



Department for
Business, Energy
& Industrial Strategy

EMPLOYMENT AGENCY STANDARDS (EAS) INSPECTORATE

Annual report 2017 - 2018

August 2018



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Executive summary

1. The Employment Agency Standards Inspectorate (EAS) is located in the Department for Business, Energy and Industrial Strategy (BEIS).
2. EAS has two key strategic drivers:
 - ensuring effective enforcement of and compliance with the law on employment agencies and businesses; and
 - delivering efficient customer service.
3. EAS is fully established as one of the three enforcement bodies (alongside the Gangmasters and Labour Abuse Authority and HMRC's National Minimum Wage Team) focused on identifying and tackling different types of labour market exploitation.
4. Recent reviews carried out in relation to employment law and enforcement in the Labour Market have direct implications for EAS. This includes the review of Modern Working Practices by Matthew Taylor and the Director of Labour Market Enforcement's 2018/19 strategy (published 9 May 2018).
5. Both the review and strategy made significant recommendations regarding EAS and its remit. The government has recently consulted on the Matthew Taylor review recommendations. These are set out in Annex A. The government is currently analysing responses and will set out next steps shortly.

Good work: the Taylor review of modern working practices

6. In July 2017, Good Work: a review of modern working practices was published, which included 53 recommendations. The review considered a range of issues, including the implications of new forms of work, the rise of digital platforms and the impact of new working methods on employment rights, responsibilities, freedoms and obligations.
7. Specifically, this review highlighted that "... EAS do a good job of protecting agency workers...."¹ but recognised that more should be done to further advance the protections to agency workers.
8. In response to the review, the government committed to the introduction of a key facts page and has consulted on what should be included in such a document to ensure agency workers make informed decisions about their contractual relationship with an employment business.
9. The government has also committed to the expansion of the remit of EAS to cover the activity of umbrella companies and consulted on how this could be achieved.
10. The government is also considering the evidence regarding the effectiveness of 'Pay Between Assignments' (PBA) contracts otherwise known as the 'Swedish Derogation' and whether EAS's remit should be extended to enforce the Agency Worker Regulations (AWR).

¹ www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices, page 58.

The Director of Labour Market Enforcement: Strategy

11. In May 2018 the Director of Labour Market Enforcement (the Director) published his Labour Market Enforcement Strategy 2018-19. The Director makes a number of recommendations regarding EAS, many of which are consistent with the recommendations from the Taylor review set out above.
12. However, there were specific areas where the Director made additional recommendations about EAS activity, including:
 - EAS should raise its profile and have an easy to find webpage on GOV.UK with contact details for people to make complaints.
 - Government should consider an increase in resources for EAS, both to promote their ability to enforce current regulations and due to the proposal to expand its remit.
 - BEIS and EAS should investigate the potential for EAS being given the powers to impose civil penalties on non-compliant employment agencies as an alternative to prosecution.
 - Different forms of partnership working should be piloted and evaluated, primarily through the support of:
 - (b) Leicester's proposal to target the garment trade through high density, highly visible joint enforcement (testing partnerships with local agencies and businesses).
13. These recommendations are currently being considered and the government will respond to the Director's strategy shortly.

Enforcement powers

14. The Immigration Act 2016 introduced two new enforcement tools for EAS: Labour Market Enforcement (LME) undertakings and orders. These powers can lead to tougher sanctions for offenders who repeatedly fail to comply with legislation. EAS used these powers for the first time during this reporting period and has issued four Labour Market Undertakings to date. EAS is working with those businesses to support compliance with their statutory obligations.

Intelligence-led working

15. EAS has improved its intelligence-led working, by refining its risk indicators and by increasing partnership with enforcement bodies and key stakeholders to identify non-complaint behaviours. These partners include HMRC's National Minimum Wage team, the Gangmaster and Labour Abuse Authority, the Pensions Regulator, the Health and Safety Executive, Home Office Immigration Enforcement, the Scottish Government, individual police forces, SAFERjobs, Department for the Economy (Northern Ireland), trade associations, trade unions and others.
16. EAS led three joint operations with partner organisations and conducted several sectoral operations in areas such as renewable energy and dental health.

