



# GLA14/6.1

## Interim Strategic Assessment

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| <i>Author: Mike Wilson</i> |                |                    | <i>Director: Mike Wilson</i> | <i>Approver: GLA Board</i>                             |
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|                            |                |                    |                              |  |

# CONTENTS

## PART 1

|       |                             |   |
|-------|-----------------------------|---|
| 1     | Executive Summary .....     | 1 |
| 1.5.1 | Intelligence .....          | 1 |
| 1.5.2 | Licensing.....              | 2 |
| 1.5.3 | Compliance .....            | 2 |
| 1.5.4 | Enforcement.....            | 2 |
| 1.5.5 | Communications .....        | 3 |
| 1.5.6 | Policy.....                 | 3 |
| 1.5.7 | Human Resources.....        | 4 |
| 1.5.8 | Finance .....               | 4 |
| 1.5.9 | Information Technology..... | 4 |

## PART 2

### INTERIM STRATEGIC ASSESSMENT

|                                      |    |
|--------------------------------------|----|
| Introduction .....                   | 5  |
| Aim.....                             | 5  |
| Method .....                         | 5  |
| Background .....                     | 6  |
| The Labour Supply Chain.....         | 7  |
| Individual Workers .....             | 7  |
| Agents .....                         | 10 |
| Labour Providers.....                | 12 |
| Sub-Contracted Labour Providers..... | 16 |
| Labour Users .....                   | 16 |
| Wholesalers and Markets.....         | 18 |
| Retailers and Other End-Users .....  | 18 |
| Customers .....                      | 19 |
| Other Stakeholder Groups .....       | 20 |
| The Olympics.....                    | 21 |
| Discussion .....                     | 21 |
| Summary .....                        | 30 |

## **PART 1**

### **1 Executive Summary**

- 1.1 This paper proposes an interim top level strategy for the GLA, to be used as a framework for planning and operations. The paper:
- paints a picture of the labour supply chain;
  - examines the chain to identify where exploitative practices and fraud appear to take place, and their nature and extent;
  - reviews the reasons for exploitation and fraud, and the opportunities provided by the supply chain structure and the relationships within it to reduce the extent of illegal activity;
  - identifies and prioritises the broad types of activity – the operational themes - that if addressed are most likely to achieve the GLA's objective of curbing exploitation in the industry; and
  - provides a reference framework for Policy and Communications development, Compliance and Enforcement activities, and IT and HR strategies.
- 1.2 The paper concludes that the GLA should concentrate its limited resources on particular parts of the labour supply chain to have the best chance of succeeding in meeting its objectives of curbing worker exploitation and fraud on the Exchequer. Importantly, the paper concludes that enforcement (i.e. operations against illegal activity) is far more effective than regulation (i.e. licensing and routine inspections) in achieving the GLA's objectives.
- 1.3 The paper acknowledges that the nature and structure of the labour and food supply chains lend themselves well to exploitation. In monetary terms the bulk of that exploitation takes the form of tax fraud rather than by underpayment, illegal deductions and other forms of worker exploitation. However, the financial exploitation of workers is a serious and continuing problem.
- 1.4 Worker exploitation begins in the country of origin. The paper recognises that until such time as arrangements are in place for the effective regulation of overseas LPs, the GLA should concentrate on UK-based LPs and LUs. The paper identifies well-publicised enforcement – disruption, refusal, revocation and prosecution - as the most powerful deterrent to LPs and LUs acting illegally. As a particular approach to Compliance, the paper advocates concentrating on actual rates paid by LUs to LPs, cross-checking contracts, pay and VAT records and worker interviews, and taking action where there is evidence of unfeasible rates, including the sharing of concerns with retailers.
- 1.5 The following specific recommendations are made:
- 1.5.1 **Intelligence**
- a. Intelligence must be able to lead to immediate (eg. same hour/day) tasking.

- b. Intelligence must be seen to be welcomed, valued and acted upon. Acknowledgement and feedback will be provided as appropriate.
- c. The value of carrying out additional checks should be assessed, with particular emphasis on PNC and Companies House checks, and checks on additional people (other than Directors, the Principal Authority and others who will act as gangmasters). Identified requirements to be put to Licensing for incorporation in a re-designed application form, to CMB as a process change request and to EMB as a business case.

### **1.5.2 Licensing**

- a. To lead on a review of the application form, extending the range of people covered, as indicated by Intelligence and bringing in additional information as requested by Communications. Produce business case.
- b. To consider the need for foreign languages on the Help Desk as input to the study recommended at paragraph 1.4.7.b below.

### **1.5.3 Compliance**

- a. To concentrate on overt intelligence-led opportunistic operations against illegal activity as guided by this paper, rather than routine inspections and regulation by rote. The immediate priority is for action that will lead to refusal or revocation of licence, and/or prosecution of LP and/or LU, particularly where there is linkage to a major retailer. Communications to be kept in the picture to pick up on publicity opportunities. This action to be taken jointly with GLA Enforcement and with other government departments (OGDs) as appropriate.
- b. A programme should be instituted aimed at ensuring LPs and LUs are working close to the published Defra guidelines for feasible minimum rates. To be done by cross-checking actual rates paid as shown by the contract, with rates paid according to the payroll records, HMRC and worker interviews.
- c. 'Routine' AIs and CIs should be carried out to the available capacity of resources, guided by CRR. Evidence of cash payments should attract particular attention.
- d. Ignore overseas LPs, but take action against UK-based LPs who are found to be using them, under 1.3 above.

### **1.5.4 Enforcement**

- a. Concentrate on tertiary enforcement tasks most likely to lead to disruption (ideally permanent) of labour, and/or prosecution of LPs and/or LUs. Work in conjunction with GLA Communications, GLA Compliance and with OGD partners as appropriate to maximise benefits.

- b. Obtain authority for GLA to run road stops. Prepare SOPs, carry out training and run stops regularly and frequently as an important core task in support of intelligence and compliance, and to identify enforcement opportunities.
- c. Carry out primary and secondary Enforcement tasks as indicated.
- d. Keep the possibility of Asset Recovery - directly or through partners - under review. Indicate to Director of Operations if and when there might be a business case to be put to the EMB, justifying the development of resources, skills and processes for in-house Asset Recovery.

#### 1.5.5 **Communications**

- a. Take a proactive approach in publicising GLA operations and in naming and shaming LPs and LUs. Opportunities include: refusal without appeal, revocation without appeal, dismissed appeal, road stop, caution, arrest, trial, conviction, acquittal etc.
- b. Support the Policy lead with regard to shellfish gathering and NI (see below).
- c. Continue 'routine' Communications Strategy work such as multi-language leaflets, brochures etc.
- d. Re-design and maintenance of GLA website.

#### 1.5.6 **Policy**

- a. Take the lead in designing a package of measures to address the critical areas of shellfish gathering and gangmasters in NI.
- b. Lead on developing the necessary agreements and procedures to allow effective licensing, compliance and enforcement of overseas LPs, concentrating initially on the Accession States.
- c. Set up and monitor the Measuring Outcomes study.
- d. Exclusions. Keep under review unintended consequences of the Exclusions Regulations. To feed into Defra's Exclusions review.
- e. Fees. Draw up an early programme for the annual fees-setting exercise for FY08/09 to avoid challenge on insufficient consultation etc.
- f. Risk-Based Approach. Maintain liaison with BRE to ensure they are aware of what the GLA continues to do to become 'a model of Hampton thinking', as indicated in the GLA Corporate Plan. Of particular importance in this regard is the Risk Profile.

### 1.5.7 Human Resources

- a. Recruit and train (or arrange training for) the remaining 7 Enforcement officers. Location is of particular importance. This Assessment should be used to inform decisions.
- b. Languages. A study should be carried out to determine the requirements for foreign languages across the GLA, and for recommendations on whether and how foreign language skills might be introduced.
- c. Continue to carry forward the broad spectrum of IiP improvements currently being developed.
- d. Take the lead in assessing the possibilities for merging the Compliance and Enforcement disciplines in the interests of flexibility, efficiency and effectiveness. Advise EMB whether this ought to be the GLA goal.
- e. Charter Mark. Confirmation of the GLA's commitment to Charter Mark, and the development of a plan to gain recognition.

### 1.5.8 Finance

- a. Banding Declarations. Develop proposals for the rigorous verification of self-declared bandings.
- b. Support the annual fees-setting process to meet 1 Apr deadline.

### 1.5.9 Information Technology

- a. Develop an IT Strategy reflecting the requirements outlined in the Strategic Assessment. A target date for the first draft to be put forward for agreement by the EMB as soon as possible.
- b. Improve the responsiveness and resilience of IT systems – especially for home-based workers - through the Defra E-enabling contract.

