

Apparel and General Merchandise Public/Private Protocol to tackle labour exploitation in the UK supply chain

Joint Workplace Protocol - November 2018

Working Together

This protocol recognises the intent of the Labour Market Enforcement Bodies (LMEB) and the Apparel and General Merchandise (AGM) Brands (as listed in Appendix 1), to work together and share information with the overarching aim to protect vulnerable and exploited workers.

Each LMEB has provided key indicators suggestive of non-compliance in workplaces covered by its remit – see Appendix 1.

For a summary of the main enforcement bodies, their roles and links to relevant websites – see Appendix 2

The Protocol applies to the UK AGM Brands supply chain and sector. This includes goods for resale and not for resale suppliers, product manufacturers, logistics and distribution companies, contractors and labour providers (the AGM Supply Chain).

LMEBs and AGM Brands will meet regularly under an agreed meeting Terms of Reference in order to:

- Establish and maintain the effectiveness of the Protocol
- Discuss trend information, high risk activities, lessons learned and positive initiatives to engender a collaborative working relationship
- Maintain an actionable series of steps which reduce worker exploitation.

Sharing Information

LMEBs must not exceed their own legal powers or act unlawfully. The emphasis is on the proper exchange of intelligence, where permitted under the law, to support targeted enforcement activity and investigations and to prevent abuse, harm or injury to workers in vulnerable conditions. In particular this relates to:

- Indicators of forced labour and modern slavery
- Underpayment of National Minimum Wage
- Systemic physical and/or mental mistreatment of workers
- Systemic use of workers without the legal right to work
- Employment tax fraud and evasion
- Coercive benefit fraud including Tax Credits
- Serious risk to the health and safety of workers
- Evasion of employment laws

- Phoenixing

The Gangmasters and Labour Abuse Authority (GLAA) will act as the specific point of contact (SPOC) for the AGMs to submit information to regarding labour market offences. AGMs should notify labour market offences to the GLAA by telephone to 0115 959 7049 or 0800 432 0804 Monday to Friday 9:00am - 5:00pm or by email to intelligence@gla.gov.uk.

The GLAA has appropriate legal gateways and operational procedural agreements in place with each of the LMEBs for the exchange of intelligence provided by the AGMs and to enable collaborative working in the appropriate prosecution of such intelligence.

All information will be treated sensitively and appropriately.

Each individual AGM Brand will work together with the GLAA to establish its own operating protocols to how it may share information with any of the LMEBs. Such operating protocols will address the legitimate concerns of the AGM Brands with regards to discoverability of documents and information through Freedom of Information requests by the media and other parties; the discoverability and release of such documents and information as evidence by LMEBs during prosecutions or other actions; the position with regard to LMEBs calling AGM Brands to give evidence in legal cases; the potential for defamation or other loss of business claims by a party that believes it has been wronged by the provision of such information and the position where information has been obtained from third party auditors and audit bodies regarding the implications that the provision of such information could have on that auditor or audit body.

Where an AGM Brand is uncertain about any issue so that the GLAA should be contacted for advice. This is particularly relevant at early stages e.g. where there are suspicions, but not substantive evidence of labour market offences.

AGM Brands and the GLAA will collaborate to develop protocols by which third party social compliance auditors and audit bodies may contact the GLAA with information relating to agreed indicators of forced labour at the time that these are discovered, and in so doing alerting the AGM Brand at the same time.

AGM Brands and LMEBs will actively work together to produce and review good practice guidance and circulate this to the supply chain in order to help prevent labour exploitation. AGM Brands will encourage their supply chain to make available any information which may indicate labour abuse.

Communication and Publicity

The GLAA media team will act in a coordinating role on behalf of the LMEBs in the preparation and agreement of any joint messaging with regards to this Protocol. This will be conducted in accordance with the [GLAA External Communications Policy](#).

AGM Brands and the GLAA will exchange contact details for their media teams.

AGM Brands are encouraged to display material and contact details for the LMEBs to assist workers who may experience exploitation and abuse, and/or be victim to those committing more serious offences (trafficking/criminality).

AGM Brands may invite a LMEB to attend their key conferences/meetings to provide information on inspection findings and steps the supply chain may take to eradicate worker abuse. The LMEB will seek to support such requests wherever possible, subject to resource constraints.

