

MINUTES OF THE TWENTY-SIXTH BOARD MEETING OF THE GANGMASTERS LICENSING AUTHORITY – 21 APRIL 2010 HELD AT NATURAL ENGLAND, NOTTINGHAM

Present:

Paul Whitehouse	Chairman
Jeremy Cowper	Defra
Joanne Young	ALP
David Camp	ALP
Jane Mordue	CAB
Sharon Cross	NFU
Phil Hudson	NFU
Marshall Evans	REC
Gillian Mills	SAGB
Hannah Reed	TUC
Carl Cresswell	BIS
Robin Wythes	HMRC
David Coackley	HSE
Russ Hardy	Police Superintendents Association
Steve Kemp	GMB
Paul Bettison	LACORS
John Gorle	USDAW
Garry Gibson	DWP (on behalf of Rebecca Murphy)

In attendance:

Ian Livsey	Chief Executive
Ray Dawson	Chief Operating Officer
Darryl Dixon	Director of Strategy
David Nix	Head of Policy and Communications
Almut Gadow	Policy Officer

Observers:

Sue Coe	Equality and Human Rights Commission
Anne Fairweather	REC
Gerry Franks	LPC
Shayne Tyler	Manor Fresh Ltd

Apologies:

Nigel Jenney, FPC
Stephen Ferris
John Speers, Dardni
Peter Toner, Dardni
Simon Chesterman, ACPO
Chris McCann, Asda
Lewina Farrell, REC
Chris Kaufman, Unite
Jeremy Oppenheim, Home Office
Ronald E Vass, Scottish Government

1	Introductions	Sue Coe, Senior Legal Officer of the Equality and Human Rights Commission, welcomed as a speaker
2	Apologies	Nigel Jenney, FPC Stephen Ferris, NAO John Speers, DARD Simon Chesterman, ACPO Chris McCann, BRC Jeremy Oppenheim, UKBA Ronald Vass, Scottish Government Graham Bruce, NFUS
3	Minutes of the last Board meeting	Note: <ul style="list-style-type: none"> minutes agreed Update on Defra's Arm's Length Body Review: the review suggested no changes to arrangements for gangmasters licensing
4	Declarations of Interest	Note: <ul style="list-style-type: none"> none
5	Declarations of urgent business	Note: <ul style="list-style-type: none"> clarification on an aspect of 2010 Exclusions Regulations
6.1	Defra Presentation: Food 2030 – Defra	Note: <ul style="list-style-type: none"> presentation noted by the Board NFU commended Defra for producing this strategy and the thorough work that went into its development. NFU hopes that all relevant government departments will now work to implement the strategy. Food 2030's recognition of agriculture and food industry as sectors of national importance is welcome; it would also be desirable for the sector to be recognised as requiring specialist skills and offering career paths.
6.2	EHRC Presentation: Inquiry into the Meat and Poultry Processing Sectors	Note: <ul style="list-style-type: none"> presentation noted by the Board Inquiry identified widespread mistreatment and exploitation of workers. Inquiry also found that there are many good employment businesses. Industry is looking to GLA to protect workers and good businesses from effects of bad practice. A third of workers reported they would not complain about working conditions under any circumstances, for fear of losing work. BIS aims to reach the majority who do not rule out complaining through continued promotion of the Pay and Work Rights Helpline. EHRC is concerned about effects of bad practice not only on individual workers but also on community cohesion, including perceptions that barriers to the employment of local workers exist. Unions are concerned about evidence that agency recruitment leads to discriminatory outcomes. REC is currently working with employment businesses to help hirers achieve a more diverse workforce, and notes EHRC has never taken a position on practices such as recruiting only through agencies in another country. Workers frequently mentioned lack of PPE. Failure to provide PPE is a breach of the law every instance of which should be reported to HSE.

