Gangmasters Licensing Authority

GLA16/7.1 Risk Profile Implementation

18 October 2007

BOARD PAPER REF. – GLA16/7.1 – Risk Profile Implementation

Issue

1. The GLA had proposed that it will change to undertaking application inspections (AIs) based purely on risk, once a robust risk profile is developed. So far data analysis has not provided sufficiently reliable indicators to develop a risk profile which could select the correct (or at least an acceptable proportion of) cases that appropriately required an AI. The extent of resource time expended on AIs, coupled with a forecast of a continuing high level of applications, necessitates a review of whether a different approach to AIs is required, and/or whether other options may assist in freeing resources for compliance inspections (CIs).

Recommendations

2. It is recommended that:

   i Application Inspections continue until the 2008-09 renewal cycle commences

   ii They are accepted as an essential element of a comprehensive risk assessment, to reduce the burden of unnecessary Compliance inspections in the longer term

   iii Alternative actions are commissioned – adding ALCs to the Public Register, and altering the approach to "new businesses" – to free up resources for compliance/project activity (see section 6)

   iv A review of the required level of resources should be undertaken, securing appropriate funding

Background

3. In March 2005 the Government published, and accepted the recommendations of the Hampton report "Reducing Administrative Burdens: effective inspection and enforcement". The report's recommendations had specific implications for the GLA. As a new (at that point un-established) regulator it was expected to address the Hampton recommendations in the manner in which it established its' processes.

4. A significant part of the Hampton report was concerned with the lack of comprehensive risk assessment, resulting in inspections by regulators occurring on businesses that were relatively low risk. The report (paragraph 2.22) argued that.

   "Unless risk assessment is carried through into resource allocations and regulatory practice, it is wasted effort. Risk assessment needs to be comprehensive, and inform all

aspects of the regulatory lifecycle from the selection and development of appropriate regulatory and policy instruments through to the regulators work including data collection, inspection and prosecution. Regulators are still a long way from this comprehensive approach, though some are closer than others"

5. It went on to suggest (paragraph 2.31) that the most effective risk assessment methodologies should:

- be open to scrutiny;
- be balanced in including past performance as well as potential future risk;
- use all available good quality data;
- be implemented uniformly and impartially;
- be expressed simply, preferably mathematically;
- be dynamic, not static;
- be carried through into funding decisions;
- incorporate deterrent effects; and
- always include a small element of random inspection

6. Therefore, from its inception the GLA has been committed to the use of risk assessment to determine its inspection priorities. As a small national regulator this is essential to ensure that its resources are effectively deployed. It has therefore undertaken two studies (the IBM and Detica reports) to assess whether the data it has collected could support a reliable risk based approach that would determine whether an inspection was required on application, and the level of risk that may exist for un-inspected businesses that were subsequently identified as non-compliant. Neither of the reports has concluded that the data held by the GLA could support a reliable risk based approach to AIs presently. Nonetheless, the GLA must still consider whether an alternative approach to AIs should be implemented. This is necessary to determine whether the GLA's risk process, with or without risk based AIs, would satisfy the principles of the Hampton report. These principles have been emphasised in the following documents:

- The Legislative and Regulatory Reform Act 2006
- The "Macrory" report: "Regulatory Justice: Making Sanctions Effective" (November 2006)
- The Better Regulations Executive consultation on a proposal for a Regulators' Code of Practice (May 2007)

- Regulatory Enforcement and Sanctions Bill

7. Section 21 of the Legislative and Regulatory Reform Act (LRRA) 2006 places a duty on regulators to have regard to five Principles of Good Regulation ("the Principles") in the exercise of regulatory functions:

"21 Principles

(1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.

(2) Those principles are that—

(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

(b) regulatory activities should be targeted only at cases in which action is needed.

(3) The duty in subsection (1) is subject to any other requirement affecting the exercise of the regulatory function"

8. Section 22 of the LRRA provided a power to introduce a statutory code of practice that specified regulators will need to comply with to meet these principles. The draft Code places an emphasis on the application of comprehensive risk assessment as set out in the Hampton report. The draft listing order for the Code of Practice identifies the GLA as one of the regulators required to comply with the Code.

