



HM Government

United Kingdom Labour Market Enforcement Annual Report 2017/18

Director of Labour Market Enforcement

David Metcalf

March 2019



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David Metcalf

Presented to Parliament pursuant to Section 5(1)(b)
of the Immigration Act 2016

March 2019



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Foreword

I was appointed the UK's first Director of Labour Market Enforcement in January 2017. My statutory duties under the Immigration Act 2016 are:

- to produce an annual strategy to guide the activities of three of the four state labour market enforcement bodies: HM Revenue and Customs (HMRC NMW) which enforces the national minimum/living wage; the Gangmasters and Labour Abuse Authority (GLAA); and the Employment Agency Standards (EAS) Inspectorate. The fourth body, the Health and Safety Executive (HSE), is not in my remit; and
- to produce an Annual Report (this is the first such report) setting out the extent to which the labour market enforcement functions were carried out in accordance with the previous year's strategy.

The 'UK Labour Market Enforcement Strategy: Introductory Report' published in July 2017 examined the work of the three enforcement bodies, the role of the Director, and provided an overview of the labour market enforcement landscape. It also acted as a de facto consultation for the first full Strategy, published in May 2018.

This Annual Report covers the Introductory Strategy in the reporting year April 2017-March 2018. Annual reports are intended to consider the impact of the previous financial year's LME Strategy. However, my Introductory Strategy – produced so soon after my appointment as Director – inevitably only marks the very beginning of my work on labour market enforcement.

An evaluation of the impact of the first full Strategy (2018/19) will appear in next year's Annual Report.

Credit is due to the government for recognising the need to bolster labour market enforcement efforts and for providing substantial extra resources to both HMRC and GLAA for this activity. One of the tasks for my 2019/20 Strategy is to evaluate the effectiveness of these extra resources in deterring non-compliance.

The Information Hub in my secretariat provides opportunities for more joint-working among the three bodies, and other partners, and for more proactive, intelligence-led, enforcement. The latter is vital because it is plausible that the most vulnerable workers are the least likely to complain.

It is important to note that it is not my job to comment on employment status – whether a person is an employee, a worker or self-employed. This is a matter for parliament and/or the courts. Once status is determined my role is to help ensure that the person's rights are properly enforced.

A handwritten signature in black ink that reads "David Metcalf". The signature is written in a cursive style with a large initial 'D'.

Professor Sir David Metcalf CBE.

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1. Introduction

1.1 Background

The Immigration Act 2016 introduced legislation to “*improve the effectiveness of the enforcement of certain employment rights to prevent non-compliance and the exploitation of vulnerable workers, via an intelligence-led, targeted approach*” (Home Office, 2016). This resulted in the:

- appointment of a new Director of Labour Market Enforcement to set the strategic priorities for labour market enforcement;
- creation of a new undertaking and enforcement order regime, with an associated criminal offence to tackle breaches of the law by employers; and
- transformation of the Gangmasters Licensing Authority (GLA) into the Gangmasters and Labour Abuse Authority (GLAA), with a broader remit and stronger powers to deal with labour exploitation across the economy.

My formal remit as the Director of Labour Market Enforcement is to consider the work carried out by the three principal labour market enforcement bodies: National Minimum/Living Wage Enforcement Teams in HMRC (HMRC NMW/NLW), the GLAA, and Employment Agency Standards (Inspectorate) (EAS). The fourth labour market enforcement body – the Health and Safety Executive (HSE) – does not fall under my remit. However, due to the nature of their remit and powers, I work very closely with them. The scope of the enforcement activity within my remit is set out in Table 1 below.

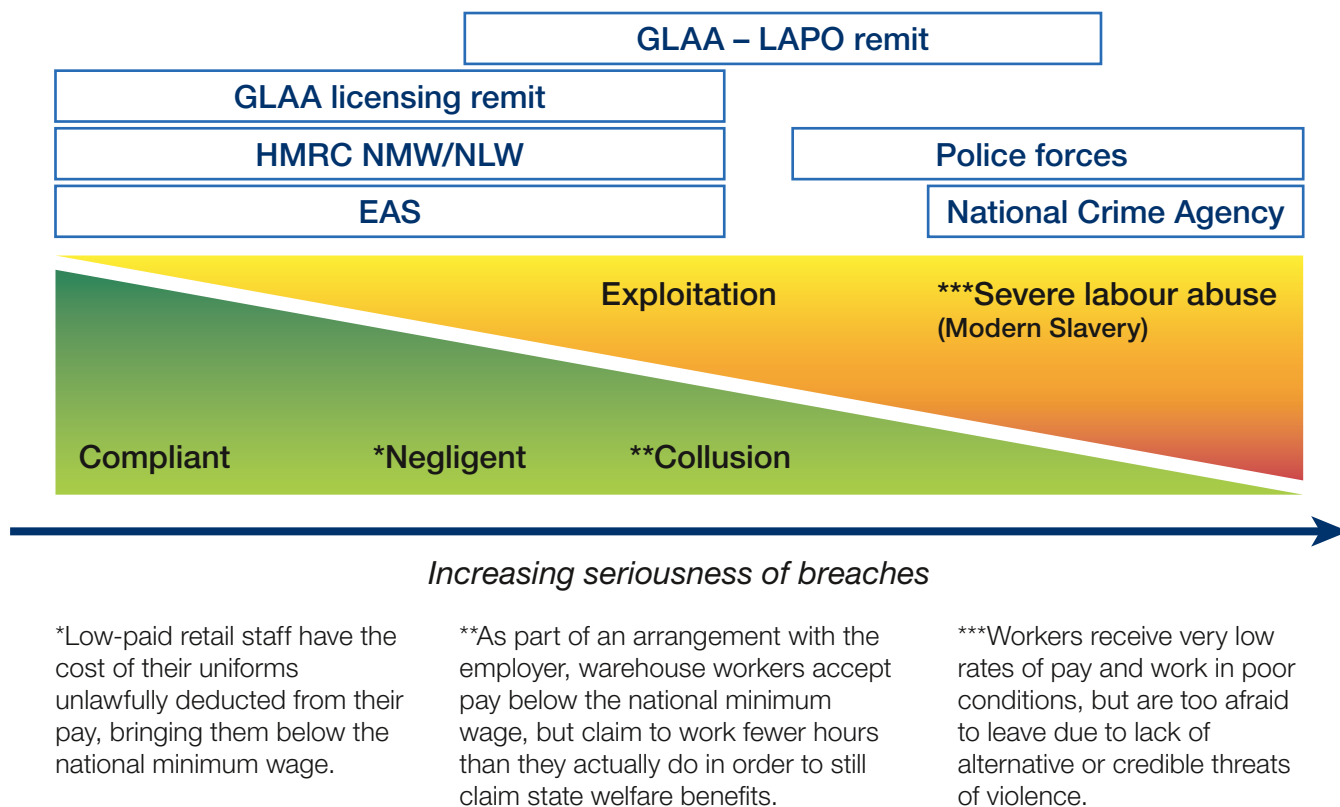
Table 1: National enforcement scope of the labour market enforcement bodies

	HMRC	EAS	GLAA (licensing)	GLAA (LAPOs)
England and Wales	✓	✓	✓	✓
Scotland	✓	✓	✓	
Northern Ireland	✓		✓	

*The regional applicability and scope of the legislation underpinning the bodies can vary. For example, nursing agencies are exempt from EAS regulation in Scotland.

My remit covers the whole spectrum of labour market non-compliance, ranging from a basic lack of understanding and the proper application of labour rights and regulations through to labour exploitation, requiring criminal investigation, including Modern Slavery offences of forced labour. Figure 1 below sets out a broad representation of the spectrum of non-compliance and shows how the three labour enforcement bodies together operate right across the spectrum, from low level to the most serious offences, albeit with varying focus, powers and penalties. This diagram includes illustrative examples of the types of breaches found at each level.

Figure 1: The Compliance Spectrum



1.2 The role of Director of Labour Market Enforcement

I was appointed on 5 January 2017. The Immigration Act 2016 requires me to deliver to government an annual labour market enforcement strategy by the end of each financial year. Given the short timeframe available to conduct a full consultation I delivered instead the 'UK Labour Market Enforcement Strategy: Introductory Report' for 2017/18 (published in July 2017). This focused primarily on the work of the three enforcement bodies, the role of the Director of Labour Market Enforcement and setting the scene for a comprehensive consultation during the summer of 2017 to inform my UK Labour Market Enforcement Strategy 2018/19 (published in May 2018).

