

**EMPLOYMENT AGENCY
STANDARDS (EAS)
INSPECTORATE:**

Annual report 2010-2011

FEBRUARY 2012

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Introduction

1. This report outlines the performance and achievements of the Employment Agency Standards inspectorate (EAS) between April 2010 and March 2011. The inspectorate is part of the Department for Business, Innovation and Skills.
2. This report is structured around three key strategic outcomes:
 - i) Ensuring effective enforcement and compliance of the law;
 - ii) Raising awareness of EAS;
 - iii) Delivering efficient customer service.

EAS's Responsibilities

3. The mission of the EAS is to work with agencies, employers and workers to ensure compliance with employment rights, particularly for vulnerable workers.
4. The main role of EAS is to ensure compliance with the Employment Agencies Act 1973, and the associated Conduct of Employment Agencies and Employment Businesses Regulations, across Great Britain. The inspectorate has powers to tackle employment agencies by seeking compliance with the employment agency legislation. Where necessary the inspectorate will issue agencies with warnings and seek to ensure that corrective measures are put in place. In extreme cases, the inspectorate can consider prosecution or prohibiting individuals from running an employment agency for up to 10 years

2) Improved risk assessment

5. Progress continued to be made during 2010/2011 in strengthening our systems to effectively enforce the employment agency legislation. A more sophisticated risk matrix has been introduced in line with Hampton principles and in response to the EAS Hampton Implementation Review published in November 2009.
6. EAS has designed a risk matrix to make inspection activity more proportionate and cost-effective by targeting inspection activity on businesses most likely to be flouting the law. Improved targeting has indicated a reduction in the risk of reputable businesses and has meant fewer inspections for compliant businesses. The risk matrix was tested in the first half of 2010/2011 and applied to all routine inspections thereafter.

3) Enforcement

7. Enforcement of the employment agency legislation is guided by a structured assessment of risk. Successes during 2010/2011 included:
 - Targeted inspections nationwide into the healthcare and construction sectors.
 - Targeted joint inspections in Leicester and Exeter with colleagues from HMRC National Minimum Wage Teams.

- Prohibiting an entertainment agent for 10 years who had been convicted of sexual assault and possession of child pornography (see Case Study 1).
 - Prohibiting partners of an agency who were both convicted of fraud (see Case Study 2). In total 8 people have been banned from operating or running an employment agency or employment business.
 - Prosecuting an entertainment agent for failing to pass on money received from a hirer to a performer that the agent had found work for (see Case Study 3).
 - Seven potential prosecution or prohibition cases pending or where proceedings have commenced.
 - Targeted inspections nationally into the entertainment and modelling sectors following changes to the regulations in October 2010 (see below).
8. EAS issue press notices to promote the inspectorate's work and to raise EAS's profile with both employers and workers. In total, we issued 5 press notices during 2010/11.
9. Over the course of 2010/11, EAS recovered £295,010.36 for workers in relation to non payment of wages or fees due to them; or where fees were charged to them; in contravention of the regulations. This was a significant increase on the £204,720.27 that was recovered during 2009/2010. The figure for 2010/11 included:
- £28,000 recovered for 11 workers from the Philippines who paid fees to an employment business. Each worker paid around £4,000 for assistance in obtaining a visa and finding a sponsor (employer) in the UK.
 - £30,000 recovered for 39 workers identified during an investigation into a construction agency that had failed to pay temporary workers for hours that they had worked. EAS successfully secured payment for the workers in full.

Case Study 1

In September 2009, EAS found that an entertainment agent had been convicted of sexually assaulting a girl of 17 (he was purporting to act as a model agent) and police subsequently found images of child pornography on his computer. The agent was sentenced, on 27 October 2009 by the High Court in Edinburgh, to 2 years in prison. He served half his sentence and in April 2010 he was released. Prior to his release EAS submitted an application to an Employment Tribunal to prohibit the agent. At a hearing in December 2010, the agent failed to appear and it transpired that he breached his parole conditions by contacting other offenders in prison. He had been imprisoned in Northern Ireland due to this breach. The Employment Tribunal prohibited the agent from running an agency for the maximum term of 10 years. The Tribunal made a separate prohibition order, with conditions, against the agent's wife to prevent her husband having access to premises or contact with persons using an employment agency that she might operate during the 10 year period.