9. The Macrory report, written in anticipation of the aforementioned Code of Practice, identified a number of sanctions for non-compliance that should be made available to regulators. This would enable them to sanction non-compliant businesses proportionately, thereby enabling penalties other than prosecution to bring companies "into line". Significantly, it stated (paragraph 6.2) that:

"It is important that only regulators who are following the risk based approach should gain access to these sanctions. That is why I have qualified many of my recommendations with a need for regulators to demonstrate that they are compliant with both the Hampton and Macrory Principles. The Regulators' Compliance Code takes Hampton's seven principles, which support a risk based approach to regulation (such as inspections being risk based, regulators sharing data between them, sanctions being proportionate and meaningful) and puts them on a statutory footing under Part Two of the Legislative and Regulatory Reform Act 2006). Regulators will have a statutory duty to have regard to the Compliance Code as it relates to their enforcement activity"

10. The draft "Regulatory Enforcement And Sanctions" Bill sets out the new sanctions that may be available to "Designated Regulators". The proposed list of "Designated Regulators" is set out in schedule 3 of the Bill, and includes the GLA.

11. It is therefore essential that the GLA is able to demonstrate that its risk based approach complies with the principles of the proposed Code of Practice, and therefore enables it to access the new sanctions that will become available to "Designated Regulators". It must determine whether:

- A risk based approach to AIs (AIs) is essential
- The continuation of AIs is inconsistent with a risk based approach
- The continuation of AIs is essential to support risk based compliance inspections, post the grant of a licence

12. However, in considering the GLA's approach it should be noted that although the Hampton report stipulated a requirement that risk assessment should be at the heart of the approach of regulators there is no mention of intelligence-led analysis to determine priorities. The Hampton report did not therefore consider the adoption of the National Intelligence Model from the policing environment in determining the appropriate prioritisation and allocation of resources. Whereas the GLA, as a regulator, but with specific investigation powers and evolving close associations with policing bodies (e.g. it is a Board member of UK Human Trafficking Centre and SOCA committees), does. It therefore has a more sophisticated model based both on risk rating and the priority arising from the national intelligence model analysis of the reliability of information received.

Impact on Compliance activity

13. AIs impact compliance activity in two ways; positively and negatively:

- AIs provide the raw data to support the base compliance risk rating (CRR), to assist in determining whether and when a compliance inspection may be required (positive)
- They continue to tie down resources preventing deployment on compliance and project activity (negative)

14. Would a continuation of AIs can be seen to be part of a comprehensive risk assessment, as required by Hampton? A continuation of this approach would be scrutinised by the Better Regulation Executive. However, it could be demonstrated as necessary because:

- there is no previous past compliance assessment that assesses all of the areas of the licensing standards to measure against potential future risk unless inspection occurs;

- use of OGD data is confirmed as good quality, or identified as out of date;
- there is a uniform and impartial approach to all applicants;
- it provides data that feeds the mathematic CRR;

15. It acts as a deterrent against non-compliance as applicants will know they will need to pass an inspection to gain a licence – it will not be, or be seen as, a "rubber stamp". Furthermore, an AI represents the GLA's earliest and greatest opportunity to establish the required compliance standards for a business, ensuring understanding and a compliant approach

16. If an AI does not occur the potential for non-compliant businesses to become licensed increases. The experience from the decision to accept TLWG "successful" audits, avoiding the need for an AI, is pertinent here. So far there have been 36 revocations, 30 of which were classed as TLWG "successful". This represents a potential 83% false pass decision, which may have been averted had they received an AI. Furthermore, there were 124 cases that were "TLWG successful" and subsequently received a compliance inspection that did not lead to revocation. 32 of those inspections resulted in the status of "licensed with ALCs". Therefore, 26% of "TLWG successful" cases that were selected for inspection, based on information received/increases in the Compliance Risk Rating, indicated that knowledge of the areas of their non-compliance would have been identified earlier if they had received an AI on application. This would have enabled the GLA to explain the corrective action required, and begin to monitor efforts to improvement. In these cases the GLA was not able to set its standards and the business operated in a non-compliant manner, which could have been detected at AI, averting the need for a subsequent CI following the issue of a licence.