Box 1: Summary of the Director of Labour Market Enforcement's statutory duties, as set out in the Immigration Act 2016

Annual Strategy

To prepare and submit an annual labour market enforcement strategy to the Secretary of State at the beginning of each financial year, including:

- An **assessment of the scale and nature of non-compliance** in the labour market during the previous year.
- An assessment of the **likely scale and nature** during the year to which the strategy relates and the following two years.
- Proposals for **how labour market functions should be carried out** in the year to which the Strategy relates.
- Proposals relating to the **education, training and research activities** of those exercising labour market enforcement and how **funding** available for these activities should be allocated.
- Setting out the **activities the Director proposes to undertake** during that year.

Annual Report

To submit an Annual Report to the Secretary of State for Business, Energy and Industrial Strategy and to the Home Secretary as soon as is reasonably practicable after the end of each financial year, including:

- As assessment of the **extent to which labour market enforcement functions, education, training and research activities were carried out in accordance with the previous year's strategy**.
- An assessment of the extent to which the strategy had an **effect on the scale and nature of non-compliance** during that year.
- A **statement of activities relating to the information hub** that the Director undertook that year.

Information Hub

To establish an information hub to **gather, store, process and disseminate information** relating to non-compliance in the labour market. To facilitate this, the Director may request any person exercising an LME function to provide the Director with any non-compliance information specified.

Ad-hoc reporting

The Director must report on **any matter that has been requested** by the Secretary of State or **any matter that the Director has proposed to report on** in an approved Strategy, as soon as is reasonably practicable.

Box 2: Labour Market Enforcement Strategies published to date

- July 2017: UK Labour Market Enforcement Strategy: Introductory Report 2017/18 (hereafter referred to as the '**Introductory Strategy**')
- May 2018: UK Labour Market Enforcement Strategy 2018/19 (hereafter referred to as the Director's '**first full Labour Market Enforcement Strategy**')

I was clear that in the time between the publication of my Introductory Strategy (July 2017) and my first full Labour Market Enforcement Strategy (May 2018), the three enforcement bodies should continue to operate to their strategic plans and previously allocated enforcement resources.

As my Introductory Strategy did not make specific recommendations regarding labour market enforcement due to the compressed timescales for delivery, I am unable to assess activity carried out in accordance with the Introductory Strategy or assess its effect on the scale and nature of non-compliance. Nonetheless, as per the requirements set out in the 2016 Immigration Act,¹ this Annual Report will consider:

- an updated assessment of enforcement activity during the 2017/18 financial year and an education and training review (Chapter Two);
- the role my Introductory Strategy Report has played in this enforcement activity and future strategies (Chapter Three); and
- the development of my Office's Information Hub (Chapter Four).

Chapter Two assesses Labour Market Enforcement from April 2017-March 2018 across each of the three enforcement bodies within my remit. This chapter also considers the role of Labour Market Enforcement Undertakings and Orders (LMEU/Os) and how the enforcement bodies have utilised these new powers to date.

Chapter Three assesses the achievements of my Office since the publication of my Introductory Strategy in July 2017.

Chapter Four outlines the work and achievements of the Information Hub, which was established to gather, store, process and disseminate information relating to non-compliance in the labour market. Additionally, this chapter outlines the various research projects commissioned by my Office, which seek to fill existing knowledge gaps and build upon the labour market enforcement evidence base.

¹ Principally Section 4(2) and related sections (2(2)(b)(i)) and section 8.

2. Assessment of Labour Market Enforcement (April 2017-March 2018)

As I have stated in my introduction, my Introductory Strategy did not make specific recommendations regarding enforcement activity against which performance or impact measures may be made. However, this chapter does consider the available data to provide an overarching picture of enforcement efforts across the three enforcement bodies during 2017/18. It also considers the role of Labour Market Enforcement Undertakings and Orders (LMEU/Os) and how the enforcement bodies have utilised these new powers to date.

2.1 Assessing the Scale and Nature of Non-Compliance

Measurement issues

Several sources of data, information and research on the scale and nature of non-compliance exist, including the Office for National Statistics (ONS), specifically the Annual Survey of Hours and Earnings (ASHE), the Labour Force Survey (LFS), management information on enforcement activity from the three enforcement bodies, intelligence data and analysis from enforcement agencies and industry, and bespoke studies and research from academia.

Together these data sources help begin to paint an overall picture of non-compliance, but each has its own, often severe, limitations and none provides the complete picture. This issue has long been recognised by expert bodies such as the Low Pay Commission. Bringing these disparate sources of information together has been the challenge for my team since the publication of the Introductory Strategy and will continue to be an area of focus for the future.

“ASHE is the most detailed and comprehensive source of earnings information available and is based on a one per cent sample of all employees drawn from HM Revenue and Customs Pay As You Earn (PAYE) records. ASHE provides a proxy measure for non-compliance; we can estimate the percentage of workers who were paid below their age relevant rate at any given time. However, this is not a true estimate of non-compliance as some underpayment is legitimate. Equally, some underpayment – for example resulting from deductions to pay through salary sacrifice – will not be shown in ASHE. Furthermore, a critical limitation is that the ASHE does not cover the informal economy, where a significant share of non-compliance is likely to take place.” The Low Pay Commission, Non-compliance and Enforcement of the National Minimum Wage (2017)

Filling the evidence gaps on non-compliance

Fulfilling my obligation under the Immigration Act 2016 to make regular assessments of the scale and nature of labour market non-compliance in the face of imperfect or missing information represents a challenge. To overcome this, I shall be making full use of the Information Hub within my Office (discussed further in chapter four), which will combine intelligence from the three bodies and other state enforcement agencies with existing research and analysis.

In addition to this, I have also launched a programme of research seeking to fill a number of information gaps, such as methods and approaches that could be used to estimate the impact of labour market enforcement or to assess the scale and nature of non-compliance across the spectrum of the labour market.

2.2 Resourcing and funding

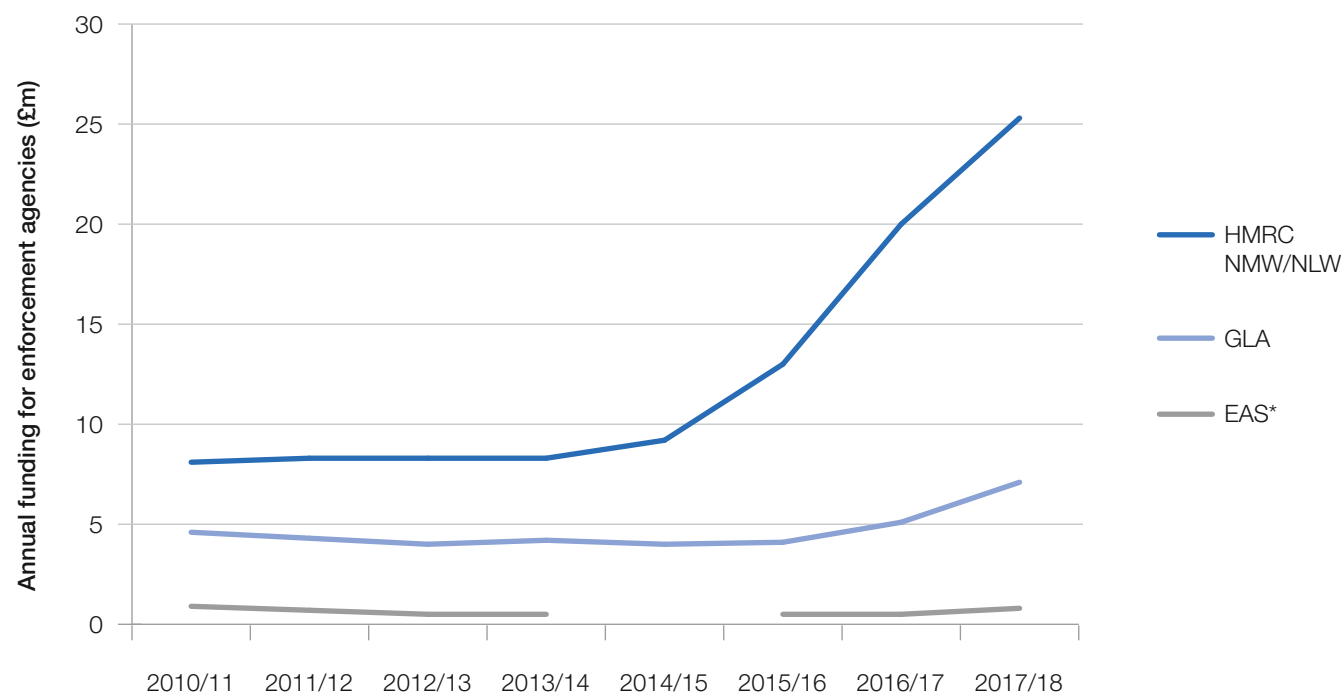
In 2017/18, funding for labour market enforcement for the three bodies exceeded £33 million. This represented a 31 per cent (almost £8 million) increase from 2016/17.

