

Tackling labour abuse and modern slavery in the hand car wash sector

Foreword

At the end of 2017, the Local Government Association (LGA) and Independent Anti-Slavery Commissioner published the first guidance¹ for councils on tackling modern slavery. This was supported by a series of regional workshops for councillors and council officers which discussed the different ways in which councils may be able to disrupt slavery and support its victims.

Since then, the LGA has continued to work with our member authorities, partner organisations and the Home Office to strengthen and develop this agenda. We have developed a collection of case studies² highlighting councils' work on modern slavery, as well as a councillor guide³ to the issue.

It has been said that modern slavery is hidden, but often in plain sight. Hand car washes are a good example of this and have been a particular area of focus. In recent years, the sector has become common in our high streets and communities, but local residents may be unwittingly using victims of labour exploitation or even modern slavery to wash their cars: the industry has been identified by a number of organisations as a high-risk sector for labour abuse. Building on his predecessor's call for a pilot licensing scheme for hand car washes⁴, the current interim Director of Labour Market Enforcement, Matthew Taylor, recently argued in favour of a council-led licensing scheme for hand car washes.

In response, the LGA has said that if hand car washing is to be licensed, there must be a proper debate about where the responsibility most appropriately fits and how to ensure it is fully funded by licence fees. However, in the meantime, the LGA has been involved in supporting initiatives aimed both at increasing awareness of the risk of slavery in hand car washes as well as increasing standards within the sector. This guidance is intended to provide an overview of this work, and to bring clarity to the role that councils and other organisations can play within the current regulatory framework, pending any new system of oversight being introduced.

The current regulatory regime for hand car washes is complex, involving a number of different agencies and pieces of regulation, with no single lead organisation. Most councils are constrained by resource pressures in a number of the key service areas that may have a role in overseeing hand car washes. But by pulling together an overview of the current framework, providing suggestions of some steps that councils can take, and highlighting examples of good practice, we hope to help councils strengthen their work in this area.

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Chair, LGA Safer and Stronger
Communities Board

1 www.local.gov.uk/modern-slavery-council-guide

2 www.local.gov.uk/tackling-modern-slavery-council-case-studies

3 www.local.gov.uk/councillor-guide-tackling-modern-slavery

4 Section 4.2, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf

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The modern slavery context

The LGA's modern slavery guidance set out four key roles for councils in relation to modern slavery: disrupting modern slavery; identifying and referring victims; supporting victims, and ensuring supply chains are free from modern slavery

In terms of disruption, councils have an important role to play in this, including potentially discovering modern slavery in their area. They are under a legal duty to do all they can to reasonably prevent crime and disorder in their areas, including modern slavery, and will be members of various partnerships which seek to tackle these issues. Through their day-to-day work with local businesses, a range of council regulatory services may be able to identify cases of modern slavery; these services also have a number of enforcement tools and powers of entry that can be helpful in targeting perpetrators of modern slavery alongside other types of rogue business. The rest of this document considers this specific role in relation to hand car washes.

Under the Modern Slavery Act 2015, councils are 'first responders' – organisations with a legal duty to refer suspected cases of modern slavery to the Home Office's single competent authority; either into the national referral mechanism (NRM), if a suspected victim consents to receive support under the modern slavery victim care contract, or via a separate reporting process (using the MS1 form) if they do not.

Councils may have a role to provide support to victims of modern day slavery. Councils have clear duties to support and protect child victims and normal child protection procedures should be followed, but for adults, the picture is a little more complex. Victims who agree to go through the NRM process may be eligible for housing or adult social care support prior to and after exiting the NRM, subject to meeting eligibility thresholds.

It is unlikely that officers working in the services outlined in this document will have a role in fulfilling a council's legal obligations as a first responder, or to support victims. However, where officers are involved in areas of work that could intersect with modern slavery, it will be important that they:

- have received basic awareness training or guidance on the indicators of modern slavery and risk areas
- are familiar with their council and local multi-agency protocols for dealing with suspected cases of modern slavery and know what to do if an issue arises. In the most serious cases, this could mean informing the police where a person is believed to be in immediate danger; in other cases, this may involve alerting the modern slavery lead officer within the council, understanding how and with whom intelligence can be shared, and linking up with local, regional and national partners in relation to any planned activity.

The modern slavery app and helpline run by the charity Unseen⁵ are a useful point of guidance for councils, while the LGA guidance also provides a more detailed overview.

5 www.modernslaveryhelpline.org

Regulatory frameworks governing hand car washes

This section sets out the different regulatory frameworks that may govern hand car washes (HCWs), including those overseen by councils and those which are the responsibility of other organisations.

Councils' regulatory roles

The previous section noted that councils have powers of inspection and entry that can be used to disrupt the activities of traffickers (and wider criminal networks), as well as to ensure compliance with different regulations. In relation to HCWs these powers typically relate to planning and health and safety frameworks, where district and unitary authorities may have a role depending on the precise circumstances of the business. However, they can also include: housing inspection, if accommodation is provided on the site of a HCW; statutory nuisance powers, if businesses are operating in residential areas; trading standards frameworks, and highways regulations (for example, if a queue into a HCW is encroaching onto a main road and causing traffic issues).