17. There have been 836 AIs (i.e. excluding "TLWG successful" cases) since the commencement of licensing. 289 of these cases had clean OGD responses but the AI identified non-compliances which initially resulted in those applicants being licensed with ALCs. In 33% of AIs the only indication of non-compliance was the AI. Comparatively, only 145 applications had an OGD non-compliance score greater than 0, with a non-compliance score from the AI of 0. The AI was therefore a greater identifier of non-compliance (the remainder had a mixture of information derived from the OGD response and the AI). AIs were therefore twice as effective as OGD reports in identifying current non-compliance.

18. Whilst AIs are currently expected; they occur within a few weeks of an application, and can be demonstrated to identify non-compliance. CIs are not expected. They can therefore be much more challenging to the licence holder, requiring continued compliance to retain a licence or avoid ALCs. The GLA therefore needs to be able to increase its ability to tackle reported non-compliance, as well as those cases prioritised by the CRR process, in addition to being able to prevent non-compliant companies becoming licensed.

19. Although AIs place an immediate burden on those companies that voluntarily apply for a licence to operate in the regulated sector they equally assist in the longer term by risk rating licence holders, prioritising compliance activity on the riskier cases. However, the unintended consequence of this is resources may not be available for such required compliance activity.

20. An examination of the top 40 CRR scoring cases shows that 19 of those cases have not yet received a compliance inspection. Additionally, a further 20 cases, lower in the CRR rankings, were re-classified as low priority and removed from the schedule for inspections. The reason for this situation is that the existing resources were tasked to capacity, to complete AIs, undertake higher priority cases from the intelligence-led daily tasking meetings, and be involved in planned projects. The resource inability to undertake the aforementioned 19 plus 20 inspections equates to 13 weeks inspection work, or 29% of one inspector's available working year. Thus other activity, such as AIs and Projects, can have an adverse impact on the GLA's ability to undertake compliance inspections based on the risk rating analysis, as advocated by the Hampton principles.

21. Despite this concern the September monthly performance report suggests that this risk is lessened. In the "Operations Outputs FY 07/08" section, which assesses performance against projected outputs from the Control Strategy, the level of AIs required and completed suggests a lower forecast than originally suggested (a reduction from 711 to 453 [-36%]). Whereas the level of CIs completed predicts that the Control Strategy forecast will be surpassed (an increase from 234 to 279 [+19%]). There may however be an impact on project related activity, which is inevitable if:

- Resources are deployed on enforcement activity
- Compliance inspections are tackling high CRR rated cases
- There is insufficient intelligence to genuinely run a thematic project targeted at the LU point of the supply chain, based on identified risk and non-complianc

22. The effectiveness of AIs and the need to operate CI activity demonstrate that the GLA must identify how it can maximise its effectiveness on, currently, limited resources, and also consider whether:

- AIs can be reduced, and, if so, what risk is introduced
- Alternative measures can be introduced that assist in maintaining a pressure for compliance and which assist in reducing resource pressures