Table 2: Funding for state labour market enforcement bodies (£ million), 2016-2018

	2016/17	2017/18	Change
HMRC-NMW Enforcement	£20.0	£25.3	£5.3
Gangmasters and Labour Abuse Authority (GLAA)*	£4.8	£7.1	£2.3
Employment Agency Standards Inspectorate	£0.5	£0.75	£0.25
Total Labour Market Enforcement Funding	£25.3	£33.2	£7.9

Note: *GLAA funding totals include £0.9 million income each year from licensing and inspection fees.

Figure 2: Enforcement Bodies' funding (2010/11-2017/18)



Sources: GLAA; Home Office Management Information. EAS: Management information, Parliamentary Question (2017). HMRC: Parliamentary Question 2015a and 2015b, BEIS 2017(b)

Note: * The EAS budget was held at a higher level of aggregation and managed across several different programmes, so a specific EAS figure for 2014/15 is not available.

Each of the three bodies received an increase in funding (see Table 2 above). However, HMRC NMW accounted for the majority of the overall increase (£5.3 million) to recruit staff to target and proactively enforce NMW regulations against large and complex organisations, to run the ‘Promote’ campaigns and proactively target help at Small and Medium sized Enterprises (SMEs). This followed a budget increase of £6.8 million in 2016/17 to enforce the National Living Wage introduced in April 2016. GLAA’s funding increased by £2.3 million to £7.1 million to support an extension of their remit with the introduction of Labour Abuse Prevention Officers (LAPOs) and their wider focus on labour exploitation across the entire labour market. EAS funding increased by £0.25 million in 2017/18, at the time this represented a one off-increase for capital investment rather than any change to core funding. However, in the 2018/19 financial year the decision was made that this increase should remain in place in light of the need for greater resource.

Before making any recommendation regarding funding levels, one must first assess how the bodies are making use of their **current** resources. As such, I have called for a full independent evaluation of the three bodies to be undertaken to investigate the overall impact of the three bodies on tackling non-compliance. Assessing value for money and the use of resources will form a key part of this evaluation and will be a central feature of my 2019/20 Strategy (to be delivered to government in Spring 2019).

2.3 Enforcement activity

Education and Training

Due to the number and variety of organisations operating in the enforcement space, it can be difficult for individuals experiencing employment violations to know where to go for help. To improve compliance, education efforts need to be twofold. First, it is essential that the bodies raise their profile both across the public sector (e.g. law enforcement agencies, other government departments) and externally to ensure information flows both into and between the bodies. Second, efforts must continue to educate workers and employers of their rights and obligations respectively. Box 3 below sets out some of the excellent work undertaken by the labour market enforcement bodies during this reporting period to achieve this, for which they deserve credit.

Box 3: Examples of enforcement bodies' education and training activities (2017/18)

EAS:

- **Delivering refresher training** to Acas advisors regarding EAS and its role.
- **Awareness raising** activities with local authorities, police, trade unions, and devolved governments to highlight EAS powers and responsibilities to ensure matters relating to agency workers are carefully considered.
- **Collaboration with Embassies** of Romania and Bulgaria in London to improve communication with agency workers intending to travel to work in the UK.
- **Updating and refreshing online guidance on employment agency issues** to better support compliance and worker awareness.
- **Training for 24 of the 37 GLAA LAPOs** covering employment agency legislation and offences.

HMRC NMW:

- **Training for 24 of the 37 GLAA LAPOs**, including awareness raising presentations and shadowing opportunities with NMW investigators to consolidate training.
- **Pilot scheme with the Citizens Advice Bureau** for handling third party NMW whistleblowing, following LPC's recommendation on establishing a formal protocol (LPC, 2016). These cases were incorporated into statistics on HMRC's online complaints form, which received a record number of complaints in 2017/18. The learning from the pilot led HMRC to update its online complaints form, which then received unprecedented levels of interest.
- **Provided six public facing webinars** to help businesses be compliant, which received excellent feedback from nearly 12,000 participants in total.
- Further examples of HMRC's training and education activities can be found within the Low Pay Commission's annual reports. The above examples are part of the ongoing nationwide 'Promote' campaign.

GLAA:

- **Awareness raising with stakeholders** to improve compliance in their regulated sector, such as the 2018 workshops with the Association of Labour Providers (ALP) on recruitment and the issue of work-finding fees charged to workers in supply chains. Awareness raising work was also undertaken with public sector stakeholders such as Departments for Education and for Work and Pensions.
- Similarly, almost a dozen **regional seminars** held in 2017 to facilitate awareness raising and information-sharing both within and outside of the licensed sectors.
- **Modern slavery publicity campaigns** on 'spotting the signs' and reporting suspected modern slavery or human trafficking both in the UK and internationally.

Individual Caseloads

The three enforcement bodies differ greatly in remit, resourcing and scope as highlighted by Table 3 below. The differences in their capacity and organisational structures impact on their enforcement approaches: making direct comparisons on performance between the bodies, therefore, far from straightforward and should be avoided.

Table 3: The Labour Market Enforcement Bodies 2017/18

Enforcement body (Responsible department)	2017/18 FTE staff	Focus and Scope	Key sectors covered	Geographic scope	2017/18 cases
HMRC NMW/NLW (BEIS)	400+	All employers and workers in scope, covering around 2 million workers in low-paid jobs*	All sectors	UK	3,975 cases opened 2,402 cases closed
GLAA (Home Office)	118	Over 1,000 licenced labour providers, supplying around 0.5 million workers Modern Slavery: estimated 10-13,000 victims**	Agriculture; horticulture; shellfish gathering; food processing and packaging	England, Scotland, Wales and by order in Northern Ireland	465 cases tasked (opened)
EAS (BEIS)	12	28,600 Employment Agencies, covering 1.1 million workers***	Employment agencies	England, Wales, Scotland	1,267 complaints cleared 145 targeted inspections

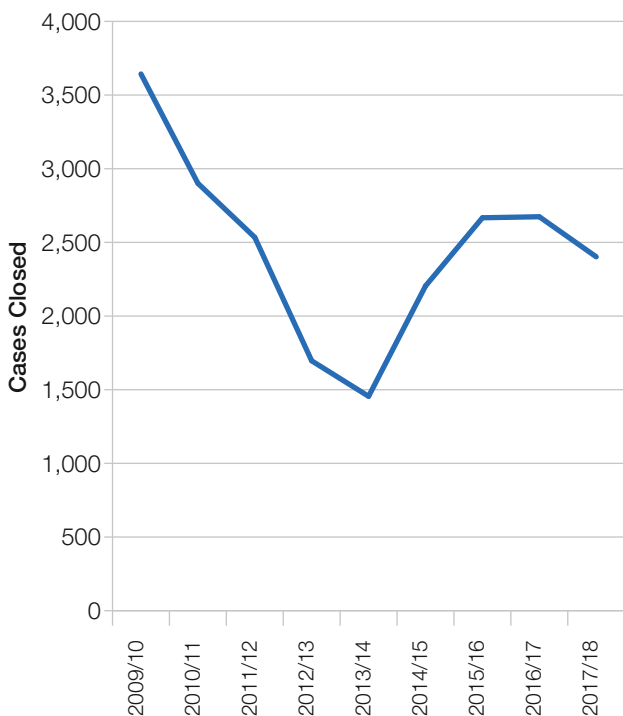
Source: NMW/NLW: BEIS (2017b), GLAA: management information, EAS: EAS (2018).

*Low paid jobs refer to those paid up to 5 pence above the relevant NMW/NLW rate based on ASHE2016 estimates.

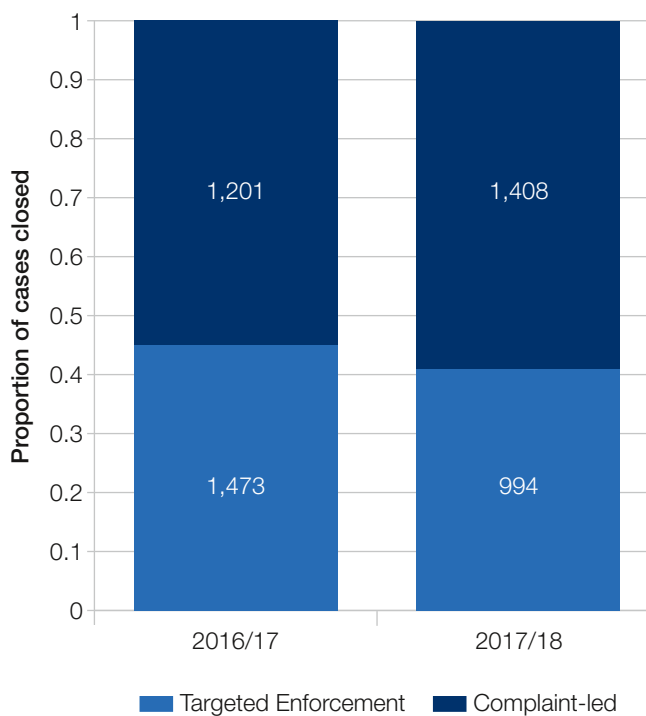
**Based on the Home Office estimate in 2014 that there were between 10,000-13,000 potential victims of Modern Slavery in the UK (Home Office, 2014). To note: GLAA can only investigate Modern Slavery offences related to labour exploitation, whereas the estimate presented includes all types of Modern Slavery.

