

# **GLA Licensing Standards Consultation**

## **Summary of Responses**

## Introduction

The Gangmasters Licensing Authority (GLA) published a consultation document on 8 August 2011 seeking views possible changes to the GLA licensing standards. The consultation closed on 28 October 2011. This is a summary of the responses received.

A list of the respondees is at annex A.

## Summary of Responses

### **1. Do you agree that the policy for automatically refusing future applications should be expanded to include other Critical failures and scores of 100 points or more?**

#### **Responses in favour of a change:**

The TUC believes that standard 1.1 should be maintained to allow the GLA to consider refusing an application for a licence to those gangmasters who are connected to persons who are not "fit and proper". The TUC considers the accompanying explanatory note should be amended to state that a gangmaster will be unable to apply for a licence for a 2 year period, from the date they have been refused a licence for not being "fit and proper".

The TUC supports the proposal to extend the principle of automatic refusals with a subsequent two year ban on re-applying, where a licence has been refused or revoked because of a single breach of Standards 3.1 and 3.2 as well as serious health and safety breaches.

The TUC also supports the GLA position that where a gangmaster has received an inspection score of 100 they should subsequently be banned from reapplying for another licence for a period of two years.

The REC would welcome an extension of the policy for automatically refusing future applications to include Critical Standards 3.1 and 3.2. The REC believes these standards indicate significant issues with a person's character that cannot be easily resolved. However, other Critical Standards could be corrected by changes to processes.

The NFU supports the proposal and comments that it would provide further safeguards for farmers and growers against appointing gangmasters who may previously have had their licences revoked for serious non-compliances.

The FPC supports the proposal and suggests this should be applicable to Standard 3.1. The FPC also agrees that exceptionally high levels of non-compliance (100 points or more) should trigger an automatic refusal of any future application.

KLARS supports the proposal. Wychavon District Council broadly supports the proposal.

UCATT supports the GLA position where those reaching a score of 100 points should be subsequently banned from reapplying for a licence for a period of two years.

NFUS agrees with the change for revocations but not for refusals.

### **Responses against a change:**

The ALP considers the proposal is unnecessary and that the current rules adequately allow for the GLA to take a "fit and proper" decision on a case by case basis.

The Cordant Group PLC comments the GLA's current approach is too mechanistic and that the proposal would make the approach to compliance more restrictive and disproportionate and would not improve regulatory outcomes. The Cordant Group PLC considers this is contrary to the Government's better regulation agenda, Hampton Report recommendations and the Regulators' Compliance Code.

The Cordant Group PLC considers that revocation or refusal ought to be used sparingly in cases where there are deliberate and persistent breaches of the law. The Cordant Group PLC urges constructive dialogue with licence holders to encourage compliance and advocates issuing compliance notices or using ALCs.

The Cordant Group PLC notes licence holders could have a licence revoked because of inadvertent non-compliance on technical grounds. The Cordant Group PLC considers that automatic refusal of future application would prevent opportunity to achieve compliance. The Cordant Group PLC considers this is contrary to the Compliance Code.

The Cordant Group PLC consider a points score of 100 points should not result in automatic refusal of future applications because it does not make any allowance for appeal. The Cordant Group PLC also comments there is a risk of double counting with the Standards.

## **2. Do you agree to an explicit reference to paragraph 6 of the schedule to the Gangmasters (Licensing Conditions) Rules 2009 in Licensing Standard 1.1?**

### **Responses in favour of a change:**

The TUC agrees that Licensing Standards should include such a reference as well as the Standard making it clear a breach can result in a licence being refused or revoked.

The REC recognises that the avoidance of inspections constitutes serious non-compliance and should be recognised explicitly in the licensing standards but believes that a blanket critical fail, licence revocation and two year ban on "fit and proper" grounds may be a disproportionate response. The REC proposes a separate standard with a proportionate score determined on a case-by-case basis. The licence holder should be given opportunity to provide a "reasonable explanation" as to why the inspection was unable to go ahead. The REC request that the GLA should provide guidelines on what might constitute a reasonable explanation and also a clear timeline for providing it, the assessment of it by the GLA and the final decision by the GLA.