17. During the reporting period EAS has been an active member of the Director's Strategic Co-ordination Group (SCG) which was established by the Director of Labour Market Enforcement to provide a strategic operational enforcement link between the Director's enforcement strategy and the three enforcement bodies. The SCG acts as a focal point to support the sharing of information, intelligence, best practice and lessons learnt. EAS has supported all functions of the SCG during the year and values its role in co-ordinating enforcement action and the sharing of intelligence.

SAFERJobs

18. SAFERJobs is a partnership of industry (employers, job boards, trade associations, etc.) and law enforcement/central government (the Metropolitan Police Service (MPS), EAS and Department for Work and Pensions (DWP)). We work together to identify and take down online job adverts that are linked to fraud or non-compliant employers, and other forms of labour market abuse.
19. Current partners of SAFERJobs advertise the free service via their websites. The scheme promotes worker rights, offering free advice and guidance, and generating worker-led intelligence which is used to inform enforcement and compliance action.
20. The worker-led intelligence from SAFERJobs forms one of the most important streams of intelligence for EAS. Over the last reporting period SAFERJobs has referred over 40% of all its cases to EAS.
21. In addition to providing a strong stream of intelligence it allows EAS to evaluate trends in the sector, identify those businesses and directors who open for a short period and then close having not paid workers or having charged them for a service they never received.
22. Another key strength in the SAFERJobs model is that it supports businesses by helping them to:
 - report any jobs advertised without the businesses permission;
 - report other non-compliance issues in the businesses recruitment supply chain;
 - meet their obligations under the Modern Slavery Regulations to have a compliant supply chain; and
 - direct any job seeker who has been the victim of a scam to SAFERJobs who will provide the worker with free assistance.

EAS role and responsibilities

23. There has been no significant statutory change in the role and responsibilities of EAS during the reporting year. EAS has continued to work within its published enforcement statement. This sets out that the general operational approach of EAS is to work with the sector and businesses to improve understanding and the level of compliance, alongside taking robust action where exploitation is identified.
24. The legislative basis for EAS and its work is set out in the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (both as amended) across Great Britain. The Department for the Economy in Belfast is responsible for enforcing employment agency legislation in Northern Ireland.

25. In 2017/18, EAS had a budget of £0.725m. This was an increase in funding on the previous year to procure a case management system to drive efficiencies and to purchase a new information management system to support EAS's operational capacity.
26. EAS has powers to tackle non-compliant employment agencies/businesses by seeking compliance with the employment agency legislation. Where necessary, EAS will issue warning letters to agencies/businesses and seek to ensure that corrective measures are put in place. In appropriate cases, EAS can consider prosecution and, on conviction, the Courts can impose unlimited fines.
27. EAS can also consider prohibiting individuals from running an employment agency/business because of misconduct or unsuitability. The maximum prohibition period is 10 years.

Awareness raising

28. Building on previous activity to raise business and worker awareness of EAS' role, EAS has continued to find ways to support better compliance and worker awareness. This activity has included:
 - conducting a targeted awareness raising exercise with local authorities (LA) to highlight EAS powers and responsibilities.
 - delivering refresher training for ACAS advisors about EAS and its role.
 - working with key, partner organisations such as the police, trade unions, and devolved governments to ensure matters relating to agency workers were carefully considered and to highlight how EAS could support their objectives.
 - updating and refreshing guidance on employment agency issues on GOV.UK; and
 - continuing to work closely with partners in the Romanian and Bulgarian Embassies in London to improve upstream communication with agency workers intending to come to the UK.

EAS Performance Report

29. One of the objectives for EAS in this reporting period was to strike a better balance between conducting intelligence led operations and maintaining strong delivery on investigating complaints made directly to EAS.