***ONS figures based on Annual Business Survey for 2017, (ONS, 2018).

HMRC

Figure 3.1: HMRC Caseload: closed cases 2009/10 – 2018-18

Source: (BEIS, 2018)

Figure 3.2: HMRC Caseload – closed cases by type, 2016/17 to 2017/18

Source: (BEIS, 2018)

In 2017/18 HMRC closed approximately 2,400 cases, down by around 10 per cent from nearly 2,700 in the two previous years (Fig 4.1). Prior to this, there had been a strong upwards trajectory since 2013/14 in the number of cases they were closing each year alongside the year-on-year increases to their resources

There are a number of factors influencing this. For instance, HMRC shifted emphasis in investigations to a more holistic approach during 2016/17. This meant that cases now looked at wider risks across an employer's workforce, which led to investigations taking longer, on average, to complete. As a result, in 2017/18 (the first full year investigating in this way), fewer cases were closed than the year before. Notably the number of complaint-led cases rose from 2016/17 to 2017/18, whereas there was a significant decline in the number of targeted enforcement cases closed, falling by around a third from 1,473 in 2016/17 to 994 in 2017/18.

The lower number of complaint-led cases remaining open from the previous year hence gave the HMRC NMW team the opportunity to complete more proactive enforcement in 2016/17. This situation did not persist in 2017/18, though, which may in part explain the scale of the downturn.

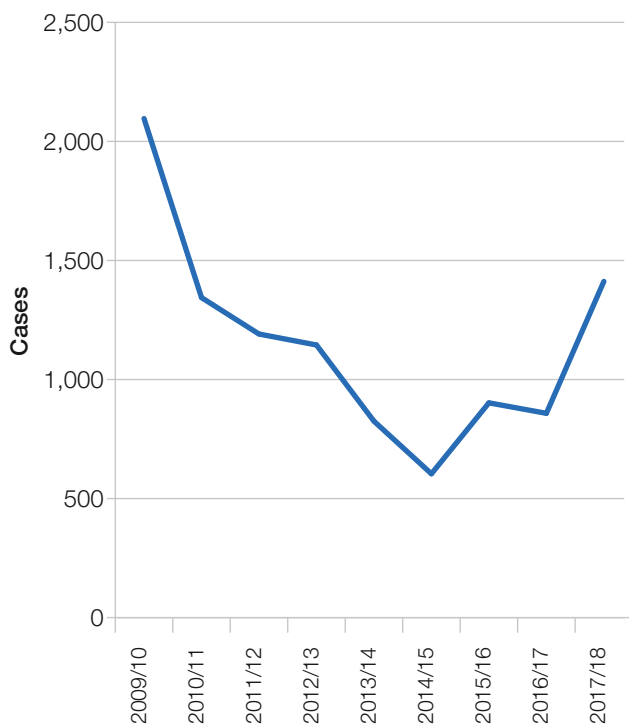
There was, however, an increase in the number of targeted enforcement cases *opened* in 2017/18 from the previous year, aligned with the recruitment of specialist teams to proactively investigate NMW compliance in large and complex organisations. In turn, this is anticipated to lead to a higher number of *closed* cases in 2018/19 (BEIS, 2018).

Moreover, the volume of complaints received by HMRC more than doubled from 2016/17 to 2017/18. As per their Service Level Agreement with BEIS, HMRC NMW must consider every complaint received. Therefore, this steep upwards trend in the volume of complaints will likely lead to an increase in the number of complaint-led cases being closed in the coming years, but may also, in turn, pose a risk to the resources available for targeted enforcement efforts. This matters as the most vulnerable workers are often the least likely to complain.

Self-correction has also proven to be an important initiative for supporting employers to ensure their own compliance. By removing any penalties that would normally apply if employers were found to be non-compliant, self-correction encourages employers to come forward if they find that they may have inadvertently breached NMW regulations. This approach should lead to more efficient use of enforcement resources. The result is that HMRC can identify and recover more in arrears for workers – totalling £5.9 million for almost 72,000 workers in 2017/18 – while minimising the resources dedicated to investigating employers who are trying to be compliant. In 2017/18, there were more than 250 cases of self-correction, with another 62 partly self-correction cases handled by HMRC.

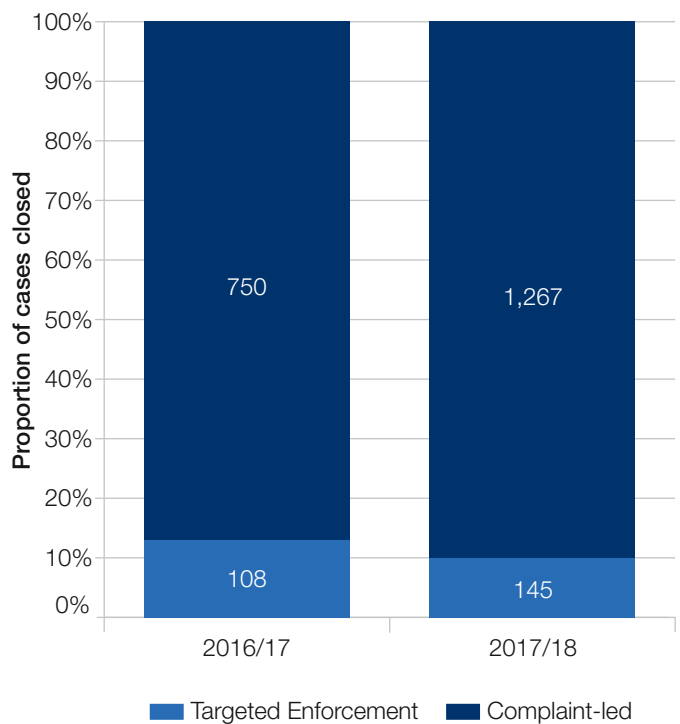
EAS

Figure 4.1: EAS Caseload – Complaints Cleared and Targeted Inspections, 2016/17 to 2017/18



Source: (EAS, 2018)

Figure 4.2: EAS Caseload – closed cases by type, 2016/17 to 2017/18



Source: (EAS, 2018)

The EAS caseload (defined as complaints closed and proactive enforcement cases closed) increased significantly between 2016/17 and 2017/18 (figure 4.1). Much of this increase was driven by an almost 70 per cent increase in the volume of complaints cleared over the period. It is likely that the significant increase in the volume of complaints received by EAS is a result of the awareness-raising work undertaken, as well as of a higher media profile more generally of workers' rights (EAS, 2018).

Targeted inspections accounted for around 10 per cent of all EAS enforcement activity. This was down slightly on the previous year.