## **PART 2**

### **Interim Strategic Assessment**

#### **Introduction**

1. The GLA has adopted the National Intelligence Model (NIM) as its business model for an intelligence-led approach to regulatory activities carried out under the Gangmasters (Licensing) Act 2004. It is worth noting that whereas the Police Reform Act 2002 provided a statutory basis for the introduction of NIM minimum standards and basic principles for all police forces in England and Wales, the GLA is not similarly mandated. Therefore, except where NIM-compliance is essential to joint and collaborative working and intelligence sharing with the police and OGDs, the GLA will take a selective approach towards the use of NIM, using it for guidance rather than anything more prescriptive.
2. Underpinning the NIM business process are 3 key processes/documents – the Strategic Assessment, the Control Strategy and the Tactical Assessment. Each of these is substantial, and it will be appreciated that it would take a significant amount of time and effort to develop them. It is for consideration exactly how the NIM model should carry across to the GLA. However, the Authority simply cannot wait for NIM-like structures and processes to be designed and implemented. The GLA needs a strategic framework immediately, to guide its activities and its development with regard to policy, communications, intelligence, compliance and enforcement, IT and HR strategy.
3. This paper is thus described as an “Interim Strategic Assessment”. It makes no attempt to copy the structure and format of the NIM, and it presumes nothing about whatever NIM-like processes and procedures might be set up within the GLA in the future. It is also rather more narrative than a formal Strategic Assessment might be, simply because there is not yet a sufficient body of evidence in place to allow this.

#### **Aim**

4. This paper proposes an interim top level strategy for the GLA, to be used as a framework for planning and operations.

#### **Method**

5. The strategy will:
  - paint a picture of the labour supply chain
  - examine the chain to identify where exploitative practices and fraud appear to take place, and their nature and extent
  - review the reasons for exploitation and fraud, and the opportunities provided by the supply chain structure and the relationships within it to reduce the extent of illegal activity



- identify and prioritise the broad types of activity – the operational themes - that if addressed are most likely to achieve the GLA's objective of curbing exploitation in the industry
- provide a reference framework for policy and communications development, compliance and enforcement activities, and IT and HR strategies.

## Background

6. The GLA is a relatively small (approximately 50-strong) organisation. It is faced with the task of safeguarding the welfare of an estimated 800,000 workers, and of ensuring that some 1,100 licensed LP and 7,300 LUs operate legally. In addition, the Authority is charged with identifying and taking enforcement action against an unknown number - but at least several hundred - unlicensed LPs in three different legal jurisdictions. It is axiomatic that the limited resources of such a small Authority will have to be focussed tightly and applied in an intelligent highly selective way to have an impact. It is equally obvious that the GLA's support functions – policy development, communications, licensing, HR, IT and Finance – must be similarly focussed and applied.
7. In the GLA, all operations are tasked and monitored through the Tasking and Coordination Committee (T&CC). The main tool available to the T&CC is the Risk Rating system and the intelligence that lies behind it. A Compliance Risk Rating (CRR) is generated automatically for each licensed LP from the Authority's intelligence database, using selected criteria. An Enforcement Risk Rating (ERR) is generated in a similar way for unlicensed LPs and LUs suspected of acting illegally.
8. The main objective of the GLA is to curb exploitation (of workers and of the Public) across the industry generally. And whilst the CRR and the ERR are useful tools for identifying and prioritising the riskiest LPs and LUs for possible Compliance and Enforcement action, they are essentially tactical. If used without reference to the larger picture of the labour supply chain and the relationships within it, there is a real danger of not getting the best leverage from Compliance and Enforcement activities – in other words the resources of the Authority will be spread too thinly. And although there may be successes at the individual LP and LU level, the effects of these successes on the industry as a whole may not be as significant as could be obtained by a more strategic approach.
9. Similarly, support functions in the GLA should be developed with a clear picture of the labour supply chain in mind. Policy (including MOUs with OGDs and with overseas authorities), Communications, IT and HR must be set up and developed in ways that support and enhance Intelligence, Licensing, Compliance and Enforcement processes and operations.
10. The Strategic Assessment is thus a 'touchstone'. It should be used in conjunction with the CRR and the ERR to ensure the right operational resources are being applied to the right parts of the labour supply chain in the right way, to achieve the GLA's strategic objectives. And it should be used by Policy & Communications and by Corporate Services to inform development and activities in these areas.

## The Labour Supply Chain

11. The labour supply chain may be defined as follows:
- Individual Workers. From their initial recruitment – perhaps overseas – to their employment in the UK
  - Agents. Whether based in the UK or (more likely) overseas
  - LPs. Overseas or in the UK
  - Sub-contracted LPs. Mainly in the UK
  - LUs
  - Wholesalers and Markets
  - Retailers and Other End-Users
  - Customers

### Individual Workers

12. For the purpose of this paper it is useful to categorise workers as legal, illegal or 'illegal legal'.
- a. Legal workers are those entitled to work in the UK. The Precision Prospecting Study estimated there to be roughly 600,000 legal workers in the GLA-regulated sectors. This category includes UK nationals, European nationals (including "A8" Accession States nationals) and workers from other nations who may hold visas allowing them to work in the UK.
  - b. Illegal workers are from other nations, mainly outside the EU, who do not hold visas to allow them to work in the UK. For obvious reasons there is no reliable figure for the number of illegal workers in the GLA sectors, but based on estimates of the overall numbers there may be up to 200,000. This category includes people who may have travelled to the UK legally but have decided to stay illegally, and those who have been trafficked or smuggled into the UK illegally. A proportion of those in this category have become failed asylum seekers. Some illegal workers hold forged or fraudulently-obtained documentation, and are employed (possibly or probably unknowingly) by legitimate employers. But it is suggested that a substantial number of illegal immigrants are employed in the full knowledge of their illegal status by gangmasters, often of the same nationality, who may or may not be illegal themselves.
  - c. 'Illegal legal' workers are people entitled to work in the UK. They chose to remain in the informal economy, electing to be paid in cash and not insisting on wage slips etc., because they can earn more overall this way, than through more formal arrangements paying at or near to the NMW. It is claimed that many AS workers take this route. For obvious reasons, these workers do not register under the WRS.
13. The GLA is responsible for safeguarding the welfare of all workers – legal, illegal or 'illegal legal'. 'Illegal legal' are considered least likely to be exploited, because – notwithstanding the possibility of exploitation through a threat of exposure - they can always choose to move into the formal economy. Both legal and illegal workers

are exploited, although it is worth noting that illegal workers are both more vulnerable to exploitation and are less likely to come forward with complaints. This is not only because of their fear of exposure and deportation, it is also because the organisation with which they work – perhaps the same one or linked to the one that trafficked them – exercises such close control over their workers that it is difficult for them to come forward. This is compounded by the foreign culture and language that workers find themselves faced with.

14. The main areas of worker exploitation include:
  - a. **Bonded labour.** Bonding of illegal workers is easily achieved through the threat of exposure, by the trafficker and/or the gangmaster. Such workers may also owe money to the agent or trafficker for getting them into the UK, with the threat of physical action being taken against the worker and/or family if payments are not kept up. Legal workers – particularly those who rely on an agent in their country of origin for work placement and for arranging transport, can be bonded in a similar way, by being persuaded to take out high interest loans with their agent. In some cases payment against these loans is through a complicit UK-based LP or LU.
  - b. **Deliberately misleading information.** Workers are often deliberately misinformed about the right to travel and to work in the UK, about the nature of work they will be expected to carry out, about arrangements for accommodation and transport in the UK, and about the number of hours they are likely to be asked to work.
  - c. **Unfair (and sometimes illegal) charges** as a condition of employment in the country of origin and in the destination country. These charges may be tied to high interest loans arranged locally, with recovery through the UK employer.
  - d. **Failure to honour contract with workers.** Failure to provide the number of hours promised. Failure to pay at least NMW for hours worked. Compulsory deduction of often unreasonable charges for accommodation, transport, PPE etc. Unsuitable and/or unsafe accommodation and transport.
15. It is suggested that gangmasters and gangs of illegal workers can only survive if they operate completely illegally – ie. with the full cooperation of unscrupulous, complicit LUs – or if they are 'hidden' by sub-contracting arrangements that are fronted by one or more licensed LPs.
16. It is worth noting that not all workers regard themselves as exploited, even when they are. For obvious reasons, illegal workers are unlikely to come forward with complaints. However legal workers may not either, partly because their income, though at illegal rates, may be greater than the norm in their home country, and at least partly because they are bonded in some way and fear the reaction of the gangmaster. And other workers – perhaps especially illegal workers - are simply grateful for any form of employment. Whilst many workers would be delighted to receive at least the NMW and not be subjected to excessive deductions, they are inclined to see such things as H&S, suitability of accommodation, standard of

vehicles etc. as irrelevant and irritating in the same way that many of their British counterparts would.