Risk Profile Options

23. In developing the options set out below the following points have been taken into consideration:

- New applications continue to be received
- The projection for the level of new applications for 2007-08 is estimated to lie between 500 (financial projections) and 711 (control strategy), but is currently 36% less than projected in the Control Strategy
- The level of AIs may adversely impact the GLA's ability to increase the level of compliance inspections of licensed LPs due to the level of resources available
- It is anticipated that the level of new applications will plateau in 2008-09
- It is not expected that this plateau will be reached in 2007-08 due to the slow level of applications from Shellfish and Forestry sectors so far, which may increase following planned operational activity
- Applications received now should theoretically be from new entrants to the regulated sector, and, as such companies should not be/have traded, the ability of an AI to assess compliance across all of the licensing standards may be limited (i.e. there may be no labour user or workers to interview in the regulated sector)
- It is recognised that Applications are not always from a "new business", and a LP will say they are a new business to avoid drawing attention to any illegal unlicensed activity that they have been involved in prior to their application
- Stopping AIs for new applicants may be seen as inequitable to existing licensed LPs that have been more closely scrutinised to assess their compliance, and develop the compliance risk rating (CRR).
- A risk based approach to AIs may allow non-compliant businesses to enter the system, and increase the GLA's exposure to reputational risk
- Termination of AIs may be more acceptable if it is considered that there will be an increase in CIs and it will be more difficult for licence holders, who become rogue operators, to escape detection.
- The experience from re-inspection of TLWG audited companies identified that non-compliance was not identified, or crept back in, and a "fast track" (no inspection) approach to such applicants allowed their non-compliance to go undetected
- Non-compliance has been detected by AIs, CIs based on the CRR, and thematic Project activity, suggesting that a "mixed economy" approach ensures LPs are "kept on their toes" and the GLA maximises detection by developing knowledge of its client base, and utilising both risk based and intelligence led analysis of reported non-compliance, to determine priorities

Option 1 - "Do nothing"

24. This option would see a continuation of AIs (and the associated AI fees)

Benefits	Risks
• AIs ensure a "level playing field" for new entrants against those who have gone through the AI process so far • AI results provide base data to inform the CRR thereby assisting in determining priorities for compliance inspection • AIs act as a deterrent against applicants that consider the licensing process a "rubber stamp" • AIs identify those applicants that should **not** be issued with a licence, thereby keeping such LPs outside the regulated sector, rendering any continuing activity illegal and liable to prosecution • Reduces reputational risk to the GLA • AIs also provide a source of intelligence on who LPs are contracting with, gaining further "competition" related information on other LUs and LPs	• Resources are not available for compliance inspection • Licence holders with ALCs are not re-inspected, where appropriate to confirm that ALCs can be removed • AIs on "new businesses" utilise resources but do not provide robust confirmation of compliance as worker/LU interviews cannot occur until the company trades in the regulated sector, requiring a compliance inspection to complete a full assessment

Option 2 - AI based on OGD response

25. This option would only result in an AI if the OGD response indicated that there was current/previous non-compliance against one of the responding OGDs.

Benefits	Risks
• Would reduce the volume of AIs based on OGD responses (Raj	• OGD responses may not indicate any evidence of non-compliance, but analysis has indicated that the

input)	AI would • OGD responses may not be upto date if there has been no, historic, or complaint based, contact with the LP

Option 3 - Deferred Inspection

26. This option would remove AIs from the application process. The rationale for this approach is based on the view that the licensing standards are not fully tested on "new businesses" as they are not (or at least not considered to be) trading. It would result in a compliance inspection **after** a licence is issued, thereby avoiding the need for two inspections to provide a complete assessment of compliance. Nonetheless the option might include, for example, a self-declaration of compliance before the application would be allowed.

Benefits	Risks
• Resources would not tied into two part inspections - AI and follow on CI • Resources available for CI/ALC clearance	• New applicants obtain a licence before compliance is tested • The application process becomes the weak link in the process • Deferred Inspection effectively introduces a "provisional licence" • The lack of inspection does not identify applicants that were previously trading illegally • The potential to licence a LP that exploits its workers increases • Inability to identify areas where ALCs should be required • licences that should be issued with ALCs reduces, suggestive of an ineffective/weak regulatory regime • The level of data informing the CRR for the licence holder is incomplete

Option 4 - Random inspection

27. This option would introduce random application inspection (and which would result in the cessation of the application inspection fee). Random inspection was expected to be an integral element of a risk profile approach: a proportion of cases that did not fit the risk profile would be inspected as a control test on the effectiveness of the risk profile.

28. However, in this scenario there would not be any objective criteria to identify the cases from which a random test sample should be drawn. The random sample would therefore be a percentage (for example 10%), which may be different for each fee band group, and which could be increased if the random inspections provided high levels of results of non-compliance in new applicants.

