

# The journey to licensing

The experience of implementing a  
voluntary code of practice in the UK  
agricultural industry (2004-2006)

Temporary Labour  
Working Group

## Members of the TLWG

The following organisations participated in the TLWG during 2004/06:

**RETAILERS:** ASDA • The Co-operative Group (CWS) Ltd • Marks & Spencer • J Sainsbury Ltd • Somerfield Stores Ltd • Tesco • Waitrose

**FOOD MANUFACTURING:** Premier Foods • Mack Multiples

**PACKERS, WHOLESALERS, IMPORTERS, RETAILERS:** Fresh Produce Consortium

**GROWERS:** National Farmers' Union

**TRADE UNIONS, AGRICULTURAL WORKERS:** Trades Union Congress • Transport & General Workers' Union

**LABOUR PROVIDERS:** Association of Labour Providers

**GROUP COORDINATION AND EXPERTISE IN CODES OF LABOUR PRACTICE:**

Ethical Trading Initiative

**PARTICIPATING GOVERNMENT DEPARTMENTS:** Department for Environment, Food and Rural Affairs • Department for Work and Pensions • Home Office • Health and Safety Executive • Gangmasters Licensing Authority (from April 2005)

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Code of Practice (Temporary Labour Working Group):  
<http://www.lpcode.co.uk/content.asp?link=code>

Gangmaster Licensing Standards:  
[http://www.gla.gov.uk/embedded\\_object.asp?id=1013015](http://www.gla.gov.uk/embedded_object.asp?id=1013015)



# Glossary & abbreviations

## **Association of Labour Providers (ALP)**

The trade association for the temporary labour industry. It was established early in 2004 by 18 labour providers and has rapidly become established as an effective trade association with a growing membership.

## **CAPAR - Corrective Action Plan and Recommendations**

Plan for future actions given to each labour provider following their TLWG audit. The plan includes: details of any non-compliances noted during the audit, details of the agreed actions to be taken to resolve them and timescales for each action.

## **Defra - Department for Environment, Food and Rural Affairs**

## **Ethical Trading Initiative (ETI)**

An alliance of companies, non-governmental organisations (NGOs) and trade union organisations. ETI convened the Temporary Labour Working Group.

## **Ethical First Limited**

A consultancy set up by a former labour provider and labour inspector to work on temporary labour issues and advise labour providers and industry.

## **Gangmasters Licensing Authority (GLA)**

Is the regulatory body for the Gangmasters (Licensing) Act and was established on 1 April 2005.

## **GLA Licensing Standards**

Are the set of mandatory standards, which LPs must comply with in order to be granted a licence.

## **Impactt Limited**

An ethical trading consultancy, which was appointed to establish and manage the registration and audit programme and to run the TLWG Secretariat.

## **Labour provider/Gangmaster (LP)**

A provider of temporary and permanent labour to the agriculture and food processing industry.

## **Labour user (LU)**

The farmer/grower or food packing or processing firm that buys labour from a labour provider/gangmaster (LP).

## **Multiple operators**

The arrangement whereby workers are recruited from abroad and the LP acts as a third party between the worker and the end-user, supplying to a number of labour users. Normally there is an employment relationship between the end-user and worker, but there is a recruitment arrangement between LP and worker. The LP is paid a one-off fee for each worker.

## **Passenger Carrying Vehicle (PCV)**

## **Public Service Vehicle (PSV)**

## **Recruitment and Employment Confederation (REC)**

Supports and represents recruitment professionals, businesses and agencies and in the UK.

## **Temporary Labour Working Group (TLWG)**

A coalition of retailers, growers, suppliers, labour providers and trade unions, set up in September 2002, to establish a set of minimum standards for labour providers which could be enforced by new statutory controls.



# G

## **TLWG COP - Code of Practice**

The Code is a voluntary measure, supported by the industry, which aimed to improve the business practices of labour providers and labour users before compulsory licensing takes effect. It sets out the standards that labour providers must meet to comply with the law and accepted good practice.

# Introduction

## Initiation of the Temporary Labour Working Group

The Ethical Trading Initiative convened a Working Group to address labour conditions for seasonal and foreign labour in the UK Food Industry in September 2002, in response to reports of abuse of workers. Its aim was to establish a set of minimum standards for labour providers that could be enforced through new statutory controls. Partly as a result of the Group's lobbying activities a Private Member's Bill was enacted in July 2004 as the Gangmasters (Licensing) Act. This laid the foundations for a licensing and registration scheme which came into force in April 2006.

The deaths of 23 migrant cockle pickers in Morecambe Bay in February 2004 threw a public spotlight on an issue that has concerned the industry and government for over a decade. Farming and the food industry have always been reliant on temporary labour to manage seasonal peaks in production. This trend has intensified with the demands of 24-hour retailing. The traditional 'gangmaster' system - where gangmasters ran gangs of workers and supplied them to farmers at harvest time - had developed into a largely unregulated sector with an increasing number of foreign workers. Anecdotal evidence suggested that, whilst there were a number of unscrupulous operators, there were also a large number of labour providers who lacked the management skills and information to run an employment business and meet all the legal obligations to their employees, in terms of pay, conditions, working hours and safety. Those gangmasters who did meet their legal obligations found that they were continually losing business by being undercut by those who did not.

Whilst this situation was evidently an issue for workers, it rapidly became clear that a broad coalition of different interests in the food industry were keen to tackle this problem. The Temporary Labour Working Group (TLWG) took a multi-stakeholder approach to tackling this issue.

## TLWG Terms of Reference

At the initial meeting of the Working Group in September 2002, the following Terms of Reference were agreed to guide the Group's future work:

- 1 To consider the case for a statutory licensing and registration scheme that will effectively regulate the labour practices of providers of temporary labour to farms and packhouses and first tier food processing facilities in the UK.
- 2 To lobby for new legislation to support such a scheme.
- 3 To consider the viability of a new cross-industry voluntary initiative that will effectively regulate the labour practices of providers of temporary labour to farms and packhouses and first tier food processing facilities in the UK.
- 4 To ensure that any scheme proposed by the Group fully considers;
  - 4.1 the roles and responsibilities of retailers, growers, packers and manufacturers of food as well as relevant statutory bodies
  - 4.2 the necessary monitoring and verification of implementation
  - 4.3 the impact upon the supply of agricultural labour to the agricultural and food service industry
  - 4.4 existing best practice that can be learned from the UK and elsewhere
  - 4.5 measures to ensure the effective implementation of any such considerations in 4.1-4.4.
- 5 To consider other measures such as improved access to information and best practice, that would improve the ability of government, retailers, growers, packers and other suppliers of food products to act responsibly in order to mitigate the problems associated with poor and illegal practices by gangmasters.
- 6 To communicate the Working Group's progress and findings to all relevant stakeholder organisations.

## Purpose and scope of this report

This report focuses on one important aspect of the TLWG's work during 2004-06 - the implementation of the TLWG's voluntary code of practice. Specifically this report aims to:

- describe the programme of work of the TLWG
- examine the findings of the TLWG registration and audit process
- comment on the successes and failures of the TLWG approach in improving the practices of businesses supplying labour to the food industry
- comment on the effectiveness of the TLWG voluntary audit scheme in preparing the industry for regulation

Data from the TLWG programme provides a unique insight into labour practices in the industry during 2005-06 and we hope this will be a valuable benchmark to help measure progress made under the statutory licensing regime. We also hope the lessons learned have application elsewhere.

The TLWG carried out further work between 2002-06 beyond that covered in this report. More information on the work carried out by the TLWG between 2002-04 in developing the Code of Practice and testing an inspection methodology is contained in *A Licence to Operate*<sup>1</sup>, which also sets out the case for licensing.

The TLWG was a unique Alliance established principally to press for change in the conditions of temporary workers that supply the agricultural industry, to lobby for licensing of labour providers and prepare them for licensing. In this it was highly successful. We believe that there are important lessons from this Alliance that may be relevant for public policy-making elsewhere and that the process developed new stakeholder relationships that may be of lasting benefit to the industry. While these subjects would be worthy of further attention, they are not explored in this report.

**Temporary Labour Working Group, 2007**

## Acknowledgement

The TLWG would like to thank Defra and the GLA for making this work possible.

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<sup>1</sup> TLWG *A License to Operate, New Measures to tackle exploitation of temporary workers in the UK agricultural industry* (November 2004) [[http://www.lpcode.co.uk/license\\_to\\_operate\\_2.pdf](http://www.lpcode.co.uk/license_to_operate_2.pdf)]

# 2

## Summary of achievements and lessons learned

This section summarises the achievements and lessons learned by the TLWG. This practical learning forms the foundation for the statutory scheme.

### Key achievements

#### Technical achievements

- Establishment of a statutory process through lobbying activities and evidence supplied.
- Developed a template for the statutory scheme to help LPs and LUs prepare and to improve practices prior to licensing
- Secured a broad remit for GLA via lobbying activities to ensure no major exclusions from scope of the Act
- Provided a pool of LPs ready for immediate licensing when the Act came into force by helping them know what compliance would look like before legislation came into force
- Enabled a smooth transition from voluntary to statutory system by working closely with the GLA and inviting its participation
- Provided insight, experience and advice gathered from the multi-disciplinary members of the TLWG and from the practical process of working together on the Code of practise (COP) within the TLWG

#### Process achievements

- Multi-stakeholder collaboration brought together a broad coalition with wide skills and resources which despite differences of opinion coalesced on concerted policy views and practical action
- Cross-departmental working brought a multitude of staff and experts from government departments into the TLWG, which enabled the TLWG to work in line with government practice and to benefit from close working relationships rather than a traditional consultative model

### Lessons learned

#### Process

- Limitations of a voluntary approach - included restricted access to the industry, to information and powers to inspect
- There were limited resources to deal with worker issues and difficulty in developing a whistle-blowing mechanism because of the inability within a voluntary system of pursuing these issues without jeopardising workers
- Challenges of time required to manage a multi-stakeholder approach - achieving agreement on policy and actions could be time consuming and frustrating. Smaller representational groups were established to take policy forward and deliver results within tight deadlines

#### Code of practice

- Too detailed - it contained aspirational aspects which were not well detailed in legislation and in practice were felt to go beyond what LPs could reasonably implement in addition to legal requirements

- Differences between TLWG COP and GLA standards - it was challenging to communicate the changes that developed when the GLA standards were published. The need for succinct advice and to minimise confusion was very clear

### **Audit programme**

Identifying auditors with appropriate experience in both social aspects of auditing combined with health and safety, tax and VAT issues was not possible. Experienced social auditors had to be developed and trained in the additional aspects and also in how to take a business development approach to their assessments. A process of identifying suitable individuals and then training them was undertaken. This then had to be followed up by a process of quality control to monitor consistency and accuracy of auditors' decisions.