Appendix 1: Protocol Members – November 2018

Labour Market Enforcement Bodies

- DWP Benefit Fraud
- Employment Agency Standards inspectorate
- GLAA
- HSE
- HMRC
- Immigration Enforcement
- Insolvency Service
- Office of Director of Labour Market Enforcement (ex officio)

Apparel and General Merchandise Brands

- John Lewis
- M&S
- New Look
- NEXT
- River Island
- Shopdirect

Associations and Organisations

- British Retail Consortium
- Fast Forward
- Stronger Together
- UK Fashion and Textile Association

Appendix 2: Joint Workplace Protocol indicators of concern

Indicators of Concern	Key contacts for sharing information									
	HOIE	HMRC & NMW	HSE or LA	EAS	GLAA	AMW	DWP	MSHTU	GAIN	IS
<u>Contracts/conditions of employment</u>										
Employers providing apprenticeships or training (those who offer a training day but do not pay the workers for it, those who pretend a worker is an apprentice, and those who fail to pay National Minimum Wage to apprentices at the appropriate time)	X	X			X	X				X
Bonus payments or large cash sums used to supplement pay (unconsolidated bonuses counting towards pay)	X	X			X	X				
Employers providing accommodation, food, transport, or other benefits in kind such as uniforms to low paid workers		X			X	X				
Trade where an intermediary such as a labour provider is involved in the engagement of the workers (particular concern around seasonal work, migrants and where there is a high turnover of staff)	X	X			X	X				
A level of charges to hirers which suggest that the Agricultural and National Minimum Wage might not be paid and/or statutory requirements are not being met	X	X		X	X	X				
Workplaces where workers are not given a written statement of employment particulars or a written contract		X		X	X	X				
Agencies providing other services (e.g. accommodation, transport, etc.) to the workers, for which the worker is being charged large sums	X	X		X	X					X
Accommodation is provided by the employer and is grossly overcrowded, subject to change at short notice, or not subject to a formal tenancy agreement		X			X					
Staff being allowed time off every two weeks (possibly to sign on)		X					X			
Staff paid cash in hand at all times	X	X			X	X				
Staff work especially unusual or long hours	X	X	X		X	X				
<u>Employer's records</u>										
Employer records are poor/incomplete particularly if there are no records of hours worked, or general evidence of poor record keeping	X	X		X	X	X				X

Indicators of Concern	Key contacts for sharing information									
	HOIE	HMRC & NMW	HSE or LA	EAS	GLAA	AMW	DWP	MSHTU	GAIN	IS
Incorrect or false national insurance numbers used for employment purposes.	X	X			X					X
Incorrect or false national insurance number used in connection with claims to benefit.	X	X					X			
Any evidence suggesting staff in receipt of benefits to which they are not entitled.	X	X					X			X
Absence of wage slips (or other evidence that employees are paid cash in hand at all times)	X	X			X					
Original travel or identity documents being kept by employer	X	X			X					
Workplace conditions										
Poor management of vehicle movement, general absence of safety signage and markings (e.g. lack of signs or signs leading you from a car park to reception via 'Goods inwards', sightings of dangerously moving vehicles or people not wearing appropriate high-visibility clothing when 'in amongst' moving vehicles)			X		X					
Welfare facilities either absent or poor, e.g. excessive heat/cold with no means of getting warm, toilets and washing facilities dirty, etc.			X		X					
Premises and equipment poorly maintained (e.g. trailing cables, open fire doors, rusty electrical equipment, leaking pipe work, significant damage to building fabric and absence of health and safety notices)			X	X	X					
Failure to provide and maintain arrangements to ensure safe work where maintenance work is being carried out (e.g. work at height should include scaffold, edge protection (guardrails), safety nets or suitable work platforms)			X		X					
Correspondence/business address differs from place of work (e.g. business or correspondence address)	X	X								
Workplace facilities not suitable for stated purpose (e.g. insufficient classroom or work space for number of registered students or employees)	X	X								
Workplace characteristics										
Workforce predominately comprising migrant workers (when combined with other factors listed in this table)	X				X					
Evidence of organised criminality		X			X				X	
Potential multi-agency disruption opportunities		X			X				X	X

Indicators of Concern	Key contacts for sharing information									
	HOIE	HMRC & NMW	HSE or LA	EAS	GLAA	AMW	DWP	MSHTU	GAIN	IS
Employer's reaction to visit										
Employer nervous or reluctant to allow officials to approach or interview workers	X	X			X					
Employer refuses to provide documents relating to workers.	X	X			X					
Previous non-compliance										
Business/employer/place of work has previously failed to comply with workplace regulations					X					X
Human Trafficking (this is not an exhaustive list of potential indicators of trafficking, more detailed information is available)										
Threats or actual physical harm to workers					X			X		
Restriction of movement or confinement, to the workplace or to a limited area					X			X		
Debt bondage: where a worker works to pay off a debt or loan and is not paid for his or her services. The employer may provide food or accommodation at such inflated prices that the worker cannot escape the debt		X			X			X		X
Withholding wages or excessive wage reductions, that violate previously made agreements		X			X			X		
Threat of denunciation to the authorities where the worker is in an irregular immigration status	X				X			X		

Appendix 3: Workplace Enforcement Agency Roles

The following is a brief overview of the workplace enforcement responsibilities of various government agencies.

