



Gangmasters
Licensing Authority

GLA39/9.3 Criminal Case Investigation and Prosecution Rationale

16 October 2013

Board Paper Reference – GLA39/9.3 – Criminal Case Investigation and Prosecution Rationale

1. Purpose of the Report

- 1.1 The purpose of this paper is to provide clarity for Board members on the decision making process that occurs in determining an appropriate and proportionate outcome for investigation cases.

2. Recommendation

- 2.1 Members are requested to note the contents of the paper and make comment as appropriate.

3. Reasons for Paper

- 3.1 Comments received by the GLA indicate that Board members may not be familiar with the criminal process, and the paper is designed to address that issue, and raise awareness.

4. The Process

- 4.1 Where allegations of unlicensed activity (section 12) or the use of an unlicensed Gangmaster (section 13) is received it is assessed by the GLA' intelligence team utilising the National Intelligence Model, the accepted and nationally agreed process by which all law enforcement agencies assimilate, grade and action intelligence. This informs the GLA's fortnightly tasking and coordination meetings attended in person by all key operational staff that determines how a particular case should be progressed, the priority for that action, and who it is allocated to. In all cases the threshold for action will be against the Human Rights and the Regulation of Investigatory Powers Act standards of proportionality, necessity, justifiable, lawful and relevant based on live and accurate intelligence.

- 4.2 For allegations of criminal offences a criminal investigation occur, which will be conducted in accordance with the procedures for such investigations:

- Police and Criminal Evidence Act 1984 Code of Practice
- Criminal Procedures and Investigation Act 1996 Code of Practice

and related standards appropriate to any particular legal and jurisdictional requirements in Scotland and Northern Ireland.

- 4.3 In such investigations interviews are conducted under caution to preserve the evidence from interviews for use in any criminal prosecution that may occur.
- 4.4 Once an investigation is completed the case is reviewed internally in the first instance to determine an appropriate outcome.

- 4.5 The review will consider aggravating and mitigating such factors as:
- Period of time of offending
 - Whether the offender is non-compliant with UK legislation (and therefore the licensing standards)
 - Whether the health, welfare, and safety of workers is impacted
 - Whether the Labour provider operates in an activity where the licensing requirements were unclear
 - Whether the knowledge of the offence arose from the alleged offender (“voluntary disclosure”)
- 4.6 For cases of short duration, without aggravating factors, particularly of ‘lower level’ labour exploitation, it may be determined that the case may be concluded with the issue of a warning letter, which warns the offender of the consequence for repeat offending.
- 4.7 If the GLA concludes that prosecution is an appropriate response it will refer the case to:
- Crown Prosecution Service (CPS) – in England and Wales
 - Procurator Fiscal – in Scotland
 - Public Prosecutor – in Northern Ireland
- 4.8 In England and Wales CPS will review the prosecution referral against the Code for Crown Prosecutors. The Code sets two tests: an evidential test; and a public interest test. If the prosecution review concludes that the evidence of an offence exists and is sustainable and it is in the public interest to prosecute, a prosecution full file is prepared and CPS act as the prosecution authority. In Scotland and Northern Ireland similar principles will be used to evaluate whether a case is suitable for prosecution.
- 4.9 If a prosecutor considers a case is unsuitable for prosecution they may advise that the GLA should conclude the investigation with the issue of a warning.
- 4.10 Once a case proceeds to prosecution the prosecutor must ensure the evidence is presented in a manner that confirms the offence. For section 12 offences, depending on the severity of the case it may be referred to the Crown Court (with similar action in Scotland and Northern Ireland).
- 4.11 It is a matter for the court to determine the appropriate sentence when considering the severity of the conduct of the alleged offenders, and the maximum sentences that could be imposed (a maximum sentence of 10 years imprisonment for S12).

- 4.12 The number of different and independent stages through which a potential prosecution travels, both within the GLA and externally, ensures that objective decisions are made on whether prosecution is appropriate, irrespective of the final court decision, or cost incurred, based on legal thresholds subject to scrutiny and from which case law has been created.
- 4.13 Regardless of the final result, a full debrief of GLA and CPS staff (and joint agencies if appropriate) is held to identify the lessons learned and the critical success factors for future. The learning is then cascaded to all staff and forms part of the GLA learning and development strategy.

5. Financial Implications and Budget Provision

- 5.1 None

6. Organisational Risks

- 6.1 It is important that Board members familiarise themselves with the process so that they are able to explain the process confidently, if asked, on any occasion that they are representing the GLA. There are inevitably occasions where a prosecution has proceeded or faltered, which may appear strange to the untrained eye and members are invited to seek clarity from the GLA in such instances.
- 6.2 The issue of sentencing and punishment administered by the courts is a separate matter and the GLA has made approaches to the Ministry of Justice to seek clarity on the 'Sentencing Guidelines' that exist to assist judges and magistrates.

7. Policy Implications and Links to Strategic Priorities

- 7.1 "Provide effective, meaningful engagement with stakeholders thereby enhancing reputation"

8. Details of Consultation/EQIA

- 8.1 None

9. Background Papers and Relevant Published Documents

- 9.1 None.

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