# 3 Timeline of activities of the TLWG

Dates	Main milestones	Internal TLWG activities	Auditing activities and issues	Communications and overall process towards licensing
<b>2002</b>				
Sept	Temporary Labour Working Group (TLWG) established	<ul style="list-style-type: none"> <li>Terms of reference agreed</li> </ul>		
<b>2003</b>				
			<ul style="list-style-type: none"> <li>Draft code tested in field trials and consultation (April 2003-Feb 2004)</li> <li>Audit protocol developed and tested in field trials Sept 2003-March 2004</li> </ul>	
<b>2004</b>				
July	Gangmasters Licensing Act passed TLWG Code of Practice (COP) agreed			
Sept		<ul style="list-style-type: none"> <li>Agreement to set up voluntary scheme hosted by ETI</li> </ul>	<ul style="list-style-type: none"> <li>Draft terms of reference for managing audit process agreed</li> </ul>	
Oct		<ul style="list-style-type: none"> <li>Award of contracts for development of TLWG website and auditor training course and TLWG Secretariat.</li> </ul>		
Nov	TLWG website launched (first registrations <i>same day as launch</i> ).			<ul style="list-style-type: none"> <li>'A License to Operate' report launched</li> <li>Launch at Houses of Parliament - website live and first registrations received on the same day</li> </ul>
<b>2005</b>				
Jan	TLWG auditing commenced		<ul style="list-style-type: none"> <li>First auditor training course run</li> </ul>	<ul style="list-style-type: none"> <li>TLWG leaflet created and circulated by retailers</li> <li>Demand for specific awareness raising events shown by ASDA trial audits</li> </ul>
Feb	Launch by Defra of the first consultation on the draft Gangmasters Licensing (Exclusions) Regulations			
March				<ul style="list-style-type: none"> <li>Website amended to time-bind registrations, improve data capture, avoid rolling-presence and include leaflet and more information on non-compliances</li> <li>Inland Revenue circulated updated leaflet in annual return</li> </ul>
April	GLA established			

Dates	Main milestones	Internal TLWG activities	Auditing activities and issues	Communications and overall process towards licensing
May			<ul style="list-style-type: none"> <li>Four consultancies selected to provide pre-inspection advice.</li> <li>Random follow-up inspection visits commenced for quality checking audits.</li> <li>Audit programme bottleneck due to limited number of auditors. Slow take-up of consultancy by LPs. Suspected Tax and VAT issues not picked up. Need for complaints mechanism and quality check process for audits prioritised.</li> <li>Back-up support for auditors increased.</li> <li>Concern that LPs choose auditor, however, with independent pricing, it is not possible to allocate.</li> <li>Second auditor course cancelled, due to insufficient numbers of potential auditors.</li> <li>Recruitment and Employment Confederation (REC) seeks recognition of its audits.</li> </ul>	<ul style="list-style-type: none"> <li>Website upgraded further</li> </ul>
June		<ul style="list-style-type: none"> <li>De-listing process for LPs that have not booked an audit begins.</li> <li>System put in place to prevent LPs from re-registering in order to avoid booking an audit.</li> <li>Technical updates made to the Code.</li> </ul>		
July			<ul style="list-style-type: none"> <li>Third auditor course trains 7 further auditors</li> </ul>	
Aug	Revised TLWG COP came into force	<ul style="list-style-type: none"> <li>Non-compliances revised for technical updates.</li> </ul>	<ul style="list-style-type: none"> <li>Top non-compliances: health and safety, worker misunderstanding of contracts, payroll, lack of evidence of right to work.</li> <li>Tax issues beginning to be identified.</li> </ul>	
Sep				<ul style="list-style-type: none"> <li>Announcement of public consultations on licensing. Discussions between GLA, Government and TLWG.</li> <li>TLWG communicates to LPs on consultation process.</li> </ul>
Oct	<p>Transition from TLWG to GLA begins</p> <p>Launch by Defra of the 2nd consultation on the draft Gangmasters Licensing (Exclusions) Regulations'</p>			<ul style="list-style-type: none"> <li>GLA consultation on licensing with TLWG.</li> <li>Handover process to GLA begins.</li> </ul>
Nov	Consultation on licensing			
Dec			<ul style="list-style-type: none"> <li>15 auditors working - need for greater clarity on Defra funded audit incentive.</li> <li>Need to reach deeper into the supply chain with awareness of licensing with farmers.</li> <li>Evidence of serious issues, undeclared sub-contracting and sub-contracting to avoid tax that were not provable through the TWLG voluntary process. These fed to GLA for future intelligence.</li> </ul>	

Dates	Main milestones	Internal TLWG activities	Auditing activities and issues	Communications and overall process towards licensing
<b>2006</b>				
<b>March</b>	Defra's Gangmasters Licensing (Exclusions) Regulations and the GLA's Gangmasters (Licensing Conditions) Rules laid before Parliament			<ul style="list-style-type: none"> <li>Licensing conditions and exclusions clarified by Defra - exclusions to end at wholesale, retail and catering points. The overall regime to be reviewed in April 2007, at the first year annual review.</li> <li>GLA clarifies plans for licensing process. TLWG offers detailed comments on feasibility.</li> <li>TLWG makes plans for closing group - writing up lessons.</li> </ul>
<b>April</b>	1st GLA license awarded			
<b>May</b>	TLWG auditing programme closed		TLWG auditors commenced GLA training and accreditation	
<b>June</b>		<ul style="list-style-type: none"> <li>Final meeting of TLWG to review process and lessons.</li> </ul>		
<b>July</b>	Of 555 applications received by GLA, 384 had been audited by TLWG			

# The registration and audit process

As part of the strategy to pave the way for the implementation of The Gangmasters (Licensing) Act 2004, the TLWG resolved to:

- Write a COP that sets out the standards that labour providers must meet to comply with the law and accepted good practice.
- Establish a means by which labour providers could place themselves on a voluntary register and have their businesses assessed against the standards in the COP.
- Appoint Impactt, a UK based ethical trading consultancy, to establish and manage the registration and audit processes and to run the TLWG Secretariat including a helpline for LPs and other parties.

The processes were developed as follows [as illustrated in [Figure 1](#)]:

## The Registration Process

LPs were able to register online at the TLWG website by completing a short registration form or by sending the form by post to the Secretariat. LPs were then notified by the Secretariat of their reference number and placed on the alphabetical list of 'LPs who have registered' on the website.

By registering with the TLWG, LPs declared their intent to comply with the Code of Practice and their intention to arrange to be audited to demonstrate their compliance with the Code. It is important to note that registration in itself did not give any indication of the performance of a LP other than the intention to be audited.

## The Audit Process

The audit process was designed as a business development tool to identify issues in LPs' businesses and provide support to resolve them. Individual auditors were trained and approved to assess for the TLWG.

The TLWG offered registered LPs the choice of booking an audit within 2 months of registration, or, for those who felt that they needed additional support to meet the standard, the opportunity to book a specialist consultancy. LPs choosing consultancy were then required to book an audit within 2 months of the consultancy taking place. Any LP who did not book an audit or consultancy within the required time had their registration suspended until an audit booking was confirmed. This was to prevent LPs registering and then simply sitting on the list rather than proceeding to audit.

The audit process involved the following steps:

- **Pre-audit questionnaire** to be completed by the LP
- **Allocation** by the TLWG Secretariat of a suitable LU site location for the audit. This helped to ensure that a representative number of workers would be present for interview, the appropriate translators could be arranged and that repeated use of the same LU, where shared by LPs, was kept to a minimum.
- **Two day audit process** - one day at the premises of the LU site, and the other at the LP's office. The process involved:
  - > Interviews with the LP and any staff responsible for health and safety, payroll, HR and finance
  - > Examination of documentation relating to all aspects of the COP

- > A walk-round inspection of the LU site to examine the physical working conditions
  - > Interviews with the LU management to understand the relationship between the LP and day-to-day operations in relation to agency workers
  - > Interviews with either a minimum of 10% of the total number of workers on the books at the time of the audit, or 10 workers, whichever is the greater. If the LP employed fewer than 10 workers, 100% of the workforce was interviewed. Many interviews were carried out with the help of a translator.
  - > The auditor assessed the LP against the TLWG COP and identified critical, major and minor non-compliances and observations. Before leaving the LP, the auditor agreed the non-compliances they had found with the LP. The auditor provided the LP with a full report of findings.
- In response to the report of findings, the LP and the auditor agreed a **Corrective Action Plan and Recommendations (CAPAR)**, setting out what actions the LP should take to resolve the non-compliances raised and timescales for each action. This was given to the auditor, who sent the CAPAR and final report to the Secretariat.
  - When workers disclosed serious issues to auditors concerning poor treatment and abuse, it was often not possible to raise them directly with the LP without causing harm to the worker who had made the disclosure. These instances were reported to the Secretariat through a confidential report.
  - If the audit showed no unresolved critical non-compliances, the Secretariat added the LP to the public list of audited LPs with no outstanding critical non-compliances.
  - LPs with unresolved critical non-compliances were asked to provide evidence that the non-compliance had been closed off to the satisfaction of the auditor. Upon receipt of this, the Secretariat added their name to the public list of audited LPs with no outstanding critical non-compliances.
  - The Secretariat analysed data from the audits, and actively monitored the quality of audit reports and auditors.
  - The auditors were supported with their queries during audits through an extensive mentoring programme provided by the Secretariat. This included broaching new issues and techniques with auditors as they were found.
  - Regular meetings were held with the auditors and consultants to review findings and discuss any necessary changes to the process.

## The Secretariat Function

The Secretariat, managed by Impactt, fulfilled the following tasks:

- Delivering central training and shadow audits for auditors in order to approve them to carry out TLWG audits
- Managing the list of registered LPs on the TLWG website, including delisting where necessary
- Managing a central list of audits booked and allocating LU sites for each audit
- Managing the collection and analysis of audit reports and CAPARs

### Non-compliances were defined as:

**Critical:** *A critical failure to comply with the code of practice resulting in -*

- Serious risk of personal injury or ill health.
- Use of trafficked workers or bonded labour.
- Systematic payment of less than the minimum wage.
- Severe restriction of freedom of association.
- Tax evasion.