Planning

The Town and Country Planning Act 1990 (TCPA) is the framework controlling all development on land in England and Wales. Generally, all new buildings and uses of land (collectively referred to here as premises) can require planning permission, but there are exceptions to this.

If a premises already has planning permission and a new business opens on it, then planning permission will only be required if there is a material change of use brought about by the new use being started. However, further definition of use classes, and therefore of whether something constitutes a material change of use, would be useful.

HCWs are subject to the TCPA 1990. The determinant of whether a HCW requires planning permission will be firstly, the existing 'use class' that an HCW falls into, under the Town and Country Planning (Use Classes) Order 1987 (UCO); and secondly, whether the premises it proposes to operate from already has planning permission for that type of activity/use class. If it does not, and the premises has planning permission for a different use class of activity, then planning permission will be required. However, the question of which use class a HCW falls into is not entirely straightforward, as they are not explicitly cited in any use class. This is considered in more detail in the appendix.

If a HCW requires planning permission, it must submit a statutory planning application form containing key information including access, hours of opening and management of trade effluent. The local planning authority will consult both statutory consultees (eg, the drainage authority) as well as notifying neighbours and local councillors about the application. It has the option to reject or accept the application, as well as to accept it with certain conditions. However, planning conditions cannot require compliance with other regimes.

Enforcement action may be taken by a planning authority where no planning consent (permission) has been granted, or where planning conditions are not being adhered to. As has been well documented, the planning system is under significant pressure, and planning authorities have very limited capacity for proactive or even reactive enforcement work on HCWs. However, councils may consider joint action with other partners, such as the police, if the intelligence and identified risk justifies this.

Further detail on HCWs and the planning framework is included in the appendix to this document.

Statutory nuisance (noise and light pollution)

The Environmental Protection Act 1990 empowers local authorities to tackle a range of issues defined by the legislation as statutory nuisance. The definition includes artificial light and noise emitting from a premises, and the Act creates a duty for authorities to undertake inspections to detect any statutory nuisances locally as well as to investigate any complaints of statutory nuisance made by someone living within the affected area. Councils have powers to issue abatement notices and require remedial works to address statutory nuisances, as well as to issue fixed penalty notices.

Some councils have highlighted issues with noise and light pollution in taking action against hand car washes.

Health and safety

Under the Health and Safety at Work Act (HSWA), employers have a duty to maintain the health, safety and welfare at work of all their employees, including providing and maintaining safety equipment and safe systems of work. In common with other businesses, HCWs are bound by the HSWA. Health and safety concerns linked to car washes include unsafe use of electricity, poor storage and use of chemicals, inadequate personal protective equipment and in some cases, the provision of sub-standard accommodation connected to the workplace.

Enforcement of the HSWA is shared between councils and the Health and Safety Executive (HSE). As a general guide, councils are the main enforcing authority for retail, office, consumer/leisure, hotel/catering and warehousing and distribution premises, while HSE is responsible for sectors including construction, utilities and factories.

As with the planning system, there is some complexity around the regulation of HCWs in the health and safety context. HCWs may be regulated by either the relevant local council or HSE; the key determining factor is which body has regulatory responsibility for the site where the HCW is located.

As councils are the health and safety enforcing body for retail premises, and have wider regulatory responsibilities at petrol stations, they are responsible for enforcing health and safety at hand car washes in retail premises and petrol stations if the HCW is managed as part of the overall site activity. However, HSE have regulatory responsibility for car washes at retail premises that are managed separately to the main business activity; this means that in most cases HSE are the enforcing body for franchise HCWs operating from supermarket car parks. HSE are also responsible for hand (often pop-up) car washes on all other sites, such as disused petrol stations or land.

Local authorities and the HSE can agree a transfer of responsibility for regulating car washes so that the council becomes the enforcing authority. Requests for transfer are made at a local level following discussion with HSE and are agreed on a case-by-case basis. Transfers have been agreed between the HSE and councils, for example where there may be a wider range of issues of concern for councils' than health and safety matters alone.

Again, as with the planning system, councils' broader regulatory capacity is under significant pressure, with cuts to general council funding having led to a marked decline in local resources to support health and safety.

Councils will therefore generally target their limited resources according to national health and safety priorities set out by HSE, as well as by their own intelligence identifying any specific local issues.

Private rental sector housing

Although not an immediately obvious tool for regulating HCWs, the fact that some businesses have housed workers in on-site accommodation provides another opportunity for council interaction with HCWs, as the Housing Act 2004⁶ empowers local authorities to tackle poor property conditions and management standards in the private rented sector. In some areas, inspection of accommodation has been the basis for a series of visits to HCWs.

Consumer protection

Some councils have used trading standards powers to investigate car washes. One council used its powers of entry under the Consumer Rights Act 2015 to visit car washes; the premises had not been visited for several years and there was intelligence to suggest contraventions of the Act in terms of misleading prices and an absence of business names being provided. As there were also safeguarding concerns about the staff working on the premises, notice of the visit was not provided, and the police and other agencies were present on the visits.

