



Gangmasters &
Labour Abuse Authority

GLAA71.09 Compliance Strategy – Proposed Consultation

4 November 2020

Board Paper Reference – GLAA71/09 - Compliance Strategy – Proposed Consultation

1. Purpose of the Report

- 1.1 This paper provides a summary of the proposals intended to form the basis of a formal consultation on the GLAA's approach to compliance.

2. Recommendation

- 2.1 The Board to note the proposals set out below in section 4 and agree that there should be a formal consultation on the compliance strategy starting in early December with a consultation period of 8 weeks.
- 2.2 The Board to delegate sign-off of the formal consultation paper on behalf of the Board to Suzanne McCarthy (Regulation Champion) and Margaret Beels (Chair).

3. Background

- 3.1 In April 2020 the Board undertook a “deep dive” review of GLAA's compliance activity, which was prompted, inter alia, by concerns previously raised by the Association of Labour Providers (ALP) in correspondence with the Chief Executive. The issues raised by the ALP are summarised in Annex 1.
- 3.2 At the September 2020 Board meeting, the interim CEO gave a presentation on the work the Executive had been doing following the deep dive to develop a new compliance strategy. This set out initial findings and a plan for testing our thinking in a “safe-space” with key partners. The Board supported this work, and it was agreed that a paper should come to the November 2020 Board setting out options for a formal consultation.
- 3.3 Annex 2 sets out the details, including attendees, of a series of workshops that took place during October where a number of stakeholders (mainly labour providers, plus two labour users, ALP and REC) were invited to share their views and expertise in a small-group setting. The sessions were facilitated by the interim CEO, supported by the Head of Regulation (Nicola Ray) and the Board sponsor for compliance work (Suzanne McCarthy).
- 3.4 The views and ideas shared by our stakeholders have helped us shape, refine and improve our initial thinking on the possible options for the new compliance strategy. We believe that we should now move to a formal consultation, as what may result will be a fundamental change to the way that we deliver our compliance and licensing activity. The specific details are set out below, which take account of the issues discussed at the Compliance deep dive in April 2020.
- 3.5 The Board are invited to delegate responsibility for sign-off of the formal consultation document to our Board sponsor and the Chair to allow for this to progress promptly.

- 3.6 It is anticipated that the consultation will start in December 2020, be open for 8 weeks, and that we will return to the Board in April 2021 with our findings and recommendations. Subject to the consultation responses and to the Board's decisions, the expectation is that changes would be introduced as early as possible in 2020/21 (assuming there will not be a need to adhere to a common commencement date).

4. Key Issues for Consultation

- 4.1 The workshops began with some context setting, covering the number of inspections currently carried out, the balance between application inspections and compliance inspections, and the available resources in the compliance team. The question we set ourselves was whether we are making the best use of these resources. To facilitate this discussion, we set out what activities are undertaken in an application inspection and how this has been undertaken virtually since Covid-19 restrictions were introduced. We then moved on to consider some initial options, including moving away from inspection on application towards inspection on renewal, plus some other variants around how these could be intelligence-led, randomly selected or applied across all licence holders.
- 4.2 Most participants favoured a hybrid of the options we presented i.e. a mix of intelligence-triggered compliance inspections (as they are now) and inspection on renewal or random inspection. The analysis of these options is set out below.

Requirement for Application Inspections

- 4.3 Over the past three years almost two-thirds of GLAA physical compliance inspections have been conducted at the point of licence application. This is when businesses are not yet trading in the regulated sector. During this period there has been a seemingly steady drift to almost automatic inspection for new licence applications, with an average of over 90% of applications leading to physical inspection (in the last calendar year it was 95%). On average 72% are granted a licence outright; this rises to 88% with the inclusion of licences granted with additional licensing conditions.
- 4.4 In 2014 the Board agreed that GLAA could exercise discretion on whether or not to carry out a physical inspection when a licence application was made before granting the licence. The high level of application inspection activity is driven by our current approach to discretionary inspections, which result in an inspection being required in most cases. This approach was originally introduced to ensure that we decided to inspect based on risk. However, the factors to consider when making this decision inadvertently lend themselves to high levels of inspection.
- 4.5 We also prioritise application inspections over intelligence-based compliance inspections (i.e. of existing licence holders) because we do not want to become a barrier to trade by delaying the granting of licenses. Currently, we are also seeing an upturn in the number of licence applications, which will further squeeze available compliance resources unless we take a different approach. We are doing some analysis in this area to identify why there is an increase, but anecdotal evidence points to the current buoyancy of the food production sector and the availability of government business grants.