**Major:** *Failure to comply with legislation that is significant but not critical.*

**Minor:** *A minor or technical failure to comply with the law or the good practice requirements of the code.*

- Updating of the public list of audited LPs on the TLWG website
- Running a helpline to answer queries from LPs and auditors
- Monitoring the quality of audit reports and auditors and handling complaints
- Providing a mentoring programme to support auditors during audits
- Managing the refinement of the code of practice and processes as and when required

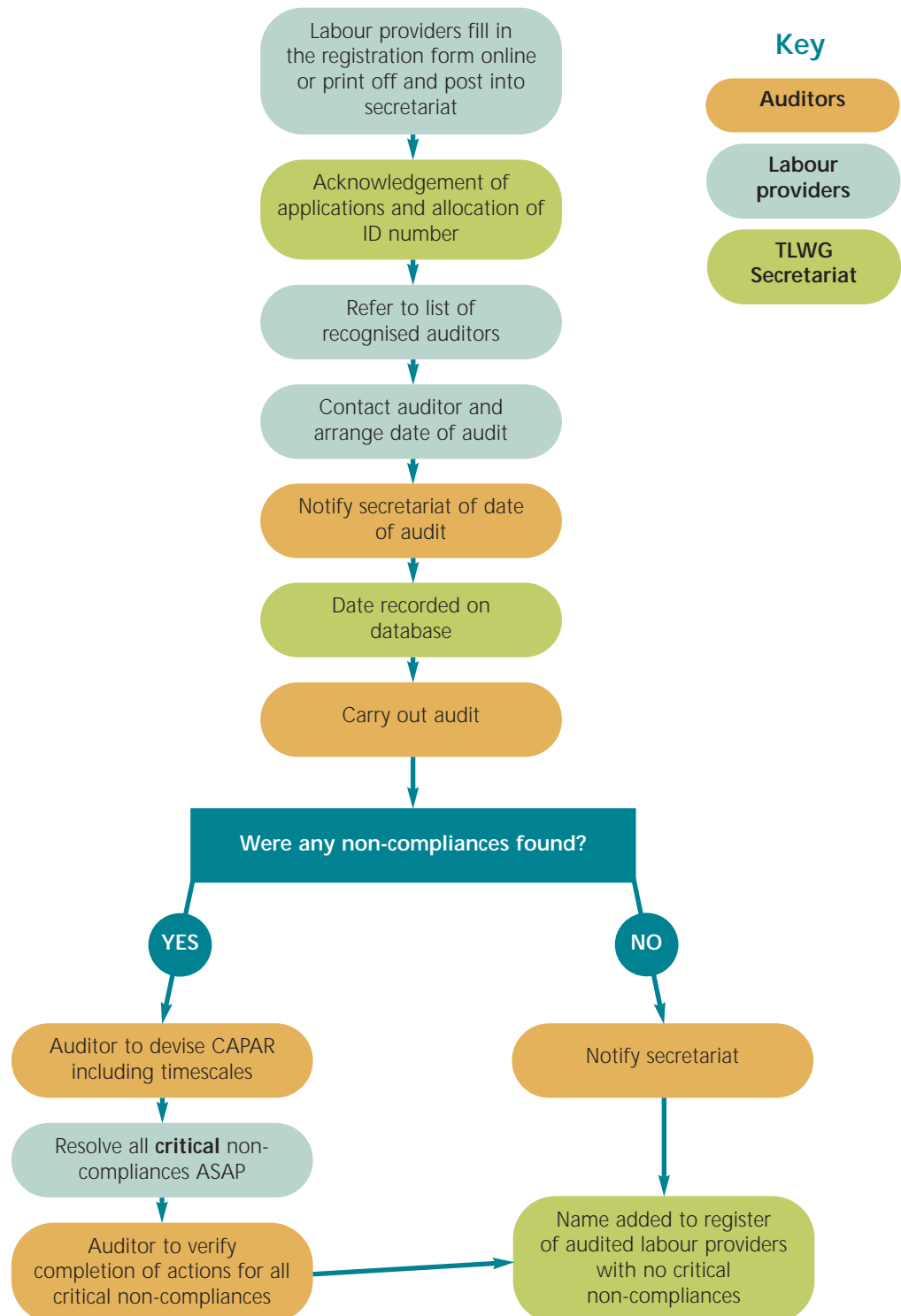


Figure 1: TLWG registration and audit process

## Transition to the GLA

In early 2005, the GLA agreed to accept those TLWG audits, which were of a suitable standard when set against the GLA Standards<sup>2</sup>, as pre-qualification for labour providers applying for a licence. In October 2005, a transition programme for transferring findings from TLWG audits to the GLA was established. Audit findings for each LP were re-analysed against the GLA Licensing Standard, and scored as follows:

- **Critical non-compliance** - 30 points
- **Major non-compliance** - 8 points
- **Reportable non-compliance** - 4 points
- **Correctable non-compliance** - 2 points

LPs scoring 30 or more points were re-visited by GLA inspectors in order to verify the level of improvements and hence the level of compliance. LPs scoring fewer than 30 points were classed as ‘successful’ and able to apply for a licence without undergoing or paying for an application inspection, unless other Government Department checks gave cause for concern.

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2 GLA defines the categories of non-compliance as follows:

- **Critical:** Most serious category of non-compliance
- **Major:** Major non-compliances, but less than critical
- **Reportable:** Significant non-compliances which may be reported to other Government Departments or Agencies
- **Correctable:** Less severe non-compliances than the above

# Analysis of TLWG registration and audit data

## 5.1 Data Sources and Constraints

The data in Section 5 of this report is drawn from the findings of the 459<sup>3</sup> audits conducted by TLWG between January 2005 and May 2006. Audits carried out between January 2005 and July 2005 were conducted against the original version of the TLWG Code of Practice (COP) [[www.lpcode.co.uk/content.asp?link=code](http://www.lpcode.co.uk/content.asp?link=code)]. As TLWG learned more about the sector, errors were discovered and as the law was clarified in some areas, it became clear that the code needed to be modified and a revised COP was issued. LPs were audited against the revised code from 1st August 2005. The audit findings against the initial version of the code and the revised version are not directly comparable. However, it has been possible to re-analyse data from 459 audits against the GLA Licensing Conditions (first issued March 2006). In this report, we have therefore used data analysed against the final version of GLA Licensing Conditions [[www.gla.gov.uk/embedded\\_object.asp?id=1013015](http://www.gla.gov.uk/embedded_object.asp?id=1013015)].

While TLWG audits include the vital component of confidential worker interviews, a voluntary announced inspection of this nature can only provide a snapshot of conditions for workers. A private auditor does not have any legal powers for right of entry into premises or access to documents. Such an auditor cannot carry out checks with government departments such as the Home Office, Health and Safety Executive or HM Revenue and Customs.

TLWG audits only cover businesses willing to be audited voluntarily. It is therefore likely that the findings of TLWG audits may under-report the number and severity of non-compliances that may exist across the sector.

## 5.2 Scope

### 5.2.1 Registration: 970 LPs registered<sup>4</sup> their intent to comply with the TLWG COP.

Identifying the large number of LPs supplying the food industry was a key initial challenge facing the TLWG. Research commissioned by Defra<sup>5</sup> estimated that there were 3,000 LPs in the food and agricultural sector. This estimate allowed for 2,000 of these being small and likely to merge or remain invisible and for the number likely to apply for a licence as 1,000. The 970 LPs registered with TLWG therefore represent 32% of the overall service provision in the sector or 97% of the total food industry LP population expected to apply.

The majority of LPs on the list supply labour to processing and packing businesses supplying supermarkets. This is because the most effective method available to TLWG group members for identifying LPs was through supermarket supply chains. Participating supermarkets wrote to their suppliers requesting that they encourage their labour providers to register with TLWG. Thus the list contains fewer businesses involved in farming and agricultural work, which are further down the supermarket supply chain and which do not supply the supermarkets directly.

<sup>3</sup> Not including 6 audits of multiple operators which are not directly comparable.

<sup>4</sup> Nine of these businesses subsequently asked to be removed from this list; most of these were labour users or labour providers that had registered in error or labour providers that were no longer in business.

<sup>5</sup> Defra, *Research into the Use And Treatment of Temporary Workers* (August 2005)

The list of registered LPs has proved extremely useful in attempting to map the sector and identify which businesses operate within it. TLWG used this list to communicate key messages about clarification and changes in the law and COP. The list also became the principal initial contact list for the GLA.

### 5.2.2 Number of consultancies booked

At least 57 LPs (not including multiple operators) had pre-audit consultancies. These account for 13% of LPs who were subsequently audited.

### 5.2.3 Number of audits conducted

465 TLWG audits were carried out between January 2005 and May 2006. Six of these audits were of multiple operators. This represents 16% of the Defra estimate of 3,000 LPs supplying the food industry, and 47% of the Defra estimate of 1,000 LPs likely to apply.

### 5.2.4 Types of business audited

90%<sup>6</sup> of LP businesses audited provided labour for packing and processing plants. 20% of LP businesses audited provided labour for picking/harvesting and 5% supplied ‘other’ sectors. 16% were involved in 2 of these categories and 1% in all three.

Audited LPs reported that they supplied labour to an average of 4 customers from the sectors covered by the TLWG. Some of the LPs audited operated in a large number of sectors outside the TLWG scope. One national company reported 4,500 separate customers across their business.

### 5.2.5 Number of workers involved in TLWG process

TLWG auditors conducted face-to-face interviews with **4,058 workers**<sup>7</sup> from businesses employing an estimated total of **88,383**<sup>8</sup> workers.

TLWG found it very challenging to establish the total number of workers employed by the LPs being audited. Auditors were asked to establish total ‘workers on the books’ and ‘workers in the TLWG sectors’<sup>9</sup>. However, LPs found these questions difficult to answer since the numbers tended to fluctuate widely due to the nature of the temporary labour market. LPs serving a number of different sectors were not always sure how many workers they supplied into the food industry. As a result, the workforce numbers reported by auditors represents a mixture of ‘workers on the books’ and ‘workers in the TLWG sectors’.

### 5.2.6 Nationality of workers

Workers covered by TLWG audits originated from 73 countries<sup>10</sup>. **Figure 2** shows how many LPs use workers from each region. The most broadly represented region of origin of workers is the new EU; workers from this region are used by 69% of the businesses audited by TLWG.

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<sup>6</sup> Based on 389 audits where this information was gathered.

<sup>7</sup> Including 42 workers employed by multiple operators.

<sup>8</sup> Including 11,133 workers employed by multiple operators.