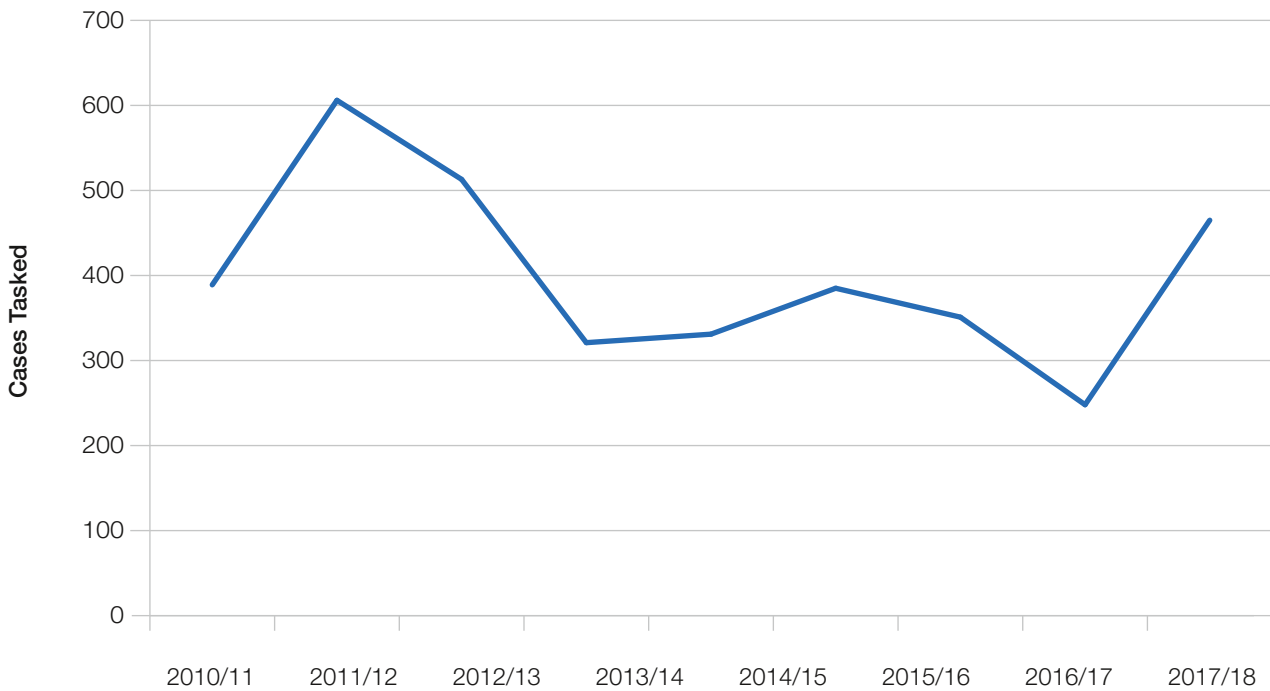
However, as mentioned previously, the volume of complaints received by EAS has risen sharply over the last year. According to BEIS policy, EAS are required to respond to every valid complaint received, so the higher volume of complaints has led to their limited resource (as highlighted by Table 3) being diverted away from targeted inspections. Nonetheless EAS increased the volume of targeted inspections from 108 in 2016/17 to 145 in 2017/18.

Case study: EAS – cases, 2017/18

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.

Source: EAS Annual Report, 2017/18.

GLAA

Figure 5: GLAA Caseload – cases tasked, 2009/10 to 2017/18

Source: GLAA management information

The GLAA's enforcement role in the labour market is twofold. First, under the Gangmasters (Licensing) Act 2004 it licenses gangmasters in agriculture, horticulture, food processing and the shellfish industry sectors. It also investigates unlicensed gangmasters in those sectors.

Second, since the implementation of the Immigration Act 2016, the GLAA now has a much broader role in addressing labour exploitation across the entire labour market by using its new powers under section 114B of the Police and Criminal Evidence Act 1984 (PACE). A significant increase in resource was provided to cover this wider remit, and the subsequent recruitment of new Labour Abuse Prevention Officers (LAPOs) has increased the investigative capacity of the GLAA over the last financial year.

The GLAA has seen a significant increase in the number of cases it has tasked (defined as cases opened having been through their risking process), with the number of cases almost doubling between 2016/17 and 2017/18 (figure 5). Though the GLAA caseload had decreased slightly in the years leading to 2016/17, the spike in 2017/18 cases tasked is likely due to the introduction of their new PACE powers in the Spring of 2017 and the consequent expansion in the GLAA's remit. In 2017/18, the GLAA conducted over 100 operations using their PACE powers, including more than 80 cases outside of their usual regulated sectors, leading to more than 100 arrests for suspected labour market offences (Home Office, 2018). In this period, GLAA referred 22 potential victims into the National Referral Mechanism, which represented less than 0.5 per cent of total NRM referrals in 2017/18. Though the volume of NRM referrals was low, it should be borne in mind that the GLAA, did not have the capability to undertake these cases for a large proportion of the reporting year. With the GLAA's PACE powers now in effect, the GLAA had already surpassed this volume of NRM referrals after only six months of the 2018/19 financial year. I am encouraged by GLAA's progress and look forward to seeing them build upon this promising start.

In terms of its licensing remit, in 2017/18 the GLAA had around 1,000 gangmasters licensed. During the year the GLAA granted 96 new licenses, but refused 15 and revoked 17 licences, 3 of which were with immediate effect.

A significant proportion of GLAA licensing activity could be considered reactive in nature, as the GLAA responds to licence applications (application inspections) or reports of potential non-compliance within their regulated sectors with inspections. Nonetheless, the GLAA also conducts proactive enforcement in the licensed sectors, which is more expressly intelligence-led (compliance inspections). Other than for licensing application inspections, GLAA does not undertake inspection activity without a justifiable reason, in this way meeting their commitment to not being an unnecessary burden on business.

Case study: GLAA Labour Exploitation Case, Dec 2017

After concerns were raised by supervisors at a food production factory about the condition of an individual being driven to and from work, the GLAA organised an operation to investigate. The suspected victim alleged that he was forced to perform work in a food processing factory and collecting scrap metal but had no access to the wages paid into his bank account. Assisted by officers from Immigration Enforcement and Greater Manchester Police, three arrests were carried out in Oldham for possible offences under the Modern Slavery Act, and the alleged victim was scheduled to be interviewed as a potential candidate for referral onto the National Referral Mechanism.

Case study: GLAA Licensing Case, May 2017

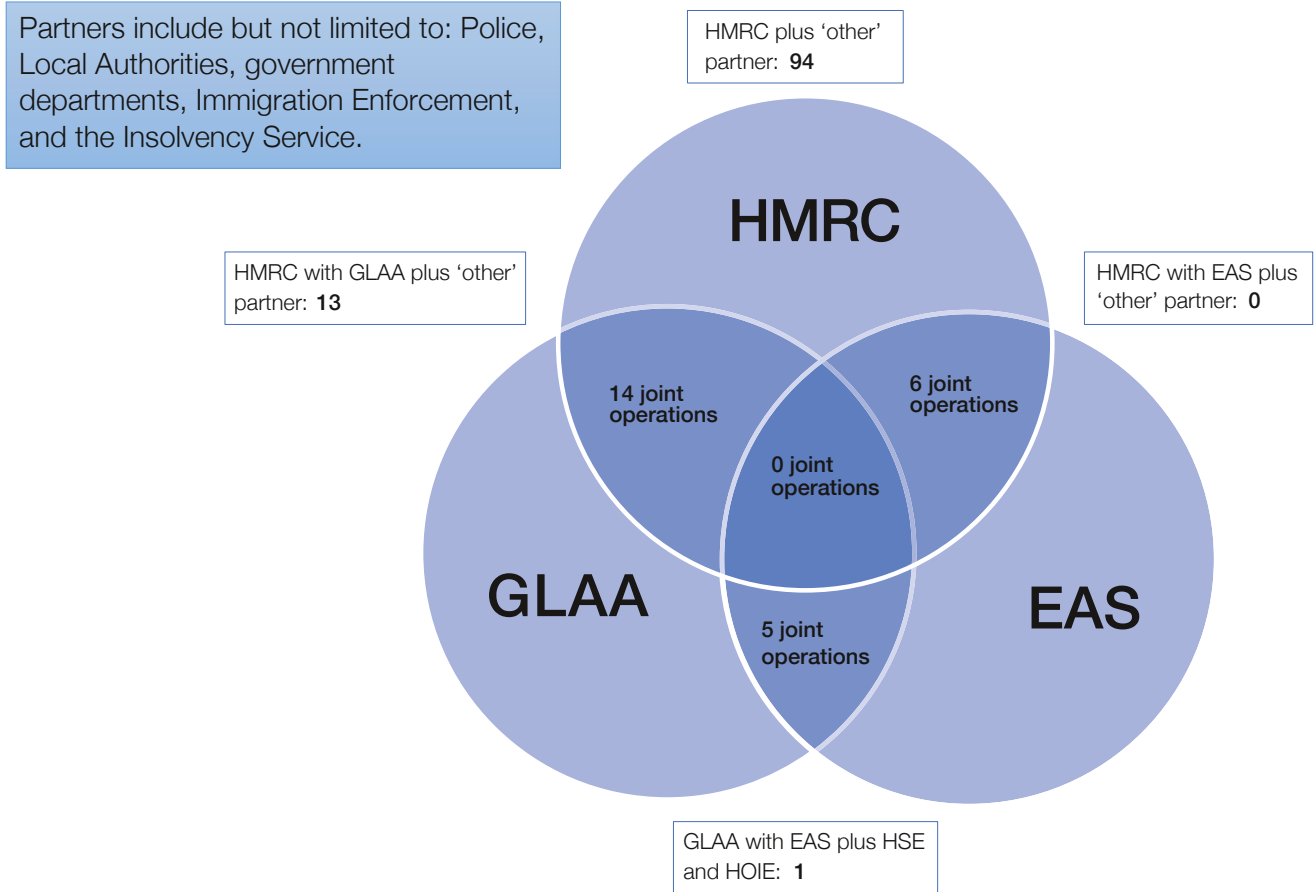
Following a joint operation between the GLAA and Leicestershire Police, two people were charged with the alleged unlicensed supply of workers into food processing factories. They were each charged with an offence under the Gangmasters (Licensing) Act and were bailed to appear at the Magistrate's Court in June.