The NFU believes that a licence holder must be given the opportunity to provide a reasonable explanation as to why an inspection could not proceed. However, the NFU does not object to an explicit reference to paragraph 6 of the schedule being included.

The FPC agrees with the proposal but comments that licence holders must have opportunity to explain why an inspection could not go ahead

Wychavon District Council, UCATT, NFUS and KLARS support the proposal.

### **Responses against a change:**

The ALP disagrees with the suggestion and notes there is an existing offence for obstruction under section 18 of the Gangmasters (Licensing) Act 2004. The ALP comments licence holder should be given opportunity to explain why an inspection did not go ahead. Depending on the circumstances, the GLA could take a fit and proper decision but the ALP considers a blanket rule would be disproportionate.

The Cordant Group PLC do not support the proposal and comments that paragraph 6 of the Schedule to the Gangmasters (Licensing Conditions) Rules 2009 is separate from the paragraph 4 and the requirement to act in a fit and proper manner. The Cordant Group PLC argues it is implicit from this fact that it was not intended that one condition was intended to be subsumed into the other.

The Cordant Group PLC highlights the powers under section 16 and 18 of the Gangmasters (Licensing) Act 2004 and comments that transposing paragraph 6 of the 2009 Rules into Standard 1.1 is an unnecessary measure that would ultimately result in the automatic refusal of a re-application and ergo destruction of the business.

### **3. Do you agree that failure to notify the GLA of a change in Principal Authority should be a Critical standard with a score of 30 points?**

#### **Responses in favour of a change:**

The TUC agrees with the proposal. The TUC also comments that the consultation document suggests keeping a 16 point penalty for failure to notify the GLA where a gangmaster has been convicted of a criminal offence. The TUC believes consideration should be given to also making this standard critical; particularly where the offence committed is serious in nature as some criminal convictions will mean that a gangmaster is no longer is "a fit or proper person".

Wychavon District Council comments the proposal, as well as those covered by questions 4 and 6 seems to be positive but considers that they may not be as important as other areas.

UCATT comments any change to the principal authority of the business must be immediately notified to the GLA and should be designated a critical standard and carry a higher score for those failing to notify. UCATT states that the new PA could be someone who is not a "fit and proper" person, where action would need to be taken to protect workers through the revoking of a license. UCATT also comments that where any gangmaster has been convicted of a criminal offence the GLA should consider making this a critical score and could mean a person is no longer "fit and proper" therefore early knowledge of this is critical to the protection of workers.

The FPC and KLARS support the proposal.

#### **Responses against a change:**

The ALP disagrees with this proposal and comments that if the failure to notify is deliberate, then the “fit and proper” criterion can be used. The ALP also comments that the Standards should set out the definition of Principal Authority and what it means in practice.

The REC does not agree with the proposal as it would be disproportionate and comment that if the GLA believes there has been a serious attempt to mislead the GLA it could be dealt with within the context of being a fit and proper person.

Reliance Employment considers this would be disproportionate.

The Fresh Potato Suppliers Association considers it would be harsh to apply a ‘critical’ standard for non-communication. The Association considers a time-limit of possibly three months could be used before any critical standard penalty is applied.

The Cordant Group PLC considers the proposal is disproportionate.

NFUS disagrees with the proposal unless the new Principal Authority is assessed to be not appropriate.

**4. Do you agree with introducing eight penalty points for failing to notify the GLA of changes to contact details, directors, company secretary, partners, other individuals named on the licence?**

**Responses in favour of a change:**

The TUC supports the proposal as it will encourage gangmasters to communicate changes in licence details promptly.

The FPC supports the proposal.

KLARS supports the proposal and argues that the penalty points should remain for a longer period of time.

The Fresh Potato Suppliers Association considers this penalty would be acceptable.

**Responses against a change:**

The ALP disagrees with the proposal and also comments that there should be a clearer definition of who should be a named person.

The REC considers the proposal is disproportionate and comments that the GLA lacks a clear and consistent definition of who is a ‘named person’ and that there should be no further penalty until the lack of clarity is resolved.