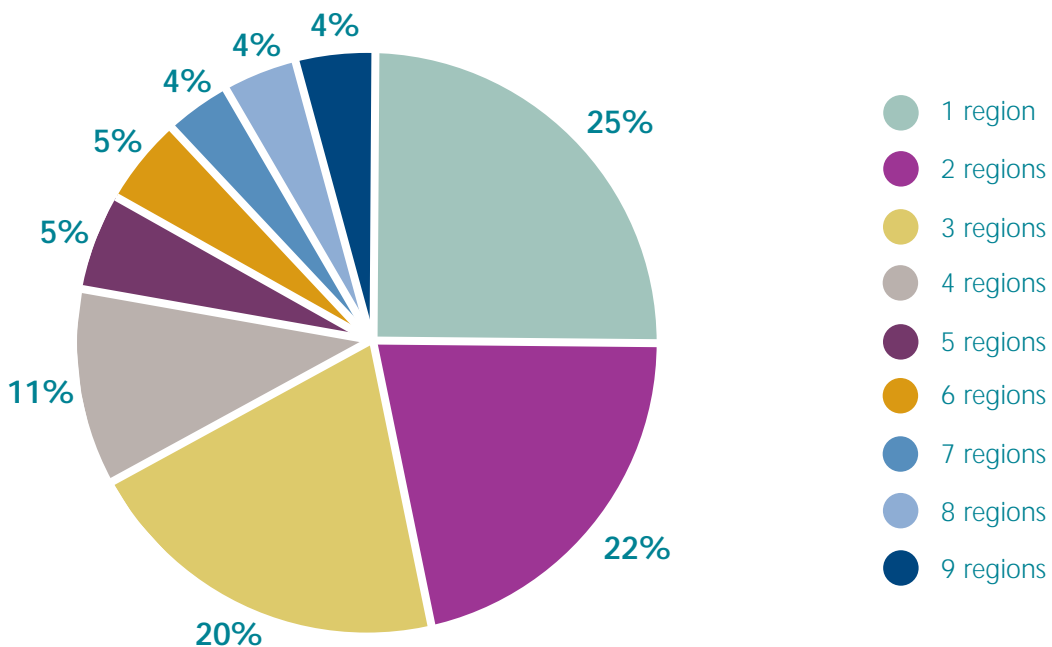
<sup>9</sup> For example farms, packhouses and first tier food processing facilities.

<sup>10</sup> **Nationalities of workers:** Afghan, Algerian, American, Angolan, Australian, Austrian, Bangladeshi, Basian, Belarusian, Belgian, Brazilian, British, Bulgarian, Cameroonian, Canadian, Chinese, Colombian, Congolese, Croatian, Czech, Egyptian, Estonian, Ethiopian, Filipino, French, Gambian, Georgian, German, Ghanaian, Greek, Hungarian, Indian, Iranian, Iraqi, Italian, Jamaican, Kenyan, Kosovan, Kurdish, Latvian, Libyan, Lithuanian, Madagascan, Malawian, Maltese, Moldovan, Namibian, Nepalese, New Zealander, Nigerian, Pakistani, Polish, Portuguese, Romanian, Russian, Slovakian, Somalian, South African, South Korea, Spanish, Sri Lankan, Sudanese, Swedish, Syrian, Taiwanese, Tanzanian, Thai, Turkish, Ugandan, Ukrainian, Yemeni, Zimbabwean

Region	Number of LPs audited using workers from this region	% of LPs audited using workers from this region
New EU <sup>11</sup>	315	69%
British	224	49%
Old EU <sup>12</sup>	163	36%
Africa	103	22%
Iran/Iraq/Middle East	91	20%
SE Asia	82	18%
Other	77	17%
Other Europe	65	14%
China	39	9%

**Figure 2:** Numbers of LPs using workers originating from various regions

Of businesses audited, 75% used workers from more than one of these regions - 16% use workers from 5 or more regions (see [Figure 3](#) below)<sup>13</sup>. This demonstrates the linguistically fragmented nature of the workforce used by LPs. One implication of this is the significant challenge which LPs face in communicating with their multilingual workforce.



**Figure 3:** % of LPs using workers from one or more regions

<sup>11</sup> New EU countries comprise the states which acceded to the EU in 2004, namely Cyprus (Greek part), the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia

<sup>12</sup> Probably under-reported since auditors sometimes focused exclusively on foreign workers when answering this question.

<sup>13</sup> This is based on a sample of 359 LPs since this data was not collected for the first 100 LPs audited.

### 5.3 Categories of Non-compliance

TLWG audits found a total of 1,998 non-compliances during the 459 audits (classified against the GLA standards). Of these, 140 were defined as critical, 1,316 as major, 169 as reportable and 363 as correctable. The percentage breakdown by severity of non-compliance is shown in Figure 4.

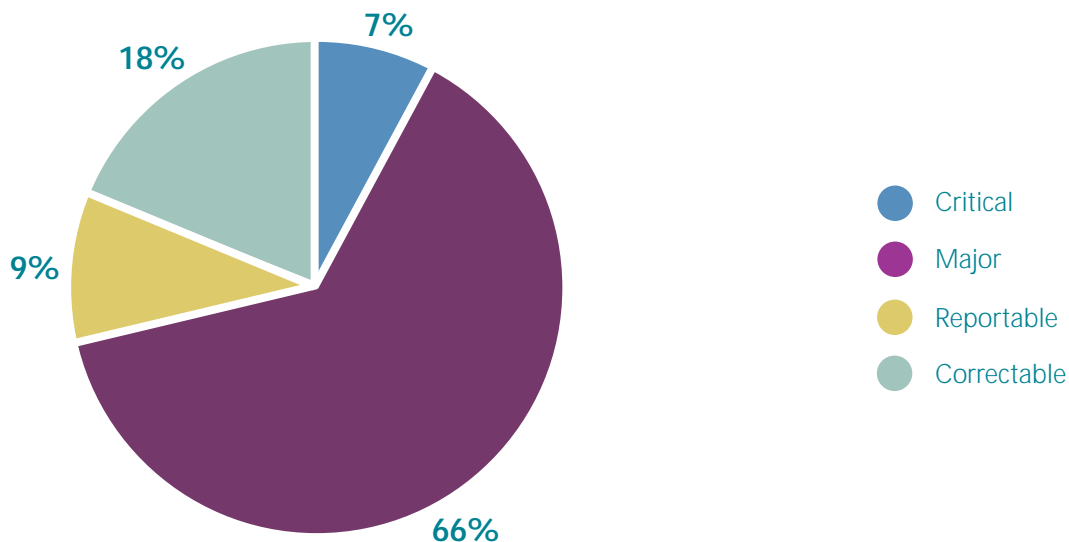


Figure 4: % Non-compliances by severity

#### 5.3.1 Critical Non-compliances

There are 8 non-compliances which are categorised as critical. These are:

- Failure to pay the minimum wage**  
 17 instances, 4% of LPs audited  
 Confidential reports received indicated a further 7 instances, indicating that at least 5% of LPs audited were failing to pay the minimum wage. The lowest reported wage was £4.20 per hour when £5.05 was the legal minimum.
- Workers are subjected to physical or mental mistreatment**  
 0 instances raised as non-compliances  
 However, confidential reports received by TLWG from auditors and whistle-blowers raised concerns over physical or mental mistreatment at 5 LPs participating in the scheme. It was not possible to verify these claims through audit, but the information was passed on as intelligence to the GLA for further action.

Bonded labour critical non-compliances fall into the following categories:

- Debt bondage**  
 3 instances, 1% of LPs audited  
 In 2 of these cases, workers had been levied a charge by recruiting agencies in their country of origin which was then deducted from their wages by the LP in the UK. The UK LP claimed that they did not see this as a problem and the workers could leave even if they had not paid the debt to the home country agent.
- Workers not able to leave without penalty**  
 4 instances, 1% of LPs audited  
 2 of these non-compliances were linked to charges made for accommodation provided by LPs. If

workers had left their jobs, they would have had to pay the cost of future rent and would have been evicted from their accommodation.

- **Passports or ID withheld**

1 instance, 0.2% of LPs audited

Confidential reports indicated a further 15 issues as follows:

- > **withholding wages** - 5 instances
- > **penalty to leave** - 5 instances
- > **bonded** - 4 instances
- > **finder's fees** - 5 instances

The occurrence of bonded labour is almost impossible to uncover without worker testimony. It is always difficult to make workers feel comfortable enough to discuss these issues with auditors especially when they fear for their own safety or that of their friends and family. Identifying bonded labour through audit is extremely challenging. 53% more instances of bonded labour were raised through the confidential mechanism than through the official audit process. This highlights the need for the GLA to find a mechanism whereby workers can report their situation in a safe and confidential environment. A whistle-blowing mechanism will encourage workers to report abusive practices and the GLA can then use this intelligence to stop abusive LPs operating without further jeopardising the most vulnerable workers.

Many of these instances of bonded labour relate to the use of agents in the country of origin to recruit workers locally and send them to the UK. These agents are reported to have used various techniques to bond the workers to them. It can be difficult to determine the extent to which the UK LP is involved in this. Whilst the GLA's powers extend to any business supplying labour into the UK, it will be far more difficult for it to 'police' instances where the bondage takes place outside the UK. This will be an ongoing challenge for the GLA as more LPs realise this and look to identify and exploit potential weaknesses within the licensing system.

- **Vehicles in need of repair or have serious defects**

18 instances, 3% of LPs audited

Of the 291 LPs audited who provided transport for workers, 6% (equivalent to 3% of the total LPs audited) were found to have been using unsafe vehicles. All safety defects reported were identifiable through a visual inspection of the outside of vehicles.

- **Charging more than £27.75 per week for accommodation**

53 instances, 12% of LPs audited

This non-compliance refers to the legal accommodation offset, that is to say the maximum amount employers may deduct from the wages of workers earning the statutory minimum wage if the LP provides accommodation. If the LP charges more than this for accommodation, the worker is deemed to be earning less than the legal minimum. From the TLWG results, it would seem that 12% of LPs are making deductions for accommodation which push workers' pay below the minimum. This means that of the 81 LPs who provide accommodation for workers, 65% are charging more than the legal accommodation offset allows. However, LPs say that it is hard for them to find suitable accommodation available for rent at this rate or below. Additionally, if the accommodation is provided by a separate legal entity this is currently within the law.

The ALP has campaigned hard to restrict the accommodation offset arrangements to the provision of accommodation as a condition of employment. It is clear that it is frequently not possible for LPs to provide accommodation which is of an acceptable standard for £27.75 per week.

- **If accommodation is provided, failure to provide accommodation which is appropriate, safe and not overcrowded**

44 instances, 10% of LPs audited.