- 4.6 There was a recognition in all the workshops that the value of physical application inspections was limited, as the business was not operating in the regulated sector. However, there was agreement that there should still be a process to vet applications to keep unscrupulous individuals out of the sector. There was near universal support for prioritising resources for compliance inspections rather than physical application inspections. There were only two dissenting voices who emphasised the importance of a physical meeting between GLAA staff and potential licensees via application inspections, as this established the right sort of relationship from the outset. Notwithstanding this, they also recognised that a lot can be achieved through a virtual approach to application inspections and they supported the proposal to increase compliance inspections for business that are trading.

Virtual Application Inspections

- 4.7 During the coronavirus pandemic, we have demonstrated that we can successfully operate a licence application process, including ID checks, which does not require a physical inspection. Compliance Investigators have been conducting their inspections using virtual systems such as Skype. This has reduced the amount of travel required and allowed application inspections to continue to be prioritised. During the workshops, evidence was shared by attendees of the general approach to audits in the sector which require documentary evidence to be uploaded prior to the audit. Participants felt that this could be replicated in the compliance regime to strengthen a virtual application inspection. There was also general agreement that virtual ID checks are becoming the norm across most sectors.

Focusing Resources on Compliance Inspection

- 4.8 A key consideration for GLAA is how to make the best use of our limited compliance resources. Currently compliance inspections are tasked through the Daily Management Meeting in response to an intelligence report. This does not allow for inspection work to be planned out over the year. The team responds to the demands created by applications and intelligence reporting. If the compliance team were able to proactively manage their workload by focusing on compliance inspections, then their productivity should improve. We know from the workshops that the sector would like to see more compliance inspection and moving away from a reactive approach would allow some of their concerns to be addressed.

Inspection on Renewal

- 4.9 To demonstrate how compliance inspection could be increased, we introduced workshop participants to an option for inspection on licence renewal, an approach currently used in drugs licensing by the Home Office. The basis of this option is that a compliance inspection would be scheduled at renewal or triggered by Intelligence (as per normal). A renewal inspection could be triggered randomly or because of information provided at renewal. With improvements in productivity within compliance, we proposed that this could cover around 20% of licence-holders annually, although we would need to smooth out inspections across the year if there was bunching of renewals. A variant of this option would be that a compliance inspection would be triggered only at the point of renewal and no other compliance inspections would be instigated. The aim would be to cover all licence-holders over a number of years.

4.10 We did not sense much support from workshop participants for moving to a system where all licence holders would be inspected over several years. It was felt that this would be a bit too much like inspection for inspection's sake. This model is used in some regulators, such as the Social Housing Regulator, but they link it to an annual inspection charge. Therefore, we would probably need to consider this in future works on fees.

Hybrid Option – Random Inspection and Intelligence led Inspection

4.11 Our workshop participants identified a hybrid option for compliance inspections. They felt that there should be random inspections, as well as the usual intelligence-led ones, but that they didn't need to link to renewal. The reason for this was that some businesses may not be subject to Intelligence reports; but this does not guarantee compliance. Additionally, if inspections were going to be randomly scheduled then the renewal process wouldn't necessarily provide an appropriate trigger. However, if there was the potential for scrutiny at any time, this would help to keep businesses compliant as they wouldn't know when an inspection would occur. Additionally, participants felt that intelligence from workers may not be reported and a cycle of inspection would weed out unscrupulous labour providers (although it was recognised that intelligence-led inspections should be prioritised). There should also be a mix between site visits and calls for evidence of compliance depending on the intelligence reported.