Regulatory frameworks overseen by other organisations

Alongside councils, there are a number of other organisations that may oversee HCWs in relation to different issues.

Health and Safety

As set out above, the Health and Safety Executive (HSE) has direct regulatory responsibility for a number of car washes and particularly hand car washes. Over the last few years the growth of the hand car wash industry has resulted in increasing numbers of HSE inspections, focussing on the most serious health and safety risks and the possibility of labour exploitation.

HSE works closely with other regulators and enforcement agencies to tackle non-compliance and experience shows it is very often migrant labour working in this industry. All workers are entitled to the same level of health and safety protection irrespective of their immigration or employment status.

HSE works in partnership with other enforcement bodies and supports multi-agency visits to HCWs. Those referred to HSE by police forces are usually part of operations to disrupt organised crime but in some cases, HSE is alerted to possible poor health and safety practices following direct contact by workers, members of the public and others, via HSE's Concerns and Advice Team.

Environment and drainage

HCW businesses are subject to the trade effluent provisions in the Water Industry Act 1991, which requires them to seek the consent of the local sewerage undertaker before discharging trade effluent to a public foul sewer. The sewerage undertaker is responsible for controlling the discharge to protect the health and safety of their employees, the public, the environment and the assets receiving the discharge. This is achieved by setting appropriate limits in the consent to control the discharge and then monitoring the discharge against the limits imposed in the consent.

All consents issues are then held on the public register of the relevant sewerage undertaker.

The Water Act 2014 provided the necessary primary legislation to establish a competitive non-household retail market and resulted in the opening of the non-household retail market in April 2017. This meant that from April 2017, all non-household customers in England can choose a retailer who provides both their water and sewerage services. Retailers have the role of assisting any HCW in completing and submitting an application form to ensure they have the appropriate consent.

⁶ LAs have related powers under associated regulations and the Housing and Planning Act 2016.

The actual enforcement of any trade effluent consent is then up to the sewerage undertaker. Whilst there is a clear onus on businesses to seek such permissions this may not always happen and retailers should advise their customers and work with sewerage undertakers to ensure the appropriate consent is in place.

The Water Industry Act also prohibits the discharge of certain hazardous, or flammable substances to sewers and these should be removed by a licensed waste carrier and transferred to an appropriately permitted waste management site. Discharges to surface water sewers would not be permitted.

While sewerage undertakers regulate the discharge of trade effluent to sewers, the Environment Agency is the body responsible for regulating water discharges into watercourses (rivers/streams), groundwater and coastal waters. It is an offence under the Environmental Permitting Regulations 2016 to allow toxic, noxious or polluting matter (which would include discharges from car washes) to enter a watercourse.

There are therefore clear legal obligations governing the operation of hand car washes in relation to drainage and the environment. The sewerage undertaker can prosecute for offenses under the 1991 Act, such as discharging into the public sewer without consent or breaching conditions in a consent.

The Environment Agency can also take action against companies and individuals that cause pollution of water courses. The Agency has powers to serve works notices under S161 of the Water Resources Act where there is a risk of pollution, but offers advice in most situations. Any action by the Agency will be in line with its enforcement and sanctions policy.

Normally environmental impacts from car washes are low and consequently dealt with by advice and guidance or similar, although the Agency reserves the right to prosecute if a serious environmental offence occurs. In 2019 the Environment Agency reissued guidance⁷ on this issue.

Labour and employment standards

The Gangmasters and Labour Abuse Authority (GLAA) was originally established to licence specific sectors for which a gangmasters licence is required⁸, following the Morecambe Bay tragedy in 2004. In 2017, its operational remit was extended and it is now responsible for investigating reports of worker exploitation and illegal activity such as modern slavery, forced labour and illegal labour provision, as well as offences under the National Minimum Wage and Employment Agencies Acts, in all sectors. The scope of offences the GLAA can investigate in England and Wales is set out in section 3(3) of the Immigration Act 2016, which also gave GLAA new investigatory powers in the Police and Criminal Evidence Act 1984.⁹ The GLAA works in partnership with the police, National Crime Agency and other agencies to target and disrupt criminal networks linked to labour abuses.

As the body with primary responsibility for tackling labour abuse, the GLAA has reported¹⁰ an increasing number of referrals alleging exploitation of workers at car washes. The organisation has undertaken a number of investigations, typically in partnership with other agencies including the police, local councils and HSE. Alongside its investigatory work, the GLAA has undertaken work to try to increase standards in the car wash industry through the Responsible Car Wash Scheme and its Code.¹¹ Further information on this is set out in the next section.