The majority of these non-compliances relate to a lack of gas safety certificates for properties rented out by LPs. Auditors found one instance of overcrowding, and confidential reports received from auditors and whistle-blowers reported a further two instances of overcrowded and unhygienic conditions. It was not possible to verify these two claims through audit and the reports have been passed on as intelligence to the GLA for further action. Auditors found this a challenging area to investigate since it was not always possible to inspect all accommodation provided for workers, given the time and location constraints. Much of the intelligence on this topic was gleaned from worker interviews. However, auditors found that it could be difficult to gain workers' trust sufficiently for them to feel comfortable in disclosing this type of information.

### 5.3.2 Major non-compliances

There are 28 non-compliances that are classified as major. During the 459 audits conducted, 1,316 major non-compliances were raised. The areas with the most significant number of major non-compliances are:

- **Deductions from salary without written consent**

118 instances, 26% of LPs audited

- **No opt-out agreements**

81 instances, 18% of LPs audited

In both the above non-compliances, the majority of LPs were not aware of the legal requirement for workers to sign for any deductions made to their wages or the need for an opt-out agreement.

In most cases, this indicates a shortfall in administrative procedures that can be easily remedied.

- **No contracts issued or incomplete**

134 instances, 29% of LPs audited

Refers to workers not provided with clear written details about the terms under which they were employed.

- **Section 8 checks**

101 instances, 22% of LPs audited

101 LPs were not carrying out the checks on workers' stipulated in the Code to ensure they were legally eligible to work in the UK. This is not a legal requirement<sup>14</sup>. It should be noted that this finding does not necessarily mean that all these LPs were using illegal workers, but that they did not have an adequate system for checking whether workers had the right to work in the UK.

### 5.3.3 Total Non-compliances

A total of 1,998 non-compliances were raised from 459 audits. The largest number of non-compliances were in the area of health and safety, which accounted for 45% of all non-compliances raised. Other areas with significant percentages of non-compliance included wages and benefits (13%), working hours (9%), contracts (7%), legality (6%) and personnel files (4%) - see [Figure 5](#).

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<sup>14</sup> The law does not require the employer to institute checks of workers' documentation, but does require that no illegal workers are employed. Instituting checks is one way of ensuring that an LP does not employ illegal workers.

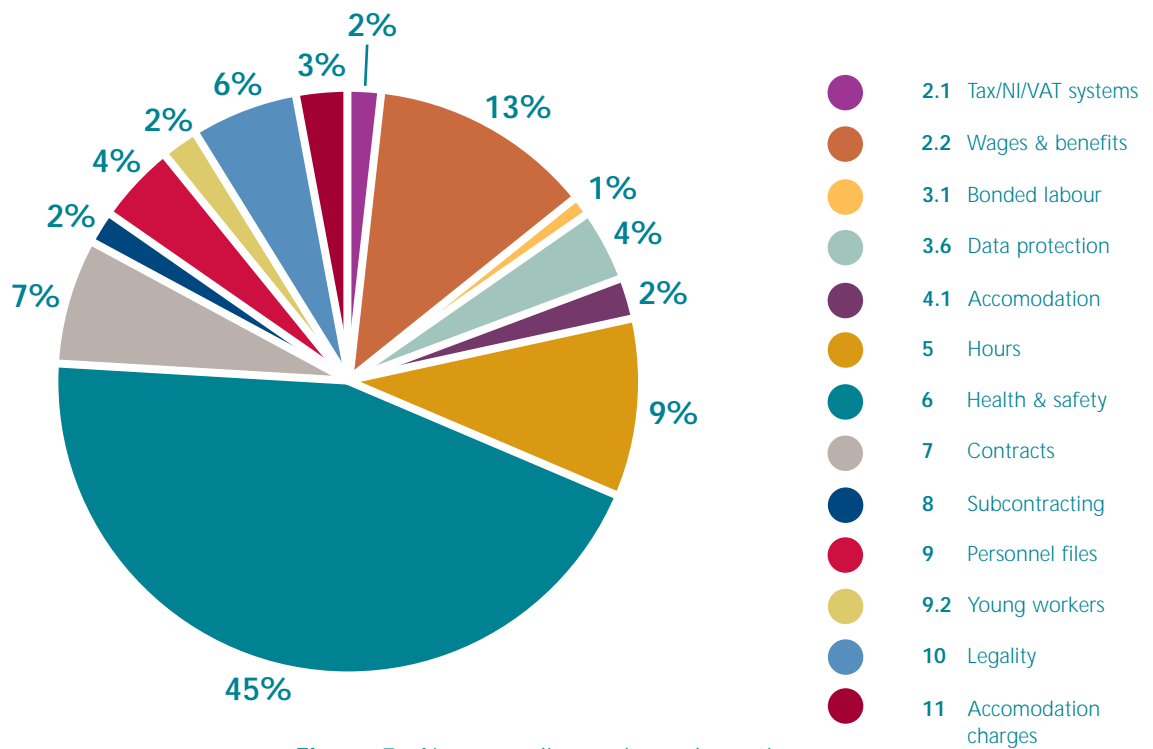


Figure 5: Non-compliances by code section.

The sections below set out the key problems found within issue areas with the highest number of non-compliances.

### 5.3.3.1 Health and Safety

The audits found 897 non-compliances concerning health and safety, accounting for 45% of the total number of non-compliances raised. The areas with significant numbers of non-compliance were risk assessments (RAs) (32%), training and contracts (31%), and PSV/PCV licence requirements (20%). These three sections account for 83% of all H&S non-compliances. The remaining sections are transport (9%) and workplace issues (8%). It is not surprising H&S accounts for the largest number of non-compliances since H&S is the section of the licensing standards with the highest number of *possible* non-compliances. H&S non-compliances are also generally easier for auditors to identify and raise with LPs. See Figure 6:

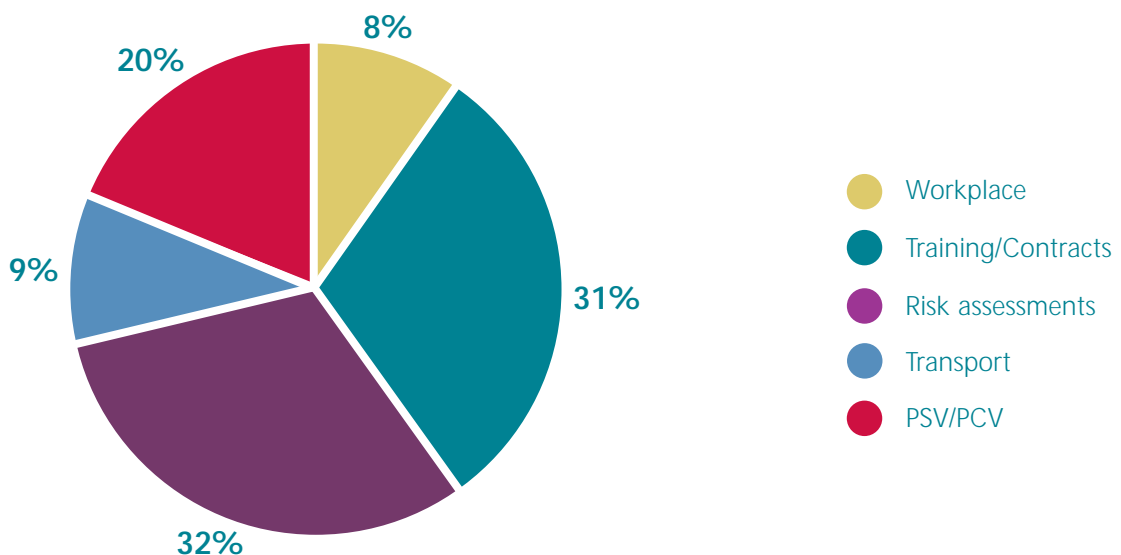


Figure 6: Proportion of health and safety non-compliances in different sections

### Risk assessments

62% of LPs audited either did not have copies of risk assessments for the premises where they were sending workers or did have copies, but the assessments were inadequate. In all instances, the LP was unaware of the risks that the workers they were providing would be exposed to. Furthermore, many customers do not have adequate or up to date risk assessments in the first place.

### Training and contracts

Audits found that 61% of LPs had no written agreement with their customer assigning responsibility for the health and safety of workers and/or did not ensure workers received training in a language they understood. Many LPs were unaware they needed to have a written signed agreement with their customers at all. The clear allocation of this responsibility is important as managing site health and safety risks was often out of the LP's control. When there was training, it often related solely to the job the worker was required to do, rather than covering more general health & safety information, for example, fire evacuation procedures and manual handling.

### Public Service Vehicle (PSV)/Passenger Carrying Vehicle (PCV) licences

Audits found that 40% of LPs audited did not have proper licences for the vehicles they used to transport workers. The law requires that vehicles with 9 seats or more should be PSV registered and that drivers of such vehicles should have a PCV licence. This is an area where there is still a lack of clarity on the law. Many LPs were unaware that they need to have this licence and the Driver and Vehicle Licensing Agency (DVLA) is informing LPs who enquire that they do not require a PSV licence if they do not charge workers for transport. However, the Vehicle and Operator Services Agency (VOSA) says that they do need such a licence for vehicles carrying 9 or more passengers regardless of whether they charge workers or not since workers are transported for reward of the LP.

### Workplace issues

Audits found that 9% of LPs had placed workers in conditions which the auditor deemed as potentially unsafe. The auditors only visited one of the customers of each LP, so it seems likely that more than 9% of LPs may be supplying workers to sites where conditions are unsafe.

#### 5.3.3.2 Wages and Benefits

There were 257 non-compliances found concerning wages and benefits. This area accounts for 13% of total non-compliances found. Key issues include:

- **The deduction of wages without the worker's written consent**

118 instances, 26% of LPs audited

Whilst this can indicate a severe abuse, most instances are due to poor administration systems.

- **Non-payment of benefits**

57 instances, 12% of LPs audited

These non-compliances refer to the failure of the LP to pay holiday and/or sick pay. The majority of workers interviewed did not understand that they were entitled to these benefits, even when this was stated in their terms and conditions. Some LPs and LUs were unaware that temporary workers are entitled to these benefits. Their understanding was that agency workers are cheaper than directly employed workers. This perception held by LUs can cause problems for LPs when they try to negotiate rates with customers. Uninformed LUs do not realise why LP's rates (which includes an allowance for benefits) are higher and so choose/swap to LPs with lower rates who do not make allowances to pay benefits.

- **Lack of or inaccurate payslips**

44 instances, 10% of LPs audited

These non-compliances have been raised either because the LP does not provide workers with a payslip, or the information on the payslip is incorrect. A LP would need to be issuing inaccurate payslips or omitting information about deductions on a systematic basis for a non-compliance to be recorded in the results.