2.4 Joint Working in Labour Market Enforcement

Joint working initiatives can take the form of: a) the sharing of intelligence and information between the bodies to inform independent activity, and b) joint operational activity. The coherence of both elements can be hugely beneficial to labour market enforcement.

Since the publication of my Introductory Strategy, work undertaken to plan and conduct joint operations between the enforcement bodies has started to alter the way the bodies collectively do business. While joint working between the three bodies should be used where it adds value in enforcement efforts, I appreciate that it will not always be appropriate.

Figure 6: Joint working between the three enforcement bodies April 2017-March 2018



Since the beginning of the Director’s Labour Market Enforcement Programme in January 2017, developing a programme of joint working that maximised the collective legislative powers of the three enforcement bodies has been a primary goal. The operational relationship among the enforcement bodies has developed, as has the approach to coordinating joint operations. Although there was no joint operational activity involving all three enforcement bodies simultaneously in 2017/18 (Figure 6), this was largely due to the nature of the enforcement activity required. Nonetheless, the planning of joint operations, the intelligence used to ensure efficiency and the effectiveness of the operations delivered has improved significantly.

DLME-facilitated Joint Working

Some degree of joint working and information sharing between the labour market enforcement bodies took place during this reporting period (Figure 6). Due to varying resources available to the bodies, there were varying levels of intelligence infrastructure amongst the three bodies, which led to their operational focus being predominately reactive and complaint-led. Joint operations were conducted because of existing inter-body relationships, and were not a coordinated, systematic, or pre-emptive response to a specific threat. This approach meant that there were occasions where joint working and intelligence sharing opportunities were missed. A tri-partite Joint Working Memorandum of Understanding (MoU) was in place between the three bodies prior to my Introductory Strategy. The Strategy itself, however, recommended a strengthening of this agreement and encouraged a change in approach to ensure a culture of joint working and information sharing became the standard operational practice between the three enforcement bodies.

To support the three bodies and the work of the Director, the Information Hub and, within this, the Strategic Coordination Group (SCG) were created (chapter four). The SCG was established to provide the operational enforcement link between the Director’s enforcement strategy and the three bodies, and to act as a focal point to support the sharing of information, intelligence,

best practice and lessons learnt. Furthermore, the SCG provided a forum where joint-working opportunities could be discussed and taken forward, and intelligence shared in order to inform each of the operations (Table 4 below).

Table 4: Influence of the SCG on Joint Working (through information sharing and operational activity) to October 2017

Descriptor	Lead agencies	Date	Outcomes
Warehousing	EAS	April 2017	14 breaches uncovered 2 warning letters issued
Hospitality	EAS	June 2017	87 breaches uncovered 20 warning letters issued
Windfarms	EAS	July 2017	65 breaches uncovered 13 warning letters issued
Major Sporting Event	EAS led HMRC NMW	July 2017	Lessons learnt to inform activity at future sporting events.
Dental nursing	EAS	Sept 2017	17 warning letters issued
North West England	EAS led	Oct 2017	98 breaches uncovered at employment agencies covering over 31,000 workers

A key lesson learned from this is that it is not always the case that all three bodies should work together on joint operational activity. Instead, the question is “which enforcement body is best placed statutorily, and operationally, to solve the detriment identified?” By agreeing up front which body was the most appropriate lead for the operation, it was possible to avoid unnecessary involvement from the other bodies, representing a more efficient use of resources. Importantly, all the information and intelligence were shared to inform the decision-making process, and all bodies were provided the opportunity to participate.

2.5 Measuring performance and enforcement outcomes

Currently all three bodies publish statements on their respective performance as part of their annual reporting cycle. An overview of these results is presented below.

As highlighted in my 2018/19 Strategy, there are gaps in terms of understanding the impact of their interventions in the labour market enforcement space. While recognising that it is not straightforward to undertake meaningful analysis in this area, it remains a gap I would like to see explored further to inform future Labour Market Enforcement Strategies.

Arrears identified and workers affected

In 2017/18, HMRC investigators identified more than £15.6 million in arrears owed to almost 202,000 workers, up from £10.9 million for 98,000 workers in the previous year. In addition to this, HMRC issued a record £14.1 million in penalties to 810 employers for failing to pay the correct minimum wage. The total value of penalties more than trebled from £3.9 million in 2016/17, to £14.1 million in 2017/18 due to the change in penalty calculation from 100 per cent to 200 per cent of arrears owed, demonstrating a more severe punishment for non-compliance with NMW regulations (BEIS, 2018).

Unlike HMRC, identifying and reclaiming pay arrears is not a core objective of either GLAA or EAS. However, in 2017/18, more than £94,000 was recovered for workers by the GLAA due to breaches across its remit (Home Office, 2018). Approximately £150,000 was recovered by the

EAS for individuals who had been exploited. Of the monies recovered, most were related to non-payment of wages or money due to temporary workers or cases involving work-finding fees being charged to workers (EAS, 2018).

Labour Market Enforcement Undertakings and Orders (LMEU/Os)

My Introductory Strategy for 2017/18 outlined the new regime of *Labour Market Enforcement Undertakings* (LMEUs) and *Labour Market Enforcement Orders* (LMEOs), which were introduced by the Immigration Act 2016 to complement existing powers and processes. This regime is an important weapon in the compliance armoury, intended to tackle serious and persistent non-compliance, and I have continued to stress the importance of making full and proper use of LMEU/Os. As this enforcement tool was introduced into law alongside the creation of my role as Director of Labour Market Enforcement, I committed to carrying out an initial evaluation of LMEU/Os in this Report, following the first year of their use by the bodies.

LMEU/Os provide the three enforcement bodies with the power to request for a business or individual to enter into a voluntary undertaking (LMEU) to take steps to prevent further non-compliance. Where that business or individual refuses to give that undertaking, or fails to comply with its terms, the bodies can escalate the process to a court enforcement order (LMEO). A breach of an LMEO is punishable by a custodial sentence of up to two years, bolstering the enforcement tools available to the bodies. An Order is also available on conviction, issued in addition to the sentence already imposed.

During this reporting period, little use was made of the LMEU/O regime. Just two LMEU's were secured in March 2018 by GLAA, at the end of the reporting year. I appreciate that this was not through lack of effort on the part of the three bodies, but rather par for the course with establishing processes and identifying suitable cases for these new legal powers.

The enforcement bodies are yet to fully test the LMEU/O process by escalating an undertaking to an order on application, as the necessary refusal or breach has not yet occurred. In July 2017, however, the GLAA applied for an LMEO on conviction for two offenders who had pleaded guilty at Leicester Crown Court. This LMEO was not secured within this reporting period and will therefore be discussed more fully in the next Annual Report.

Within my remit, the GLAA hold a unique role in that their specially trained Labour Abuse Prevention Officers (LAPOs) have a wider enforcement remit covering the trigger offences set out in the Gangmasters (Licensing) Act 2004, the Employment Agencies Act 1973 and the National Minimum Wage Act 1998. The GLAA is therefore the only body which can coordinate and lead on securing LMEU/Os in England and Wales where multiple offences have occurred across the remit of the three bodies. To date, no combined LMEU/Os have been brought about through joint working.

Box 4: LMEU/O Nottingham pilot scheme

A pilot scheme based in Nottingham has been established to test the LMEO regime to set out the necessary processes for prosecuting LMEOs and develop specialised knowledge of the judicial process for wider roll out. This pilot scheme has yet to see any LMEO cases as the small number of LMEU's issued have not been breached and therefore have not been escalated. The GLAA's application for order on conviction predated the pilot scheme.

Once completed, this pilot scheme will form a useful basis for evaluating the initial use of LMEU/Os with regards to process, monitoring compliance, and recidivism rates. This may also help to inform the provision of HM Courts and Tribunals Service guidance to inform best practice for future use of this regime. I will await the reporting on the outcome of this pilot scheme before making a full assessment as to the success of the LMEU/O roll-out and the impact that this tool has on tackling non-compliance.

Whilst it is too early to make a full assessment of the LMEU/O regime, initial feedback from the three bodies has flagged several issues in the initial stages of implementation, including:

- **How the LMEU/O regime complements existing enforcement tools:** the LMEU/O code of practice makes clear that this tool does not replace existing sanctions, it should be used alongside them, and it will be for the enforcement bodies to decide which sanction is the most appropriate to use in the circumstances. There can be no standardised approach given the differing remits and powers of each body, and so this process will require a degree of fine tuning by each body to determine the most proportionate use of this tool.
- **Implementation in Scotland:** the LMEU/O regime is not currently in force in Scotland, reducing the number of potential cases to which LMEU/Os can be applied. It is my understanding that the Home Office is currently seeking ‘rules of court’ to rectify this issue.
- **Language requirements:** the bodies have encountered some barriers to issuing LMEU’s written in English where this is not the respondent’s first language. There has since been agreement to share translated factsheets between the three bodies. This is the type of technical issue that I foresee being identified and addressed during the Nottingham pilot scheme (see Box 4).