7 www.gov.uk/guidance/pollution-prevention-for-businesses

8 Agriculture, horticulture, shellfish gathering and any associated processing and packaging.

9 The Police and Criminal Evidence Act 1984 (Application to Labour Abuse Prevention Officers) Regulations 2017

10 GLAA submission to Environmental Audit Committee inquiry 2018: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/hand-car-washes/written/83129.pdf>

11 www.rcws.org.uk

Like all businesses, hand car washes are bound by the National Minimum Wage Act 1998, which sets out requirements relating to payment of the national minimum and national living wages and is enforced by Her Majesty's Revenue and Customs' National Minimum Wage Unit (NMWU). Both the GLAA and NMWU are under the oversight of the Director of Labour Market Enforcement (DLME), which sets priorities for the various bodies enforcing employment rights.¹² As noted above, in his 2018/19 report the previous DLME Sir David Metcalfe recommended piloting GLAA licensing for HCWs and nail bars, and the current director has gone further by calling for a local authority-led licensing scheme, although the Government's approach to date has been to test out a series of other initiatives (outlined in the next chapter) before it will consider a piloting of licensing.

Summary

While a number of organisations may play a role in overseeing the compliance of car washes with a range of different regulatory frameworks, there is no single lead agency for regulating them. For this reason, enforcement activity targeting hand car washes has often involved several different agencies and the police working collaboratively to share intelligence and target enforcement where there are concerns.

However, there are major challenges preventing sustained, proactive activity designed to increase compliance and target criminal activity in the car wash sector, principally the recent proliferation of the sector and a lack of resources. For councils, resource challenges are a significant issue. The planning system is recognised to be under significant pressure and regulatory services such as environmental health (which includes health and safety) and trading standards have in many places halved in size as a result of cuts to local government funding. Other agencies, too, face the challenge of limited budgets when compared to the significant

number of car washes in operation, with work required to be prioritised accordingly.

Although organisations want to help tackle modern slavery, in terms of their individual regulatory remits, the impact and detriment caused by hand car washes may be low when compared with other, more serious issues that resources needed to be targeted towards.

The following sections of this document set out the initiatives that have been developed to try to improve standards in car washes within this context, as well as the work that councils may be able to undertake.

¹² In summer 2019, the Government launched a consultation on merging these enforcement functions.

Current initiatives to raise standards in the car wash sector

Given increasing concern about labour exploitation in hand car washes, a number of initiatives have been launched to raise awareness and raise standards in the sector.

Clewer initiative safe car wash app

In 2018, the Church of England's Clewer Initiative worked with partners to launch the safe car wash app. The app helps increase public awareness of the issue and provides a mechanism for reporting concerns, which will help to increase the amount of data we have about hand car washes.

Consumers are encouraged to use the app when they are using a hand car wash. The app asks a series of questions related to the indicators of modern slavery; if the responses indicate a high likelihood that modern slavery is occurring at the site, the user will be directed to report concerns to the modern slavery helpline. Data from the app is anonymised and shared with the GLAA and National Crime Agency to help build the intelligence picture about hand car washes and modern slavery. In the first six months of operation, the app was used more than 2,000 times, leading to 126 calls to the modern slavery helpline via the app.

Further information about the app is available at: www.theclewerinitiative.org/safecarwash

Responsible car wash scheme

The responsible car wash scheme (RCWS) is a partnership approach towards improving standards in the sector developed by the GLAA, HSE, HMRC, Environment Agency, police, Petrol Retailers Association and the charity Unseen. It is hoped that by increasing compliance and working standards across the sector, this will enable limited enforcement resources to be targeted at the worst/criminal businesses. By providing an accreditation scheme, the scheme will enable customers to make an informed decision about the businesses they use.

The scheme has developed a code of practice setting out a checklist of obligations for hand car washes to comply with in order to become accredited with the RCWS and display its logo. The requirements fall into a number of different categories:

- having consent to trade
- operating with full financial transparency and good corporate governance
- providing safe and hygienic working conditions
- protecting the environment
- operating compliant and ethical employment practices
- operating good car washing practices.

The code is initially being piloted in the midlands, ahead of a planned national roll out. The pilot is focusing on franchise HCWs operating out of retail car parks, with five major supermarkets and Waves (a car wash franchise) as founder members.

Reference to the scheme is already being used by some police forces in their work targeting car washes.

Further information about the RCWS is available at: www.rcws.org.uk

Nottingham Trent University / GLAA initiative in the North East.

Nottingham Trent University have developed a predictive tool to map out where HCWs are likely to occur. This information is being overlaid with the mapping information created by the Clewer Initiative's safe car wash app to create a virtual map setting out where HCWs have been reported or are expected to spring up.

As a pilot/proof of context exercise the GLAA are working to visit each identified site, across an agreed geographical location, to test the mapping and engage on a voluntary inspection exercise to gather intelligence on the nature and scale of problems linked to HCWs.

How councils can help address issues in local hand car washes

Councils can try to tackle modern slavery in car washes in four broad ways:

- understanding and awareness raising
- regulation and disruption
- joint working with other agencies
- supporting victims.

Understanding and awareness raising

Our recent councillor guidance¹³ on tackling modern slavery emphasises the important role that councils and councillors can play in helping to raise awareness of modern slavery as an issue that affects communities across the country. There is a need for awareness raising on two levels; among both officers and councillors, as well as among the general public.