The Cordant Group PLC disagrees with the change and comments that the matters are of a minor technical nature and unlikely to cause harm. The Cordant Group PLC considers the change would improve regulatory outcomes. The Cordant Group PLC argues issuing timely reminders, perhaps supported by a fixed penalty regime in the event of non-compliance, would be a more positive and proactive approach towards compliance.

NFUS disagrees with the proposal and considers eight points is disproportionate. NFUS suggest four might be appropriate unless more than nine changes have not been notified.

**5. Do you agree it should be a Critical requirement for licence holders to notify the GLA that they are in administration, liquidation or gone bankrupt?**

**Responses in favour of a change:**

The ALP agrees but notes that it should be made clear who is the licence holder when a company is in administration or has been liquidated as well as what should be communicated to the GLA and when and what constitutes non-compliance.

The TUC agrees and comments early notification (within 20 days of any changes taking place) that a gangmaster is going to cease trading would mean the GLA is better placed to find out if workers have been paid for the work done, to liaise with other enforcement agencies and to be able to signpost workers to adequate housing or continuing employment through other agencies.

The Fresh Potato Suppliers Association, Cordant Group PLC, KLARS and the FPC support the proposal.

UCATT comments that the GLA must be notified immediately if any gangmaster is no longer trading for whatever reason as this would allow the GLA to ensure that workers have been paid, to liaise with other agencies and help support workers in reaching organisations that can support re-engagement into the workplace.

**Responses against a change:**

The REC comments that it does not see the value in reclassifying this requirement. Furthermore, the REC comments that the GLA could do more to monitor trends of phoenixing and better target those suspected of such abuses. The REC believes that if the GLA suspects there is a wilful attempt to mislead, this should be dealt with on 'fit and proper' grounds.

NFUS disagrees with the proposal and comments that the business might be salvageable but losing its licence could adversely impact workers and customers.

**Other comments:**

Reliance Employment comments that anyone who continues to trade whilst bankrupt is unlikely to be concerned with any GLA sanction.

**6. Do you agree with the revised wording of Licensing Standard 5.7?**

**Responses in favour of a change:**

The Fresh Potato Suppliers Association, ALP, TUC, FPC, UCATT, NFU, REC and the Cordant Group PLC support the revised wording. Wychavon District Council broadly supports the proposal.

KLARS agrees with the revised wording and cite problems associated with age and racial discrimination.

**Responses against a change:**

NFUS considers this is outside the scope of the GLA and comments that if a labour provider should be found not "fit and proper" if they have been found guilty of discrimination and as a result has been barred from employing staff.

**7. Do you agree Licensing Standard 5.7 should be classed as "Critical"?**

**Responses in favour of a change:**

The TUC comments the failure of a gangmaster to comply with equality law will have significant implications for workers. The TUC supports the re-categorisation of standard 5.7 to Critical.

The Fresh Potato Suppliers Association, FPC, UCATT, NFU and KLARS support the proposal. Wychavon District Council broadly supports the proposal.

**Responses against a change:**

The ALP disagrees and comments that discrimination can be very minor, not deliberate and of no practical significance. The ALP considers serious discrimination may be addressed through Standard 3.1.

The REC believes reclassifying the Standard is an unnecessarily severe solution to an issue not prevalent in the GLA sectors.

The Cordant Group PLC does not support the proposal and suggests it would be disproportionate.

Reliance Employment comments that if a junior member of staff behaves in a racist or sexist manner may mean the entire's licence is at risk. Reliance Employment considers that some punishment is appropriate but this proposal is disproportionate.

**8. Do you agree that Licensing Standard 6.4 should be revised to include explicit reference to vehicles with 8 passenger seats or less?**

**Responses in favour of a change:**

The ALP, TUC, FPC, NFU and REC support the proposal.

KLARS supports the proposal and highlight the risk of agencies deliberately using smaller vehicles to avoid checks. KLARS also comments that this change may lead to agencies stopping providing transport which may result in more informal arrangements.

Wychavon District Council supports the proposal and comments that labour users should not be expected to inspect vehicles of another company (although deficiencies would be reported if they were noticed).

NFUS agrees with the proposal but queries whether this falls under the GLA's remit.