Benefits	Risks
• Reduced levels of AIs release resources for compliance activity • Random AIs acts as a limited deterrent against applicants that consider the licensing process a "rubber stamp" • Setting the % at 75%, then 50%, 25%, 10% in steps after set a period would enable the level of risk to be identified, controlled, and the percentage increased, instead of decreased, if necessary	• Lack of objectivity to the selection of cases for inspection may not avoid placing a burden on compliant businesses • Non-compliant businesses may not be selected for inspection • The application process becomes the weak link in the process • The lack of inspection does not identify applicants that were previously trading illegally • The potential to licence a LP that exploits its workers increases • Inability to identify areas where ALCs should be required • licences that should be issued with ALCs reduces, suggestive of an ineffective/weak regulatory regime • The level of data informing the CRR for the licence holder is incomplete

Option 5 - Risk profile based AI

29. This option is based on implementing a risk profile based on the conclusions from the IBM, and, latterly, Detica studies. However, as neither confirmed a robust risk profile the extent of applicants that would be licensed without inspection, where an inspection could identify grounds for a refusal, may be significantly greater.

Benefits	Risks
• Reduced levels of AIs release resources for compliance activity • Inspection against a profile enables further testing to enhance the profile over time	• Neither report confirmed a robust risk profile, therefore assessment against a profile may not provide reliable selection for inspection (compliant businesess may be selected; non-compliant businesses may not) • The application process becomes the weak link in the process • The lack of inspection may not identify applicants that were previously trading illegally • The potential to licence a LP that exploits its workers may increase • Inability to identify areas where ALCs should be required may occur • The level of data informing the CRR for the licence holder is incomplete

Option 6 - Project based approach only

30. To date there have been 16 Project operations. These have led to inspections on 30 identified LPs. 15 of these inspections resulted in the status of the licence holder changing from “licensed in full” to “licensed with ALCs”. Additionally, 2 inspections resulted in an increase in the level of ALCs; 9 to revocation; and 4 cases are still under investigation. No cases inspected as a result of Projects have so far resulted in a reduction of ALCs, for identified LPs. Information on other LPs operating from LUs sites has fed into intelligence analysis, and, in one case led to an arrest and ongoing investigation. Targeting activity at a pivotal point of the supply chain - the LUs – can therefore identify LPs and their non-compliances effectively, running at 86% for completed inspections. It is therefore a successful method of policing compliance with the licensing standards, but it does not address

the level of non-compliance of applying companies, whose LUs (if they are trading) are not identified when an application is made

Benefits	Risks
• AIs would cease, and the resource time would be allocated to thematic Project activity • Increased ability to tackle non-compliance of multiple LPs, via the supply chain relationships • Unannounced, non-intelligence-led, cases, can act as a control to identify the ability to identify non-compliance	• More non-compliance may enter the system, undetected, for subsequent inspection • Project may not pick up and detect such cases if the Projects are not driven by existing intelligence • Project "themes" may not be an objective assessment, but based on the need to demonstrate the GLA operating in a different manner, resulting in the "Project burden" falling on incorrectly selcted complaint LU and LPs • Greater pressure on Intelligence to "feed" Projects and Enforcement, can impact the resources available to provide analysis for enforcement cases • A lack of problem profiles from Intelligence result in mis-directed Projects that do not tackle areas of greatest risk

Alternative compliance approaches

31. If the current Application Inspection approach is to continue, and there is a need/desire to deploy greater resources on high risk compliance cases and Projects, alternative options must be considered. Resource availability can be increased by:

- Creating a greater compliance pressure for LPs to demonstrate they have taken action to rectify non-compliances identified as Additional Licence Conditions (ALCs)

- Managing "New Business" inspections so that two inspections are not require

Creating an ALC compliance pressure

32. Currently, ALCs are placed on a licence where the identified non-compliances do not exceed the 30 point threshold. There is an expectation that the LP takes action to remedy the ALC and notifies the GLA when that has occurred. Changes in the Compliance operating procedures have allowed verification of clearance of ALCs to be accepted in different ways:

- Self-declaration
- Documentary Verfication
- Compliance Inspection

33. Where a LP does not advise the GLA that they have cleared the ALCs, seeking GLA acceptance of that position, and removal of the ALCs, the case is referred for Inspection. There are currently 124 of this type of case requiring inspection.