Most councils will already have provided training on modern slavery for staff who may come across modern slavery in the course of their work; for example, staff in customer contact, housing, regulatory and social care roles. It is important that all officers who may come across modern slavery, or who work in roles that can help disrupt it, understand the indicators of modern slavery, high risk sectors, and the part they can play. Council officers should be clear on what to do, or who to contact, in the event that they have a concern, or a concern is raised with them.

Councils should therefore ensure a minimum level of training and information for all relevant staff, including drawing on resources such as the LGA's guidance¹⁴ and available training.

Councils can also undertake work to ensure the public are aware of slavery as a modern issue – rather than something that was abolished hundreds of years ago. This could in particular focus on the risks of labour exploitation and slavery in local businesses such as hand car washes and nail bars, and seek to inform responsible consumer decisions by local residents. As an example, Slough Borough Council won an award for its 'modern slavery is closer than you think' publicity campaign,¹⁵ while a number of councils have sought to promote use of the Safe Car Wash app.

Using regulation to disrupt slavery

Although councils' regulatory capacity has reduced significantly in recent years, there may still be scope for them to use their regulatory powers and tools in both a systematic and targeted way to try to raise standards in the HCW sector and actively disrupt serious criminality. This could include looking for ways to promote the responsible car wash scheme code of practice with hand car washes in their area,¹⁶ as is already occurring with several police forces.

In planning, councils can seek to reinforce the need for HCWs to comply with a range of different regulatory regimes, although they are unable to attach conditions requiring compliance with other regulatory regimes.

¹³ www.local.gov.uk/councillor-guide-tackling-modern-slavery

¹⁴ www.local.gov.uk/topics/community-safety/modern-slavery

¹⁵ <http://view.ceros.com/clear-channel/oma-2019/p/9> and www.slough.gov.uk/info/modern-slavery-campaign.aspx

¹⁶ www.rcws.org.uk/code-of-practice .

However, they can raise awareness through advisory notes summarising the different requirements of other regulatory regimes to be complied with, and seek evidence that the applicant has sought permission from other regulators. By including this within their local validation lists, which sets out what evidence is required to be provided at the outset of an application, it becomes mandatory for this information to be provided before a planning application can be accepted and considered.

WYCOMBE DISTRICT COUNCIL PLANNING ADVICE

Following recent work on hand car washes in the Thames Valley, Wycombe District Council are signposting applicants towards the RCWS at application stage, with the following information provided as an 'informative' on planning decision notices:

The applicant should be aware of the legal and statutory obligations required in operating a hand car wash business. These obligations relate to the protection of the environment, health and safety, financial transparency as well as employment practices including workers' rights, conditions and pay.

Thames Valley Police supports 'The Responsible Car Wash Scheme' which clearly identifies these obligations whilst providing guidance to ensure your business is compliant in meeting them. This national accreditation scheme has been developed with support from the police, the Gangmasters Labour Abuse Authority, the Environment Agency, the Health and Safety Executive, Her Majesty's Revenue and Customs, Immigration Enforcement and the Modern Slavery charity Unseen.

The applicant is therefore signposted to the website below:

www.rcws.org.uk

In areas of regulation that don't require an initial consent to be issued, councils can undertake specific operations focusing on local hand car washes. The case studies in the next section demonstrate how councils have used a range of regulatory powers to visit and inspect hand car washes.

Joint working with other agencies

Linked to this, councils can pool their resources with other agencies to collect and share intelligence on HCWs and undertake partnership working through joint operations. Experience suggests that businesses which are non-compliant in one area of legislation are more likely to be non-compliant in other areas of regulation, suggesting that pooling intelligence can help target activity effectively. Again, the case studies provide examples of how councils have worked with partner organisations including the National Crime Agency, local police, the GLAA, HMRC, HSE and others.¹⁷

Councils may also be involved in work to target HCWs as part of their local modern slavery partnerships. Under Section 17 of the Crime and Disorder Act councils have a duty to do all that they reasonably can to prevent crime and disorder in their areas, which will include modern slavery and trafficking. Councils are a part of a number of partnerships whose work may have an impact on tackling modern slavery, including community safety partnerships and serious and organised crime partnerships. Again, subject to local intelligence, these partnerships may opt to target their activity around risk areas such as HCWs, again by sharing intelligence to target disruption activities and enforcement work most effectively.

Councils can play a key role in facilitating joint working through mapping and sharing intelligence on locations of HCWs. Several areas have found it a challenge to begin planning work with HCWs given that there is

no single, accurate record of HCW locations operating in a specific location. Areas that have undertaken work on HCWs to date have tended to use a combination of data from: planning and other local regulatory teams; local council and police neighbourhoods teams (often collected simply through walking around their areas) and in some cases the Clewer safe car wash app. Council business rates teams may also be able to provide information on any HCWs which are registered for national non-domestic rates (NNDR).¹⁸

Support for victims

Planning how to provide advice and support to victims of exploitation who may be identified at hand car washes is a critical part of planning any activity linked to hand car washes.

In the Thames Valley, officers participating in multi-agency visits to HCWs aimed to ensure that individuals working on site were aware of their rights as workers. A recurring issue with some cases of modern slavery is that workers may not recognise that they are being exploited, therefore signposting them to information such as the GLAA worker's rights leaflets, or working in collaboration with third sector partners to provide accessible information, is extremely important.

