



Gangmasters &
Labour Abuse Authority

Enforcement Policy Statement

8 May 2019

Introduction

1. The Gangmasters and Labour Abuse Authority (GLAA) has responsibility for the investigation of criminal offences contrary to the Gangmasters (Licensing) Act 2004 in England and Wales, Scotland, and Northern Ireland.
2. In England and Wales the GLAA also has the authority to investigate other breaches of labour market legislation. Primarily they are offences in the Employment Agencies Act 1973, National Minimum Wages Act 1998, and the Modern Slavery Act 2015. These are referred to collectively as labour market offences. The full list of labour market offences can be found in [section 3\(3\) of the Immigration Act 2016](#).
3. The GLAA's Enforcement Policy Statement sets out how the GLAA approaches illegal activity. It describes how the GLAA ensures different sanctions are used consistently, and appropriately, to deliver a proportionate and meaningful response to criminal offences. It also sets out how it approaches situations where criminal and civil (e.g. licensing) decisions are required, to deliver the most appropriate sanction, as well as a preventative and deterrent effect, to eliminate financial gain or benefit.
4. The GLAA's objective is to create a compliant business sector. It aims to achieve this through the provision of guidance and advice to enable labour providers and labour users who operate in the licensable sector, to understand the nature and extent of their responsibilities and comply voluntarily. It also raises awareness of wider labour market compliance with business, working with its Government enforcement partners. However, there are times when enforcement action is necessary where individuals and companies do not comply.
5. Formal enforcement is about securing compliance with regulatory requirements through criminal and/or civil sanctions. Therefore, the GLAA uses a range of civil and criminal options from simple advisory letters, licence decisions, and advisory letters (notifying labour providers to apply for a licence), a warning letter regarding future conduct, or the use of Labour Market Enforcement Undertakings (LMEU) and Orders (LMEO) to a criminal prosecution. The GLAA will particularly target those offenders that exploit the conditions of workers. The GLAA may use these in combination where appropriate.
6. The GLAA expects labour providers that operate in the regulatory sector to hold a licence and be compliant with the licence standards. If a labour provider does not hold a licence it will commit a criminal offence. If a labour provider holds a licence but operates in a manner that exploits workers such behaviour will be dealt with as a criminal offence, as well as consider whether the licence should continue. The GLAA will also investigate other exploitative behaviour that breaches other legislation in England and Wales (see paragraph 2).
7. The GLAA recognises that a licensed labour provider may have become non-compliant and is exploiting its workers in ways that causes more harm than an unlicensed labour provider. There may be situations where an unlicensed labour provider is trading but does so in a way that is compliant with other areas of law that govern employers and the employment relationship. Other breaches of labour

market legislation may create similar degrees of harm to workers in other industries outside the licensable sector. The GLAA will consider such situations carefully to ensure that an appropriate approach to sanctions is taken that delivers a proportionate and consistent outcome that focuses on the harm to workers at the heart of the decision-making process. Where it investigates offences under the Employments Agencies Act 1973 and/or the National Minimum Wages Act 1998 it will work closely with the National Minimum Wages teams and the Employment Agency standards teams to ensure appropriate and consistent sanctions are utilised.

8. The GLAA believes in firm and fair regulation and applies the following good regulation principles for achieving this.

Proportionality

9. Proportionality in securing compliance will generally involve taking account of the harm, or the risk of harm, caused by non-compliance or trading without a licence. Sometimes enforcement action will be taken where the risks are unclear, and the actual harm caused initially uncertain, to determine whether intervention is required, and if so the action required. It will also take account of the length of the illegal trading or identified non-compliance. In relation to this offence, and others that it has responsibility for in England and Wales it may also consider whether a LMEU may be the most effective and proportionate mechanism to correct non-compliances and maintain future compliance.

Accountability

10. GLAA is accountable for the efficiency, effectiveness and cost of its operations. The GLAA publishes an annual report detailing its performance for the previous financial year. Published reports will appear on the GLAA's website. Its enforcement outcomes will have regard to cost effectiveness recognising that prosecution can be an expensive process but remains necessary in certain circumstances.

Consistency

11. Consistency means taking a similar approach in similar cases in all legal jurisdictions in which the GLAA operates as it is essential to achieve similar outcomes within which a degree of discretion is available. The overarching view of the GLAA is that full compliance by those we regulate is expected, and across those industries that are not subject to licensing. The attitude and competence of the key individuals within a business, and the company itself, will be considered in reaching a decision on whether to prosecute. In setting out this principle the GLAA recognise that no two sets of circumstances are precisely alike.