17. Workers – whether legal or illegal – are invariably victims of exploitation rather than perpetrators. Thus, there are no imaginable circumstances in which the GLA might take enforcement action against workers in order to reduce exploitation. And because the main areas of worker exploitation - in the country of origin by in-country agents and in the UK by UK-Based LPs – are so different, quite separate approaches for curbing exploitation are indicated.

**a. Exploitation in Country of Origin**

- The GLA has no authority for compliance or enforcement in the country of origin, and it is not clear in any event whether things that are clearly illegal in the UK (eg. job-finder's fee) are necessarily illegal in all other countries. It is therefore suggested that any enforcement action against illegal exploitative activities by overseas agents or gangmasters should only be considered through the relevant in-country authorities, perhaps by bilateral MOU.
- It is clear that potential UK workers would benefit from being properly informed about their legal status with regard to the right to travel to the UK and to work in the UK. They should also be advised that if they decide to use in-country agents, to check that the agent holds a GLA licence (see below).
- Some UK-based LPs and LUs make use of overseas agents to recruit labour on their behalf. The arrangements between these agents and the LPs and LUs vary. Some agents are more-or-less employed by UK-based businesses, some of which at least give the impression of being keen to avoid the agent exploiting workers. Other agents seem free to do what they will. And there is even evidence that some LPs and LUs help to recover money owing to the in-country agent through deductions from wages. In theory, UK-based LPs and LUs should only take labour from a licensed supplier. Ideally therefore, all in-country agents should be licensed.

**b. Exploitation in the UK**

- The range of exploitative practices against workers in the UK are best combated by effective Compliance and Enforcement activities involving the GLA and OGDs.
- Legal workers should be aware of their rights. There should be done through a range of measures that needs to take into account differences in culture and language.
- Workers should be able to report breaches of their rights without compromising their employment, using a confidential help line. The means of doing this should be readily available and widely publicised and should take account of the foreign language requirement.

## Agents

18. 'Agent' is a widely-used term that is applied to individuals and businesses that obtain workers for UK-based LPs and LUs. Agents are deemed to be providing labour under the Act, and therefore require a GLA licence. Importantly however, agents – many of whom are overseas - do not actually employ or pay the workers they source or 'introduce'. This distinguishes them from other LPs. The distinction is useful for the purposes of this paper, because agents exploit workers in different ways to other LPs.
19. Agents act in exchange for a commission and/or charges from those businesses to whom they supply workers, and in most cases also from the individuals that they recruit. Some agents may be more-or-less employed by the UK-based to which they provide labour, but the details of the relationships are unknown. Most agents seem to be self-employed and are not formally accountable in any way to the businesses to which they provide labour. There are even agents acting for agents. An example has been given of Slovakian gypsies recruiting in their communities and bringing individuals to the office of a permanent agent. It is reported that a fee of up to 75% of wages for 3 months may be extracted from the worker for this service. These 'agents of agents' and their recovery means may be completely unknown to the LP.
20. Agents are known to advertise in the UK, and are likely to do so also in the country of origin. Advertisement in the UK is through trade journals such as Farmers Weekly and by unsolicited e-mails to LPs and LUs. Nothing is known about how agents advertise in-country, but it is likely to be mainly on the Internet, in the local press and perhaps in academic news sheets.
21. Agents provide a necessary service in the eyes of potential workers. It is assumed that they maintain lists of job possibilities in the UK with particular LPs and LUs with whom they are in direct contact. They are also familiar with the procedures for arranging travel and travel documentation, to and within the UK. It will be appreciated that agents in the Accession States (AS) who are providing labour to UK businesses do not need to arrange visas. Agents are seen by prospective workers as a convenient – perhaps a necessary – one-stop shop for getting a job in the UK.
22. Agents also provide a necessary service in the eyes of UK-based LPs and LUs. Much of the work in the UK is highly seasonal (mainly Spring/Summer) and involves large volumes of workers (up to 3,500 on a single site). This volume of demand requires more-or-less formal agreements between LPs and LUs and agents, with quotas and targets that it is assumed are renegotiated each season. The range of possible contractual relationships between LPs and LUs and agents is not known in any detail.
23. There is anecdotal evidence, not only that agents exploit workers by making unreasonable charges for services provided as a condition of employment, but also that they arrange high interest loans to pay for these services, with at least some of these payments being recovered by a complicit LP or LU in the UK. To complicate the situation, it may be perfectly legal in some countries to do certain things (eg. charge a job finder's fee) that would be illegal in the UK.

24. It is worth noting that in most cases it is not actually necessary for the worker to use an in-country agent. For example, some UK LUs have a website that allows workers to apply directly from their own country for jobs in the UK. But some workers at least seem unaware that it may be perfectly legal for them to travel to the UK to work, or even to look for work. It would not be surprising if agents did not inform them of the true position.
25. Although overseas agents (other than those that are only identifying sources of labour or providing advice and guidance to those interested in working in the UK) are required to be licensed if they provide labour into the UK, the GLA has no direct control over them. In some cases agents may be regulated through their own national arrangements. These arrangements are not known in any detail, but those examined appear to be registration bodies rather than licensing regimes, and none begin to approach the rigor of the GLA licensing system. Other agents appear to be contracted to UK-based LPs and LUs in some way as indicated above. But it is a broadly-held view within the UK LP/LU community that overseas agents are for all practical purposes unregulated.
26. As a significant amount of exploitation of workers is perpetrated by overseas agents, it is unsatisfactory that they appear to be so poorly regulated. This situation could be mitigated through one or more of the following approaches:
  - a. Enlisting the support of overseas authorities to either enforce the requirement for a GLA licence, or introduce a comparable national system to that of the GLA. It will take some time – months or even years - to explore the possibilities for this in each of the countries of origin, and then to set up any arrangements that might be agreed.
  - b. Enforcing the requirement for UK-based LPs and LUs to use only GLA-licensed agents, thus disrupting the supply of labour from unlicensed agents. It would be perfectly in order now for the GLA to prosecute any UK-based LP or LU who could be shown to have taken labour from an unlicensed overseas agent (LP). This should be pursued. However, because the GLA is not yet in a position to process properly the licence application of overseas LPs, pursuit of a non-compliant overseas LP is not yet a realistic option. It will take some time – weeks or even months - for the GLA to agree, put in place, publish and communicate the necessary arrangements for this. In the interim, apart from letter(s) of notification etc as appropriate, no direct action should be taken against overseas LPs.
  - c. Make it a requirement of UK-based LPs and LUs (i.e. those who are LPs sub-contracting their labour requirements) that hold a GLA licence, to:
    - 1) name their overseas agents on that licence,
    - 2) allow them to use only named agents,
    - 3) require them to ensure that their agents behave legally and are properly registered with the relevant national authorities.

Again, it will take some time to agree, put in place, publish and communicate these requirements.

27. In summary:
- a. Agents exist because they provide an essential service to UK-based LPs and LUs, and because are seen by workers as the best – perhaps the only - way of securing employment in the UK.
  - b. Although overseas agents exploit workers, there is little that can be done at present to take direct enforcement action against them. Their activities should however be disrupted by taking action against the UK-based LPs and LUs they supply. It should be anticipated that overseas LPs are unlikely to change their ways in the short term.
  - c. There are at least 3 medium to long term options for improving the regulation of overseas agents. The most immediate of these is the capability to licence overseas LPs properly.

## **Labour Providers**

28. LPs (gangmasters) are businesses that supply labour into the GLA sectors. The main sectors are agriculture (including forestry), food processing and packing, and shellfish gathering. Other sectors include agricultural labour service providers and other more specialist areas. Since 1<sup>st</sup> October 2006, all LPs acting in the GLA sectors have been required to hold a GLA licence.
29. There is a long history of LPs (gangmasters) exploiting workers. But it is important to recognise that it is the nature of the food supply industry – such things as its seasonal peaks and troughs, its geographic variations, the huge cost pressures from retailers, the fragmented and largely invisible nature of the work, and the ready availability of immigrant and illegal labour – that particularly lend the industry to exploitation by unscrupulous operators. Much of the exploitation is in the form of tax fraud rather than worker exploitation, although the two are often linked.
30. A number of LPs (probably no more than in any other group of businesses) are motivated to illegal activity by greed, in the knowledge that the returns can be very profitable, the chances of getting caught are slight, and even if they are caught, that the sanctions are relatively weak. In addition, the fragmented and volatile nature of labour provision seems to make it relatively easy for businesses to keep trading by reappearing in another guise - 'phoenixing'.
31. Quite separately, LPs are driven to illegal activity by what they report as widespread, unfair and illegal competition. Labour provision is highly competitive for several reasons including:
- a. The pressures put on by retailers. Retailers put enormous pressures on their suppliers (LUs) to reduce costs, and these reductions are inevitably passed on by the LU in terms of lower labour costs. ie. the hourly rate that a LU is prepared to

pay for provided labour is reduced. Some LUs seem quite prepared to switch LPs at short notice if they can get a better price.