Prosecutions

The most serious cases of labour market exploitation can be referred for prosecution by the enforcement bodies. This has been an underutilised intervention in the enforcement arena, with only a handful of prosecutions occurring in 2017/18 (Table 5).

Table 5: Prosecutions secured by the enforcement bodies (April 2017-March 2018)

Enforcement body	Prosecutions 2017/18	Key offences
HMRC NMW/NLW	1	Intentionally delaying or obstructing an NMW officer (s.31(5)(a) of the NMW Act 1998). Refusing or neglecting to answer any question, furnish any information or produce any document when required to do so (s.31(5)(b) of the NMW Act 1998).
GLAA*	5	Operating as an unlicensed gangmaster (s.12 G(L) Act 2004 offences).
EAS	1	Charges related to withholding wages to two workers, s.5 of the Employment Agencies Act 1973 and Regulation 12 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003. Also, failing to issue terms and conditions to two workers (s.5 of the Act and regulations 14 and 15 of the Conduct Regulations).

* This does not include GLAA’s prosecution rates within their wider LAPO remit for Modern Slavery offences. This is because LAPO’s only became operational part way through the reporting period and such cases could not practically be concluded within the remaining timeframe.

Since the introduction of the NMW Act 1998, which came into force in April 1999, up until the time of writing this report, there have been only 14 NMW prosecutions. All of these have occurred since 2007. HMRC and BEIS are continuing to monitor several cases under investigation and considered for prosecution.

The GLAA has made good progress utilising Police and Criminal Evidence (PACE) powers (1984) to investigate serious cases of labour exploitation in the first year of operation. In 2017/18, the GLAA conducted over 100 operations, with more than 80 of those across sectors outside of the

traditional agricultural sector. As a result, the GLAA arrested over 100 people for suspected labour market offences (Home Office, 2018). Several other cases are currently under consideration by the Crown Prosecution Service (GLAA, 2017).

As I note in my 2018 Strategy (DLME, 2018), HSE by comparison achieves more than 500 prosecutions leading to conviction each year. Even allowing for greater funding, this is proportionally a much higher prosecution rate than the three enforcement bodies. I recognise that the process involved in prosecutions is often lengthy and very costly, and of course the use of this tool must be proportionate. I do, however, believe that if used more frequently and with wider publicity, prosecutions could act as a much more powerful deterrent.

Prohibitions

EAS has the powers to prohibit individuals from running or acting as an agency for up to 10 years by application to an Employment Tribunal. A prohibition can be sought based on information obtained during an investigation or after successful prosecution by EAS or another enforcement body. Any breach of a prohibition order could lead to criminal proceedings.

As of February 2018, EAS had prohibitions in place for 10 individuals, plus one with special conditions. In the reporting period of 2017/18, EAS did not obtain any prohibitions, although EAS investigated 11 potential prosecution or prohibition cases over this period involving 14 defendants running employment businesses.

3. Impact of the Introductory Strategy on the scale and nature of non-compliance in the Labour Market during 2017/18

3.1 Introduction

A primary aim of the Director's Annual Report is to assess the impact previous labour market enforcement strategies have had on the scale and nature of non-compliance in the UK labour market. In this case, because of the timing of my appointment as Director and the obligation under the Immigration Act 2016 to deliver a Labour Market Enforcement Strategy to government by the end of each financial year, it was only possible to produce an Introductory Strategy in 2017.

By its nature the Introductory Strategy was essentially a survey of the labour market enforcement landscape. It considered:

- the work of the three main enforcement bodies;
- the role of the Director of Labour Market Enforcement;
- evidence on non-compliance; and
- issues for consultation informing my first full Strategy (May 2018).

I committed to build on the existing efforts of the three main enforcement bodies to deliver a more targeted, joined up approach to tackle exploitation and ensure compliance and provide greater flexibility to pool resources (BEIS/Home Office, 2016). Over the reporting period, a great deal of progress has been made towards facilitating joint working and I have since published my first full Strategy for 2018/19 (DLME, 2018) which aims to further establish a more collaborative and proactive enforcement approach. I shall report on progress against the 2018/19 Strategy in my next Annual Report.

3.2 Impact upon Enforcement Efforts

My role supports and promotes enhanced partnership working and the development of a strengthened intelligence picture through the dedicated Information Hub. My Introductory Strategy set out my ambition for the bodies to uncover more abuses using proactive enforcement methods.

At the time of my Introductory Strategy, much of the enforcement model, particularly in respect of HMRC NMW and EAS, was predicated on responding to complaints. Whilst this approach remains a central tenet of labour market enforcement, those proactive, intelligence-led investigations are vital as the most vulnerable workers are often those that are unable to complain.

During the reporting period, the enforcement bodies have done more to adopt a broader-based enforcement model, which looks to expand and optimise the use of intelligence from wider sources to expose cases of hidden exploitation and direct proactive operations.

In the 2017 consultation period, I visited the HMRC NMW operations team in Salford where I learned how HMRC's approach makes increasing use of a wide range of internal data in order to identify and undertake proactive investigations, often in collaboration with other specialist HMRC teams. I was also encouraged by HMRC's new processes for triaging complaints and the variety of approaches for managing responses, ranging from "nudge" communications through to complex criminal investigations and prosecutions.

Due to EAS' limited resources, they are bound to a predominantly reactive caseload, though they continue to commit available resource to proactive investigations. In their latest annual report, EAS states that assessing risk and intelligence to carry out targeted proactive investigations where possible has enabled EAS to deploy its resource more efficiently, meaning that it carried out more visits and identified more breaches of legislation per visit (EAS, 2018).

3.3 The 2018/19 Enforcement Strategy

Following the publication of my Introductory Strategy (DLME, 2017), the consultation informing my 2018/19 Strategy (DLME, 2018) formed a large part of my Office's work during this reporting period. The approach I took during the consultation was inevitably wide-ranging due to the nature of my remit and the scale of the challenge.

I launched the consultation in July 2017 and consulted extensively between August and October 2017, holding over 80 meetings with stakeholders across England, Wales and Scotland, including visits and meetings across Britain to learn first-hand how we might best tackle some of the labour market enforcement challenges we face. The development of the Information Hub, the distribution and level of enforcement resources, the case for and against more joint working, how to raise awareness of regulations, and the use of the new offence linked to LME Undertaking and Orders were all issues I committed to consult upon and were addressed in more detail in my Strategy for 2018/19.

4. The Information Hub activities undertaken in 2017/18

4.1 Introduction

The third and final area upon which I have a statutory duty to report relates to the activities of the Information Hub (hereafter, the Hub) created and hosted by my Office. One of the main challenges of my role is to assess the scale and nature of non-compliance in the labour market. I have already highlighted how limited existing sources of data and information will hinder our efforts to paint an overall picture of labour market non-compliance and labour exploitation.

What the Hub aims to do, therefore, is to fuse together and make maximum use of the information that is available, be that from intelligence and seeking ways to improve intelligence sharing between enforcement bodies and beyond, or from academic research and analysis. A key priority for the Hub is also to identify gaps that can potentially be filled through further research and explore the use of new and innovative techniques such as data science.

In addition to seeking to improve the overall evidence base in this area, the Hub also plays an important coordination role in the promotion of joint working between the state enforcement bodies. Although the three bodies that fall within my remit retain operational primacy, there is, I believe, significant scope for undertaking more joint working to help uncover further non-compliance.

The Hub was created by the 2016 Immigration Act. Initial work was focused on its intelligence functions to develop an initial strategic analysis report, contacts with key law enforcement partners, data sharing processes, and to support work on legal gateways.

Further analytical and intelligence resources were recruited in 2017 including embedding a dedicated DLME intelligence analyst in HMRC which has significantly improved the flow of information between the HMRC NMW team and the Hub. In my Introductory Strategy, I set out the aim for the Information Hub to be at 'phase three' of its development, which would see the Hub as fully functioning and fully staffed by early 2018. Recruitment difficulties meant that full resourcing was only achieved by the second half of 2018. Nonetheless, the Hub was able to produce several intelligence-based outputs, including reporting on non-compliance trends broken down by sector and region; highlighting gaps and intelligence, and by implication, what further intelligence should be collected; and analysis of the intelligence picture to help provide an overview of the scale and nature of non-compliance to better evidence future iterations of my annual Strategy.