Number of complaints received

30. EAS received 1,261 complaints in 2017/18 compared to 828 in 2016/17 representing over a 50% increase. This increase is believed to be a result of awareness raising work that EAS has undertaken and of a higher media profile more generally of workers' rights. Nearly half of all this year's complaints were received from December 2017 to March 2018.
31. Hospitality and healthcare were the sectors, which saw most worker complaints totalling nearly 25% of all complaints received by EAS. The infringements identified in these sectors equated to approximately 32% of the total number of infringements found during the reporting period.
32. The largest volume of complaints made to EAS this year were about failure of the employment business / agency to pay a worker (for all hours worked).
33. In addition, EAS received 43 referrals where individuals had paid fees to photographic studios and were seeking refunds. EAS does not regulate photographic studios so the complaints were referred to Trading Standards or Action Fraud.

EAS dealt with 50% more complaints in 2017/18 than the previous year.

Number and outcome of EAS intelligence-led operations

34. EAS uses an assessment of intelligence and risk to plan enforcement of the legislation. In the reporting period, EAS undertook a series of intelligence-led targeted operations in geographical locations and occupational sectors.
35. This targeted approach enabled EAS to deploy its resource more efficiently, meaning that it carried out more visits and identified more breaches of legislation per visit.
36. There are broadly two types of operation:
- i) EAS unitary operations looking at particular risk sectors; and
 - ii) joint operations with HMRC's National Minimum Wage team, the Pensions Regulator and the Gangmasters and Labour Abuse Authority.
37. EAS inspectors have also worked on wider joint operations with other enforcement partners, including Immigration Enforcement and the police.

EAS have increased their risk-based operations by 20%, and in doing so have increased the number of breaches found by approximately 50%.

38. The outcomes of the operations are detailed below:

Month	Type	Number of visits	Infringements
May 2017	Renewable energy	15	65
May 2017	Warehousing	2	14
June 2017	Hospitality	21	87
July 2017	Sporting Event	22	124
September 2017	Dental Nurses	18	101
October 2017	Cheshire	29	98
February 2018	Leicester	30	118
March 2018	Re-visits	5	26
March 2018	Leicester (re-visits)	3	3
Total		145	636

39. The majority of infringements related to non-compliance with the required content of the terms that were issued to temporary workers or hirers, or with the information required to be collected and passed on to the worker or hirer. Where infringements were found, EAS issued a warning letter to the relevant employment business and sought compliance with the relevant provisions of the legislation.
40. This reporting period has seen EAS increased its proactive operations by approximately 20% in comparison to the reporting period 2016/17. In addition to this EAS has identified nearly 50% more infringements than the last reporting period.

Prosecutions and prohibitions

41. EAS investigated 11 potential prosecution or prohibition cases, involving 14 defendants running employment agencies or employment businesses in 2017/18. The number of potential cases is broadly similar to the previous reporting year.
42. From the 2016/17 period, in one prosecution case proceedings have commenced but have not yet been concluded. Other potential prosecutions or prohibitions that were investigated during 2016/17 were not taken forward for varying reasons. This included witnesses withdrawing their complaint or the evidence not being available for EAS to consider any further action. In several cases, BEIS prosecution lawyers issued a warning to the relevant persons regarding their future conduct. Such cases are now assessed to see whether there is scope to issue a Labour Market Enforcement (LME) Undertaking and/or LMEU Order.

43. The cases investigated for potential prosecution / LMEU order during the 2017/18 period are at different stages of the investigation process. The cases involve:
- employment businesses not carrying proper checks on HGV drivers before supplying them to hirers;
 - employment businesses withholding the payment of wages to its temporary workers;
 - entertainment/model agencies failing to pass money to work-seekers that they have received on behalf of those work-seekers; and
 - model agencies providing photographic services to work-seekers for a fee but not providing a cooling off period before taking the fee.
44. There are currently 11 people who are prohibited from running or being concerned with the running of an employment agency or employment business and appear on GOV.UK.