- b. The unknown (but reportedly very large) number of illegal workers under illegal gangmasters. This means that labour is readily available at rates well below the NMW.
  - c. The seasonal nature of agricultural and fresh produce work. This means that the demand for labour can vary hugely in particular areas or sectors over a very short period of time. The situation can change from all-hours working to workers being layed-off, and vice versa, literally from one day to the next.
32. There are strong temptations for a legal LP to act illegally, most easily and safely by tax fraud, but also by exploiting labour to reduce costs. And most of the common means of worker exploitation – pay below the NMW, illegal compulsory deductions, sub-standard accommodation and transport etc are under the gangmaster's direct control.
33. The GLA Licensing Standards provide a rigorous, purpose-built framework for checking the extent to which a LP is acting legally. Inspection against the Standards, at the time of application or from a Compliance visit, provides the necessary information to decide whether to grant, deny, allow to continue, or revoke a licence.
34. A check against the standards provides a snap-shot of an LP's suitability to hold a licence. It is a relatively limited exercise for several reasons. Firstly, because there are numerous ways in which an LP can mask illegal activity. These include duplicate accounts, hidden contracts and false documentation. Secondly, because the most likely outcome of most identified non-compliances is one or more Additional Licence Conditions (ALC). ALCs are invisible to LUs (unless they demand sight of the licence) and to other LPs. And whilst there is clear evidence that at least some LPs are very keen to get ALCs removed quickly, it is difficult to regard ALCs as a serious deterrent to a LP who is determined to act illegally.
35. It is alleged that the GLA has granted licences to businesses that are known to be run by criminals and others who are well known within the industry to be unfit to provide labour. It has been pointed out that the only names requested on the application form are those of Directors and those of individuals who will act as gangmasters under the Act. It is therefore very easy for any individual who wishes to do so, to avoid being named.
36. Also, some 400 LPs were granted a GLA licence on the strength of a 'successful' TLWG audit, provided the OGD checks were 'clean'. During the verification exercise to determine which TLWG-audited LPs might be regarded as 'successful', it became apparent that TLWG audits were somewhat variable in quality. A number of TLWG-audited LPs who now hold a GLA licence are likely to be marginally compliant or non-compliant. It is suggested that this group of LPs is sufficiently likely to be more non-compliant than non-TLWG licence holders, to mount a compliance exercise directed specifically at them.



37. In addition, the GLA has received several reports to indicate that a number of businesses that applied as 'new businesses' have actually been providing labour into the GLA areas for some time. The 'new business' facility is aimed at businesses that anticipate providing labour into the GLA sectors. They are either just starting up and have no office or workforce to inspect against the GLA Licensing Standards, or they are existing businesses that already supply into another sector (eg. construction) and who are planning to switch some or all of their activities into the GLA areas. The suspicion is that a number of the 'new businesses' now applying are actually existing businesses that for unknown reasons missed the 1 Oct 06 deadline, and are calling themselves 'new' to avoid being prosecuted for trading illegally since 1 Oct 06. The question is the extent to which all 'new businesses' should be investigated with a view to identifying and prosecuting those that are not genuinely new.
38. Not only is the GLA licence no guarantee of legality, there have been complaints from LPs to the ALP, and directly to the GLA, that the licence is being used deliberately by licensed LPs as a veneer of respectability to cover illegal activity. In the ALP view the main threat to legitimate business is not so much from unlicensed LPs, as from licensed LPs acting illegally. The suggestion is that they do this by running an illegal gang or gangs alongside their legal operation. The GLA would only detect this by intelligence.
39. In addition, it is claimed by the ALP that LUs are using the fact that their LP is licensed as an excuse not to challenge what the LU must know are unsustainably low labour charges. It is alleged that some LUs bring pressure on LPs by threatening to turn to a cheaper LPs, even though they must know that LP is offering unfeasibly low rates. There is of course no formal requirement for LUs to satisfy themselves that their LPs are acting legally. But unless and until LPs are unable to find an outlet for under-priced workers – ie. unless and until LUs are not prepared to look for and use unfeasibly cheap labour, the practice is likely to continue.
40. As recognised above, any inspection (Application or Compliance) is only a snap-shot at a particular point in time. There is a reported perception that once the report is completed, the LP can safely revert to old habits without much chance of the GLA paying another visit. This perception must not be allowed to remain.
41. **Accommodation**
- a. Accommodation has always been a lucrative source of revenue for unscrupulous LPs who have been able to charge unreasonable rates for accommodation that the worker has no choice over. If accommodation is provided by the LP it may be inspected by the GLA to ensure financial arrangements are reasonable and voluntary and that the accommodation is safe and suitable. The Accommodation Offset will limit the charge for such accommodation to roughly £29 per week.
- b. These factors are encouraging LPs to distance themselves – or to appear to distance themselves - from the provision of accommodation to avoid the attentions of the GLA. Some LPs are setting up separate accommodation businesses run by family or friends. But are recent indications that at least some LPs may be moving into accommodation as their core business.

- c. Accommodation is a major area of worker exploitation and the GLA therefore has a responsibility for either tackling it itself or for working with other stakeholders to ensure the problem is addressed. To start this, it is suggested that the GLA should hold a series of Accommodation Workgroups with interested parties with a view to reaching a common understanding of the problems in different parts of the country, and agreeing who might be doing what to have the best chance of curbing exploitation in this difficult area.
42. In summary, LPs are in a highly competitive market in which the price is everything. It is a market in which illegal activity – fraud and worker exploitation – are well known, and in which there are known criminals and businesses of doubtful propriety and legality. There are many reported instances of legal LPs being undercut by other LPs (some licensed) offering infeasible rates. It is widely believed that these rates are only possible by illegal activity, by the employment of illegal immigrants and by tax fraud.
43. Illegal activity can and must be tackled by direct Compliance and Enforcement action against LPs. But this will be a continuing battle against what will inevitably be a very small number of illegal LPs, simply because of the resource limitations of the GLA. For example, a single large Enforcement operation leading to a multiple prosecution could tie up a significant proportion of the Enforcement capacity for several weeks. A more strategic (and cost-effective) approach would be:
- a. To reduce the need for LPs to act illegally. Get retailers, LPs and LUs to accept and work at rates at least approaching closely the minimum feasible rates published recently by Defra and the ALP. For LPs to inform the GLA when rates below this are offered, and for the GLA to take publicised action. This will require agreement with the major retailers.
  - b. To make it more difficult for LPs to find LUs prepared to pay below the recognised feasible rate. LUs need to feel that if they do this there is a reasonable chance it will damage their business.
  - c. To accept that whilst TLWG-audited businesses and ‘new businesses’ are probably groups that are riskier than others, they should not be singled out for special treatment as groups, but should be handled as business-as-usual under the CRR process. If evidence emerges to indicate that the group is particularly risky, this will be reflected in a change to this strategy with the possibility of a different approach in due course.
  - d. To publicise the CRR approach, and to back this up with sufficient random and targeted inspections to dispel the perception that an LP can safely revert to illegal practice after an AI or CI.
  - e. To hold a series of Accommodation Workgroups with interested parties aimed at curbing exploitation through common understanding and joint activities in this specific area.

## **Sub-Contracted Labour Providers**

44. Sub-contracted LPs are an essential part of the seasonal labour supply business. However, sub-contracting is also a very easy way to mask illegal activity. All sub-contractors are required to hold a GLA licence, and the terms of that licence and other factors that are true for 'prime' LPs are equally applicable to sub-contracted LPs. However, it seems probable that sub-contractors are more likely to act without a licence because they feel less likely to be caught, and that they are more likely to exploit their workers, for the same reason.
45. There is reportedly a large number of sub-contracted LPs. They are inevitably operating in a less stable environment than their 'prime' equivalents, and they are therefore more likely to come and go as businesses, and to vary their workforce size and areas and nature of work.
46. Compliance and enforcement action must be taken against sub-contracting LPs in the same way as for 'prime' LPs. And whereas it might be expected that the success rate against sub-contracted LPs is likely to be higher than for compliance and enforcement against 'prime' LPs, it is likely also that the more fluid arrangements of sub-contracted LPs will make such action more difficult.
47. The better solution for sub-contracted LPs, as for 'primes' is arguably also, to reduce the need for LPs to act illegally, and to make it more difficult for LPs to find LUs prepared to pay below the recognised feasible rate.