34. Whilst it is accepted that there will always be a need for some ALC related compliance inspections (due to their nature and agreed method of clearance) if there is a pressure that makes LPs take action to resolve the non-compliance earlier, it would reduce the numbers that may require compliance inspection. This is because the notifications may enable by an alternative method of confirmation other than inspection, as identified in para. 31. It would also reduce the number of cases were notifications were not received, inspections were required, but which may not be inspected due to other priorities.

35. The proposed method of achieving this would be to provide greater information on the Public Register. There are several options:

a) To state which standards have been failed, by standard number only (i.e. “The LP has ALCs on the following standards: 2.10”), placed on the Public immediately that they are identified

b) As in option (a) but only after 3 months (the original “rectification” period) has expired

c) To have a simple tick box to state there are ALCs, but not which ones, placed on the Public Register immediately that they are identified

d) As in option (c) but only after 3 months (the original “rectification” period) has expired

36. If this process can be implemented it would increase the volume of correspondence received for review by the Compliance team. However, due to a restructuring within that team there will be a resource available to tackle such work. It would not therefore create a greater resource pressure on inspectors.

Revised approach to New Business applications

37. Currently a new application for a licence is considered to be a new business. This is because if the applicant has traded in the regulated sector since October 2006 they will have traded illegally. Therefore, new applicants are not considered to have/be trading in the regulated sector (unless information suggests otherwise). Application inspections are consequently undertaken but with limited value because there are arguably no contracts, no Labour Users or workers in the regulated sectors at that time. If a licence is issued the Public Register entry indicates that the company is a new business, the labour provider is expected to notify the GLA when it has contracts, workers, and begins to operate in the regulated sectors. A follow up compliance inspection is then required to ensure that licensing standards that were previously untested are reviewed enabling a comprehensive picture of compliance to be established. Potentially this can result in the issue of licences to applicants whose practices result in revocation once they can be fully identified and tested. Furthermore, a failure to notify the GLA when they begin to operate would appear to be prevalent – there are 287 entries on the Public Register currently marked as "licensed – new business" . So non-compliances can go un-detected as resources are tied into other cases, including inspections of those who do notify the GLA that they have started to trade

38. The current approach is therefore resource intensive, as two inspections are required. Furthermore, the approach that all new applicants are new businesses is not true in all cases. Additionally, some applicants may not have traded in the regulated sectors but may be currently operating in other industry sectors, where their business approach and practices are likely to be the same as they intend to operate in the regulated sectors. Thus a change in approach may provide a more efficient assessment of compliance and resource utilisation.

39. Firstly, if a new applicant is identified as having traded in the regulated sector since October 2006 it should not be treated as a new business. If the application arose as a consequence of enforcement investigation of an unlicensed labour provider enforcement action will have been completed. A full application inspection should assess compliance. The extent of compliance or otherwise will be a significant factor in determining whether to prosecute such cases.

40. If the application was not prompted by an enforcement investigation, and illegal trading is identified as part of the inspection process it again cannot be classed as a new business. In most cases the voluntary decision to apply for a licence should be taken into account, and any enforcement action taken should be a proportionate response (e.g. a warning or formal caution only). This should not prevent or delay a full application inspection – there is no reason to treat it as a new business with a limited inspection. However, if the labour provider has temporarily stopped trading then the inspection should focus on the practices employed on a recently concluded contract, with,

where possible interviews with workers, even if those workers are now employed on contracts with the labour provider outside the regulated sectors.