Whether or not they are directly involved in any disruption activity targeting hand car washes, councils may also become involved in such actions in a victim support role. In many modern slavery cases, councils have contributed to victim reception centres established where targeted operations have identified individuals believed to be victims of slavery, who are removed from the situation and may need emergency accommodation. The British Red Cross is currently undertaking research into the factors that constitute effective reception centres.

¹⁷ Some areas have found it preferable to have immigration officers on stand-by/on the phone for support if required, rather than on site, on the basis that their presence on a visit can sometimes prevent disclosure from genuine victims and also encourage claims of exploitation from those who are not victims but want to avoid deportation.

¹⁸ In common with other businesses, HCWs may be required to pay NNDR; however, any premises with a rateable value of £12,000 or less is now eligible for small business rate relief, which may exclude many HCWs. The [Valuation Office Agency](#), rather than individual councils, is responsible for assessing the rateable value of individual premises, and councils may only operate from the list of premises provided by the VOA. There is no obligation on individual premises to register with the VOA.

Case studies

OPERATION FLINCH, SLOUGH – NOVEMBER 2019

Operation Flinch was coordinated by the South East Regional Organised Crime Unit (SEROCU), and the Government Agency Intelligence Network. The aim of the operation was to promote the Responsible Car Wash Scheme (RCWS) by proactively visiting all car washes in a designated area, helping to educate and support genuine business owners who have ambition to be legitimate hand car washes while targeting those who do not. Not all car washes are linked to wider criminality or organised crime groups, nor are they all exploiting their staff, but by undertaking a programme of visits, the operation could collate and enrich the intelligence picture for that area and feed this back to the local police.

Slough was chosen to trial the approach because it is a densely populated, culturally diverse borough and has the second largest amount of car washes in the Thames Valley area. Of the 35 car washes originally identified from the council and police intelligence systems, 19 were found to be open and operational; the others were either duplicates or car washes that had since closed or moved on, highlighting the need for up to date and accurate recording.

Safeguarding was a key priority during the visits, which took place over a two day period, but unless there was an immediate concern for a person's welfare or safety, staff de-briefs were not conducted with every employee.

The estimated time spent at each car wash was between 25-30 minutes, during which time the RCWS and adherence with its code of practice as a form of governance was promoted.

Following the visits, 20 people, including car wash owners, directors, publicans and landlords, attended a follow up partnership seminar. Seventy per cent of car washes that had been visited were represented: it transpired that two car washes had closed down since the visits, on the basis that they would not reach the requirements of the scheme and did not want further police or compliance visits.

The aim of the seminar was to build on the visits by continuing to promote a supportive approach and the adoption of the RCWS; input was provided by both the RCWS and Slough Council's trading standards team, and there was a good level of debate throughout the seminar. Genuine business owners were concerned about what they saw as rogue car washes setting up and undercutting them by disregarding legal requirements, and the majority of owners and directors were happy something was being done across the area. Many wanted to see further legislation and for the RCWS to be made mandatory. Four car washes registered their interest in the scheme on the day; the remaining ten took away the literature detailing the scheme and the requirements for subsequent applications.

Going forward, SEROCU and neighbourhood policing will continue to engage and build rapport with hand car wash businesses, including through a wider rollout of the project across the Thames Valley and South East region.

They believe that communication with landlords to raise awareness and encourage compliance on their sites would be useful, as well as for planning authorities to provide information about the RCWS to anyone submitting a planning application for a hand car wash. They would also like to see an RCWS kite mark that businesses could use in their advertising, similar to the food hygiene rating scheme.

The Operation Flinch template could be used in any area with support from the RCWS and the local police; the same principles could also be applied to other high-risk industry sectors where a consistent set of standards could be developed.

LONDON BOROUGH OF SOUTHWARK HEALTH AND SAFETY – 2018

Following an identified case of modern slavery at a Hand Car Wash (HCW) in Southwark in early 2018, Regulatory Services at Southwark Council developed and delivered a project to investigate if there were similar issues at similar businesses in the borough.¹⁹ This formed part of the Health & Safety Enforcement team's work plan in 2018-19 and that action was developed in line with one of team's business objectives – to raise awareness of and promote health and safety compliance. As enforcement responsibility for health and safety legislation in HCWs rests with the Health & Safety Executive (HSE) nationally, it was agreed with them that the focus of the project would be advisory, with any enforcement issues identified passed to the HSE for enforcement.

Officers in Southwark collated information from staff, partners and online searches to identify the locations of HCWs in the borough; of 28 possible sites, 17 were identified as still operational.

Officers participating in the project were given training on the indicators of slavery and an information pack containing key health and safety messages for HCWs was developed to be distributed HCWs through on-site visits. A pro-forma assessment form for officers to note observations on key aspects of HCW health and safety and any potential slavery indicators observed was developed to use as an aide memoir. The price point was also noted. The assessment form was completed by staff shortly after leaving site to ensure a helpful and light touch tone to interactions.