## **Labour Users**

48. LUs use workers from one or more LP. Their contract is with the LP, and it is the LP who is responsible for paying the workers. LUs will often also have their own employees who they pay directly.
49. The only part of the Gangmasters (Licensing) Act that applies specifically to LUs is Section 13 – using an unlicensed LP. However, LUs also have specific responsibilities in law for the working conditions they provide. Some of these (eg. H&S) may be shared with the LP.
50. There is no legal requirement for LUs to satisfy themselves that workers are not being exploited in terms of NMW, accommodation, transport etc. Neither is there a legal requirement for the LU to pay the LP at least the minimum over-headed hourly rates that are generally recognised across the industry as being sustainable – at present about £6.50 per hour. There is however a point at which the LU, in paying rates lower than this, could at least be suspected of being complicit in illegal activity. And where the rate being paid by the LU drops below the NMW, that suspicion becomes more concrete.
51. LUs are not in a position to exploit workers directly themselves, except perhaps with regard to working conditions. However, it is widely suggested that they are a prime cause of financial exploitation of workers by LPs, because they are able to dictate costs of labour that are below the feasible minimum, knowing that there are LPs

(including licensed LPs) who will work at those rates. It is further suggested that many LUs are perfectly aware of the inevitable outcome of this unfair pressure. LUs continue to act in this way because they can get away with it. They are more-or-less outside the scope of the Act, and although they may be a major cause of exploitation, this is not necessarily because they have been acting illegally.

52. LUs depend fundamentally on the ready availability of workers at affordable rates, to meet the constantly varying demands of retailers. As long as there are sufficient numbers of LPs prepared to act illegally, LPs can drive down costs without risking the supply of labour. LUs are unlikely to act responsibly (ie. to pay fair rates) as long as that supply can be relied on. In addition, LUs depend on continuing to win contracts to supply retailers – especially the major retailers. Against this background, four main courses of action suggest themselves:

- a. To keep prosecuting illegal LPs in the hope that the supply of unreasonably cheap labour will dry up. The GLA can and must prosecute illegal LPs. But successful prosecutions will be relatively few and far between, and will not necessarily reflect adversely on the LU. For this reason it is questionable whether this approach will change the behaviour of LUs at all, let alone in an acceptably short time frame.
- b. Encourage LUs – particularly the larger LUs - to turn to legal LPs, by making labour supply by illegal LPs uncertain and uncomfortable. This could be achieved relatively simply as follows:
  - Require LUs under Section 16 of the Gangmasters (Licensing) Act 2004 to give documentary details of the actual contracted rates they pay to LPs. They would also be required to declare any claw-back arrangements that might hide the final contracted rates. This would feed into the CRR. This is information which the GLA can lawfully demand from LUs, and which could be a very cost effective method of raising the compliance and enforcement profile.
  - Subject the highest risk LPs to a targeted Compliance inspection involving a mixture of Traffic Stops adjacent to the LU facilities, and worker interviews at the LU facilities to confirm worker identity for HMRC checks and for actual rates paid and deductions made. Invite press/media coverage.
  - Take on-the-spot action against illegal workers and vehicles. Consider immediate revocation of LP licence where there is evidence of critical non-compliance amounting to a threat to life and limb. Publicise.
  - Repeat the exercise with the same LU within a short time, as indicated.
- c. Persuading the retailers to terminate or to not renew their contracts with particular LUs. This should not be difficult if appropriate publicity is obtained for the operations outlined above. It is to be hoped that any action of the kind outlined above that came to the attention of the retailer to whom the LU was contracted, might cause the retailer to consider whether it was wise to risk

continued association with that LU. With this in mind, the GLA should be proactive in sharing with any affected retailers, evidence of illegality or suspected illegality in the supply chain.

- d. Investigating and prosecuting LUs - perhaps jointly with illegal LPs - where there is evidence of LUs using the services of one (or more) unlicensed LPs and/or there is evidence of the LU refusing to pay at least the minimum feasible rates.

## **Wholesalers and Markets**

53. A significant proportion of fresh produce is not sold by the major retailers (see below), but passes from farmer to pack-house to wholesaler or markets, and then to catering and other consumers. The significance of this part of the labour supply chain is that it is much more cash-oriented than the more formal and more closely regulated flow of produce to the major retailers.
54. It is suggested that some LUs who also supply the major retailers, use this outlet to generate the cash to pay informal economy workers, which allows them to accommodate the supermarkets' downward pressure on costs. It should be recognised that the emphasis on cash payments in this area does not necessarily mean that workers are being exploited. Some workers – particularly the 'illegal legals' (see paragraph 12 above) would prefer (say) £5 in cash, to (say) £5.35 through PAYE. The point about this outlet is that it offers the LU a ready means of tax avoidance.
55. The GLA cannot force LPs to pay workers by cheque. But any indication of cash payment should be viewed with suspicion by GLA officers, and should invite worker interviews and examination of wage slips and tax returns.

## **Retailers and Other End-Users**

56. Retailers – and in particular the major supermarkets and discounters – are the main end-users of produce collected, processed and packaged by the labour supply chain outlined above. However, there are other significantly large outlets for food produce, including the Armed Forces, contract caterers and manufacturers of food products. The concentration of huge buying power in a relatively few highly organised and efficient bodies makes these organisations arguably the single greatest influence on the labour supply chain.
57. Retailers and other bodies do not exploit those working in agriculture and food processing and packaging. The major retailers played a key role with ETI and others in setting up the TLWG as a precursor to the GLA, with the aim of raising standards for temporary workers. In addition, the GLA has met with each of the major retailers and with discounters, and at the top management levels there is a strong declared interest to drive out exploitation in the labour supply chain.
58. It would be understandable if this interest derived rather more from a desire to protect the good name of the business from damage by adverse publicity that might lead to loss of market share, rather than a wish to curb exploitation per se. But

more important than this, is the general perception amongst LPs and LUs that whatever top management may say publicly, the retailers' buyers simply do not practice what their top management speaks. The perception is that buyers are absolutely ruthless in pushing prices down to or below rates that they know are infeasible. This is epitomised by the not unusual practice of 'claw-backs' - a unilateral declaration by the buyer that the contracted rate will be reduced by a percentage, or that a cash adjustment (invariably negative) will be made. In the view of the GLA, this practice puts unreasonable pressure on LPs and risks being accommodated by paying workers less. Technical departments are meant to police this, but in practice it seems that few retailers emphasise the problem.

59. It is suggested that - at the buyer level at least - retailers are more worried about disruption of supply and the price of supply than exploitation, and the possible damage this may cause to their profitability.
60. Recognising this, it is suggested that where there is evidence of unfeasibly low pay or other forms of financial exploitation, the retail/end user connection should be pursued and played up. Instances in which retailer/end user complicity is indicated - whether this is by omission (ie. turning a blind eye to what they can reasonably be expected to know about) or commission - should be sought and publicised. Evidence or even strong suspicions of illegal activity by their LUs and LPs should be shared with senior retail/end user managers, and with the media as appropriate. Prosecutions of LPs and LUs who are in the supply chain to major 'household name' organisations should be publicised to indicate the end user link.

## Customers

61. It might be suggested that customers are the fundamental drivers of the labour supply chain, in that it is their demands for freshness, variety, and value for money that drives everything. In a sense this is true, but customers are individuals and as such they lack organisational and financial strength. In terms of their ability to exercise influence over the behaviour of LPs and LUs they are therefore not particularly significant.
62. There is at least a slight possibility however that customers could be persuaded to switch from one retailer to another on hearing or reading headline-grabbing stories of worker exploitation involving a particular retailer. And if the headline was sufficiently strong, it is possible (if not likely) that the numbers of customers switching could force the retailers to take action against offending LUs.
63. Customers are not regarded as being particularly influenced by exploitative practice. Nor are they seen to have any significant utility in combating it. It would be unrealistic for the GLA to seek to inform the public directly with a view to persuading them to switch retailers. But the possibility of achieving this - to some extent at least - would come indirectly from the publicising of actions taken against LPs and LUs with strong retailer connections. Before that stage is reached, it is likely that a suggestion to the retailer concerned that such publicity is imminent is likely to cause swift action by them.