Case study 2

EAS brought a case against an agency supplying temporary workers to rail companies. The agency was operated by a husband and wife team who set up a limited company, as a recruitment service. The husband worked for a rail company in a capacity where he contracted with recruitment companies. It was alleged that the recruitment company submitted fraudulent invoices to the employer the husband worked for. The fraud was estimated to be in the region of £1m. British Transport Police investigated the fraud and following proceedings both directors of the recruitment company were convicted. The husband was sentenced to 18 months in prison. Both defendants were ordered to pay a confiscation of around £44,000 and compensation of around £20,000. On 7 October 2009, Ashford Employment Tribunal heard evidence from EAS but failed to issue a prohibition order. EAS successfully appealed this decision to the Employment Appeal Tribunal. On 9 April 2010, the case was re-listed at Ashford Employment Tribunal. Both directors were subsequently banned from running an employment agency for the maximum term of 10 years.

Case study 3

An entertainment agent supplying acts to venues was investigated by EAS when the agent failed to pass a fee to an act (work-seeker) that the agent had received on behalf of the act. The agency had booked the act into a venue for a fee of £200. The venue subsequently cancelled the booking but paid a cancellation fee to the agency. EAS investigators made numerous attempts to recover the fee for the act and secure compliance with the regulations but the agent refused. EAS referred the evidence to BIS lawyers and the agent was warned that he could be prosecuted if he did not make a payment to the act. The agent failed to respond and proceedings were initiated. Charges were laid at Manchester Magistrates' Court and a hearing date of 2 February 2011 was set. The agent failed to attend Court and a warrant for his arrest to attend Court was issued. At a subsequent hearing on 2 March 2011, at Manchester Magistrates Court, the agent pleaded guilty and was sentenced which resulted in a fine and compensation of £570.

10. EAS investigators also assisted other enforcement authorities in providing evidence and witness statements for proceedings brought by other authorities. Two cases were successfully concluded during 2010/11 and the inspectorate assisted the Department for Employment and Learning in Northern Ireland and the Sexual Crime Unit - Serious Crime Division, Greater Manchester Police. There is also an on going investigation and Court case, being brought by Trading Standards Officers, in which the inspectorate has assisted officers in providing evidence.

4) Changes in legislation

11. Following a consultation seeking views from interested parties and those who may be affected, the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 were introduced on 1 October 2010. The main changes were:

- A ban on upfront fees for photographic and fashion models for entry into a publication or website; an extension of the cooling off period for workers in entertainment sector from 7 to 30 days.
- Terms to workers in the modelling and entertainment sectors to be amended to clarify the limited situations where an agency can charge fees to workers.
- A 30 day cooling off period in respect of photographic and motion picture services provided to entertainers and models by an employment agency.
- Removal of the requirement for employment agencies to carry out checks for most work-seekers except for those working with the vulnerable.
- Remove the requirement that employment agencies obtain agreement to terms with work-seekers and with hirers – requirement to remain for employment businesses.

Targeted inspection of entertainment and model agencies

12. A key task for the inspectorate has been to ensure that these amendments are understood, and are being complied with, particularly in the modelling and entertainment sectors where they had the biggest impact. In order to facilitate this, these sectors were targeted throughout the 2010-2011 period. A total of 99 entertainment cases and 215 model cases were investigated during this period.

13. The breakdown was:

Entertainment

35 complaints and 4 inspections - April to September 2010

30 complaints and 30 inspections - 1 October 2010 to end of March 2011.

Models

143 complaints and 4 inspections - April to September 2010

41 complaints and 27 inspections - 1 October 2010 to end of March 2011.

14. A number of the complaints were multiple and against one or more agencies. In one particular case, over 100 complaints were received against one model agency. The total number of infringements found at both types of agencies (entertainment 122 and models 169) represents about 14% of the total infringements found (2,065) during 2010/11. Most of the infringements related to the content of the terms issued to workers; the fees that were being charged to workers; or non compliance with the changes to the legislation. Where necessary, EAS sought compliance with the legislation in regard to revised documentation and procedures.