The findings of the project indicated a generally high level of compliance in Southwark HCWs, but two of the 17 premises gave rise to concerns about both health and safety and worker welfare: these businesses were then referred to the HSE and the Gangmasters and Labour Abuse Authority (GLAA).

The project was shortlisted for the Chartered Institute of Environmental Health's best environmental health project 2019.

OPERATION NECK, NOTTINGHAM CITY COUNCIL – NOVEMBER 2017

In November 2017, Nottingham City Council Safer Housing Team and Tasking & Intelligence Team (part of the Community Protection (CP) team/directorate), Nottinghamshire Police officers and HMRC supported a GLAA led operation to identify and support potential victims of modern slavery at hand car washes in the city of Nottingham.

The CP Intelligence Team developed an intelligence package identifying 30 hand car wash businesses in the city and graded them according to risk using Nottinghamshire Police and city council held intelligence.

19 ^[1] Summary and redacted report available at: www.southwark.gov.uk/environment/environmental-protection/southwark-council-investigates-modern-slavery-at-hand-carwashes

The CP Intelligence Team along with the GLAA lead investigator undertook intelligence scoping and briefing exercises with colleagues that led to formal planning meetings with partners and the development of an operational order identifying the roles and responsibilities of participating teams and agencies.

The GLAA led a joint briefing and attended four hand car washes with partner teams. One victim of modern slavery was identified and entered the National Referral Mechanism (NRM) while the Safer Housing Team issued an Emergency Prohibition Notice on one car wash facility being used illegally for accommodation and a further address which was identified through the operation. HMRC found causes of concern at all four businesses and commenced investigations.

A great deal of further intelligence was developed and passed into the ECINs partnership data sharing system (which allows the police and partners to share information about anti-social behaviour) and into the Nottinghamshire Police NICHE intelligence system.

The operation proved the importance of joint working between partners and achieved the key moral outcome of protecting victims. The operation generated positive media coverage further raising public awareness of the issue of modern slavery and its connection to other offending such as exploitative and dangerous housing practices.

The team has visited car washes for various purposes, but primarily from the perspective of disrupting human trafficking, modern slavery and their part in local organised crime groups. Inspections have been undertaken utilising both trading standards and housing powers in terms of identifying illicit goods and accommodation, and with input from relevant partner agencies depending upon the intelligence received or concern at hand. Virtual partners are also brought on board where required including officers from the Gangmasters and Labour Abuse Authority, Immigration Enforcement and the Department for Work and Pensions.

ROCHDALE COUNCIL MULTI-AGENCY ENFORCEMENT APPROACH

Rochdale Council's Partnership Enforcement Team, based in a Rochdale police station, is a multi-agency team comprising officers from trading standards, environmental health, housing enforcement and the benefit fraud team.

Appendix

Detailed information on hand car washes and planning permission

Legislation

Section 55 of the Town and Country Planning Act 1990 (TCA) sets out how the Act controls all development on land in England and Wales. Generally, all new buildings and uses of land can require planning permission, but in terms of the use of land, this depends on the existing use/planning permission and whether there is a material change of use brought about by a new use being started on that land.

Therefore, to determine whether a HCW needs planning permission, it is important to establish what 'use class' the operation falls into under the Town and Country Planning (Use Classes) Order 1987 (UCO), as this will determine if planning permission is needed, depending on the existing permission already in place on the relevant site.

Unlike for some types of business, the UCO does not specify what use class HCWs fall into, but there are two possible determinations, and arguments in favour of either interpretation:

Use class B1(c) - Business – a light industry use that is appropriate in a residential area. The UCO20 states that an 'industrial process' includes repairing, maintaining, washing and cleaning of any article.

Sui generis use – a use that does not fall within any defined use class.

IN A PLANNING ENFORCEMENT APPEAL DECISION,²¹ THE INSPECTOR ARGUED THAT:

"It is clear that... washing and cleaning [of a vehicle] is an industrial process... Use class B1(c) encompasses use...that can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. Car valeting uses generally involve the use of power washes and vacuum cleaners are used, both of which are commonly used in domestic environments, but otherwise the work involved - cleaning, waxing and polishing etc – is usually done by hand. It is a use that can be carried in any residential areas without detriment to the amenity of that area and would therefore be a use falling within Use Class B1."

However, in terms of a Sui Generis use, many planning authorities consider that the operation of a HCW fails to meet the requirement of Class B1(c) to be a use that can be, 'carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit'. The determining factors relate to the following:

- The scale of the operation – how large is it and how many vehicles are on site at any one time?

²⁰ Article 2

²¹ Planning Enforcement Appeal Decision APP/Q1445/C/12/2169597 Brighton and Hove City Council Enforcement Appeal 30th August 2012 - [https://present.brighton-hove.gov.uk/Published/C00000118/M00004072/AI00029945/\\$H130CowperStreetHove.pdfA.ps.pdf](https://present.brighton-hove.gov.uk/Published/C00000118/M00004072/AI00029945/$H130CowperStreetHove.pdfA.ps.pdf)

- The hours of operation, does it start early in the morning until late in the evening?
- How large are the pressure washers used? Are they of a small domestic type or are they heavy industrial?