Transparency

12. Transparency means helping those subject to licensing as well as those that operate in non-licensable sectors, to comprehend what is required of them at the outset and setting out what they may expect from GLAA in return. Transparency includes clarity on the consequences of prosecution or any other form of sanction for them. It also involves making clear what remedial action is required from a person or business and providing details of any rights of appeal etc.

Targeting

13. Targeting of enforcement action means prioritising and directing regulatory effort and sanctions effectively. This means concentrating on the activities that create the most serious risk either because the nature of the activity is inherently high-risk, or because of a lack of appropriate controls or appropriate attitude in other less high-risk activities. It also involves identifying and focusing on those responsible for the risk. Furthermore, it requires a proportionate response, with sanctions other than prosecution, for less serious offences.

Approach

14. Alleged trading by unlicensed operators, and other labour market offences referred to the GLAA will require criminal investigation.
15. Criminal investigation may also become necessary in assessing new applicants for a licence, and in compliance reviews of licence holders. This may be appropriate because:
 - A new applicant may have been trading illegally without a licence for a period
 - A licensed labour provider may be using the services of an unlicensed sub-contractor
 - Labour market offences are identified
16. Investigation of alleged criminal behaviour will aim to identify whether there are any aggravating or mitigating factors that should be considered in determining an appropriate sanction. The GLAA will resolve each case by the most appropriate enforcement option.

Criminal Investigations

17. A criminal investigation is carried out for the purposes of gathering evidence to establish whether a person has, or has not, committed an offence. It aims to ensure that evidence of illegality is secured to enable prosecution or alternative sanction to be initiated, to eliminate gain, prevent harm, punish wrongdoing, avoid a recurrence and to act as a deterrent to others. Evidence gathered during an investigation will determine the appropriate enforcement outcome.

Aggravating factors

18. The following factors will be considered when determining the appropriate outcome:
- Have workers been caused harm by the actions of the individual or business
 - Have workers been exploited and/or suffered economic loss?
 - Do the actions of the individual/business constitute offences under other labour market legislation
 - Has there been a significant loss of revenue to UK Government through the activities of an individual or business,
 - Whether a labour user failed to take steps to check that a labour provider was licensed, and exploitation of, and harm to, the worker(s) occurred
 - If the labour user knew the labour provider was unlicensed but contracted with them in intentional contravention of the Gangmasters (Licensing) Act 2004.
 - Any previous and relevant criminal history
 - The explanation given of why a licence was not applied for earlier
 - Deliberate or reckless nature of the offence

This list is not exhaustive

Mitigating factors

19. Mitigating factors do not de-criminalise unlicensed trading or other offences. However, where present, they may be taken into consideration to determine whether it is in the public interest to prosecute an offender, or whether an alternative sanction may secure an effective and proportionate remedy. Mitigating factors include:
- Demonstration of full compliance with the GLAA licensing standards
 - Providing a welfare centred approach to working, transport, and living conditions of workers, to prevent the risk of harm or financial difficulty
 - Correctly registered with HMRC and fully up to date with all payments due
 - In conjunction with the GLAA have demonstrated that corrective steps have begun.

This list is not exhaustive

Voluntary Disclosure

20. Labour providers and/or labour users who have previously operated outside of the legislation and wish to put their affairs in order may approach the GLAA to make a voluntary disclosure of the full extent of the irregularities in their operations
21. The size of the alleged offence is not of itself the determining factor in considering whether to prosecute. However, the GLAA's view is that the more extensive and substantial the alleged offence, the more likely it is that prosecution may be appropriate. Furthermore, a crucial factor will be establishing the reason why a labour provider decided to come forward, as this may identify circumstances that cannot be classed as "voluntary disclosure". Nonetheless, if a labour provider or labour user voluntarily comes forward it may not be in the public interest to prosecute and an alternative sanction may be considered.

22. It is less likely that the GLAA may be similarly approached by a business in respect of separate offences contrary to the Employment Agencies act 1973 and the National Minimum Wages Act 1998; it is more likely that they will approach either EAS or NMW in such cases.