41. If an application is received from a company that has not traded in the regulated sectors, but is providing workers into other industries this would be classed as a new business insofar as the regulated sectors are considered. Its activities in those other sectors would normally fall to be scrutinised by the Employment Agency Standards (EAS) inspectors of BERR (formally DTI). There is therefore no legal basis for the GLA to require an inspection on contracts that are operating outside the regulated sectors. However, if the labour provider consents to an inspection based on one of its non-regulated sector contracts, with current workers, and the willing participation of a labour user it would be to the labour provider and GLA's advantage. It would enable the GLA to, ideally, conduct one inspection in order to assess compliance across the full range of licensing standards. It would also reduce the burden on the applicant labour provider: a compliant business will not normally need to have two inspections. It may also be possible to arrange such inspections jointly with the EAS. Finally, in such situations, the likelihood of the issue of a licence potentially followed by a revocation after a short period of being licensed is reduced – if the company is non-compliant a licence will not be issued in the first place. Therefore, the GLA will also be able to reduce the reputational risk of issuing licences to companies that are actually non-compliant simply because it constrains itself from undertaking a full application inspection. It would also test the boundaries of its responsibilities.

42. Finally, there will be a small number of applicants that are correctly classed as new businesses, that have never operated in any industry sector for the supply of labour. In such cases the current, limited, application inspection and follow up compliance inspection will continue to be the most relevant approach.

43. By taking a more imaginative approach to application inspections of new businesses, seeking to test compliance on existing or recent contracts inside and outside the regulated sectors, with the consent of the labour provider, the number of compliance inspections to complete assessments will be reduced. For example, if the current projection of new applications (based on the August performance report) of 453 is accurate this would currently generate 453 application inspections and a further related 453 compliance inspections. Altering the approach to new business inspections could therefore remove this double resource burden, and free up resources for further compliance and/or project activity.

Increasing Resource levels/use of external inspectors

44. A further alternative is to argue for an increase in compliance resources to improve the volume of required inspections (based on intelligence/ ALCs requiring review) that can be tasked. The original resource proposed for the compliance team was based on an organisational structure provided by Defra.

The Enforcement structure was simply a mirror image of the Defra Enforcement team. However there was no directly comparable model for the compliance team. It would therefore appear that the original compliance team resource assessment may have been based on the number of auditors used on the TLWG scheme. There were 14 of these, but they were not used in a fulltime capacity. Therefore, a reduction to 10 for the GLA may have been proposed on this analysis, but without the benefit of the GLA's operating model, and assessments of resource costs actually experienced.

GLA absence factor

45. The geographical spread of GLA officers, coupled with the fact that the required locations for labour user/worker/labour provider interview and inspections are not regularly close to the location of staff inevitably means that a significant proportion of the working week is spent travelling. The hours spent travelling to/from an inspection, in addition to the hours spent on the inspection, results in inspectors accruing significant levels of excess, travel related, hours for which "time off in lieu" (TOIL) is required.

46. Analysis of the TOIL days taken by field staff for the period from January to August, and the hours accrued but not yet taken, extrapolated for a full year indicates that the absence factor created through the TOIL equates to 4.11 staff units. Resource planning uses a 44 week multiplier (available working weeks) and an estimated 3 inspections per week. Using these multipliers an absence factor of 4 staff per year is equivalent to 528 potential inspections.

Use of external inspectors

47. This absence factor has occurred in spite of the use of external auditors as a short term contingency resource for the GLA. Therefore, increasing the use of external auditors to address the current absence factor is not considered to be a viable solution for the longer term. This is because of the associated cost to the GLA in deploying external resources, despite the application inspection fee. A further factor is that the external resources also have other work which can mean that they may not be available, or complete inspections, when required by the GLA.

48. However, if all AIs were undertaken by external inspectors it would free up resources for compliance inspections. Using an estimate of 453 AIs (see para. 43), and the multipliers referred to in para. 45, provides an estimated resource requirement of 3.43 staff units. The financial cost, based on an average external inspection cost of £750, for 453 AIs would be £339,750. This equates to the cost of 10.5 Compliance Officers at the current full cost (maximum salary plus ERNIC etc) of £32.4K/staff. Logically, the resource calculation, rather than the financial estimate, provides a more realistic assessment of the necessary increase in resources to free current resources from AI work, bearing in mind the expected "plateauing" of new applications in 2008-09. Accepting the argument in para. 46 as the reason for not using externals in a greater capacity than as a contingency, suggests that an

increase in internal inspection resources should be the approach taken, basing requirements on the 4 units identified in para. 45, which is effectively supported by the estimate of 3.43 above.

