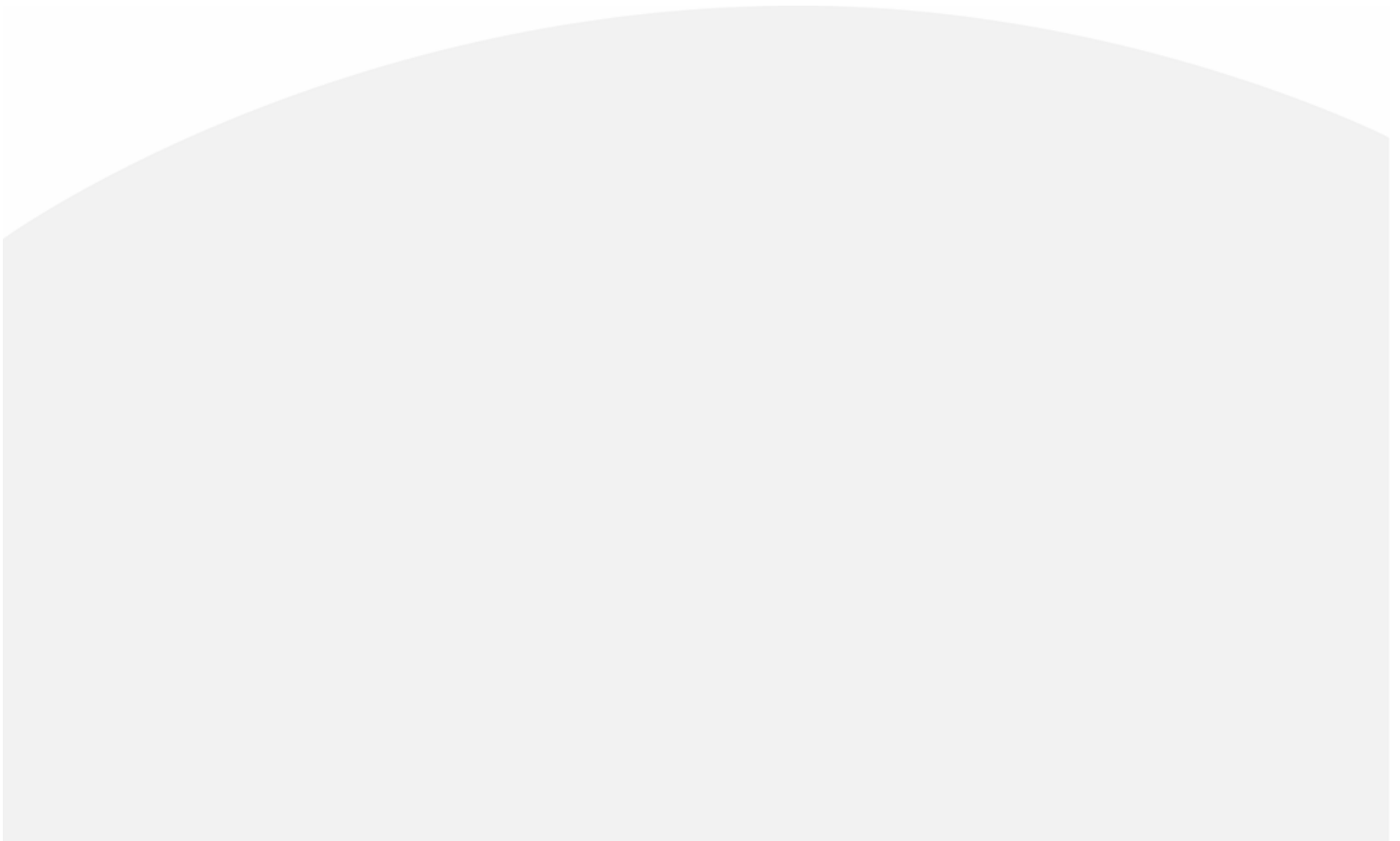




Enforcement Policy Statement

February 2008



1. The Gangmasters Licensing Authority (GLA) recognises that the best way to achieve compliance with the law is to provide guidance and advice so that those carrying out regulated activities understand the nature and extent of their responsibilities and comply voluntarily.
2. However, there are times when conformity with the law needs to be sought by formal enforcement action. Formal enforcement is about securing compliance with regulatory requirements. To this end there is a range of civil and criminal options available ranging from simple advisory letters and warning letters (for example the inclusion of additional licensing conditions for those labour providers who are deemed to have fallen short of the licensing standards) to a criminal prosecution.
3. Other sanctions may become available under new civil and criminal legislation, allowing for the use of administrative financial penalties or a caution coupled with a reparative or restorative penalty. When such sanctions become available the GLA will consider their inclusion in its enforcement approach to ensure that offences continue to be dealt with in a proportionate manner.
4. The effective use of enforcement powers in regulatory schemes is important to secure compliance with the law and where necessary to ensure, as far as is possible, that those who have not complied are held to account.
5. The GLA believes in firm and fair regulation of the matters for which it has responsibility. The GLA has adopted four enforcement principles for achieving this.

Proportionality

6. Proportionality in securing compliance will generally involve taking account of the degree of the risk of harm caused by non-compliance. Sometimes, however, the precautionary principle will require enforcement action to be taken even though the risks may be uncertain.

Consistency

7. Consistency means taking a similar approach in similar cases in all legal jurisdictions in which the GLA operates (England and Wales, Scotland, and Northern Ireland) as it is essential to achieve similar outcomes within which a degree of discretion is available. There are many variables to be taken into account in using discretion to achieve an outcome such as the attitude and competence of the regulated person, to bringing about the outcome sought to be achieved. In setting out this principle the GLA recognise that no two sets of circumstances are alike.

Transparency

8. Transparency means helping those regulated to comprehend what is required of them at the outset and setting out what they may expect from GLA in return. This includes clarity on the consequences of prosecution or any other form of sanction for them. It also involves making clear what remedial action is required from the regulated person and providing details of any rights of appeal etc.