## **Other Stakeholder Groups**

64. There is a variety of stakeholder groups in addition to those in the labour supply chain outlined above, that are of relevance to the GLA for various reasons. It is worth identifying these bodies and indicating the sorts of relationships with them that would meet or help to meet the GLA's objectives, and that are affordable given the pressures on GLA resources. Not doing this assessment risks the Authority spending too much or too little time and effort with - perhaps the wrong - stakeholder groups.
65. **Citizens Advice (CA)**
- a. CA is often the first place that exploited workers will turn to for help. They are thus an important source of specific intelligence, although confidentiality may preclude the release of any personal information. In addition, they are an important source of metadata – information about the general nature of and trends in gangmaster-related matters. They are not a means of disseminating GLA literature in bulk, but they are able to hold and give out GLA leaflets etc. on particular topics to individuals or to small groups as required.
- b. The following relationship with CA is indicated:
- 1) CA membership on the GLA Board. Allows dealings at Chairman/CE/Director level to promote GLA-friendly policies within CA and to champion arrangements with GLA.
  - 2) All GLA Compliance officers to be aware of the value of CA to the GLA, and to establish personal contact with local CA offices appropriate to gangmaster activity in each area. They should ensure these offices are supplied with the necessary leaflets etc. and should be prepared to support local CA meetings and other activities where possible, calling on HQ GLA for assistance as required.
66. **Trade Unions (TU)**
- a. Like CA, TUs are also often turned to by exploited workers, and therefore offer the same possibilities for obtaining and disseminating information about gangmasters and about the GLA. There are of course several TUs, which makes for some difficulty in deciding whether to deal with some or all.
- b. All the major TUs support fully the GLA's objective of safeguarding the welfare and interests of workers. But they see union membership as a much more important part of this than does the GLA, and this can lead to . There can also be an important part of this. There can also be tensions between the political

**67. Faith and Community Groups**

- a. A number of faith and community groups have strong links with migrant workers. Workers are probably more willing to report instances of exploitation to these groups rather than to the GLA or any government authority, and these groups will often understand better than most the various ways in which workers are exploited.
- b. The GLA should make a point of identifying those faith and community groups with large migrant worker congregations, letting them know about the GLA, using advice from them to inform the development of GLA policy, and encouraging them to the extent they are comfortable with this, to feed back specific information to support Compliance and Enforcement.
- c. There is no obvious structure to the location or denomination of faith and community groups with large migrant congregations. This suggests that the development of contacts with them should be left to individual Compliance or Enforcement officers. This should be coordinated and monitored by the GLA Director of Operations.

**The Olympics**

68. The 2012 Olympic Games is likely to attract large numbers of temporary workers both for the construction and preparatory work and for the huge range of services required during the games themselves. It is equally likely that the rates of pay on offer will be higher than those in the 'steady state economy', attracting not only new workers from abroad, but also temporary workers from the less well paid sectors in the UK, including those regulated by the GLA. And when the Olympics are over, many of these workers could be seeking employment back in the traditional areas.
69. The bulge in demand will probably begin to build from 2008 and will drop off precipitously after 2012. The effect on the GLA-regulated sectors is difficult to predict, but there could be two roughly opposite outcomes. On one hand there could be a positive upward pressure on wages. But on the other hand, the demand for workers will lead to increased activity by overseas agents, with the possibility of increased exploitation.

**Discussion**

70. The implications of the foregoing for each of the main functional components of the GLE – Intelligence, Licensing, Compliance, Enforcement, Communications, Policy, HR, Finance and IT are examined below.

**71. Intelligence**

- a. Good intelligence is vital to the success of the GLA on two distinct levels. At a strategic level it improves the general understanding of the industry and feeds into the GLA Strategic Assessment and Control Strategy and the Measuring Outcomes work. There is no particular urgency with which intelligence used in



this way must be processed. Neither is its currency absolutely vital. However, at the individual case or task level, specific intelligence strengthens CRRs and ERRs and allows more certain targeting of scarce resources. It is vital that at least some of this intelligence becomes available and is used with some urgency – perhaps immediately – if its value is not to be lost. Recognising that intelligence comes from a variety of sources and is hugely variable in its content and quality, the Intelligence team must be able to work at both levels. It is particularly important that good fresh intelligence is able to be tasked immediately where necessary.

- b. The GLA makes it clear that any intelligence will be received gratefully, but the Authority has little control over the volume and nature of what is actually provided. For the flow of intelligence to continue, it is necessary that the GLA continues to stress that intelligence is highly valued and that it will be used. Acknowledgement and feedback are important in this regard. At the individual level, information from workers and those that support and work closely with indigenous and migrant workers can be vital in confirming existing intelligence and pointing to particular abuses in the supply chain. The GLA will strive to assure this group that the channels through which they can report their concerns are safe.
- c. Most intelligence will be fed into the GLA Intelligence team as and when it is gathered by GLA officers or from third parties. There will be occasions when further intelligence is required to corroborate a fact, to complete a picture sufficiently etc. These requirements will be tasked as intelligence requests through the Tasking and Coordination meeting.
- d. A major source of intelligence is information on the Application Form. It is proposed that as a matter of some urgency the Intelligence Team consider changes to this. It is suggested particularly that the form at least asks about other individuals than the PA and those named as gangmasters, who may exercise a key influence over the business.
- e. It has also been proposed that the Application Form could be used to provide a clearer indication of which segments of the regulated area are more likely to be non-compliant. There are currently only 2 categories shown on the form – ‘agriculture, horticulture, forestry, food packaging and processing’ and ‘shellfish gathering’. These categories are so broad as to be almost useless for further analysis. Existing businesses would be asked to provide this information at Renewal.
- f. It has been suggested that Licence Renewal might be used to ask additional questions not asked at application. Consideration should be given to using the self-declaration form attached to the Licence Renewal notice, to ask for accounts for those that have them, or for contract and other details that would allow the declaration to be checked with HMRC. This would at least tend to make LPs think carefully before self-declaring. Also, renewal might be used to ask licensed LPs to provide a more detailed indication of the segments into which they provide labour – see paragraph 64.e above.

## 72. Licensing

- a. Whether the act of licensing does anything to curb exploitation is arguable. Certainly, there is plenty of anecdotal evidence from LPs, that determined and clever LPs can get a GLA licence easily enough. Consequently, it should be a priority for Licensing to assess the extent to which the licensing process might be made more effective, and to make a business case for any shortfalls to be remedied. Three areas for improvement have been suggested:
  - The ALP has suggested that the licensing process needs to concentrate rather more on the individuals in a business, rather than on the business itself. This would include individuals that are not necessarily named as Directors, or as the PA or acting as gangmasters, but anyone else who might be a controlling influence in the business.
  - Extending the range of proactive checks to include (for example) Companies House checks and PNC checks. As PNC was not available during the initial stages of licensing, this may be a fruitful source of information.
  - Reviewing the Risk Profile for determining whether new applicants require Application Inspection. It appears it may not be possible to develop a sufficiently reliable Risk Profile using only information from the application form to make this decision. Work is in hand to confirm the position by June 07. If the present approach is found to be infeasible, consideration should be given to other means by which a risk-based approach may be taken in this area – eg. by bringing OGD information into the decision-making process. A business case will be required for any development expenditure involved.
- b. A main benefit from licensing is the information that it obtains from the application form. The form was designed very specifically to collect only that information required to make worthwhile checks on the LP business and its named principals. Consideration should be given, in conjunction with others such as Policy & Communications and the Intelligence Team, to the possibility of using the form to meet other information needs – eg. nationality monitoring to better target communications. A business case should be put forward as appropriate.
- c. Licensing is also the main point of contact for calls reporting illegal activity or complaints about exploitation etc. Consideration should be given as to whether the present arrangements for this might usefully be improved – perhaps by increased capacity and/or improved foreign language facility. Again, if improvements are found to be necessary, a business case should be developed.

## 73. Compliance

- a. The core task for Compliance is to carry out inspections – Application Inspections for new businesses and Compliance Inspections for licensed LPs.
- b. Application Inspections (AI). AIs are the key source of information for the essential knowledge base about an individual LP, and should be regarded as the

most important ongoing action for Compliance. The inspection should report specifically on whether the business is genuinely a new business. This should be in sufficient detail to inform a possible decision to refuse a licence and/or prosecute the LP.

- c. Compliance Inspections (CI). These will usually be driven by the CRR and tasked by the Tasking and Coordination Meeting. The CRR should be reviewed to take account of the additional risky-ness of TLWG-audited LPs (see paragraph 66. .
- d. CIs are all 'targeted' i.e. for the most part they will have been tasked because of a high CRR due to specific factors, and the CI will home in on these factors. A small proportion of cases will be selected at random for CI, and these will generally be subjected to a full inspection against the GLA Standards. It has been suggested that a number of LPs who received a GLA licence on the basis of a 'verified' TLWG audit rather than undergoing a GLA Application Inspection, are less than fully compliant. Compliance should investigate this as a matter of some urgency and put in place remedial measures as indicated.
- e. AIs and CIs are clearly the best way of establishing whether particular LPs are compliant and have remained compliant with the GLA Standards. But the main business risk facing the Authority is not meeting stakeholder expectations for early evidence of enforcement – ie. giving an early impression across the labour supply chain that the GLA is actively enforcing, and the use of Compliance Officers to carry out formally-tasks AIs or CIs supported by a fully-researched intelligence package is unlikely to be the quickest and most economical way of mitigating this risk.
- f. Until such time as the business risk outlined above is shown to have been reduced to an acceptable level, priority should be given to tasks that are likely to achieve this shorter term aim. For example, an intelligence report of illegal workers in a particular LU might be followed up quickly – almost immediately - by a visit to the site, with perhaps a vehicle/occupant/driver check. The task would be duly authorised by Director Operations, and it could well benefit from an Enforcement presence, but it would not necessarily have to wait for the 2-weekly T&C meeting and be supported with a full intelligence package.
- g. In addition Compliance should consider setting up a programme – not necessarily related to the AI or CI programme – asking LPs to provide copies of current labour supply contracts, identifying LUs and giving the actual rates paid. This would not be unduly expensive in time and effort. The information would be invaluable in taking action consequently against LUs, and for discussions with Retailers. But it would have the immediate benefit of sending a powerful message across the LP community that we are serious.
- h. There are limited arrangements for the licensing of overseas LPs. There is no facility to carry out in-country inspections, although overseas LPs will be asked to produce as-yet-unspecified documentation in the UK to show that they are acting legally with regard to paying workers and tax, and worker interviews will be carried out. In addition, arrangements are being sought with the Accession

States authorities to carry out the in-country equivalent of OGD checks. Until robust arrangements are in place, the possibility of taking action directly against overseas LPs should be discounted.