5) Raised Visibility

15. The Pay and Work Rights Helpline (PWR) was launched in October 2009, handling calls from members of the public wishing to contact enforcement agencies (EAS; HM Revenue and Customs (National Minimum Wage Enforcement); Gangmaster Licensing Authority; Health and Safety Executive on working time issues).
16. The PWR (0800 917 2368) has trained advisers who can give information and guidance about basic workplace rights and can put callers in touch with the relevant authority who will investigate further and take enforcement action where necessary.
17. EAS carried out two training sessions with the PWR advisors during the period 2010-2011 to cover the new protections and revised legislation that came into force on 1 October 2010.
18. The inspectorate works closely with trade associations such as the Recruitment and Employment Confederation (REC) and The Employment Agents Movement (TEAM).
19. As part of the TUC's Union Modernisation Fund (UMF3) project the TUC has worked with enforcement agencies, including EAS, to compile a set of videos outlining the role of each agency, the powers of their investigators and the sanctions that can be imposed for non compliance with the law. The EAS video covered the basic rights and protections for agency workers, including vulnerable workers, who use employment agencies to find them work including: -
 - ensuring temporary agency workers were paid what they were entitled to;
 - that they did not have to pay a fee for being found work;
 - that they were not forced into paying for additional services;
 - that they received written details about their terms and details of each job that was found for them and that the worker was being supplied to a safe working environment.
20. The link to the TUC website and the 'Introduction to the Enforcement Agencies' videos can be accessed through the following link
<http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm>
21. EAS investigators spend a large amount of time raising awareness of the legislation among recruitment agencies and other organisations connected with the industry. Where possible they are encouraged to do this through collective events. Examples during 2010 and 2011 included presentations to Jobcentres and Citizens Advice Bureaus.
22. The inspectorate has published revised and improved guidance on this and other obligations at www.businesslink.gov.uk/employment and www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Agencyworkersanddeploymentagencies/index.htm

6) Customer Service

23. During 2010/2011 the inspectorate received 958 complaints and carried out 243 high risk targeted inspections. This reflects a fall in the numbers of investigations carried out in 2009/10. The cases investigated during 2010/11 were more complex and protracted and resulted in the inspectorate identifying 2,065 infringements and issuing 917 warning letters. The inspectorate met the target of responding to 75% of cases within 6 weeks.
24. The inspectorate received 14 Freedom of Information requests during the year and responded to 92.8% within the deadline. The most frequent request was for detailed information about our investigations. We do not publish the detail of our investigations, or reveal information captured during an inspection, unless it leads to a public prosecution or prohibition.

Working with other enforcement bodies

25. As part of delivering better customer service and increasing our impact, EAS has been working more closely with the other workplace enforcement bodies. The single Pay and Work Rights helpline which serves five different enforcement bodies has provided a strong stimulus to collaboration. The result has been closer liaison on the handling of multi-issue complaints which raise matters of interest for more than one enforcement body. The most common multi-issue cases were national minimum wage allegations where an employment agency is involved.
26. The inspectorate worked with the National Minimum Wage inspectors of HM Revenue & Customs (HMRC) to handle cases, and explore other opportunities for closer collaboration. During the course of the year the inspectorate held joint management meetings with HMRC; discussed ways to work more closely together and shared intelligence through the information-sharing gateway in the employment agency and national minimum wage legislation.
27. The EAS inspectorate has continued to play a key role in the Best Practice Group that was established in autumn 2008 to provide more collaboration at working level across all five enforcement bodies.

7) Forward Look

Targets

28. The inspectorate's published targets for 2011/12 (see Annex C) make it clear that its main role is to ensure compliance with the legislation. The priority outcomes are: (i) to increase compliance; (ii) to improve EAS's effectiveness; and (iii) to deliver good customer service. In a number of areas, the inspectorate has set higher service targets than for 2010/11.

Enforcement review

29. The initial stages of the Workplace Rights Compliance and Enforcement Review identified fragmentation across the enforcement architecture, arising largely as a result of the underpinning regulations. The Conduct Regulations were reviewed as part of the Red Tape Challenge on employment law regulation, which agreed that the regulation of the recruitment sector could be improved to streamline it and make it more effective. Following the outcomes of the Red Tape Challenge, the Workplace Rights Compliance and Enforcement Review is considering the underpinning structures for Government enforcement and will report its findings and recommendations in Spring 2012.

