

GLA13/8.9 Providing Feedback to Informants on Information Received

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BOARD PAPER REFERENCE – GLA13/8.9 – Providing Feedback to Informants on Information ReceivedIssue

1. This paper explains the approach to be taken by the GLA on receipt of information suggesting illegal or exploitative activity by labour providers or labour users in the GLA area of responsibility.
2. The explanation will cover the following scenarios, as discussed at the October GLA Board meeting.
 - a) A worker makes an allegation against a licensed Labour Provider
 - b) An anonymous allegation is made against a licensed Labour Provider
 - c) An allegation is made against a licensed Labour Provider by a third party - i.e. a Labour User or other Labour Provider
 - d) After October, the GLA are informed of an unlicensed Labour Provider or Labour User using an unlicensed Labour Provider

Approach

4. The handling and analysis of information is undertaken in the same way for all four scenarios above.
5. When an allegation is made against any Labour Provider, irrespective of the allegation or its source, the GLA will:
 - Record the allegation in the Intelligence Management System and assess the information according to a nationally recognised intelligence appraisal system which evaluates the information according to:
 - the source
 - the potential quality of the information
 - the potential dissemination of the information
 - Identify any possible breaches of GLA Licensing conditions
 - Where possible, enhance the information in order to either increase its credibility, or disprove any allegations.
 - Determine whether the information relates to the remit of any other government department or Police Force, and if so, disseminate the information that is relevant to their responsibilities. Dissemination of information in these circumstances is provided for under section 19 of the Gangmasters (Licensing) Act 2004, or under section 29 of the Data Protection Act 1998.
6. Once recorded and evaluated, the allegation, along with other relevant information available, will feed into the GLA risk rating system. This will determine when a licensed Labour Provider will be considered for a Compliance Inspection, or an unlicensed Labour Provider would be investigated.

7. This analysis will ensure that the highest priority cases are selected for action when assessed against consistent and objective criteria. This analysis may also mean that not all allegations may warrant inspection or investigation. However, whilst it may not be appropriate for any action following an initial allegation, further allegations, possibly from different sources, which can be objectively verified from other information sources, may then result in inspection or investigation. All information therefore has a value but may not always be actionable when first received.

8. Priority cases for compliance inspection may result in notified or un-notified visits to re-assess compliance with the Licensing Standards.

9. Priority cases for investigation will necessitate further investigation, utilising the powers available to the GLA, potentially culminating in an interview under caution, and a prosecution in appropriate circumstances.

Provision of Feedback

10. Unless informants get the impression that the GLA welcomes, values, is grateful for, and **will actually do something with** information provided, they will be less inclined to come forward again, and are unlikely to encourage others to do so. Therefore, recognising the possibility of malicious and/or anonymous information (including that received through Crimestoppers), the general approach of the GLA will be to acknowledge with thanks any information provided at the time, and to stress the value of any intelligence received - however significant it may turn out to be. This acknowledgement will be by the means and in the manner most appropriate, as judged by the Intelligence Team recipient. In rare circumstances where it may be judged that acknowledgement would not be possible without endangering or compromising the source or the prosecution, no acknowledgement will be made, although the circumstances will be recorded. In addition, as a general rule the GLA will provide feedback to the informant on how the information provided has been used. This includes cases in which there is no particular outcome. It is for the Intelligence Team to decide the most appropriate timing and means of doing this. Again, in rare cases this may not be done.

The nature and timing of feedback requires careful control to ensure that it does not:

- Breach legislation
- Undermine effective compliance or enforcement action

11. A critical point in the provision of any feedback is therefore when the information enters the public domain.

Compliance inspections

12. As compliance inspections may need to be un-notified it is inappropriate to provide feedback of the GLA's intended action as this may be disclosed by the complainant, over whom the GLA has no control, and undermine the effective and objective inspection of the labour provider. It is also inappropriate to disclose a notified visit as this information may also be used by the complainant for other means beyond the GLA's control.

13. Where a compliance inspection results in the revocation of a licence it will be removed from the public register, and appear on the list of revoked licence holders. At the initial point of revocation there may be an appeal. Until the period for an appeal to be lodged has elapsed, or the appeal has been heard, such decisions will not be formalised and result in the amendment to the register. Once a revocation has been formalised it will be in the public domain. Furthermore, any labour users who have registered (or other individuals who have similarly registered) for an active check of the labour provider will then receive a notification of the revocation. At that point it would be appropriate to provide feedback to a complainant. Such feedback should simply restrict itself to a notification of the revocation decision, but not the detail (NB: nor is this provided in the active check process).

14. Where a compliance inspection results in the continuation of a licence, with or without additional licence conditions (ALCs), it would not be appropriate to provide a specific response. This is because whether a labour provider has ALCs on their licence or not is a matter of confidence between the GLA and the labour provider. It may have inappropriate and unintended commercial consequences if that information is disclosed to a third party. There may also be legal challenges to the appropriateness of the GLA's approach in such circumstances. Therefore, at the conclusion of the inspection, in this situation, the feedback provided should restrict itself to advising that appropriate action had been taken; that the GLA would continue to monitor the situation (i.e. through its risk rating system); and to thank the complainant for the information.

Enforcement investigations

15. Once a case is taken on by Enforcement it is essential that the investigation is not prejudiced by any inappropriate disclosure of the GLA's activity. This could not only undermine the GLA's ability to effectively prove criminal offences but also place the safety of the GLA's officers at risk. This later risk could occur where even an acknowledgement of the allegation, stating that the GLA will take whatever action may be appropriate, may lead to the complainant using that information to make others aware, including the labour provider, against whom the complainant may have other agendas. This is also important because it should be recognised that the allegation may also be spurious in the hope of action by the GLA against the complainant's competitor, in order to disadvantage them competitively.

16. Once an investigation has been concluded, and has led to a prosecution, the details of the case will have entered the public domain. At that point feedback that the GLA had prosecuted the labour provider, and the sentencing outcome, could be provided. This approach would be consistent with Recommendation 9 of the Macrory report for the Better Regulation Executive (Regulatory Justice: making sanctions effective: www.cabinetoffice.gov.uk/regulation/penalties), which proposes that: "Each Regulator should publish a list on a regular basis of its completed enforcement actions and against whom such actions have been taken".

17. In the circumstances where there had been a joint investigation it would not be appropriate to provide feedback until the outcome of the investigation by both parties. The action taken by the partner organisation should not be disclosed, as this is a matter for that organisation to consider under their procedures. A request for that information by a complainant would need to be closed by advising the complainant to contact the partner organisation.

18. If the GLA's investigation was inconclusive, or confirmed that there was no offence, it is not appropriate to provide feedback other than along the lines set out in para. 14 above, and for the same reasons therein. Furthermore, if the investigation was inconclusive the information provided may still be under investigation by a partner organisation, or indeed by the GLA if further information is received. Any feedback, other than of the general nature, in line with para. 14, could undermine the ongoing or future investigations by the partner organisation or the GLA.

Providing Feedback – resource considerations

19. The resources required to acknowledge information provided is minimal. However, the provision of feedback will have a more significant resource impact on the GLA. This has yet to be assessed.

Conclusion

20. In general, information provided to the GLA will be welcomed and acknowledged at the time of its receipt. In addition, normally some form of feedback will be given some time later, depending on if and how the information provided leads into prosecution or other action.