Targeting

9. Targeting of enforcement action means prioritising and directing regulatory effort effectively. This means concentrating on the activities that create the most serious risk either because the nature of the activity is inherently high-risk, or because of a lack of appropriate controls or appropriate attitude in other less high-risk activities. It also involves identifying and focusing on those responsible for the risk. Furthermore, it requires a proportionate response, with sanctions other than prosecution, for less serious offences.
10. These four principles derive from the Cabinet Office Enforcement Concordat (March 1998) that drew on the principles of good regulation set out by the Better Regulation Task Force.

Enforcement Options

11. Although investigation of the circumstances or matters discovered on inspection or following a complaint is vital before taking any enforcement action, such an investigation does not have to be a criminal investigation. GLA shall seek a resolution of matters by the most appropriate enforcement option.
12. Where the non-compliance relates to the activities of a licensed labour provider the appropriate resolution will normally be consideration of the issue of additional licence conditions. For more extreme non-compliance licence revocation may be appropriate.
13. In the most severe cases, and for identified unlicensed labour providers, and labour users using unlicensed providers, prosecution will normally be considered. This will follow a criminal investigation, subject to the GLA's approach, as set out below.

Criminal Investigations

14. A criminal investigation is carried out for the purposes of gathering evidence to be used in a criminal trial.
15. Where it is suspected that a criminal offence has been committed and the particular circumstances appear to merit a criminal sanction, then the matter will be referred for criminal investigation. In determining whether or not it is appropriate to refer a case for criminal investigation the following issues will be considered:
 - the impact or potential impact of the offence on the industry or community concerned;
 - the alleged offender's response to any previous advice and guidance;
 - whether the use of any available civil enforcement powers would be sufficient remedy;
 - the benefit, financial or otherwise to the offender by avoidance of regulatory requirements; and
 - the need to obtain a criminal conviction in order to achieve an enforceable remediation order.
16. The evidence obtained in a criminal investigation can be used to achieve one of the options set out below.