- **Underpayment of minimum wage**

17 instances, 4% of LPs audited

Accurate Payroll system: 17 instances, 4% of LPs audited: this refers to LPs which do not have an accurate payroll system and are therefore unable to ensure that workers are paid correctly.

Businesses with a non-compliance in this area employ 2,858 workers, who could therefore be receiving incorrect wages.

- **Withheld wages**

4 instances, 1% of LPs audited

It is clear that the wages and benefits section of the GLA code poses considerable challenges to LPs. Some violations in this section are due to ignorance of the law, poor record keeping and, of course, intentionally illegal behaviour. However, these non-compliances must be considered in the market context in which LPs operate. LPs commonly complain that their customers do not pay them enough to meet their legal obligations and that their customers are often unaware that temporary workers are entitled to benefits such as holiday and sick pay. LPs have also commented that, if they try to raise their prices, there is always another LP prepared to do the work for less, and that customers would switch to the cheaper option. Some LUs have commented that they cannot afford to pay more since they are under pressure from retailers to keep prices down. Others are unaware of the true costs for LPs of employing workers legally and therefore do not realise the effect of low prices on workers' entitlements.

In order for a LP to be able to meet the standard set by the GLA, the price paid per worker hour should be sufficient to:

- Pay every worker at least the appropriate minimum wage for every hour worked
- Fund all the benefits to which workers are entitled (e.g. holiday pay, sick pay etc)
- Cover the LP's overheads and meet all their legal obligations e.g. tax, NI contributions, PAYE, PSV licences, etc.

At the current minimum wage level of £5.05, it has been calculated that LPs should receive at least £6.57 per worker hour to cover the above. This figure does not allow for a reasonable profit margin for the LP or the costs of a licence.

TLWG audits found that 89 LPs (19% of those audited) were paid less than £6.57 by their customers. Of these 89 LPs:

- 11 LPs (12%) did not pay at least the minimum wage - these accounted for 65% of all failures to pay minimum wage non-compliances (17 in total)
- 14 LPs (16%) did not pay benefits to workers - these accounted for 25% of all failures to pay benefits non-compliances (57 in total)
- 12 LPs (13%) did not pay the correct PAYE, tax etc - 43% of all failures to demonstrate correct payment non-compliances (28 in total)
- 12 LPs (13%) could not demonstrate registration and/or payment of VAT - 50% of all VAT non-compliances (24 in total)

This figure may be under-reported since this information was not collected in the early stages of the

scheme. The data above further supports the case that low rates paid to LPs can increase the likelihood of LPs cutting corners and not paying their obligation to workers and/or the Government.

### 5.3.3.3 Working hours

There were 181 non-compliances found concerning working hours. This area accounts for 9% of all non-compliances found. Key issues include:

- **No opt-out agreements**  
81 instances, 18% of all LPs audited  
This covers the failure of LPs to ask workers working more than 48 hours per week to sign an opt-out agreement.
- **Workers not receiving the required rest periods**  
66 instances, 14% of all LPs audited
- **Poor or absent hours records**  
34 instances, 7% of all LPs audited  
It is common practice in the sector for LPs not to record hours of work when workers are paid a piece rate. Lack of hours records make it impossible to verify whether these workers are earning the minimum wage for all hours worked. Even when records are present, few LPs monitor workers' hours to ensure they get the required rest periods between shifts. Calls to the secretariat helpdesk indicate that there are also issues with interpreting the Working Time Directive and what this means for LP's businesses and working practices. Auditors reported that some workers were reluctant to admit the level of overtime they were working, as they were worried their hours would be capped at a low level as a result of the work being done by the TLWG.

### 5.3.3.4 Contracts

There were 135 non-compliances found concerning contracts with workers. This area accounts for 9% of all non-compliances found. Key issues include:

- **Contracts are not issued or are incomplete**  
134 instances, 29% of all LPs audited  
The GLA specifies that each contract should include the following:
  - > The type of contract e.g. contract for services
  - > Rate of pay
  - > Pay period
  - > Termination period
  - > Benefit entitlements e.g. paid holidays, Statutory Sick PayThe information most often omitted concerned benefit and annual leave entitlements.
- Many workers reported that they did not understand their terms and conditions, even when they had a written contract. This is further complicated by the presence of a multilingual workforce, many of whom may struggle to read contracts written in English.

### 5.3.3.5 Legality of workers

There were 114 non-compliances found concerning legality of workers. This area accounts for 6% of all non-compliances found. Key issues included:

- **Failure to comply with Code requirements related to Section 8<sup>15</sup>**  
101 instances, 22% of all LPs audited  
These LPs failed to conduct systematic checks of the immigration status and/or right to work of their workers. It does not mean that all these LPs used illegal workers, but rather that they were not taking sufficient precautions to avoid employing illegal workers.
- **International students working more than 20 hours a week**  
13 instances, 3% of all LPs audited  
Most of these LPs were not aware of the legislation that restricts the working hours of foreign students.

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<sup>15</sup> The Code of Practice required checks to be carried out, however the law does not. The law simply requires an LP to not employ illegal workers. Checks are one way for an LP to avoid inadvertently employing an illegal worker.

### 5.3.4 Most Common Non-compliances

Out of a total of 50 possible non-compliances, the 5 most common non-compliances raised accounted for 49% of all non-compliances and are shown in Figure 7. All but one of these non-compliances were related to a lack of / incompleteness of administrative systems and paperwork. Many of these shortfalls were due to ignorance on the part of the LP and/or inadequate paperwork. Administrative non-compliances are also more common as they were easy for auditors to assess and identify shortfalls. The exception to this is the need for a PSV/PCV licence. A lack of compliance in this area is partly due to conflicting information on requirements coming from different Government departments. This particular non-compliance is more difficult than administrative issues for LPs to correct as it can have quite significant cost implications for their business and how they organise their transport services for workers.

Most common non-compliance	Non-compliance Area	Classification	Number of non-compliances	% of LPs with this non-compliance
1	6.1.2 Contract with customers	Major	278	61%
2	6.1.3 Risk Assessments	Correctable	271	59%
3	6.4.5 PSV / PCV	Major	183	40%
4	7.2.1 Contract with workers	Major	134	29%
5	2.2.2 Consent for deductions	Major	118	26%

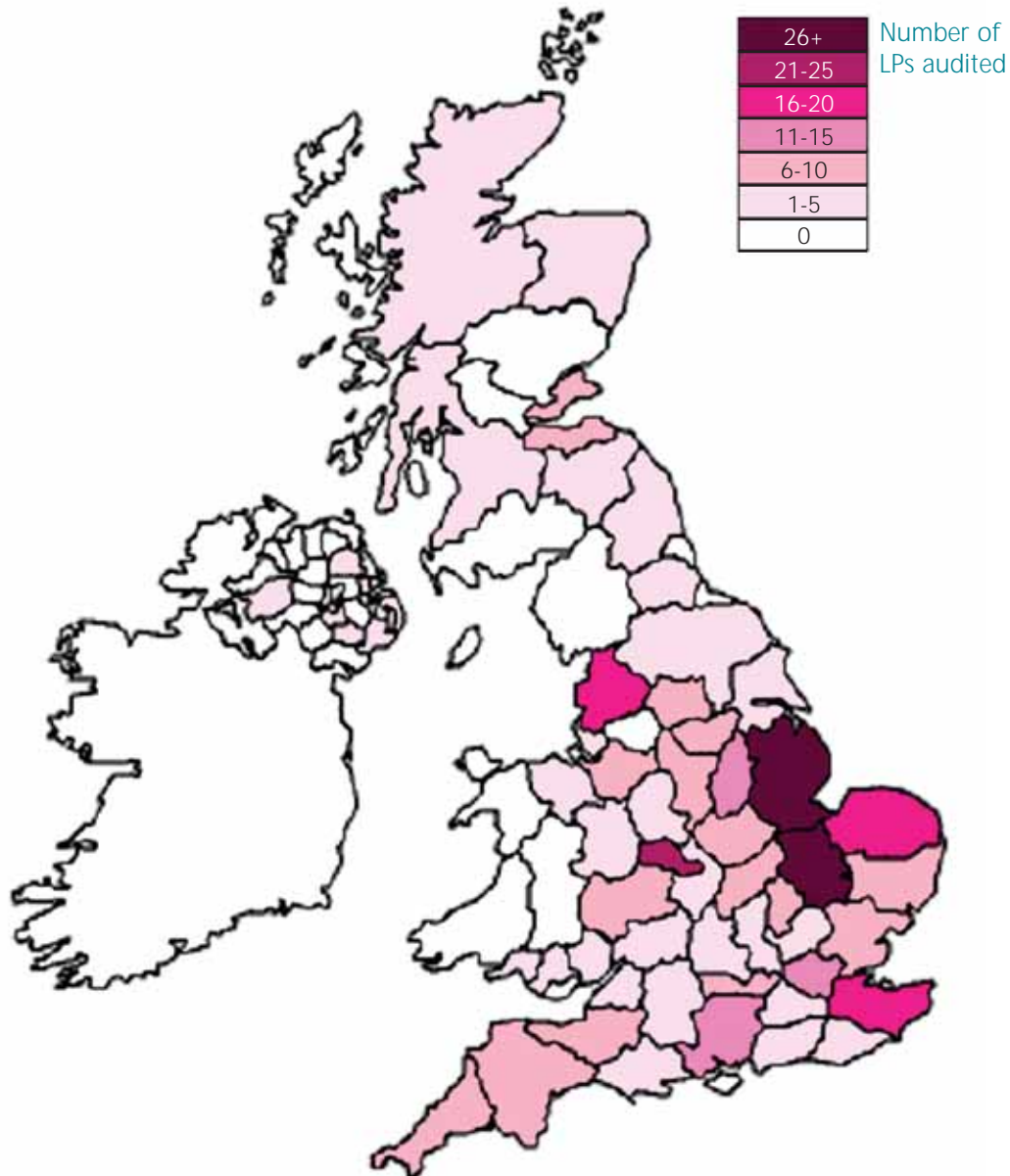
Figure 7: The 5 most common non-compliances of LPs

Although the issues above are important, correcting these non-compliances will have minimal impact on the actual treatment of workers. Figure 8 shows the occurrence of the types of non-compliances that imply or evidence actual exploitation of workers. A total of 215 such non-compliances were found, 11% of all non-compliances reported. These serious non-compliances maybe less common than those listed above either because they occur less or because they are much more difficult to identify through an audit process. This latter explanation is supported by the number of additional instances reported through the confidential mechanism. In reality, it is probably a combination of the two.