Agency Worker Regulations

30. The Agency Worker Regulations (AWR) 2010 came into force on 1 October 2011. The EAS inspectorate does not enforce the AWR as this is the responsibility of individual agency workers.

31. Further advice about the application of the AWR is available through ACAS (Advisory, Conciliation and Arbitration Service). ACAS provide an advisory service to workers, employees and employers about all aspects of employment law. Their website is www.acas.org.uk and their confidential advice helpline is 08457 47 47 47.

Annex A: Case Statistics 2010/2011

<u>Investigations</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Complaints received	1,103	1,244	1,567	1,714	958
Complaint cases cleared	1,302	1,273	1,450	1,932	1101
Cases still in progress	291	299	547	371	202
Targeted inspections in high risk areas /follow up inspections	330	221	311	164	243
Total infringements found on all cases	1,892	1,128	2,393	2,236	2065
Warning letters sent	558	518	692	647	917

Annex B - Complaints cleared and inspections carried out (by agency type) – 2010/2011

Types of agencies	Number of cases	% of total cases
Healthcare (carers/nurses/doctors)	131	10%
Industrial/Construction/Drivers	446	34%
Secretarial/Commercial/Admin (office workers)	193	14%
Entertainment (actors/extras/entertainers)	99	7%
Models (fashion and photographic)	215	16%
Nannies/Au Pairs/Childcare (domestic workers)	27	2%
Hotel/Catering/Hospitality	39	3%
IT/Online	51	4%
Professional/Executive (including engineering and technical)	71	5%
Teachers/Tutors	62	5%
Total	1344	100%

Infringements (by agency type) found during cleared complaints and inspections – 2010/2011

Types of agencies	Number of infringements	% of total cases
Healthcare (carers/nurses/doctors)	261	13%
Industrial/Construction/Drivers	893	43%
Secretarial/Commercial/Admin (office work)	220	11%
Entertainment (actors/extras/entertainers)	122	6%
Models (fashion and photographic)	169	8%
Nannies/Au Pairs/Childcare (domestic workers)	77	4%
Hotel/Catering/Hospitality	110	5%
IT/Online	71	3%
Professional/Executive (including engineering and technical)	54	3%
Teachers/Tutors	88	4%
Total:	2,065	100%

Annex C: EAS Targets for Next Period (2011/2012)

Objective 1 – To increase compliance with the EAS regulations

- To increase compliance with the regulations from the 2010/2011 level, such as through a reduction in the number of repeat offenders
- Continue to use EAS interventions to recover the maximum possible payment for workers
- Deliver six large scale risk based investigations
- Maximise publicity for prosecutions and prohibitions.

Measures:

- EAS Annual Report 2011/2012 (compared with 2010/2011)
- Number of press notices
- Feedback from industry stakeholders.

Objective 2 – To improve EAS's effectiveness and impact

- Improve targeting of high risk businesses by implementing the recommendations from the EAS Hampton review 2009
- Increase joint working with other enforcement bodies (particularly HMRC's National Minimum Wage Inspectors and the Gangmasters Licensing Authority)
- Each inspector to participate in at least one awareness raising event
- Work closely with industry bodies to develop better guidance for employment agencies on their legal obligations and raise awareness of the regulations.

Measures

- EAS Annual Report 2011/2012(compared with 2010/2011)
- Feedback from other workplace enforcement bodies
- Staff reports.

Objective 3 – To deliver good customer service

- Positive feedback from employment agencies, employment businesses, and from workers on EAS's performance

- 90% of the complex enquiries passed to EAS by the Pay and Work Rights helpline receive a response within seven working days
- Complete 80% of investigations (including issuing any warning letters) within six weeks of the complaint being passed to EAS
- Appropriate requests from other enforcement agencies met on time
- Continue to develop the expertise and professionalism of EAS staff by matching training to needs
- Ministerial, public and Freedom of Information correspondence deadlines met on time

Measures

- EAS Annual Report 2011/2012 (compared to 2010/2011)
- Staff reports.

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