**Other comments:**

Reliance Employment questions how a person could be capable of running a business if they did not understand what standard of insurance applies to a vehicle and that, therefore, the standard is superfluous.

The Fresh Potato Suppliers Association argues that one way to circumvent current requirements is to transport workers in smaller vehicles and claim they are a private arrangement but then have some level of hire or reward. The Association argues this is clearly providing transport and must be regulated to reduce the risk of exploitation.

The Cordant Group PLC comments that the Standard already stipulates that all vehicles used by a licence holder to transport workers should have valid insurance and that the change would be of little consequence.

REC expresses concern that labour providers and users could be unfairly penalised for minor infringements. REC also comment that the current wording of the Standard does not make it clear whether the labour user / provider or the agency supplying the driver would be at fault for breaches of any of the three points cited under Standard 6.4, part 3. REC also question whether the GLA has the expertise or resource to effectively monitor compliance with Working Time and Tachograph matters.

**9. Do you agree with moving the wording in standard 7.3 that relates to fees and service into standard 7.1?**

**Responses in favour of a change:**

The Fresh Potato Suppliers Association, TUC, FPC, Wychavon District Council and UCATT support the proposal. The TUC suggests there is good reason to make this a critical standard as compliance will ensure that workers are not charged upfront fees for finding work. The TUC also consider the change will ensure that workers are provided with adequate information about the nature of services and any charges. The TUC considers the wording for Licensing Standard 7.3 needs to be amended to comply with the requirements set out in the Conduct Regulations 2003; under the Conduct Regulations a temporary worker is entitled to receive any information relating to the taking up of additional services, prior to agreeing to use these services. The TUC comments that currently the Licensing Standard 7.3 only requires that this information is given to the worker after they have agreed to use the additional service from the gangmaster.

KLARS supports the proposal and argue that agencies should give full details about services offered as well as explaining that they are optional.

NFUS agrees subject to further clarification and comments that if documents are provided outside of the required time then it should not constitute a critical failure.

**Responses against a change:**

The ALP considers such a change would be disproportionate.



The REC does not support the proposal and comments Licensing Standard 7.3 contains over 25 sub-clauses which, the majority of which are administrative. If 7.3 was merged into 7.1, breaching any of these points could all potentially prompt lead to a license revocation, despite a number of the sub-clauses of 7.3 being (a) difficult to accurately monitor in terms of timescales and (b) demonstrably less serious than other current critical standards.

The Cordant Group PLC disagrees with the proposal. The Group considers that it would be disproportionate for a licence to be revoked for failing to inform a worker in writing and claims that this would be contrary to the principles of good regulation.

**Other comments:**

Concordia does not object to making the requirements in 7.3 as Critical and highlights the need to avoid disruption to business if an overseas licence holder they were using had its licence revoked.

**10. Do you think the Licensing Standards should cover the Agency Workers Regulations?**

**Responses in favour of a change:**

The ALP believes there is a place for the GLA to monitor the Agency Worker Regulations but the Authority should not embroil itself with the detail of individual cases. The ALP considers that the GLA should limit its activity to monitoring whether there is wholesale evasion of the Regulations by a licence holder. The ALP supports this position from the perspective of ensuring that legitimate labour providers are able to avoid unfair competition from licence holders who ignore or deliberately flout the Regulations. The ALP recommends the evasion should be an eight point non-compliance and that ALC process under Standard 1.3 will ensure compliance is resolved. The ALP further comments that gross avoidance of equal treatment, pregnancy and maternity entitlement provisions should be included under Standard 2.3. The ALP considers the GLA should pay no attention to the provision of "collective facilities" or vacancy posting as these are obligations which fall upon the hirer.

The TUC comments that, in their current form, the Standards already apply to many of the equal treatment rights under the Regulations and believes that the GLA will have a key enforcement role in relation. The TUC considers the standards should be amended to include a distinct standard to ensure full compliance with the Regulations and to ensure that labour providers are fully aware of their responsibilities. Failing this, the TUC believes that the Standards relevant to equal treatment terms and conditions should be amended to reflect the new rights and to clarify what the labour provider must do to comply with the Regulations.