Non-compliance Area	Classification	Number of non-compliances	% of LPs with this non-compliance
5.1 Excessive hours/breaks	Major	66	14%
2.4.1 Benefits paid	Major	57	12%
11. Accommodation charges	Critical	53	12%
2.3.1 Minimum wage paid	Critical	17	4%
4.2.1 Free to find alternative accommodation	Major	5	1%
2.2.3 Wages withheld	Major	4	1%
3.3.1 No Penalty	Critical	4	1%
3.5.1 Harassment	Correctable	4	1%
3.2.1 Debt Bondage	Critical	3	1%
3.2.2 Clear loan agreement	Major	1	0%
3.4.1 ID withheld	Critical	1	0%

Figure 8: The occurrence of exploitative issues

### 5.3.5 Geographical distribution of assessments



**Figure 9:** Geographical distribution of LPs across the UK

Figure 9 shows that the TLWG programme touched most corners of the UK. The largest concentrations of audits were in the Spalding and Lincolnshire areas. This reflects the locations of LPs identified by supermarkets during the project. There was lesser involvement of LPs in areas such as Scotland, Wales and the north of England. It has been particularly difficult for the Group to identify and contact LPs who are not in the upper tiers of the supermarket supply chain. The identification of areas where few LPs have engaged in the TLWG programme is crucial information to the GLA who need to identify LPs in these areas and target communications to them to ensure they are aware of the pending licensing requirements before the offences come into force. LPs who are unaware of the TLWG or licensing may require a different type of communication to introduce them to licensing and what this means for their business, as they would not have had the advantage of TLWG exposure or had much time to prepare their businesses for application inspections.

# 6 Transfer from voluntary scheme to statutory licensing

The TLWG scheme was set up in 2002 to help the sector prepare for licensing - how successful has the TLWG been in preparing the sector for a mandatory licensing scheme?

In October 2005, a transition programme for transferring findings from TLWG audits to the GLA was established. Audit findings for each LP were re-analysed against the GLA Licensing Standard, and scored as follows:

- **Critical non-compliance** - 30 points
- **Major non-compliance** - 8 points
- **Reportable non-compliance** - 4 points
- **Correctable non-compliance** - 2 points

LPs that scored 29 or less were classified as 'TLWG successful' and could apply for a licence straight away without the need to have or pay for an Application Inspection<sup>17</sup>. Those that scored 30 or more had to undergo a GLA verification visit to demonstrate they had resolved the non-compliances to the satisfaction of the GLA. Verification visits began in January 2006 and were completed by mid June 2006.

Analysis of the TLWG data showed that 52% of LPs audited had a low enough score, i.e. 29, or less to be classed as 'successful' and therefore did not require an Application Inspection. The breakdown of scores for LPs audited is shown in Figure 10 below. The TLWG was therefore successful in preparing 239 businesses to be ready for immediate licensing (subject to Other Government Department Checks and the outcome of the verification visit).

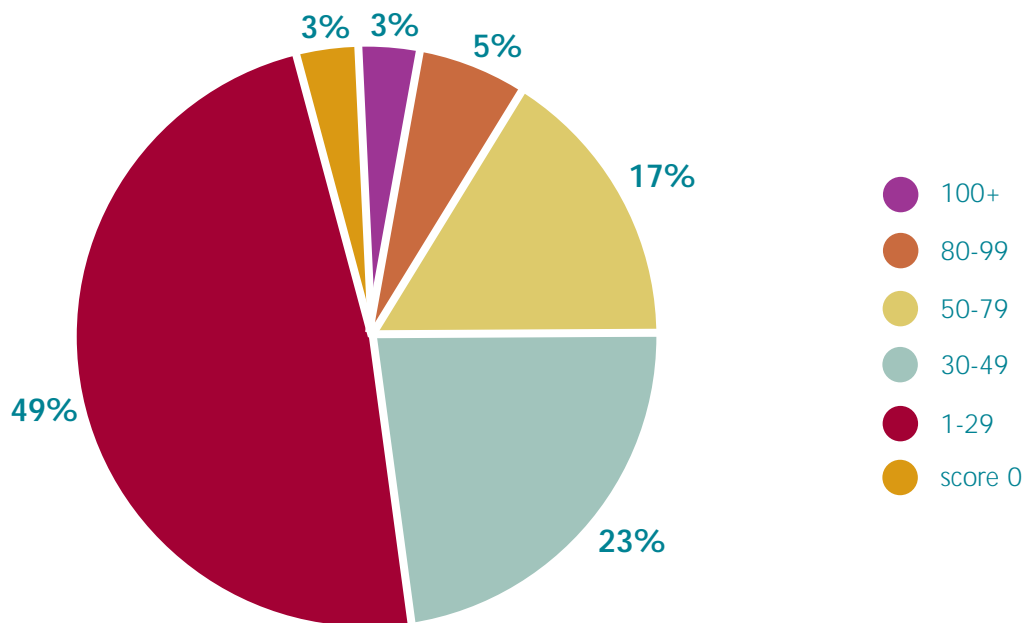


Figure 10: Number of LPs within given scoring ranges for GLA licensing

<sup>16</sup> LPs may have to pay for an Application Inspection if their business circumstances have changed since the original TLWG audit or checks from Other Government Departments raised concern.

### **Licence Applications**

Of 462 TLWG audited LPs 434 (94%) were classified as successful by the GLA upon comparison of their audits with the GLA standard and following Other Government Department checks. Of these 434, 384 (88%) had applied for a licence by the end of July 2006. 28 LPs (6%) classified as unsuccessful - 12 had 'gone away', 9 failed on checks and 7 had changed business status.

The GLA intends to carry out a one-year Impact Assessment from April 2007. The TLWG hopes that this will review the comparative success of LPs that went through the TLWG process against those that applied directly to assess how much the voluntary process helped success rates of LPs in applying for a licence.

# 7 Key achievements of the TLWG

The activities of TLWG have provided useful and practical learning to the GLA and are now the foundations upon which the statutory scheme has been built. Because of the preparatory work done by the TLWG, the GLA has been able to establish itself and began inspection and licensing activities in the food and agriculture sectors much earlier than would otherwise have been possible. No enforcement activities began until 1 October 2006. This is in direct contrast to the shellfish industry, where there was no voluntary scheme and the GLA is currently involved in preparatory work to identify how best to implement the licensing regime in this sector. This was acknowledged by Lord Bach in March 2006:

“The very valuable work done by the Ethical Trading Initiative Temporary Labour Working Group to develop a voluntary code of practice, has helped ensure the early introduction of licensing for labour providers operating in the farming and fresh produce supply chain. However, more time is needed to finalise the licensing arrangements to apply to shellfish gathering.”<sup>17</sup>

## 7.1 Technical achievements

The Group has made the following technical achievements:

### 7.1.1 Established a Statutory process

Active lobbying to support the Private Member’s Bill which was enacted in July 2004 as the Gangmasters (Licensing) Act. This laid out the statutory framework for the registration and licensing scheme which came into force in 2005 and with secondary legislation established the statutory process.

### 7.1.2 Developed a template for a statutory scheme

With the passing of the Act, the Group set about designing a voluntary scheme which would serve to support LPs to improve their practices and prepare for licensing.

There were three key elements which acted as pathfinders for the statutory scheme:

- **the code of practice:** this provided the initial template for the GLA Licensing Conditions and highlighted legal technicalities requiring clarification and explanation in order to provide clear guidelines for LPs
- **voluntary registration scheme:** this provided contact details for 970 labour providers and helped to scope the sector.
- **voluntary auditing scheme:**
  - > shaped how GLA inspections are carried out
  - > provided a pool of skilled auditors that can be used to supplement the GLA’s inspection capabilities
  - > provided an opportunity to trial the GLA inspection process in a low risk environment
  - > gathered data about LPs to design and implement the risk assessment process

<sup>17</sup> Lord Bach, *The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs - Written Ministerial Statements, Monday, 13 March 2006*. Source: [Hansard](http://www.publications.parliament.uk/lid199900/ldhansrd/pdvn/lds06/text/60313-35.htm#60313-35_spm1n1)  
http://www.publications.parliament.uk/lid199900/ldhansrd/pdvn/lds06/text/60313-35.htm#60313-35\_spm1n1

### 7.1.3 Established a broad scope for the GLA

TLWG engaged in a concerted lobbying programme to ensure that there were no major exclusions from the scope of the Act. The group felt strongly that the success of the lobbying was due to the quality and depth of TLWG data demonstrating widespread abuse of workers in the primary and secondary food processing sectors which contradicted the suggested divisions.

### 7.1.4 Provided a pool of LPs ready for immediate licensing

The TLWG process helped to inform LPs of the required standard and help them understand ‘what good looked like’. This provided a pool of LPs which are prepared for licensing and are able to comply with the required standard before it becomes an offence to operate without a licence. The scheme has also reduced the number of application inspections required allowing the GLA to minimise application bottlenecks and better manage its resources.

### 7.1.5 Smooth transition from voluntary to statutory scheme

The transition from voluntary to statutory scheme has been remarkably smooth. This has largely been due to the early involvement of the GLA in the development of the TLWG and the close liaison between managers responsible for developing GLA Licensing and the TLWG Secretariat.

### 7.1.6 Insight, experience and advice

The TLWG has given valuable insight and advice to the GLA based on the lessons learned from the TLWG programme. TLWG members also have a wealth of experience in improving labour standards in supply chains on which the GLA has been able to capitalise. Members were also able to comment and advise on the practicalities and implications of some proposed GLA actions. This process meant that different industry perspectives could be brought to bear and proposals were rapidly reviewed and sense-checked. This has informed GLA decisions at all levels from policy through to operations.

## 7.2 Process achievements

### 7.2.1 Multi-stakeholder collaboration

The TLWG was a broad coalition of retailers, food manufacturers, growers, trade unions and labour providers with the participation of government departments all working together towards the same goal. Despite their differences of opinion, the group showed itself capable of concerted action and has not deviated from its original terms of reference which were set out in 2002. TLWG clearly demonstrated that the supply chain can be a powerful mechanism for influencing change at both a policy and operational level. Each member of the Group brought their own skills and resources which they shared with the Group as and when needed.