- i. It is accepted that a certain amount of 'routine' Compliance tasking should go ahead – for the most obviously non-compliant LPs and/or where there is a large LP involved that would amplify the enforcement message. But for (say) the next 6 months, Compliance resources should be concentrated with imagination and nimbleness on high visibility tasks of the nature outlined above. In overall terms, AIs should enjoy a higher priority than CIs.

#### 74. **Enforcement**

- a. The Enforcement Strategy (Version 1 dated 9 Aug 05) defines the key tasks of Enforcement as:
  - Primary. To investigate criminal offences under the Gangmasters (Licensing) Act 2004, identifying LPs and LUs operating illegally.
  - Secondary. To engage OGDs in joint investigative activity of mutual benefit to tackle illegal activity by LPs.
  - Tertiary. To provide a visible presence to deter, disrupt or displace activity that cannot be prosecuted.
- b. The Strategy indicates that the tasks outlined above are to be used in a 'proportionate approach', with prosecution as the 'ultimate sanction'. It is quite clear that all Enforcement activity must be carried out in a way that would not preclude prosecution. But it is at least arguable that whilst it is essential that the GLA is able to carry out the primary and secondary Enforcement tasks, they contribute little if any more than the tertiary task to the Authority's objectives of curbing exploitation and fraud. And because the tertiary task is relatively inexpensive in terms of planning and execution, there is a strong case for the bulk of Enforcement activity to be centred on the tertiary task, particularly where there is any possibility that the effect of tertiary enforcement could be anything other than transitory.
- c. Accepting that the bulk of the GLA's Enforcement capacity will be used on the tertiary task, it is important that that the Authority is able to switch quickly to primary or secondary tasks. A flexible, nimble approach is called for, recognising and switching to whatever activity is most likely to meet the GLA's objectives in the most effective and efficient way. The following should be borne in mind:
  - 1) Joint Operations. Joint operations are potentially more cost-effective than GLA-only operations, particularly if led by an OGD.
  - 2) Powers. For most tertiary enforcement tasks it appears that the GLA and its officers have the necessary powers. Road stops seem a particularly useful enforcement and intelligence-gathering tool, and Director of Operations is

invited to draw up a business case with some urgency for the GLA to be able to set up its own road stops.

- 3) Asset Recovery. The facility to recover assets from the proceeds of crime can be an effective deterrent and a powerful reinforcement of what might otherwise be regarded as acceptable punishment. Asset Recovery requires specific authority and approved procedures and skills. It is therefore suggested, given the Authority's much more immediate objectives, that Asset Recovery should remain a low priority until such time as Director Operations feels the operational context would benefit from it, and he has the resources and the time to introduce and support it properly. In the interim, if cases arise in which asset recovery is an appropriate sanction, or if directed by the courts to take action to recover assets, the GLA will make arrangements for this to be done through partners.
- 4) Diminished returns. It is not necessary to follow through every lead or every case to its conclusion, to effect the required outcome. Enforcement must be alert to reaching a point in an investigation where it becomes clear that the value of proceeding has reduced below that likely to produce a worthwhile return on the investment. By handling things with an eye to visibility, it should be possible to gain some if not most of the potential benefit of enforcement action well before the point of prosecution.
- 5) Mission creep. It is important that cases are scoped in terms of time and resources at the time of tasking. Cases will tend to broaden as leads are discovered and developed. But any increase to the original scope should be authorised by the Director of Operations through the Tasking and Coordination Team.
- 6) Consider the smart option. For example, where there is reason to believe that a LU (particularly one with connections to a major retailer) is refusing to pay a feasible rate, rather than mounting a full scale investigation, the desired effect (ie. getting the LP to act legally) might be obtained simply by sharing - or even threatening to share - the GLA's suspicions with the retailer. Similarly, where there is a strong indication of illegal activity (eg. a UK-based LP that is named by an overseas LP as someone they are supplying), consideration should be given to revoking or threatening to revoke the LP's licence, and putting the onus on the business to prove its innocence.
- 7) Visibility/publicity. The benefits of compliance or enforcement action are severely limited unless they become known beyond the individual business that may have been the subject of such action. Where a business shows that it is willing to become legal and compliant, it would be wrong for the GLA to act in a way that might damage the business and threaten the welfare of its workers. However, businesses that are grossly and knowingly non-compliant, or that continue to act illegally should not be afforded protection from adverse publicity. The GLA should not hesitate to 'name and shame' such businesses.

## 75. **Communications**

- a. It will be GLA policy to 'name and shame' non-compliant LPs and LPs and LUs acting illegally, except where to do so might damage the business in a way that would threaten the welfare of its workers. The following should be considered possible media opportunities – refusal without appeal, revocation without appeal, dismissed appeal, road stop, caution, arrest, trial, conviction, acquittal etc. A proactive approach should be taken –ie. instead of setting up media events and hoping for a good story to follow, the GLA should draft the story and send to suitable outlets such as local papers, trade literature, etc.
- b. For the next 6 months, 'naming and shaming' publicity using a proactive approach as outlined above should be the top priority for Communications. Next should come measures aimed at curbing in-country exploitation. This might include such things as flyers in Polish labour exchanges explaining how to obtain work in the UK, and getting the message across that it is not necessary to use an agent and be ripped off. The routine production of leaflets, brochures, posters etc., and re-design and maintenance of the GLA website should be regarded as a lower priority during this period.
- c. The communications team will continue to nurture the intelligence sources that workers and their support groups can provide, stressing that the channels established will not be compromised.

## 76. **Policy**

- a. Shellfish
  - 1) The shellfish industry may require focussed action by Enforcement, Compliance and Communications in the run-up to the go-live date of 6 Apr 07, depending on the take-up of licences between now and then. A number of well-known individuals who in the view of the GLA will require a licence, have not yet come forward. It will be unacceptably damaging to the GLA if the dominant players in the industry are seen to be able to avoid having a licence.
  - 2) It is not clear whether these individuals are simply leaving their application to the last moment, or – and there are indications this may be the case – they believe they will not need a licence. The GLA should be proactive in getting the message out to these individuals, making the position clear.
  - 3) It is suggested that a mini-project be set up with the specific aim of ensuring that those whom the GLA believe are acting as gangmasters in shellfish gathering sector, are made aware of this, and are advised individually to apply for a licence.
  - 4) Fundamental in this approach is a clear understanding in the GLA of who requires a licence. For this reason it is suggested that Policy take the lead on

this mini-project, at least until such time as it may become sensible for Operations to take over.

b. Northern Ireland

- 1) It is also clear that NI is behind the rest of the UK in coming forward for licensing. An early, visible effort must be made to avoid giving the impression that this is in any way acceptable. The requirement for a discrete coordinated campaign involving OGDs, Intelligence, Compliance, Enforcement and Communications is indicated.
- 2) As with shellfish gathering, it is suggested that Policy take the lead on this, at least until such time as it may become sensible for Operations to take over.

c. Overseas LPs. It is necessary to clarify the position regarding overseas LPs, and to arrange through the authorities in the UK and the Accession States, the necessary agreements and procedures to allow effective licensing, compliance and enforcement of these businesses. The 'Lithuanian approach' should be rolled out to other AS states in turn, according to the proportion of workers from those states. The Lithuanian approach has been to:

- 1) Establish contact with individuals in British Embassy, Ministry of Labour and AS embassy in London.
- 2) Obtain details of AS licensing arrangements. Review with Defra(Legal) for comparability with GLA regime. The starting working assumption for all AS is that there is insufficient comparability to consider even partial acceptance of AS arrangements as counting towards a GLA licence.
- 3) Explore possibilities for carrying out checks equivalent to OGD checks with AS authorities, and for exchange of intelligence.

d. Measuring Outcomes. This work is crucial to the future of the GLA, and therefore to the way in which those in a position to exploit workers are regulated. It is important that this task is set running as soon as possible, and that it is closely overseen to ensure that it delivers a credible, authoritative view.

e. Exclusions. Policy is required to keep under review any unintended consequences of the Exclusions, to feed into Defra's Exclusions review.

f. Fees. Draw up an early programme for the annual fees-setting exercise for FY08/09 to avoid challenge on inadequate consultation etc.

g. Risk-Based Approach. Maintain liaison with BRE to ensure they are aware of what the GLA continues to do to become 'a model of Hampton thinking', as indicated in the GLA Corporate Plan. Of particular importance in this regard is the Risk Profile.