The FPC advocates that the Standards must embrace the Regulations and highlight concerns about a number of areas where the Regulations may fail to serve its purpose and could lead to discrimination against permanent members of staff. The FPC believes the existing guidance on the Regulations is not resolving these concerns.

KLARS supports the proposal.

UCATT comments that this is covered already under Standard 2.3 and that Standard 3.3 states that a gangmaster must not withhold any payment or part of a payment that is due to an agency worker. UCATT further states that in order to avoid any defence from gangmasters that they were unaware of compliance with agency regulations, then a specific standard relating to the Regulations and equal treatment rights would be useful.

### **Responses against a change:**

The REC does not agree with the Standards covering the Regulations and comments the Regulations are designed to be enforced via Employment Tribunals with individuals pursuing claims as appropriate. The REC further states that it is seeing a lot of interest from labour users and clients further up the supply chain in engaging workers under the Regulation 10 (or "Swedish Derogation") model and observes that, in the near future, it is possible that the GLA could be inspecting sites where direct employees, temporary agency workers and workers operating under Regulation 10 contracts as employees of the labour provider are working side by side. The REC considers that the GLA simply does not have the requisite expertise (nor the resource) to effectively police Regulations in such complex situations.

The REC further states that the Regulations is based on statutory minimum pay and holiday allowances being met - and thus on workers not being treated unfairly or exploited in the first instance - the REC feels that for the GLA to proactively monitor the establishment of comparators, qualifying periods and equal treatment will divert a significant amount of resource away from the Authority's core function: the protection of vulnerable workers from serious exploitation.

Reliance Employment considers including the regulations in the Standards would be premature as there is a lack of clarity about them.

The Cordant Group PLC does not think the Standards should cover the Regulations. The Group states that the Regulations are far too complex and should be dealt with by the Employment Tribunals.

NFUS does not think the Standards should cover the Regulations and comments that the matter is outside the GLA's remit.

### **Other comments:**

The NFU has no objection in principle. However, the NFU express caution that additional time spent by the GLA inspecting conditions between agency and directly recruited staff should not divert focus away from preventing and investigating serious exploitation allegations. The NFU also comment that if the GLA intends farmer's employment records on site then the Regulations should not be covered in the Licensing Standards.

The Fresh Potato Suppliers Association considers the Standards should cover the regulations in time and suggests the matter should be considered again in any future review.

Wychavon District Council query whether smaller companies have until 2015 to comply with the Regulations.

**11. Do you think the Standards should include requirements relating to the changes in pensions law?**

**Responses in favour of a change:**

The ALP considers this should be included and explicitly stated under Standard 2.3.

The TUC believes the standards should be amended to reflect the upcoming changes in pensions law. The TUC states that regardless of the later staging date for small firms, workers should be made aware at the earliest possible opportunity of their new entitlements under the pensions system.

The FPC and UCATT support including the new pension arrangements in the Standards.

Wychavon District Council supports the proposal and notes smaller businesses will have until 2015.

The NFU has no objection in principle to the inclusion of requirements relating to the changes in pensions law within the standards but would welcome clarity on how the GLA would monitor compliance with these requirements. The NFU comments there is a risk that additional checks and requirements to the standards could lengthen and burden the inspection process.

KLARS supports including something in principal but question whether it would be practical. KLARS comments that many workers change agencies regularly which may present issues with this requirement. KLARS observes that zero hours contracts may be an issue. KLARS also express concern at how the cost for the pensions requirements will be met.

The Fresh Potato Suppliers Association supports including the pension requirements in the Standards.

**Responses against a change:**

The REC does not support including requirements relating to the changes in pensions law in the Standards on the grounds that the Pensions Regulator will proactively monitor compliance and individual workers can appeal to TPR if they believe their employer is not meeting their pension obligations.

Concordia disagrees with change and comments few Concordia workers would qualify due to only being in the UK for 3 – 6 months.

Reliance Employment comments that it would be premature to include any such requirement.

The Cordant Group PLC does not think the Standards should cover the changes in pensions law and claims such a change would create unnecessary burden as businesses will be required to provide the same information to two regulators.

NFUS does not think the Standards should cover the Regulations and comments that the matter is outside the GLA's remit.