### 7.2.2 Cross-departmental working

The TLWG process involved people from a multitude of government departments, drawing on technical advice from experts across government and lobbying across many departments at ministerial level. Defra has been particularly supportive of TLWG’s work. Forward-thinking civil servants within this department recognised the value the TLWG could bring and from an early stage, committed incredible amounts of time, support (both directly to the TLWG but also within Government itself) and resources to ensure the work of the TLWG continued and helped in preparation of the GLA. Other Government departments such as the Health and Safety Executive and the Department of Work and Pensions went beyond offering advice and provided members of staff for secondment to the TLWG. This meant that the

TLWG had much better access to information and could ensure its activities would work in line with Government practice and thinking and secure the long-term value of this work. The whole project saw a move by these creative thinking civil servants to move beyond a traditional consultation model to one where they actually worked closely with industry and drew on the vast experience and knowledge held within the group.

# Lessons learned

## 8.1 Process overview

### 8.1.1 Limitations of a voluntary approach

The registration and auditing programme were implemented only after the Gangmaster (Licensing) Act had been passed. This pending legislation provided an incentive to LPs to engage with the programme in order to prepare for licensing.

As a voluntary scheme, the TLWG had a number of disadvantages:

- Ability to interact with only those businesses coming forward voluntarily for registration and auditing. These volunteers tended to be those LPs who were within the first tier of the supply chain with better businesses.
- Only able to use consultancy and audit to identify issues. With no access to information held by government departments such as the Health and Safety Executive, the Department of Work and Pensions, the Immigration and Nationality Directorate, HM Revenue & Customs and police forces, and no rights of entry or search, TLWG auditors were less able to uncover criminal activities and other wrong-doing or pursue serious allegations of abuse. GLA Inspectors and Enforcement Officers will have statutory powers and access to Other Government Department checks and a database of information. This should ensure that the statutory scheme is better able to root out the most serious issues.

### 8.1.2 Limited resources and powers to deal with worker issues and difficulty in developing a whistle-blowing mechanism

TLWG's experiences in handling worker complaints underlines the need for the greatest sensitivity, a confidential means for workers to complain and the resources to follow up complaints promptly. This was not achievable working in a voluntary capacity, with limited resources and no statutory powers.

TLWG's experience was that when workers disclosed serious issues to auditors concerning poor treatment and abuse, it was not always possible to raise them directly with the employer without risking harm to the worker who had made the disclosure. These instances were reported to the Secretariat through a confidential report. There were also a number of issues raised directly with the Secretariat by workers and other third parties via the helpline. It often proved difficult to take sufficient action on these issues, due to limited resources and/or limited powers of influence - especially as in most cases the workers' identity needed to be kept confidential.

Trade union members of the TLWG offered help, however unions do not have the resource to act as the complaint mechanism for the entire sector and relatively few migrant workers are union members. Workers were sometimes referred to their local Citizens Advice Bureau, however, many were too nervous to go to the CAB, especially if their immigration status was in question. This was exacerbated by the fact that workers often could not get time off work without raising suspicion. Some also felt inhibited by their lack of fluency in English. The other option for workers was to inform the LU of their problem, however, this was also perceived as risky since in some instances the LU appeared to be in collusion with the LP.

Auditors have made a number of useful observations based on their experience and feedback from workers:

- Workers would like to have a telephone service (which would need to offer support in a wide variety of languages) where they could go for help and advice.
- When workers confide in auditors and this is reported back to the Secretariat, there should be feedback to the worker of what action, if any, has been taken on their behalf.
- As many workers were quite anxious about being interviewed, it would be useful to have a leaflet (again multi-lingual) that could be given to workers either before or after interviews that explains why they are being interviewed and where they can find sources of help.

There is no doubt that any credible future scheme should have some form of whistle-blowing mechanism to give workers a voice and give the enforcing body an alternative source of intelligence about what is really happening on the ground.

### 8.1.3 Managing a multi-stakeholder approach

The TLWG was a multi-stakeholder initiative and this in itself is challenging. Achieving consensus on policy and communication proved to be time-consuming and sometimes frustrating. The TLWG attempted to tackle this by convening smaller working groups to deal with specific issues, in particular a Rapid Response Team, which was successful in speeding up the decision-making process.

There is no doubt, however, that the benefits of the broad multi-stakeholder consensus far outweighed any of the challenges. Within the group, there was a breadth of knowledge about the structure of the industry and the realities of improving standards in the supply chain - particularly in such an informal centre. Despite the wide spectrum of stakeholders and their interests in the TLWG, when required the group were united in challenging Government decisions and processes when it was felt that the Government were making inappropriate steps. This was even more apparent when it was clear to Group members that Government decisions would not work in practice.

### 8.1.4 The Code of Practice

#### Too much detail

The COP was established to give LPs a clear and centrally available set of guidelines which outlined all the minimum requirements they needed to meet in order to be compliant with existing UK legislation as well as certain areas of best practice. In functional terms, the code posed a number of issues.

Many felt that the COP included too many aspirational or good practice requirements yet lacked detail in some key legislative sections. For example, the code stated "...hours should be monitored to ensure the requirements of the Working Time Regulations are met...". This doesn't actually specify the legal requirement. Although sources of help were given, for many LPs, finding and understanding this information is difficult. A lot of the calls to the helpline were from LPs seeking clarification on issues such as these.

As one might expect, reading the COP in itself did not change behaviour. Many LPs read the COP before their audit but few actually made any changes to their business until after the audit. LPs seemed to struggle to translate the COP into reality and incorporate it into their ways of working.

#### Differences between TLWG and GLA standards

The GLA Licensing Standards builds on the foundations of the TLWG COP, but is not identical to the COP. The Licensing Standards focus on legal requirements and do not include most of the good practice areas. Since the Licensing Standards were not established until early 2006, many LPs were working to close off non-compliances raised against the COP which are not germane to the Licensing Standard. Despite valiant attempts to communicate the changes to the industry, some confusion still arose. This just

highlights the need for clear communications to LPs and succinct advice to reduce confusion in the industry. The TLWG and ALP have played a pivotal role in ensuring the information provided is accurate and as clear as possible.

### 8.1.5 Audit programme

#### Identifying auditors

Auditing against the TLWG COP required auditors with knowledge and skills in the areas of employment practice, health & safety and tax, VAT and National Insurance. Auditors needed to be able to interact professionally with LPs, be confident in the forensic examination of documents and be able to gain workers' trust, often when working through a translator in worker interviews. TLWG rapidly discovered that there was no existing pool of people with proven knowledge and aptitude in all these areas. It was decided therefore principally to use ethical auditors (who have knowledge of employment practice and health and safety as well as of worker interviews) and build their skills in assessing financial records outside the payroll. Additionally, the Group developed some auditors with an HR background who were also able to develop their skills to cover the TLWG remit.

#### Auditor training

The Group agreed that it would train individual auditors and approve them to conduct audits on behalf of TLWG, rather than appointing one or more auditing companies who would take responsibility for upskilling their staff. The Group believed selecting individuals rather than companies would help to ensure that quality standards could be monitored and maintained. Before attending the training course, auditors had to demonstrate that they were experienced at auditing against the ETI Base Code and had at least 20 days of ethical auditing experience in the food industry. Auditors then attended a two-day training course, and sat a written examination. If successful, they then were accompanied by a TLWG assessor on their first audit. If this audit was completed and reported to the assessor's satisfaction, the auditor was then allowed to carry out TLWG audits. In addition to this formal process, auditors could call the TLWG Secretariat for the resolution of specific issues. There were also regular auditors meetings where findings, best practice and lessons learnt were discussed and disseminated.

#### Quality control

TLWG instigated a number of quality control mechanisms. All reports were analysed and inconsistencies between the findings of different auditors examined. The Secretariat also conducted a second accompanied audit with a selection of auditors to check that standards were maintained.

*The audit process had the following strengths and weaknesses:*

#### Strengths

- High degree of consistency amongst auditors due to the fact they had been trained by the same people, given the same information and received ongoing feedback
- Active quality control
- Named auditors rather than accredited auditing firms
- Mix of experience of auditors (some ethical audit specialists and some HR specialists) enriched the capacity of the whole group
- Ongoing support of auditors through the Secretariat
- Ability to report unsubstantiated issues, or issues where workers were potentially at risk through confidential reports

## Weaknesses

- The audit was only a snapshot of LP business operations.
- It was sometimes difficult to conduct interviews because of the level of multilingual workforce. When selecting the translator to assist with interviews, auditors always chose one that would cover the largest group of workers on site. As a result, minority workers were not interviewed. It may have been these groups that were subject to poor treatment.
- Auditors did not have any rights of entry so had to rely on LPs volunteering information and declaring the full scope of their businesses.
- Complicated audit booking process.
- Auditors tended to revert to type, for example ethical auditors tended to focus more on the issues they were comfortable with, rather than tax and VAT.

### 8.1.6 Communications

Communication with LPs and other stakeholders was one of the biggest challenges the Group faced. It was difficult to identify who the LPs were and few communications got beyond the packhouses to farmers who were the original target. It would have been beneficial to use other trades bodies and representatives, such as the National Farmers' Union, to communicate more effectively with a wider spectrum of people.

# Issues for the future

## 9.1 Whistle-blowing mechanisms

### Protecting workers

The GLA needs a dedicated and reactive mechanism for workers to report abuses in confidence. This will improve the GLA's ability to find out what is really happening. This can also act as a source of help and advice. This would need to be multilingual and available beyond the normal working hours of workers. When responding to workers' reports, the challenge will be addressing the issue without revealing the workers identity and thus jeopardising their safety. There also needs to be a mechanism for reporting back to workers on how their complaint has been taken forward.

### Reporting illegal activity

There needs to be a facility for members of the public to report instances of illegal activity amongst LPs, to help the GLA build its intelligence and prioritise resources for investigation and enforcement activities most efficiently.

## 9.2 Credibility

The GLA will need to demonstrate success in ridding the sector of illegal LPs and poor working conditions. The GLA will also need to demonstrate that its process is sufficiently robust to obviate the need for any supplementary voluntary auditing programme. In order to deliver results, the Government will need to make sure that sufficient resource is available to pursue prosecutions.

## 9.3 Limited scope

The GLA covers the provision of labour into all levels of the food industry up to the supermarket or wholesale distribution point. However, there is evidence coming to light via the press to show that substantial abuses exist in labour provision to other sectors, in particular hotel and catering, construction, healthcare and social welfare and cleaning. There is concern that LPs who are intent in avoiding their legal obligations will merely move into sectors outside the scope of the GLA.

## 9.4 Other countries

The TLWG and GLA's focus has been on the UK. However, increasing reliance on agency labour is a global phenomenon and all initial evidence points to the increased vulnerability of temporary and agency workers to serious abuse. Confidential work done in the US, Asia, Europe and Africa all supports this contention. It is hoped that the pioneering work of the TLWG will act as a useful model for others striving to improve the conditions of temporary workers around the world.





