

GLA13/8.5 Overseas Labour Providers Issues – Progress Report

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BOARD PAPER REFERENCE – GLA13/8.5 – Overseas Labour Providers Issues – Progress Report

Issue

1. This paper provides an update on progress with addressing the issues identified in Board Paper GLA12/8.7 for licensing labour providers based outside the UK.

Recommendations

2. The Board is invited to note this update.

Background

3. Board paper GLA12/8.7 identified a range of issues to consider when taking forward the licensing of labour providers based outside the UK. These issues were split between three categories: Policy, Operations and Other. This paper notes the latest position with these issues. A number of the issues are ongoing and will be discussed further with the Board members who have previously expressed an interest in helping to resolve them.
4. There is clear evidence that in many cases the exploitation of workers begins in the country of origin. It can take the form of unlimited job-finders' fees and inflated administrative charges for questionable purposes tied to high interest loans, and to misleading information on the available hours of work and the nature and conditions of employment. This is a significant and serious area of exploitation.

Policy

Issue 1

To determine whether an overseas agency is acting as a gangmaster or an agency

5. Section 4(2) of the Gangmasters (Licensing) Act 2004 states 'A person ("A") acts as a gangmaster if he supplies a worker to do work to which this Act applies for another person ("B").' There is no definition of "supply" in the Act. However, as the licensing scheme seeks to protect worker, the GLA interprets supply broadly to maximise protection.
6. Therefore, anyone involved in the supply of workers who is not directly employed by a licensed labour provider should be licensed in their own right. The GLA considers supply would include introducing workers to a labour provider and labour user by way of providing workers' CVs or completed application forms.
7. This means anyone based overseas (regardless of how they describe themselves) will need a licence if they supply workers direct to an end user or to another labour with the regulated sector. Therefore labour users and labour providers should be supplied workers from licensed overseas operators. This point has been promulgated to all licence holders and current applicants.

Issue 2

Whether a licence can be required in EU states where they have their own licensing regime?

8. The GLA is currently assessing the comparability with other Member States licensing systems. Initial findings indicate most do not match the rigour and effectiveness of the GLA scheme. In light of this, the GLA position is that labour providers should apply for a licence even if they are licensed in their home country.
9. However, the GLA is considering how other Member States licences could factor into the GLA scheme. For example, exchanging information between the GLA and the relevant authority in another Member State. GLA officials have discussed this with the Lithuanian Government and further discussions with other Member States are planned.

Issue 3

Should we allow a period of grace for EU labour providers to come forward for licensing whilst we settle issues around the licences issued by other EU states?

10. While it is now an offence to act as a gangmaster without a licence and to make an arrangement with an unlicensed operator, it may be difficult to prosecute given the potential low level of awareness with labour providers based overseas and the unresolved nature of some of the issues identified in this paper.
11. The GLA is seeking to address the apparent low level of awareness through discussions with authorities in other countries as well as through contacting representative organisations. The GLA is communicating this message to UK labour users and labour providers who use overseas operators.
12. The GLA does not consider it appropriate to impose formal periods of grace for overseas labour providers. Those who need a licence should come forward immediately. While effective enforcement against unlicensed overseas operators may be difficult at this stage, this activity will increase accordingly as the awareness campaign takes effect.

Issue 4

Non UK practices for recruitment are incompatible with the licensing standards e.g. charging for work finding services

13. In assessing comparability between the GLA scheme and the systems in other Member States (see Policy Issue 2), the GLA is also seeking to clarify which conditions prohibited in licensing standards are permitted in other Member States. Where a particular restriction in the licensing standards is acceptable practice in another Member State, the GLA will need to consider how the standard should be applied. However, the GLA generally expects compliance with all the standards if they are applicable.

Issue 5

How to deal with overseas labour providers who supply directly to labour users in the UK?

14. The GLA will work with supermarkets to raise awareness labour users in their supply chain that any labour provider needs a licence irrespective of where they are based. This will be supported by communicating this message through press and media activities.
15. Policy Issue 6 summarises the current thinking for tackling overseas labour providers who do not come forward for licensing.

Issue 6

Prosecution Policy for overseas labour providers

16. There are practical difficulties with prosecuting unlicensed labour providers based outside the UK. The GLA will work with the authorities in the country in question to explore what options are available for taking action against unlicensed operators.
17. Notwithstanding the foregoing, it is important to note that the GLA will not hesitate to prosecute UK labour users who make arrangements with unlicensed overseas labour providers. This will be done regardless of any claims by the labour provider or their national licensing authority that they are exempt from the requirement to hold a GLA licence because they are registered or licensed in-country.

Operations

Issue 1

The application process

18. The applications received so far from overseas labour providers indicates that completing the application form does not present any serious obstacles. Therefore, at this stage, the GLA has not identified any need to make substantial changes to application process for overseas labour providers. Any difficulties in applying for a licence that may be experienced by an overseas labour provider will be handled on a case-by-case basis.

Issue 2

The application inspection process

19. Many overseas operators do not have an ongoing relationship with the worker – they only introduce them to a UK labour provider or labour user. Therefore, many of the licensing standards are not applicable. In conducting an application (and compliance) inspection, the usual interviews with workers are straightforward as they are UK based. The GLA can request all necessary records.
20. In the discussions with authorities in other Member States, the GLA is also exploring the options for co-operation and possible joint working for compliance and enforcement activities. However, agreeing and putting into place such arrangements may take time.

Issue 3

Developing relationships with overseas governments

21. The GLA has contacted the UK embassies in the countries who have the largest number of nationals working in the regulated sectors. The embassies have then facilitated contact with the relevant authority. GLA officials have so far met with the Lithuanian and Polish authorities. Further meetings are planned with other countries. Discussions have focussed on the issues outlined in this paper. The GLA is exploring how best to formalise arrangements for continuing co-operation with authorities in other countries (for example through MOUs).
22. As most overseas labour providers supplying into the UK are based in the EU, efforts have been focussed on making contact with authorities in the key Member States. However, contact may also need to be made with Russia and Ukraine.

Other issues

Issue 1

Whether the GLA will conduct business in other languages?

23. The GLA is preparing guidance for labour providers based outside the UK initially in Polish, Lithuanian and Latvian with additional languages to follow. This guidance is a compendium of the material already published.
24. Leaflets for workers has also been translated into Polish, Latvian, Lithuanian and Slovak.
25. The GLA will keep under review whether it is appropriate and cost efficient to provide other services in different languages.

Issue 2

The payment of fees

26. In processing applications from labour providers based outside the UK, the GLA accepts international credit transfers.
27. Board paper GLA12/8.7 noted concerns from overseas labour providers that the licence fee may be too high so many may not come forward. With this in mind, the impact of the fee levels on the number of overseas applicants will be monitored. However, it is important to have equity with the fee levels paid by UK based licence holders.