Criminal and Civil Decisions for licensable activities

23. The following paragraphs illustrate how certain situations may be handled where a criminal offence is identified, and a civil licensing decision is also required. Each case will be considered on its own merits.
24. **An unlicensed labour provider is identified.** A criminal investigation will occur. As part of that process an advisory letter is issued. It is designed to warn individuals and companies of the risks of illegal trading and that a licence is required. It is not a sanction itself. It will not prejudice any subsequent decision taken on whether it is appropriate to pursue a criminal sanction. If no application is made, and the company continues to trade it will be seen as aggravating the situation.
25. **An unlicensed labour provider makes an application for a licence.** This may occur as a result of detected unlicensed trading. This will not automatically result in licence refusal. To do so may not create the behavioural change the GLAA seeks. If the workers are mistreated or the labour provider is non-compliant with the standards a licence refusal may be the appropriate enforcement outcome. Where defrauding of Government is identified there may be substantial grounds to refuse a licence on the basis of “fit and proper”. If the LP has made profits but is compliant with all standards (particularly VAT/PAYE etc payments up to date; no irregular deductions; compliance with relevant AWO/NMW) then a licence may be granted. Future compliance will be expected.
26. Where a licence is granted, and a prosecution decision is pending, the licensing letter will state: “The decision to grant a licence is made without prejudice to any further action that may be necessary for any period of trading without a licence that occurred before the grant of this licence.” The fact that a licence is granted may not mean that a prosecution does not occur, which deals with past behaviour. Illegal trading will be dealt with by prosecution or other appropriate sanction to achieve a proportionate outcome in the public interest.
27. **An unlicensed labour provider applies for a licence – no previous information held by the GLAA.** Where an unlicensed labour provider applies for a licence and states in their application that they have traded illegally it may be classed as “voluntary disclosure”. Such cases may be concluded with the issue of an advisory notice of offences or warning. However, for a situation to be classed as “voluntary disclosure” it would not be the subject of an existing investigation or a referral to the GLAA, but may still require a formal investigation to appropriately conclude that it is a case of “voluntary disclosure”. The reasons why the labour provider has come forward will be relevant. It would be unlikely to be considered as “voluntary disclosure” in the following circumstances:
- if there was an investigation close to their location;

- another company has informed on their activity, and they are aware of that situation; or
- they are an illegal sub-contractor of a labour provider that is under investigation, who had not been immediately identified.

Each case will be considered on its merits.

28. **A licensed labour provider uses the services of an unlicensed sub-contractor.**

This action will breach the licensing standards. It will also constitute criminal offences under section 13 of the Gangmasters (Licensing) Act 2004. In such circumstances a civil and a criminal decision on the labour provider's conduct will be required. An immediate remedy for such conduct may be to revoke the licence. Such a decision will not prevent a criminal prosecution or other sanction being considered. The decision to revoke a licence in this situation is without prejudice to any other action considered appropriate.

29. In deciding whether prosecution or other sanction is appropriate the GLAA will consider:

- the length of time that the un-licensed sub-contractor was used;
- the extent of non-compliance with the standards;
- any exploitation of workers that has occurred; and
- the extent to which the situation financially benefited the labour providers.

Where the exploitation resulted from the actions of the unlicensed sub-contractor the extent that the labour provider was complicit with the sub-contractor, and condoned exploitation will be an aggravating factor in deciding whether to prosecute.

30. **A licensed labour provider obstructs the GLAA in undertaking compliance inspections or Criminal investigation.** The inability to test whether a labour provider is maintaining compliance with the licensing standards will raise concerns whether they are "fit and proper" to hold a licence. Consideration of revocation will be necessary. Separately, consideration of prosecution or other sanction for the offence of obstruction (section 18 of the Act) will also be required. Revocation may be implemented more quickly than a prosecution or other sanction. It may also represent a quicker remedy to ensure cessation of any harm to workers that was masked by the obstructive behaviour. Nonetheless, the nature of the obstruction may warrant prosecution (e.g. if the obstruction was an attempt to prevent discovery of a section 13 [use of unlicensed contractor] offence). In such situations the revocation letter will advise the labour provider that it is without prejudice to any other action that may be appropriate.

31. **Investigations into the labour market offences.** In England and Wales (only) the GLAA may investigate broader labour market offences. Where the offences include the offence of forced labour from the Modern Slavery Act 2015 prosecution will always be considered. Where there is a combination of the Modern Slavery Act 2015 Offence with any other labour market offences (including offences in the Gangmasters (Licensing) Act 2004) prosecution will be considered for all of the identified offences. Where there are no Modern Slavery offences the GLAA may

consider an alternative sanction (e.g. a LMEU), having regard to aggravating and mitigating factors in each case.