4.12 Many suggested making more use of third-party audit reports, for example, by making these a requirement of the renewal process. This would provide evidence of compliance as many of these audits are based on the Licensing Standards. Potentially this would be cost-neutral as many businesses are required by their supply chain to undergo audits such as SMETA. However, we need to test the appetite of the sector as many of the participants in our sessions came from our larger labour providers. Smaller businesses may not be subjected to audits in the same way.

Longer Licences

4.13 We rehearsed the arguments for moving to a regime of longer licences, i.e. a two-year licence, but there wasn't an appetite for this. The feeling was that some compliance activity would still be needed at the mid-point on top of potential intelligence-triggered compliance inspections. Additionally, there was a view that we would need to collect a fee annually so it was unclear what the benefits would be. More interestingly, much was made of the feeling that licence-holders should be "kept on their toes" by spot checks or thematic reviews which could be desk-based. This approach could provide a snapshot of compliance in the sector if it's managed effectively. Compliance activity did not just have to be an inspection, it could encompass the current Tier 1 process for dealing with minor issues plus other requests for information.

New Business Inspections

4.14 Some concerns were raised about the loss of "new business" inspections, (i.e. routine compliance inspections conducted once a licensee begins to trade), if inspections were random or intelligence-led. However, there was support for an approach that would involve local contact being made by the GLAA's operational

enforcement syndicates and/or Compliance Investigators. This approach has been successfully used during the pandemic to provide information for labour users and licence-holders. Obviously, this wouldn't be a formal inspection, but would provide an opportunity for education and awareness. This could be further enhanced by ensuring that we continue to use our communication channels such as briefs and bulletins to share information.

Wider Issues

- 4.15 During the sessions, some wider issues were raised that require further thought but are not for consultation. Some excellent feedback was provided on the use of Apps and surveys to access and/or capture the views of workers. This could be used with virtual inspections or thematic reviews to garner a wide range of views. Additionally, participants were interested in the structure of inspection reports and how they could be improved using an audit model. This is an area that we will be working on outside of the consultation so that we can make some quick improvements.

5. Financial Implications and Budget Provision

- 5.1 One of the drivers for this review is to improve the flow of work through the compliance team. This will drive greater efficiency across the Licensing scheme as well as demonstrating a robust approach. But the consultation will also need to be clear on the potential impact on the future licence fee model, albeit any changes to the model would be subject to a separate consultation, HM Treasury approval, and secondary legislation. As the GLAA is already under-recovering licensing costs by around 50%, changes to the balance of compliance activity cannot make this situation worse. One obvious area of contention is the application inspection fee, which some might argue should change if the process becomes entirely virtual. Although this was not raised in any of the workshops, we will need to make the case for ensuring any future regime has to adhere to the principles of full cost-recovery.

6. Organisational Risks

- 6.1 Reputational risk if compliance activity does not provide stakeholders with sufficient assurance on the licensing scheme.

7. Policy Implications and Links to Strategic Priorities

- 7.1 This work will contribute to the GLAA meeting its strategic objective number 2.

8. Details of Consultation/EQIA

- 8.1 An informal consultation exercise has taken place on the GLAA's approach to licensing and compliance which sought a range of stakeholder views. The selection of stakeholders was based on attendance at the LP/LU liaison group and covered both LPs, LUs and trade associations. A list of attendees is at Annex 2. The scope of the consultation will be shared at the next LP/LU liaison meeting in November.

9. Background Papers and Relevant Published Documents

- 9.1 Compliance deep Dive April 2020.