Consequently, if an area of land or building is already in industrial use (any of the B use classes) the operation of a HCW may not need planning permission if it were small scale and appropriate in a residential area. However, in all other cases permission would be needed, especially if new buildings or structures were to be erected as part of the operation. However, whether or not new buildings are erected is not itself the crucial determinant of whether planning permission is required – both a change of use of land and/or a building can need planning permission.

One issue that may be relevant for planning authorities is whether or not a HCW is operating independently of the core business of a premises, for which planning permission is in place. If a HCW is separate to the main activity, for example, it is sub-letting space in a car park, then the activity may be in breach of the planning permission for the site unless planning permission has been sought for the additional activity.

When planning permission is needed

Submission of a planning application

- While there are national requirements for information to support a planning application, local planning authorities (LPAs) also have the ability to set up 'local validation' requirements (see page 13). For HCWs, like all other applications that need planning permission, the standard statutory planning application form has to be completed. The requirements to include the following information on the statutory form are particularly relevant to HCWs:

- Question 6 – Access - any changes to the access to the site, vehicular or pedestrian
- Question 7 – Waste Storage and disposal – details of how this will be managed
- Question 10 – Vehicle Parking – both existing and proposed
- Question 11 – Foul sewage – how will this be disposed of
- Question 12 – Assessment of Flood Risk – what area is it in
- Question 14 – Existing Use – description of what it is
- Question 16 – Trade Effluent – how will it be disposed of
- Question 19 – Employment - number of jobs to be created to be identified
- Question 20 – Hours of opening – details on a daily basis

Therefore, at the point of application the LPA should be in possession of key facts about employment, hours of operation, drainage and waste disposal and this information is supplied to consultees. If this information is not provided in full, the application can be invalidated by the council.

Consulting on an application

The LPA will have established lists of consultees, some set out as statutory consultees and some as local consultees. Given the fact that access is required to a hand car wash site for vehicles, waste is produced (both solid and liquid) and neighbours can be affected, all LPAs **should** consult, as a minimum, the following bodies:

- environmental health/protection authority
- highways authority
- drainage authority.

Which body this is will vary depending on the local regime. In some cases this may be the same as the sewerage undertaker, but in others it may be a different authority – possibly the Environment Agency if the site is in a sensitive area and has a flood risk assessment in place.

Consultees can raise objections to an application and seek to get it refused. They can also recommend conditions to be imposed on any consent to be granted or advisory note to be given to applicants. They might also withdraw from the process with no strong views or concerns.

In addition, local councillors and neighbours will be notified of the application, although they have no powers of direction as to what the LPA should do.

Conditions imposed on consents

These fall into two types; those that are prior to the start of the operation and those that are continuing during the life of the operation.

Typical conditions before the operation starts for this type of business could include:

- drainage and water treatment schemes to be submitted with method statements of how it will be implemented and maintained (these schemes should ensure that there is no run off of water from the site onto the adopted highway and or into highway drains).
- noise mitigation measures to be approved and the method of implementation and maintenance.

Typical conditions during the operation include:

- maintenance of water treatment facilities
- maintenance of other mitigation measures such as acoustic barriers
- specification of hours of operation.

It is important to note that planning conditions cannot require compliance with other regulatory requirements (eg Building Regulations, the Environmental Protection Act), as conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning²².

However, there is the possibility of appending advisory notes to remind applicants of the need for other necessary legal approvals such as:

- consent from the local sewerage undertaker for the discharge of waste water and or surface water.²³

Enforcement

Where no consent has been granted

In the case of operations that do not have planning permission and need it, the LPA has the legal power to require activities to stop:

- Where there are serious material planning matters at risk, and the LPA is unlikely to grant a permission, the LPA can use temporary stop notices to cease the operation for a short period of time to prepare a formal enforcement notice requiring the use to cease. There is a right of appeal against an enforcement notice and the LPA might be liable for costs if an appeal succeeded. The use of stop notices should be carried out using a risk based judgement in line with any local enforcement policies.
- Where the use could be appropriate, the role of planning enforcement becomes one of encouraging the submission of an application that can then be regularised and perhaps controlled via condition.
- It is good practice in enforcement situations to see whether a situation can be improved through discussion and negotiation before serving notices.

²² www.gov.uk/guidance/use-of-planning-conditions

²³ Water Industry Act 1991. Section 118 of the Act makes it an offence to discharge trade effluent to a sewer without the written consent of the local water company. It also states that to obtain consent, the discharger must serve written notice (an application) on the sewerage undertaker (the water company).

Enforcement of planning conditions

Enforcement of conditions by LPAs is relatively straightforward. If a condition is not complied with the LPA can serve a breach of condition notice (BCN) which gives a period of time for the situation to be remedied. If it is not the matter is then escalated to the magistrates' court. Failure to then comply with a ruling of the magistrates' courts can then result in fines and or imprisonment.

Developed by the Local Government Association (LGA) and John Cummins, Consultant, Planning Advisory Service (PAS).



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