Prosecution

17. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
18. The GLA recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will be taken in accordance with the factors set out in the Code for Crown Prosecutors, for England and Wales; the Crown Office and Procurator Fiscal's Prosecution Code in Scotland; and the Public Prosecution Services' Code for Prosecutors in Northern Ireland.

Sufficiency of Evidence

19. A prosecution will not be commenced or continued by the GLA unless it is satisfied that there is sufficient, admissible and reliable evidence providing a realistic prospect of conviction. Public interest factors that can affect the decision to prosecute usually depend on the seriousness or prevalence of the offence and the circumstances of the offender.

Public Interest Factors

20. The GLA will consider the following factors in deciding whether or not to prosecute:
 - **foreseeability** of the offence or the circumstances leading to it
 - **intent** of the offender, individually and/or corporately
 - **history** of offending
 - **attitude** of the offender
 - **deterrent effect** of a prosecution, on the offender and others
 - **personal circumstances** of the offender
 - **other relevant factors as set out in the prosecution codes that apply in each legal jurisdiction.**
21. These factors are not exhaustive and those that apply will depend on the particular circumstances of each case.

Corporations, Partnerships and Individuals

22. Criminal proceedings will be taken against those persons considered by the GLA and the Prosecutor to be responsible for the offence. Where it is alleged that a corporation/partnership or association is involved in the commission of an offence, it will be usual practice to prosecute that legal entity. Additionally, the GLA may also prosecute officers of the company/association or individual partners, or those who actually have control over the relevant activities, where there is considered to be sufficient evidence of their guilt, including directors, managers and the company secretary. Action may also be taken against such officers (as well as the company/partnership/association) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it.

Prosecution

23. Where there is sufficient evidence and it is in the public interest to do so, the GLA will normally prosecute the offences as defined by the Act.
24. However, there may be instances when during the course of an investigation into a GLA offence, other offences may be discovered; an example of which may include a labour provider operating without a licence (a GLA offence) but also operating false records in relation to his workforce. Whilst the making of false records is not an offence under the Act, the offence of false accounting will exist. In such instances the GLA will investigate all offences and refer the case to Defra Legal (or their agents), the Procurator Fiscal or Public Prosecution Service (NI) to consider bringing charges for both the GLA and non-GLA offences.

Alternatives to Prosecution

25. In cases where a prosecution is not the most appropriate course of action, the alternative of issuing a formal written warning will be considered. This sanction will be applied, where appropriate, in the jurisdictions of England and Wales, Scotland, and Northern Ireland.
26. A formal written warning is a notice to an individual body corporate, association, or partnership, that the GLA considers there is clear evidence of an offence under the Act, but that it is appropriate and proportionate to close that matter through a warning rather than prosecution. The warning notifies the offender that:
 - they have committed a specific offence,
 - a record of the warning will be retained by the GLA,
 - may be referred to the relevant Prosecutor to consider whether it will be referred to in Court proceedings.
 - this may occur at any later date

Voluntary Disclosure

27. Labour providers and/or labour users who have previously operated outside of the legislation and wish to put their affairs in order may approach the GLA to make a voluntary disclosure of the full extent of the irregularities in their operations.
28. The size of the alleged offence is not of itself the determining factor in considering whether to prosecute. However, the GLA's view is that the more extensive and substantial the alleged offence, the more likely it is that they will wish to prosecute. Nonetheless, if a labour provider or labour user voluntarily comes forward it would not normally be in the public interest to prosecute in such cases and an alternative sanction may be considered.

Working with other Regulators

29. Where the GLA and another enforcement body both have the power to prosecute, the GLA will liaise with that other body, to ensure effective co-ordination, to avoid

inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.

29. If in the course of an investigation offences come to light that fall within the remit of another enforcement body, the GLA will not seek to prosecute for those offences, rather the GLA will seek to work jointly with the agency in question. However, should the other agency request, the GLA will consider adding charges relating to those offences when seeking a prosecution under the Act.