## 77. **Human Resources**

- a. Human Resources (HR) is responsible for ensuring that the GLA's workforce is recruited, skilled and trained to do the tasks required in Operations, Policy and Communications and in Corporate Services.
- b. Priorities for action are:
  - 1) Recruit and train (or arrange training for) the remaining 7 Enforcement officers. Location is of particular importance. This Assessment should be used to inform decisions.
  - 2) Languages. A study should be carried out to determine the requirements for foreign languages across the GLA, and for recommendations on whether and how foreign language skills might be introduced.
  - 3) The broad spectrum of IiP improvements currently being developed.
  - 4) It has been suggested that having separate Compliance and Enforcement officers limits the flexibility, efficiency and effectiveness of the GLA. Certainly, this paper proposes a much more joined up approach to enforcement than might have been indicated previously. It is for consideration whether the GLA should move towards all its field officers being Enforcement-trained. HR is asked to recommend a way forward on this question.
  - 5) Charter Mark. Confirmation of the GLA's commitment to Charter Mark, and the development of a plan to gain recognition.

## 78. **Finance**

Banding Declarations. These are self-declared, and there is little doubt that LPs are not being entirely honest in this. It should be a priority for Finance is to review the situation and to recommend how self-declarations might be verified.

## 79. **Information Technology**

- a. The priority is to develop an IT Strategy reflecting the requirements outlined in this assessment. A target date for the first draft to be produced should be agreed by the EMB as soon as possible.
- b. Efforts should be made to improve the responsiveness and resilience of IT systems – especially for home-based workers - through the Defra E-nabling contract.



## Summary

80. This paper proposes an interim top level strategy for the GLA, to be used as a framework for planning and operations. The paper:
- Paints a picture of the labour supply chain,
  - Examines the chain to identify where exploitative practices and fraud appear to take place, and their nature and extent.
  - Reviews the reasons for exploitation and fraud, and the opportunities provided by the supply chain structure and the relationships within it to reduce the extent of illegal activity
  - Identifies and prioritises the broad types of activity – the operational themes - that if addressed are most likely to achieve the GLA's objective of curbing exploitation in the industry.
  - Provides a reference framework for policy and communications development, compliance and enforcement activities, and IT and HR strategies.
81. The paper concludes that the GLA should concentrate its limited resources on particular parts of the labour supply chain to have the best chance of succeeding in meeting its objectives of curbing worker exploitation and fraud on the Exchequer. The paper acknowledges that the nature and structure of the labour and food supply chains lend themselves well to exploitation. That exploitation is essentially financial, taking the form of tax fraud in the main, but also involving a significant degree of worker exploitation.
82. Worker exploitation begins in the country of origin. The paper recognises that until such time as arrangements are in place for the effective regulation of overseas LPs, the GLA should concentrate on UK-based LPs and LUs. The paper identifies well-publicised enforcement – disruption, refusal, revocation and prosecution - as a powerful deterrent to LPs and LUs acting illegally. As a particular approach to Compliance, the paper advocates concentrating on actual rates paid by LUs to LPs, cross-checking contracts, pay and VAT records and worker interviews, and taking action where there is evidence of unfeasible rates, including the sharing of concerns with retailers.
83. The following specific recommendations are made:
- a. **Intelligence**
- 1) Intelligence must be able to lead to immediate (ie. same hour/day) tasking.
  - 2) Intelligence must be seen to be welcomed, valued and acted upon. Acknowledgement and feedback will be provided, as appropriate.

- 3) The value of carrying out additional checks should be assessed, with particular emphasis on PNC and Companies House checks, and checks on additional people (other than Directors, the Principal Authority and others who will act as gangmasters). Identified requirements should be put to Licensing for incorporation in a re-designed Application Form, to CMB as a Process Change Request and to EMB as a business case.

**b. Licensing**

- 1) To lead on a review of the application form, extending the range of people covered, as indicated by Intelligence and bringing in additional information as requested by Communications. Produce business case.
- 2) To consider the need for foreign languages on the Help Desk, and to produce a business case as indicated.

**c. Compliance**

- 1) The immediate priority is action that will lead to refusal or revocation of licence, and/or prosecution of LP and/or LU, particularly where there is linkage to a major retailer. Communications to be kept in the picture to pick up on publicity opportunities. This action to be taken jointly with GLA Enforcement and with OGDs as appropriate.
- 2) Investigate the position with regard to 'verified' TLWG audits. If this group of LPs is found to be significantly riskier than others, consider reflecting this in the CRR and handling as 'Routine' as per paragraph 4) below.
- 3) A programme should be instituted aimed at ensuring LPs and LUs are working close to the published Defra guidelines for feasible minimum rates. To be done by cross-checking actual rates paid as shown by the contract, with rates paid according to the payroll records, HMRC and worker interviews.
- 4) 'Routine' AIs and CIs should be carried out to capacity of resources. Particular interest should be paid to indications of cash payments.
- 5) Ignore overseas LPs, but take action against UK-based LPs who are found to be using them.

**d. Enforcement**

- 1) Concentrate on tertiary enforcement tasks most likely to lead to longer term or permanent disruption of labour and/or prosecution of LPs and/or LUs. Work in conjunction with Intelligence, Licensing, Communications, Compliance and with OGD partners as appropriate to maximise resources.
- 2) Obtain authority for GLA to run road stops. Prepare SOPs and carry out training.

- 3) Carry out primary and secondary Enforcement tasks as indicated.
- 4) Do not pursue Asset Recovery. Keep the possibility under review and indicate to Director Operations if and when there might be a business case to be put to the EMB, justifying the resources, skills and processes for Asset Recovery.

e. **Communications**

- 1) Take a proactive approach in publicising GLA operations and in naming and shaming LPs and LUs. Opportunities include: refusal without appeal, revocation without appeal, dismissed appeal, road stop, caution, arrest, trial, conviction, acquittal etc.
- 2) Support the Policy lead with regard to shellfish gathering and NI (see below).
- 3) Continue 'routine' Communications Strategy work such as multi-language leaflets, brochures etc.
- 4) Re-design and maintenance of GLA website.

f. **Policy**

- 1) Take the lead in designing a package of measures to address the critical areas of shellfish gathering and gangmasters in NI.
- 2) Lead on developing the necessary agreements and procedures to allow effective licensing, compliance and enforcement of overseas LPs, concentrating initially on the Accession States.
- 3) Set up and monitor the Measuring Outcomes study.
- 4) Exclusions. Keep under review unintended consequences of the Exclusions Regulations. To feed into Defra's Exclusions review.
- 5) Fees. Draw up an early programme for the annual fees-setting exercise for FY08/09 to avoid challenge on insufficient consultation etc.
- 6) Risk-Based Approach. Maintain liaison with BRE to ensure they are aware of what the GLA continues to do to become 'a model of Hampton thinking', as indicated in the GLA Corporate Plan. Of particular importance in this regard is the Risk Profile.

g. **Human Resources**

- 1) Recruit and train (or arrange training for) the remaining 7 Enforcement officers. Location is of particular importance. This Assessment should be used to inform decisions.

- 2) Languages. A study should be carried out to determine the requirements for foreign languages across the GLA, and for recommendations on whether and how foreign language skills might be introduced.
- 3) Continue to carry forward the broad spectrum of IIP improvements currently being developed.
- 4) Take the lead in assessing the possibilities for merging the Compliance and Enforcement disciplines in the interests of flexibility, efficiency and effectiveness, to advise whether this ought to be the GLA goal.
- 5) Charter Mark. Confirmation of the GLA's commitment to Charter Mark, and the development of a plan to gain recognition.

**h. Finance**

- 1) Banding Declarations. Develop proposals for verifying self-declared bandings.
- 2) Support annual fees-setting process to meet 1 Apr deadline.

**i. Information Technology**

- 1) Develop an IT Strategy reflecting the requirements outlined in the Strategic Assessment. A target date for the first draft to be put forward for agreement by the EMB as soon as possible.
- 2) Improve the responsiveness and resilience of IT systems – especially for home-based workers - through the Defra E-nabling contract.