**12. Do you think there are any standards which could be removed in order to better focus the GLA's work?**

**Responses against removing Standards:**

The ALP does not think any standards should be removed but comments that 1.1, 6.4, 7.3 and 7.4 could be made clearer.

The TUC, FPC, REC and KLARS do not think any standards should be removed.

**Other comments:**

Wychavon District Council welcomes questions 12 and 13 as it considers they imply a refocusing of work on the labour provider.

The Cordant Group PLC recommends that where a Standard is drawn from existing legislation and another regulatory body has responsibility, the GLA must consult with that body to avoid regulatory creep. The Cordant Group PLC does not believe that this is always the case.

NFUS considers the GLA's work should be more tightly focussed.

**13. Do you think any of the scores associated with the standard should be reclassified?**

**Responses supporting reclassification:**

The ALP and REC consider there are matters within standards 4.1 (Quality of Accommodation) and 6.4 (Transport) that should not be classed as "Critical". These standards should be redrafted to make this clear.

The TUC and UCATT believe Standard 5 on Working Hours should be reclassified as critical as forcing workers to work longer with limited rest can result in serious incidents or injury and cause health and safety problems.

The TUC and UCATT also consider standard 6 should be classified as "critical". UCATT comments that when served with a prohibition or enforcement notice by the Health and Safety Executive, the GLA should consider withdrawal of the licence until the workplace is made safe and that the standard should make it appropriate for those holding licence to make workers aware of method statements and risk assessment of the type of work that will be carried out, any failure to do this should result in a critical score. The TUC and UCATT also comment that, under the Conduct Regulations 2003 an agency worker is entitled to receive a copy of the health and safety assessment carried out by the hirer. The TUC believes this should also be reflected in the GLA Standards.

**Responses against reclassification:**

The FPC and KLARS do not think any scores should be reclassified.

The Fresh Potato Suppliers Association considers the scores are now generally understood and seem appropriate.

**Other comments:**

The Cordant Group PLC recommends that the GLA exercise discretion as the number of points scored, with Standards having a sliding scale and a maximum total.

**14. Do you agree that the GLA should adopt an alternative approach for dealing with breaches of standard 2.2 and 3.3 by adding a condition to the licence requiring the licence holder to pay amounts owed to the workers within a specified timescale?**

**Responses in favour of a change:**

The ALP supports the proposal and would seek further clarification on whether the GLA has the power to apply the sanction, the circumstances it would apply and how far back it would apply.

The TUC supports the principle that the GLA should be able to impose a licensing condition requiring the licence holder to pay amounts owed to the workers within a specified time limit. The TUC also comments that in situations where NMW rules have been breached, the GLA should work jointly with the HMRC NMW enforcement team to ensure that any NMW arrears are paid at the current NMW rate and that the labour provider is also required to pay a civil penalty.

The REC supports this proposal comments that whilst there are some operators in the GLA licensed sector who do wilfully seek to underpay workers and who should face revocation, there are also many conceivable instances where payroll miscalculations, administrative errors or labour users consistently withholding payment to the provider could result in late payment or underpayment to a worker. The REC considers allowing a period of flexibility during which licence holders can correct such errors, pursue labour users for withheld payments, and make good on any outstanding amounts owed benefits not only the license holder, but the wider supply chain, including the workforce, who will remain in employment while the pay dispute is settled.

KLARS supports the proposals and suggests that gangmasters be required to a reserve amount of money for workers.

Wychavon District Council broadly supports the proposal.

The Fresh Potato Suppliers Association states that the role of the GLA is to protect workers through the regulation of all labour providers and comments that the proposal appears to be a logical step.

The Cordant Group PLC supports the proposal and considers it is more in keeping with the GLA Enforcement Policy and the Regulators' Compliance Code.

**Responses against a change:**

NFUS considers these Standards have no legislative basis.

**Other comments:**

The FPC express concern at how the GLA would regulate such a measure.

The NFU considers the proposal may have a positive impact on labour users but would appreciate further clarity from the GLA as to how it would regulate this condition and satisfy itself that workers had received any outstanding wages.

UCATT comments that the GLA must be able to put in a standard that ensures workers receive their wages in a reasonable time.