Department for Environment, Food and Rural Affairs (defra)

- Ensure compliance with the Agricultural Wages Order (AWO) and to enforce the Agricultural Minimum Wage in England and Wales (AMW).

Department for Work and Pensions (DWP)

- Ensure accurate and timely payment of benefits
- Minimise benefit fraud, official and customer error to stop those who are not entitled, or those who are working illegally whilst claiming, from receiving benefits.

Office of Director of Labour Market Enforcement (ODLME)

- The office of the Director of Labour Market Enforcement is not an enforcement body but oversees the work of the GLAA, HMRC [NMW] and Employment Agency Standards Inspectorate (EASI)
- High level intelligence and information used to assess wider trends and cross cutting issues are supplied by the three bodies
- The Director also has an overarching Strategy around Labour exploitation, which the three bodies need to pay due regard to.

Employment Agency Standards Inspectorate (EASI)

- Part of the Department for Business, Energy and Industrial Strategy (BEIS)
- Enforce legislation regulating the conduct of the employment agencies. The regulations include requirements to ensure that workers are paid in full and on time, and to establish the identity and suitability of workers before supplying them to hiring companies. Agencies are also not allowed to charge fees for providing work-finding services (except agencies in the modelling and entertainment industries)
- Must pay regard to the Director of Labour Market Enforcement strategy.

Government Agency Information Network (GAIN)

- Gain is a collaborative agreement between Government agencies that have an intelligence and investigative remit. GAIN has evolved into a significant capability for the police, agencies and national colleagues that can coordinate partners (both law enforcement and others) to disrupt organised crime.
- GAIN agencies work together to:
 - Support the delivery of the National Organised Crime Strategy
 - Use their collective influences to tackle serious and organised criminality
 - Share appropriate intelligence and exchanging information within legislative constraints
 - Share resources to jointly participate in enforcement action

- GAIN strives to deliver these objectives through three main channels of business, these being:
 - Partnership intelligence sharing
 - Partnership disruption activity
 - Partnership network development
- Each Regional Organised Crime Unit (ROCU) has a GAIN Coordinator who is the strategic and tactical lead for GAIN within their Region, working with partner agencies to identify and coordinate enhanced intelligence sharing and disruption activity across the network in order to tackle serious and organised crime.

Gangmasters and Labour Abuse Authority (GLAA)

The role of the GLAA is established through the Gangmasters (Licensing) Act 2004 as amended by Part 1 (Chapter 1) of the Immigration Act 2016.

The aim of the GLAA is to work in partnership to protect vulnerable and exploited workers. The aim is achieved through the delivery of three clear priorities:

- Preventing worker exploitation
- Protecting vulnerable people
- Tackling unlicensed/criminal activity and ensuring those licensed operate within the law.

The GLAA regulated sector and that which currently requires licensing includes agriculture, horticulture, shellfish gathering and all associated food processing and food packaging. Enforcement of Labour Market Offences under NMW, Employment Agencies Act and Modern Slavery Act (labour exploitation) are now included wherever they occur – not limited to sectors under the Gangmasters Licensing Act.

GLAA support law enforcement authorities and relevant government departments as appropriate, through shared information and joint working to:

- Safeguard the welfare and interests of workers, by regulating those labour providers who supply labour or use workers to provide services in agriculture, horticulture, shellfish gathering and food processing
- Support enforcement of the law, by or in conjunction with the Enforcement Authorities of other Government Departments, and others as appropriate, through shared information and joint working, covering the areas set out in the GLAA's licensing standards
- Investigate cases of severe exploitation and allegations of labour abuse across the entire UK labour market
- Pay regard to the Director of Labour Market Enforcement strategy.

Health & Safety Executive (HSE)

- Secure the health, safety and welfare of all persons at work
- Enforce working time regulations protecting workers from working more than 48 hours a week on average without their written agreement
- Protect the health and safety of others (including members of the public) against risks to their health and safety arising out of or in connection with work activities.

These responsibilities are shared with local authorities. The HSE has responsibility for high risk sectors of the economy including: factories, construction, agriculture, healthcare, government activities and major hazard industries such as chemical manufacture and storage, offshore oil and gas extraction (for Local Authorities' areas of responsibility please see below).

HM Revenue and Customs (HMRC)

HMRC are responsible for safeguarding the flow of money to the Exchequer through collection, compliance and enforcement activities.