Labour Market Enforcement (LME) undertakings

45. EAS issued four LMEU's where trigger offences under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 had been identified in 2017/18.
46. EAS Inspectors had previously carried out inspections in respect of the relevant employment businesses and following the inspections set out the trigger offences in warning letters to those employment businesses, in accordance with the EAS Policy Statement. EAS carried out follow up action and identified that the trigger offences were continuing and issued LMEUs setting out what each employment business needed to do to review their processes to comply with the law.
47. The trigger offences included insufficient information being obtained from hirers about the vacancies that the employment business was trying to fill; not providing full assignment details to temporary workers; and failing to issue written details of fees for additional services provided to workers. The sectors included driving and supply teaching agencies.
48. At the end of the reporting year all the LMEUs were still in place and EAS were still working with all the businesses to ensure they met the required standards as set out in the LMEUs.
49. Should the businesses subject to a LMEU fail to meet the requirements set out in the document, EAS may apply to the courts for an LME order to ensure that the expectations are met.
50. If the businesses failed, without reasonable excuse, to comply with an LME Order they would have committed an offence. The maximum penalty on conviction on indictment is 2 years imprisonment and/or an unlimited fine. The maximum penalty on summary conviction is 12 months imprisonment and/or a fine.

Money recovered

51. Over the course of 2017/18, EAS recovered around £150,000 for individuals who had been exploited. Most of the recovered monies related to non-payment of wages or money due to temporary workers, or where fees were being charged to workers to be found work.

52. Since April 2008, EAS Inspectors have recovered over £1.5 million for individuals whose employment rights have not been met.

Freedom of Information requests

53. EAS received five Freedom of Information requests during the period 2016/17 and responded to 100% of requests within the statutory deadline. These covered contact with other government departments, workfare schemes, au pairs and modern-day slavery.
54. Further details and analysis of the data relating to 2017/18 can be found in the Annexes.

EAS Strategy 2018/2019

Strategic direction

55. The Director of Labour Market Enforcement is responsible for producing an annual strategy and he published his first full strategy in May 2018.
56. EAS will continue to play a full and active role in supporting the delivery of the Director's strategy and will contribute to the delivery of any relevant recommendations government implements arising from the review of modern employment practices led by Matthew Taylor.
57. The Director has established a central intelligence hub. The hub facilitates the sharing of intelligence that will lead to coordinated enforcement action between the enforcement bodies, as well as supporting outcomes of investigations. EAS will continue to provide information, and intelligence, to the central intelligence hub. This will aid the development of joint enforcement activity and support future labour market enforcement strategies.

Closer partnership working

58. EAS will continue to play a lead role in the tripartite labour market enforcement regime, working closely with the teams in HMRC's National Minimum Wage team and the Gangmasters and Labour Abuse Authority. EAS will also maintain a robust partnership with other key stakeholders.
59. Alongside the investigation and enforcement activity, EAS will continue to support and work with industry and trade associations to support those operating in the sector to comply with the law. This work complements the publicity strand of delivery whilst also ensuring EAS can be proactive in identifying emerging trends and potential risks.

Strategic awareness raising

60. EAS will build on the work of 2017/18 to raise awareness and compliance with all relevant stakeholders and users of employment agencies and employment business to ensure that workers who require the protections that EAS provide are aware of how to make a complaint and what EAS can do to assist them.
61. This will include a continued package of engagement with the police, local government and devolved administrations. This activity will assure that information and knowledge about the role of EAS is part of the wider enforcement landscape.

62. EAS will make presentations to representative bodies/businesses to support those in the industry achieve and maintain the required level of compliance. This will be achieved by highlighting good practice and detailing the most common areas of non-compliance. EAS will for the first time hold an industry event to support employment businesses and agencies by providing an opportunity for them to hear from EAS and other key speakers. Whilst supporting them in sharing good practice and providing a space for businesses to network.

Continuous improvement

63. EAS will continue to seek ways to ensure that it remains efficient and fit for purpose. It will achieve this by realising the benefits of its new IT infrastructure, whilst also continuously seeking to identify opportunities to streamline its processes. EAS will examine what organisational changes are required to ensure it is well positioned to respond in an agile way to the increase in demand of its services and to any potential changes to its remit.