**15. Do you think there should be any change to rule 5 of the Gangmasters (Licensing Conditions) Rules 2009?**

**Responses in favour of a change:**

KLARS supports a change to rule 5.

**Responses against a change:**

The Cordant Group PLC disagrees with changing Rule 5 and express concern that any change could extend the circumstances in which a licence expires.

**Other comments:**

The ALP considers the GLA should have scope to allow a business to transfer a licence where advance notice of legitimate business structure changes is provided. The ALP also considers that licences should be transferred where advance notice of VAT changes for legitimate business reasons is provided.

The TUC takes the view that a licence must expire where the legal identity of the labour provider changes and that this rule should clearly apply where there is a change to a Company House number.

The REC advocates a greater degree of flexibility around the expiration of a license in those instances where a company is dissolved or wound up and the business is transferred to an existing or successor company within an associated or group company - particularly when the Principal Authority remains the same (i.e. a group restructuring) - and similarly where a company is sold to another entity, but the Principal Authority remains in place. The REC comments that in these instances - where there is effectively no change or interruption to the day-to-day management and operations of the company - it would benefit workers, labour users and labour providers alike if the GLA could grant a period of flexibility during which they confirm the PA has indeed remained in place, without forcing the license holder to cease operating in the GLA sectors by revoking their licence.

The FPC comments that Standard 1.4 makes clear the requirements regarding the individual legal entity and the circumstances under which a licence expires. The FPC

does not see any need to change Rule 5 which sets out the timeframe in which changes should be notified to the GLA.

Wychavon District Council comments that it is important that there is a clear link between the licence and the entity it was awarded to.

The Fresh Potato Suppliers Association comments reducing tax avoidance would be a positive step.

NFUS comments that a change could only be done by amending the legislation and considers further explanation is required.

**16. Do you agree with merging Licensing Standards 5.3 and 5.4?**

**Responses in favour of a change:**

The ALP, FPC, Wychavon District Council, REC, KLARS and the Cordant Group PLC agree with the proposal.

Concordia does not object to the proposal as long as the explanatory text to Standard 5.4 remains the same.

**Responses against a change:**

The TUC and UCATT comment that the these standards refer to different areas and must be kept separate.

**Other comments:**

NFUS considers the Standards appears to be outside the scope of the GLA.

**17. Do these Standards as worded properly reflect the legal rights for Trade Unions and their members?**

**Responses agreeing wording reflects legal rights:**

NFUS, the REC and KLARS considers the wording properly reflect rights. NFUS comments the matters appear to be outside the scope of the GLA.

The TUC and UCATT comment that Standard 5.3 should be extended to include other rights of being a member of a trade union and that explanatory notes should also be added which make clear that under this standard:

*All workers have the right*

- *Not to be refused work because of their trade union membership*
- *Not to suffer detriment because of their trade union membership or activities. This includes protection from dismissal*
- *Not to be offered a financial inducement to opt out of trade union membership or from a collective agreement*

*It is unlawful for a gangmaster to discriminate against a worker on the basis of information contained in a blacklist*

## **General Comments**

### ***Basis for Standards***

NFUS comments that the content Standards is wider than the requirements contained in the Gangmasters (Licensing Conditions) Rules 2009 and queries whether the GLA is exceeding its mandate.

### ***GLA Strategy***

The TUC believes that the Standards should continue to encompass all the legal rights to which agency workers are entitled and considers that the review should ensure equal treatment rights are incorporated into the Standards.

The Fresh Potato Suppliers Association also argues that preventing the exploitation of workers should be the sole aim of the GLA and consideration should be given to extend the remit of the GLA to all warehouse operations.

NFUS considers that any activity which the GLA undertakes that goes beyond what it was intended to under the Act and Rules adds cost to its operation. The NFUS comments that, as the GLA's costs are passed on to licensees (and therefore labour users) through licence fees, this means fees are likely to include charges for enforcement activity that would otherwise not attract a charge. The NFUS expresses a concern about the impact of double enforcement on business.

Reliance Employment observes that simplification of the rules would limit opportunities for loopholes and allow the GLA to concentrate on tackling rogue operators.