Areas of responsibility:

- Income Tax, Corporation Tax, Capital Gains Tax, Inheritance Tax, Stamp, Land and Petroleum Revenue Taxes
- Environmental taxes - Climate Change and Aggregates Levy, Landfill Tax, Insurance Premium Tax and Air Passenger Duty
- Value Added Tax (VAT), including import VAT
- Customs duty
- Excise duties
- Trade Statistics
- National Insurance
- Tax Credits
- Child Benefit
- Enforcement of the National Minimum Wage
- Recovery of Student Loan repayments

Must pay regard to the Director of Labour Market Enforcement strategy (**NMW only**).

Priorities: HMRC has three strategic objectives:

- Maximise revenues due and bear down on avoidance and evasion
- Transform tax and payments for our customers
- Design and deliver a professional, efficient and engaged organisation

Home Office Immigration Enforcement (HOIE)

- Remove incentives for people to stay in the UK illegally
- Target the criminality that supports illegal immigration
- Effectively manage high harm individuals to reduce risk to the public
- Continue to increase the number of individuals removed from the UK

Immigration Enforcement works to prevent and reduce illegal immigration and the harm caused to the UK by foreign nationals, directly contributing to the Home Office's strategic objectives of preventing terrorism, cutting crime, reducing migration and promoting growth and to the Government's ambition to reduce net migration to the tens of thousands.

Enforcement activity goes wider than individual offenders, with campaigns that target those who benefit from supporting illegal migration such as employers and rogue landlords. We also relentlessly pursue the criminal gangs who facilitate and benefit from illegal migration, both through arrests and confiscation of their illicit gains. Identifying key sectors has allowed us to establish strong relationships with a range of partners, which we will continue to build upon. These include:

- Other Government Departments and agencies, such as Director LME, DVLA, NHS, HMRC and DWP, to deny access to benefits and services
- Local authorities where we have on-site immigration officials
- Relevant professional bodies to raise awareness of responsibilities in preventing illegal working
- Employers and landlords, to improve compliance with right to work and rent legislation
- The voluntary and community sector, to increase voluntary returns and tackle local pressures such as rough sleeping.

The backdrop to this activity will be creating a credible deterrent to illegal migration where the incentives that draw people to the UK to live and work illegally are removed. **At the heart of this is our work to tackle illegal working**, which continues to be one of the main drivers that attracts illegal migrants to the UK. Building on the Immigration Act 2016, which made illegal working a criminal offence, we will use our new powers to close businesses, prosecute employers, and seize assets.

The current priorities for Immigration Enforcement are:

- Deterring migrants from entering the UK illegally and overstaying
- Encouraging and enforcing the removal of illegal migrants (including foreign national offenders) from the UK
- Tackling the threats associated with immigration offending such as organised immigration criminality and modern slavery/human trafficking.

Local Authorities (LAs)

- Enforce health and safety at work, and working time, legislation on the same basis as the Health and Safety Executive. Local Authorities have responsibility for sectors of the economy including: offices, shops, retail and wholesale distribution, hotel and catering establishments, petrol filling stations, residential care homes and the leisure industry (for HSE's areas of responsibility please see above)
- Enforce a range of legislation in relation to the private rented sector, including tackling unsatisfactory housing conditions, overcrowding, implementing licensing for certain Houses in Multiple Occupation (HMOs) and responding to complaints about harassment and illegal eviction
- Enforce a range of regulatory legislation which may indirectly bring inspectors in Environmental Health and Trading Standards divisions into contact with businesses employing migrant labour (e.g. Licensing, trading standards, animal health and welfare, feed and food hygiene requirements on farms).

Modern Slavery Human Trafficking Unit (MSHTU)

- Part of the Organised Crime Command in the National Crime Agency

- Protect the public, safeguarding potential victims and target those who enable or facilitate crimes of modern slavery in the UK
- Tackle serious and organised crime, strengthen our borders, fight fraud and cybercrime, and protect children and young people from sexual abuse and exploitation.

The Insolvency Service (an Executive Agency of the Department for Business, Energy and Industrial Strategy)

Our company investigations team may investigate:

- Following other formal insolvency proceedings where we receive information about a director's conduct (in one or more companies) that would make them unfit to manage a company if it was proven, and
- Taking into account all circumstances of the case, a court would be likely to make a disqualification order.

We also have the power to conduct confidential investigations into limited companies and limited liability partnerships where we have received information that suggests serious corporate abuse.

We can investigate when the company is actively trading or has ceased trading without entering into insolvency proceedings, but not when a company has been dissolved. If we feel it is appropriate, we may apply to the court for a company to be wound up and/or for one or more directors to be disqualified.