32. When considering appropriate enforcement sanctions in relation to offences in the Employment Agencies Act 1973 and the National Minimum Wages act 1998 the GLAA will liaise with the EAS and NMW inspection teams, and have regard to their enforcement statements which can be found [here](#) and [here](#).

Alternatives to Prosecution

33. In cases where a prosecution is not the most appropriate course of action, the alternative of issuing a formal written warning will be considered alone, or as part of a LMEU. This sanction will be applied, where appropriate, in the jurisdictions of England and Wales, Scotland, and Northern Ireland.
34. A formal written warning is a notice to an individual body corporate, association, or partnership, that the GLA considers there is clear evidence of an offence under the Act, but that it is appropriate and proportionate to close that matter through a warning rather than prosecution. The warning notifies the offender that:
- they have committed a specific offence,
 - a record of the warning will be retained by the GLA,
 - may be referred to the relevant Prosecutor to consider whether it will be referred to in Court proceedings.
 - this may occur at any later date
35. The use of a LMEU may be considered appropriate by the GLAA in England and Wales, and Scotland, but not Northern Ireland. Where there are several labour market offences, occurring in England and Wales the GLAA may consider the use of a combined LMEU. In cases where there are no Gangmasters (licensing) Act 2004 offences the GLAA may also consider a combined LMEU for the identified offences. Where a LMEU is agreed with the individual or business committing the offences, but is not complied with, a LMEO may be sought from a court. If a LMEO is not complied with investigation and prosecution for a breach of the Order may occur. Further information of the LMEU/LMEO approach can be found in the "[Code of practice on Labour Market Enforcement Undertakings and Orders](#)"
36. In cases where a criminal breach is not proven the GLAA may issue an advisory notice of offences to ensure that the recipient is aware of future conduct and compliance that is expected, and that they are not ignorant of the relevant legislation.

Prosecution

37. The GLAA recognises that prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will be taken by the Crown Prosecution Service, in England and Wales; the Procurator Fiscal in Scotland; and the Public Prosecution Service in Northern Ireland.

Sufficiency of Evidence

38. A prosecution will not be commenced or continued unless it is satisfied that there is sufficient, admissible and reliable evidence providing a realistic prospect of conviction. Once the evidential test is satisfied the prosecutor will decide if it is in the public interest to prosecute. Public interest factors that can affect the decision to prosecute usually depend on the seriousness or prevalence of the offence and the circumstances of the offender.

Public Interest Factors

39. The GLAA will consider the following factors in deciding whether to prosecute:

- **Proportionality:** whether an alternative sanction can achieve a similar enforcement outcome in a more cost-effective manner, and safeguard the interest and welfare of affected workers
- **foreseeability** of the offence or the circumstances leading to it
- **intent** of the offender, individually and/or corporately
- **history** of offending
- **attitude** of the offender to the offending
- **deterrent effect** of a prosecution, on the offender and others
- **personal circumstances** of the offender
- **other relevant factors as set out in the prosecution codes that apply in each legal jurisdiction, or in relation to each offence type.**
- **Impact of the offence on the reputation of the regulatory regime**

40. These factors are not exhaustive and those that apply will depend on the circumstances of each case.

41. On conviction the GLAA may seek a LMEO in addition to any other sanction imposed by the court, where the offences include those where the LMEU/LMEO regime applies. In England and Wales, if a conviction relates to a modern slavery offence the GLAA may seek a Slavery and Trafficking Prevention Order (STPO). In other circumstances the GLAA may make an application for a STOP or Slavery and Trafficking Risk Order (STRO). Guidance on the use of STPOs and STROs can be found in the [“Guidance on Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under Part 2 of the Modern Slavery Act 2015”](#) guide.

Corporations, Partnerships and Individuals

42. Criminal proceedings will be taken against those persons considered by the GLAA and the Prosecutor to be responsible for the offence. Where it is alleged that a corporation/partnership or association is involved in the commission of an offence, it will be usual practice to prosecute that legal entity. Additionally, the GLAA may also prosecute officers of the company/association or individual partners, or those who actually have control over the relevant activities, where there is considered to be sufficient evidence of their guilt, including directors, managers and the company secretary. Action may also be taken against such officers (as well as the company/partnership/association) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it.