Enforcement approach

64. EAS will continue to use its existing enforcement powers by seeking compliance initially or where appropriate, seeking to prosecute or prohibit individuals from running an employment business or agency. In addition, EAS will seek to maximise its enforcement powers set out in the Immigration Act 2016, by making full use of LME undertaking and orders. This will ensure that those who repeatedly fail to comply with the law or those who commit offences of such severity are dealt with using the appropriate enforcement powers.

Contacting EAS

65. Further information about the legislation that agencies and employment businesses are obliged to comply with are on GOV.UK - www.gov.uk/employment-agencies-and-businesses.
66. There is further information on GOV.UK about agency worker rights – www.gov.uk/agency-workers-your-rights.
67. Anyone who wishes to make a complaint about the conduct of an employment agency or employment business should in the first instance contact Acas (0300 123 1100). Anyone who wants to submit a complaint in writing can complete the complaint form which is available on the Pay and Work Rights page on GOV.UK. Completed forms that relate to employment agencies or employment businesses will be forwarded to EAS for consideration - www.gov.uk/pay-and-work-rights.

Annex A: EAS case statistics – 2011 to 2017

Cases	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Complaints received	828	714	603	781	828	1,261
Complaints cleared	916	779	581	730	750	1,267
Targeted inspections	229	46	23 ²	172	108 ³	145
Infringements found (cleared cases and inspections)	1,479	320	186	782	782	1,071
Warning letters issued	471	179	133	275	387	321

² In November 2013, as part of the government's ongoing commitment to review regularly the enforcement of the national minimum wage, a more targeted enforcement strategy for the recruitment sector was announced, focusing on protecting the most vulnerable, low-paid workers. Resources from EAS moved to HM Revenue and Customs' National Minimum Wage (NMW) team to form a new HMRC team which mainly focussed on enforcing non-payment of national minimum wage in the recruitment sector. Two staff remained in BIS to enforce the recruitment sector regulations and prioritised complaints using a risk-based approach.

As part of the government programme on illegal working and tackling exploitation, a decision was taken in February 2015 to increase EAS resourcing.

³ The number of targeted inspections recorded in the Annual Report for 2016/17 (142) has been revised down to 108 (Annex A). The figure was recalculated following data checking to only include physical inspections by EAS Inspectors.

Annex B: Complaints cleared and targeted inspections carried out (by agency type) – 1 April 2017 to 31 March 2018

Types of agencies	Number of cases	% of total cases
Healthcare (carers/nurses/doctors)	243	17%
Industrial	251	18%
Drivers	80	7%
Construction	118	8%
Secretarial/Commercial/Admin (office workers)	88	6%
Entertainment (actors/extras)	30	2%
Models (promotional workers)	126	9%
Nannies/Au Pairs/Childcare (domestic workers)	18	1%
Hotel/Catering/Hospitality	107	8%
IT/Online	32	2%
Professional/Executive (engineering and technical)	60	4%
Teachers/Tutors	39	3%
Sector not listed	214	15%
Total	1,406	100%

Annex C: Analysis of infringements from cleared complaints and targeted inspections carried out (by agency type) – 1 April 2016 to 31 March 2017

Types of agencies	Number of	% of
Healthcare (carers/nurses/doctors)	223	21%
Industrial	112	11%
Drivers	81	8%
Construction	85	8%
Secretarial/Commercial/Admin (office workers)	61	6%
Entertainment (actors/extras)	12	1%
Models (promotional workers)	10	1%
Nannies/Au Pairs/Childcare (domestic workers)	10	1%
Hotel/Catering/Hospitality	217	21%
IT/Online	7	1%
Professional/Executive (engineering and technical)	108	10%
Teachers/Tutors	76	7%
Sector not listed	52	5%
Total	1,054	101%*

*All figures are rounded to the nearest whole number

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