Report Author: Nicola Ray

Senior Responsible Officer: Ziggy MacDonald

Annex 1

ALP Concerns about Compliance

The issues highlighted by the ALP are listed below:

- **Compliance strategy** – GLAA should have a specific Compliance Strategy; there should be greater transparency about risk assessment; GLAA is not making use of intel from labour providers; GLAA should formally assess the effectiveness of its compliance activity;
- **Compliance Activity Level** – ALP is concerned that many licensees have not been inspected in the last five years and some within 10 years. ALP also questioned the productivity of the compliance team and the time taken to resolve compliance issues;
- **Scope of Licensing*** – ALP is concerned that GLAA has allowed “licensing creep” beyond its statutory duty awarding licences to companies with no intention to supply labour in the regulated sector and that some of those with GLAA licences are acting as financial intermediaries or have second licenses as back-up parachutes. ALP proposed that those who have not begun trading within a year should not have their licences renewed;
- **GLAA Activity to Support Compliance** – ALP wanted to see GLAA issuing more “GLAA briefs”; GLAA being more proactive with overseas labour providers, and being more active as regards holiday pay and tax evasion models;
- **Effectiveness of Compliance Inspections** – ALP perceived that GLAA was only inspecting against a subset of GLAA licence standards and that GLAA should be transparent about this. It argued that written reports should be issued to licence holders and that there should be a formal “control point” system used during GLAA compliance inspections to ensure consistency; and
- **GLAA Licensing Resource Capability** – ALP wanted to see an upskilling programme for GLAA Compliance Inspectors.

***Scope of Licensing** - We recognise that there is the potential within the relevant Act to refuse an application or revoke an existing licence, but these decisions could trigger an appeal. We intend to seek further advice on this, as this would potentially result in an increased number of appeals and we would need to identify a policy setting out how we would make these decisions. This would not be a matter for the consultation.

Informal Consultation

The GLAA ran a series of four workshops and one telephone interview.

Each workshop included a presentation on the rationale for reviewing the GLAA's approach to Compliance work and contextual information such as the number of inspections carried out and the resources available for compliance activity.

We identified the following issues that we aimed to tackle through the review:

- Increasing our productivity by conducting more inspections so we can provide greater assurance on the Licensing scheme.
- Improving our processes so that they are more responsive to customer needs.
- Getting the balance right between application inspections and compliance inspections, as the former are currently prioritised at the expense of the latter.
- Ensuring that our inspections are robust, consistent and represent good regulatory practice.
- Linking actions to regulatory outcomes, e.g. renewals being a trigger for inspection.
- Improving the frequency and quality of the advice we give.

We started the discussions by exploring participants thoughts on application inspections, after sharing quantitative data on the numbers being inspected and granted. There was a general feeling that application inspections were not necessary as most businesses were not trading so "there was nothing to see". This could be covered off through document checks to ensure there were policies etc in place.

We then moved on to consider some initial options that the GLAA has identified. These include moving away from inspection on application towards inspection on renewal plus some other variants around how these could be intelligence-led, randomly selected or applied across all licence holders. This resulted in several options being identified by participants which were in addition to those presented for discussion.

The options that we had identified prior to the meeting comprised:

- Remove application inspection and introduce risk-based inspection on renewal, with two variants presented:
 - Inspection on renewal plus current compliance inspections as they arise
 - Inspections on renewal only
- Remove application inspection and divert the resources to compliance inspections

- Introduce two-year licences with automatic inspection after the first year of trading and retain current compliance inspections

Attendees identified some hybrids of these options, which were further discussed in the workshops. There was some lively debate around the question of when compliance inspections should occur and how they could be used to ensure more businesses are inspected. As the sessions were deliberately kept small to encourage debate, the quality of the conversation was high with good practical advice being shared. Most participants were keen to share their personal experiences from supply chain audits which covered the same areas as inspections. Attendees also said that they valued the ongoing discussion with inspectors once they were licensed and felt that regular inspection would facilitate this, as well as being able to speak to a local presence when they wanted specific advice.

Attendees:

Attendee	Organisation
Claire Flower	REC
Luiza Gomes	REC
Lorna Bramwell	Unity Resourcing
Doug Amesz	AG Recruitment
Tom Easson	Ringlink
Sam Zubaidi	Concordia
David Segust	First Call
Jane Bladon	Staffline
Shayne Tyler	Fresca Group
Joanne Young	Consultant
David Camp	ALP
David Thurley	GI Group
Sian Thomas	FPC
Estera Amesz	AG Recruitment
Julie Giles	The Staffing Group.