### ***GLA Licence Decision Making Process***

The ALP recommends the a "minded to" stage is introduced into the Licensing Decision process. This would allow a labour provider to be informed of allegations and given the opportunity to respond before a decision is made. The ALP consider the current GLA process is contrary to the Regulators' Compliance Code, which at section 8.2 states:

*"When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action."*

The ALP recommends the GLA introduces more proportionality into its decision making process by using ALCs where the fail score exceeds 30 points whether the breaches are relatively minor or technical in nature. If the licence holder fails to comply, then the licence may be revoked under Standard 1.3.

### ***Change to Active Check***



The ALP considers the Active Check notifications on licence holder be amended so that unreasonable commercial risk is not caused.

### ***Communication and Guidance***

The NFU expresses concern at the scale of impact section 4(5)(a) of the Gangmasters Licensing Act may have for farmers. The NFU would like to agree a clear interpretation and clarification of this section of the Act for the agriculture and horticulture sector with Defra and the GLA.

The FPC requests any changes be communicated well in advance of them being implemented.

The Cordant Group PLC comments the GLA should refrain from publishing or publicising decisions to revoke without immediate effect and similarly any re-application for a licence. The Group also believes the GLA should engage with licence holders by setting out concerns and giving opportunity to respond before a decision is taken. The Group considers this would narrow issues ahead of an appeal.

### ***Impact on Labour Users***

Wychavon District Council expresses concern that labour users are easier targets than some labour providers. The Council comments that labour users would like the GLA to be able to give concrete advice on whether a labour provider is fully compliant.

NFUS also expresses concern about the impact a GLA inspection has on a labour user.

### ***GLA Powers and Remit***

UCATT comments that it supports the role that the GLA plays in enforcing minimum standards protecting workers in the food processing, shellfish and forestry industries and argues licensing should be extended to cover construction.

The Fresh Potato Suppliers Association consider that the GLA should have the ability to establish the work status of employees and should have similar powers to the UK Border Agency. The Association also argues the GLA should have complete access to a labour provider as avoidance is often practised.

Housing and Migration Network highlights the findings in its forthcoming report on private rented housing and comments that the GLA could strengthen the accommodation requirements in its licensing standards through considering related problems such as fees paid to gangmasters which create an incentive to get rid of workers after a few months to make way for new workers and paying new fees. The Network also considers the remits of the GLA and EAS should be brought into line in relation to migrant workers and accommodation. The Network also comments that there are issues about accommodation element of the minimum wage being inadequate to secure reasonable accommodation.

### ***Comments on Individual Standards***

The TUC comments that there is an error in Standard 3.2. The GLA currently ensures that labour providers are prohibited from loaning agency workers money and requiring interest to be paid on these amounts. The TUC states that the standard does not currently reflect this

and suggests substituting “and” in the place of the “or” in the penultimate bullet point on page 21 of the Standards.

The TUC comments that Standard 7.1 makes it a requirement that where a worker is provided with accommodation by the labour provider or labour user, they cannot be tied into a tenancy notice period longer than a maximum of 10 days. The TUC believes it would be useful to cross reference this information in the standard above, so that union reps or workers trying to find the minimum standards of accommodation that a labour provider must comply with are also made aware of this relevant information.

NFUS considers some of the “fit and proper” factors are open to interpretation. NFUS also queries whether Standard 1.2 should be critical or whether the GLA should simply require the documentation before a licence is issued.

### ***Other comments***

PCS endorses the TUC submission.

KLARS express concerns that some agencies only issue online payslip, which may be deleted after 3-4 weeks, despite many workers not having internet access. KLARS also comments that agencies often stop providing work altogether to pregnant workers instead of identifying viable alternatives.

## **Annex A: List of Respondees**

Association of Labour Providers (ALP)
Concordia
Cordant Group PLC
Fresh Potato Suppliers Association
Housing and Migration Network
King's Lynn Area Resettlement Support (KLARS)
NFU
NFU Scotland (NFUS)
Public and Commercial Services Union (PCS)
Recruitment and Employment Confederation (REC)
Reliance Employment
TUC
UCATT
Wychavon District Council