		<p>HSE is currently producing new guidance on PPE for its inspectors.</p> <ul style="list-style-type: none"> Workers were often unclear about their employment status, and many who stated they were self-employed did not appear to be. LPs interviewed raised particular concerns over travel and subsistence schemes which many perceived as an abuse of existing legislation, creating an uneven playing field and unfair competition to what they regarded as lawful and ethical practices, as well as depriving workers of entitlements to contributory benefits and undermining GLA's indicative charge rates. Since EHRC fieldwork, the GLA has issued a Brief on travel schemes and HMRC/BIS are currently consulting on these schemes and NMW. <p>Action:</p> <ul style="list-style-type: none"> HMRC/BIS to report on outcomes of travel scheme consultation at June Board meeting.
6.3	Operations Update	<p>Note:</p> <ul style="list-style-type: none"> The Board is dismayed by the low sentences imposed for offences under the Gangmasters Licensing Act. Very low sentences can undermine the credibility and effectiveness of the licensing scheme. The recruitment industry considers that sentences for unlicensed gangmasters have little deterrent effect if fines for convicted offenders are lower than the licence fee. In the shellfish industry, fines for offences under the Gangmasters Licensing Act are a small fraction of the fines levied for breach of regulations in the fishing industry. The Board is pleased to note the increase in enforcement activity. Unlike compliance inspections, the investigation of an offence can occupy several officers for several weeks. This is why the number of compliance inspections is falling despite the increase in frontline staff. Industry perception is that cases still take long to progress from investigation to conclusion. One possible response would be for GLA to publicise its actions before legal process is exhausted in clear-cut cases. <p>Action:</p> <ul style="list-style-type: none"> The Board asked PW to ensure concerns about low sentences are communicated to the Lord Chief Justice, who chairs the Sentencing Guidelines Council. GLA to present at next meeting a paper on earlier use of publicity. GLA to circulate map of frontline staff and organogram to Board members.
7.1	Business Plan	<p>Note:</p> <ul style="list-style-type: none"> Approved Business Plan will form the basis of performance reporting for the next 12 months; targets can be reviewed at quarterly Board meetings. Targets around worker exploitation and working conditions in sector are both the most important and the most difficult to measure. Measuring the large number (30 approx) of targets contained in the plan should not become an end in itself at the expense of other work. As some performance indicators are to be measured for the first time this year it will become clearer over time which indicators are most useful and worth retaining.

		<ul style="list-style-type: none"> • It would be very useful to quantify the amount of tax revenue paid to the Exchequer as a result of GLA activity. • The recent creation of the Marine Management Organisation provides an opportunity for the GLA to become more fully engaged with Shellfish sector.
7.2	Budget	<p>Note:</p> <ul style="list-style-type: none"> • Approved • GLA/Defra are mindful that budget cuts at shorter notice could occur
7.3	Transport charges and deductions	<p>Note:</p> <ul style="list-style-type: none"> • ALP agrees that GLA must follow HMRC interpretation of NMW rules, according to which transport deductions reduce pay for NMW purposes. • Excessive deductions and charges can be a source of major exploitation. The location of workplaces in the GLA regulated sector makes this form of abuse more likely in the sector. Whilst appreciating the need for consistency across government departments unions would welcome a cap on permissible transport charges and deductions. • While many labour providers offer transport at a loss, others make substantial profits from it. Labour users would therefore welcome guidance on what level of transport charges should be considered reasonable. ALP can provide calculations of cost of providing transport. <p>Action:</p> <ul style="list-style-type: none"> • GLA to raise with HMRC/ BIS. • GLA/HMRC/BIS to update Board at next meeting.
7.4	Common Governance	<p>Note:</p> <ul style="list-style-type: none"> • Agreed
8.1	Corporate Plan	<p>Note:</p> <ul style="list-style-type: none"> • Approved subject to minor corrections discussed
8.2	ARC update	<p>Note:</p> <ul style="list-style-type: none"> • ARC has reviewed reports from internal and external auditors, income expenditure budget and risk registers. No issues to report. • The Board delegated to ARC its authority to approve annual accounts.
8.3	Implementation of Key Reports' Recommendations	<p>Note:</p> <ul style="list-style-type: none"> • Noted <p>Action:</p> <ul style="list-style-type: none"> • Board members to submit any further comments by email within a month.
8.4	Employment Status	<p>Note:</p> <ul style="list-style-type: none"> • Unions consider it imperative in terms of the GLA's overall effectiveness that GLA inspections test workers' employment status. • The law of employment status is complex, at times contradictory, and ever changing. This confusion benefits neither workers nor business. • No single test or set of tests conclusively proves a worker's employment status. Rules differ between employment, tax and social security law. Even within employment law tests can differ depending on the employment right at issue. • GLA will meet other relevant government departments to ensure a common understanding is achieved. It remains open to further discussions with trade associations, unions and BIS about criteria used

		to determine employment status.
8.5	GLA EU activity	Note: <ul style="list-style-type: none"> • Noted
8.6	Liaison Group update	Note: <ul style="list-style-type: none"> • Minutes noted by the Board • PW confirmed as chair of all three liaison groups
9.	Any Other Business	Note: <ul style="list-style-type: none"> • Under the Gangmasters Licensing (Exclusions) Regulations 2010, the processing or packaging of produce in wholesale establishments remains outside the scope of the gangmasters licensing scheme.
10.	Close and date of next meeting	16 June 2010, Nottingham