49. It should also be noted that the volume of work generated by inspections – in terms of ALCs for subsequent review, and intelligence reports, does create further resource requirements. Therefore, an increase in the inspection resources may generate workloads justifying further resources at the operational centre for intelligence analysis and ALC review and clearance.

50. Following the Prime Minister's speech at the TUC conference BERR have announced that the staff of the Employment Agency Standards inspectorate would be increased by 20 from 12. This is tied into BERR's vulnerable workers project. The GLA's success in cases such as Baltic and Focus, both of which attracted significant media attention, demonstrates that it is effective in tackling exploitative practices of vulnerable workers. Arguably as there appears to be an appetite for increasing the number of inspectors to tackle exploitative labour providers, a case could be made for increasing the GLA's compliance team. This might simply be equivalent to the identified absence level of 4 staff units (with the potential addition of the analytical and review resources identified in para. 49).

51. Increasing resources, and tasking those resources to capacity, would increase the GLA's capacity to undertake increased levels of compliance inspections, reaching further into the volume of cases that require review. Whilst this may be a more difficult option to implement consideration should be given to whether it should be supported, and action taken to secure an appropriate level of funding.

Conclusion

52. It can be argued that a move away from AIs will free up resources for compliance and project activity. Such a move can be further argued to be consistent with Hampton principles. However, using information from AIs as a component part of a comprehensive risk assessment approach is equally Hampton compliant: it assists analysis to prevent burdens on businesses risk rated as compliant; and it keeps out those businesses clearly identified as non-compliant.

53. It is therefore considered that a continuation of AIs is essential and builds information, at the level of the individual licence holders, to assist risk based compliance inspections. Thus AIs are not considered to be inconsistent with a risk based approach – they are a fundamental element of subsequent risk decisions. On this basis an additional risk based approach to AIs is not considered essential, particularly as there is an unreliable risk profile at the summary, rather than individual, data level. Furthermore a lack of information from AIs would mean that the risk based approach to CIs would be weakened.

54. The identification of non-compliance in cases originally assessed as "TLWG successful", and where there was no TLWG audit and the OGD response did not identify non-compliance, indicates that AIs can be an effective tool to identify non-compliance. Thus it is argued that AIs should continue; they are effective to detect and prevent non-compliance entering the regulated sector. The issue is therefore whether there can be a move away from an "audits for all" approach which does not increase the risk that non-compliance will enter the system. None of the options to reduce AIs would appear to reduce the risk to the GLA's approach satisfactorily. Therefore, it appears that continuation of the current approach (option 1) is required until the 2008-09 steady state is reached, or is at least reviewed again then.

55. If the current approach to AIs is to continue then alternative approaches must be explored to assist in creating a compliance pressure for improvement that assists the GLA in deploying its resources on areas of greatest risk based on the CRR and intelligence analysis. These options cover an alternative approach to inspecting new businesses and also to the publicity on ALCs.

56. Coupled with this a review of the appropriate level of compliance resources is required if the GLA is able to task its resources to capacity, but not overstretch them, ensuring that compliance inspections based on the CRR, and intelligence-led projects can further detect hidden non-compliance.

57. In conclusion, a single solution is unlikely to create the environment essential for the GLA to increase its effectiveness. AIs, CIs, and Projects all have an equal part to play in detecting non-compliance. A mixed economy approach, in terms of priorities, is therefore essential in order to tackle identified risks in CIs and Projects, and prevent risk entering the system through AIs. However, this can be aided by a change in approach on ALCs and new businesses. But analysis of the resources expended, based on the volumes of work encountered through the GLA's operating model, additionally requires a review of whether the correct level of resources has been created.

58. It is therefore recommended that:

- Application Inspections continue until the 2008-09 renewal cycle commences;

- They are accepted as an essential element of a comprehensive risk assessment, to reduce the burden of unnecessary Compliance inspections in the longer term;

- Alternative actions are commissioned – adding ALCs to the Public Register, and altering the approach to "new businesses" – to free up resources for compliance/project activity (see section 6); and

- A review of the required level of resources should be undertaken, with a view to securing appropriate funding