4.2 Information Hub Outputs

Strategic Intelligence Assessment

One of the key deliverables for my role was the development of a single set of priorities across the enforcement bodies, combined with a single intelligence-led view of risk to focus enforcement efforts in a more effective way. This has, in part, been achieved through the restructuring of each of the enforcement bodies but this has also been informed by the development of the Strategic Intelligence Assessment. This was produced by the Hub, in collaboration with the enforcement bodies themselves, which has resulted in the first overarching view of the sectors most at risk of labour exploitation in the UK (Table 6 below).

Table 6: Sectors identified as key risks of labour exploitation by the Intelligence Hub*

Sector	Description
Car washes	Organised crime groups are exploiting workers with threats, debt bondage and withholding travel documents to control workers. Many more in the sector are also not receiving NMW.
Agriculture	Organised crime groups are exploiting workers with threats, debt bondage and withholding travel documents to control workers. Many more in the sector are also not receiving NMW.
Care	Many workers in the sector not receiving NMW.
Nail bars	Organised crime groups are exploiting workers with threats, debt bondage and withholding travel documents to control workers.
Shellfish Gathering	Workers forced to gather in dangerous conditions, with particular hazards around unlicensed activities at unclassified beds. Some evidence of workers also not receiving NMW.
Hospitality	Many workers in the sectors not receiving NMW.
Construction	Organised crime groups are exploiting workers with threats, debt bondage and withholding travel documents to control workers. Some workers in the sector are also not receiving NMW.
Poultry & Eggs	Some workers in the sectors not receiving NMW.
Factories & Warehousing	Organised crime groups are exploiting workers with threats, debt bondage and withholding travel documents to control workers. Many more in the sector are also not receiving NMW.

*To note although this was compiled and agreed during the reporting year, this list was only published in the first full Labour Market Enforcement Strategy (May 2018).

To help establish an overall picture of non-compliance, the Hub drew on numerous existing data sources, capturing and aggregating intelligence collected by the enforcement and stakeholder bodies, with a link to the UK labour market.

Using the industry standard² Measurement of Risk in Law Enforcement (MoRiLE) strategic matrix, the Hub was able to identify, catalogue, and assess non-compliance threats.

Although the Hub actively engaged with the enforcement bodies and relevant partner agencies to undertake this assessment, the threat assessment provides a broader view of potential threats in the labour market and therefore informs my strategic priorities in terms of enforcement.

The Strategic Coordination Group

The Strategic Coordination Group (SCG) combines operational expertise from HMRC, GLAA and EAS in order to identify potential joint enforcement activity involving the three bodies. It also encourages operational delivery by coordinating activity involving several agencies and identifying lessons learned.

² MoRiLE is used throughout police forces, the National Crime Agency, and Immigration Enforcement.

The SCG has promoted more collaborative working between the bodies in terms of intelligence sharing, drawing on institutional expertise and determining which body is best placed to lead specific operations. This has resulted in more efficient use of resources and allows the bodies to learn from wider experience.

I am pleased by the progress made in terms of the intelligence and information sharing element of joint working during this reporting period. My Office's view is that joint operations have resulted in the discovery of more breaches within a single workplace across the spectrum of non-compliance than would otherwise have been possible to uncover on a unitary enforcement visit, thereby providing an efficient enforcement mechanism and reducing the investigative burden on businesses. This includes serious non-compliance and multiple incidents of non-compliance crossing over the bodies' remits thereby potentially improving outcomes for the individual workers.

As detailed in Chapter two, Table 4, there were six joint operations emerging from the SCG during the reporting period. However, I recognise that there is more work to do in this space. This will involve overcoming some of the remaining barriers to joint working, including:

- **Improving gateways to information sharing**, particularly around the sharing of sensitive information between the bodies.
- **Overcoming inconsistency in systems** to enable the three bodies to identify all possible incidents of labour exploitation across all their information sources and to find a way to easily share these with each other.
- **Embedding a culture of sharing** of information across the network of enforcement organisations.
- **Achieving a more consistent approach to prioritisation** across all three bodies.

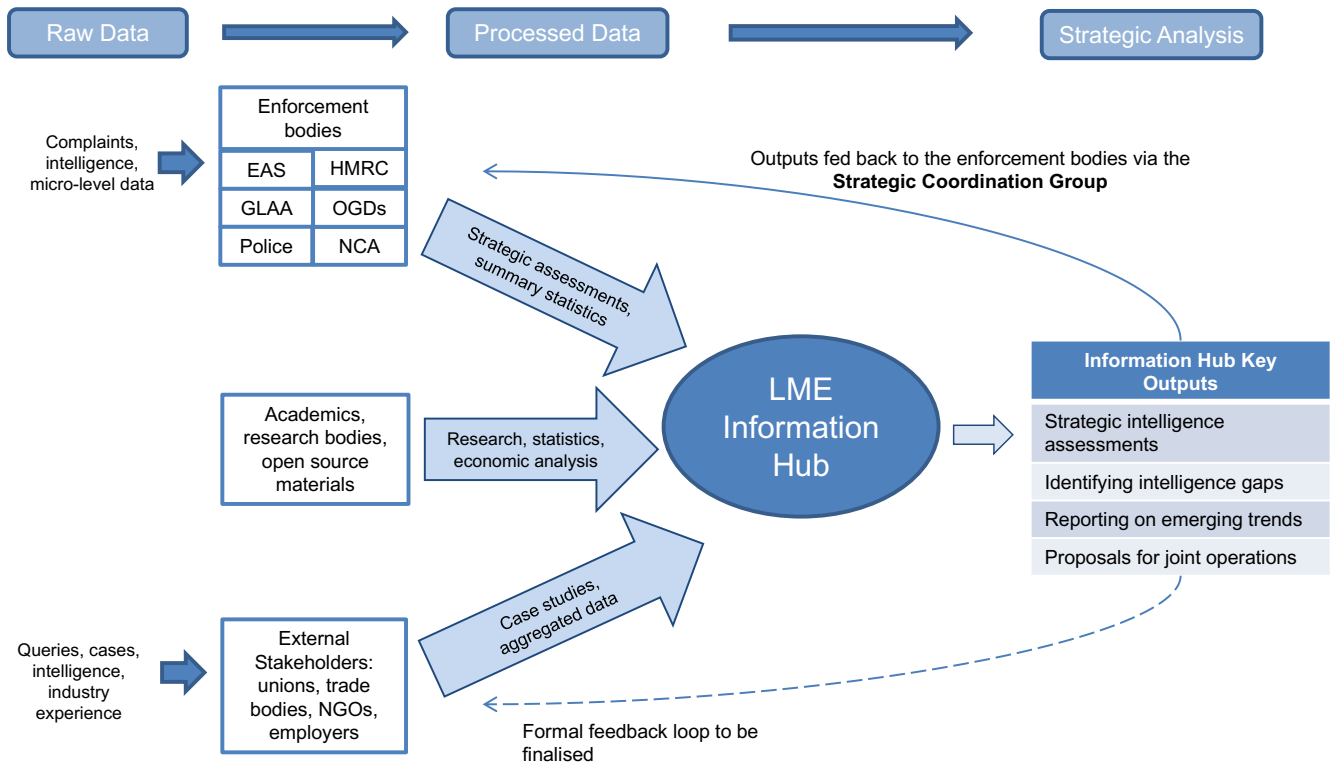
4.3 Research and Analysis

The Hub's other key objective is to undertake a programme of research and analysis to improve the evidence base on labour market non-compliance.

As part of my work during this reporting period, I considered research from both the UK and internationally on evidence of non-compliance in the workplace and the approaches being used to tackle this. I held a workshop with analytical experts from government and academia in January 2018 to identify gaps in the evidence and have since launched a programme of research to help better inform future iterations of the labour market enforcement strategy. This research has included: an evaluation scoping exercise to assess how best to evaluate the impact of Labour Market Enforcement activities; a scoping study looking at methodologies for an assessment of the scale and nature of non-compliance in the UK; and, three sector-specific research projects taking a detailed look into hotels, food services and warehousing.

Overall, this fusion of intelligence and social science approaches to evidence gathering will play a vital role in assessing the scale and nature of non-compliance in the UK labour market (Figure 7 below).

Figure 7: The flow of information through the Information Hub



Prioritisation of operational intelligence on non-compliance has been a key approach for the Hub. In collaboration with the three enforcement bodies, the Hub has developed and utilised a stronger evidence base from the pooled intelligence and resource across the spectrum of labour market exploitation to ensure a variable, nuanced approach to enforcement is adopted.

Although there is no silver bullet for overcoming data gaps, I believe we have come a considerable way to increasing data sharing and intelligence gathering across the three bodies and beyond.

5. Concluding remarks

As this report highlights, much work was undertaken by the enforcement bodies in the 2017/18 reporting period, in terms of both operational enforcement activity and education and awareness raising across the labour market enforcement landscape.

The three bodies within my remit have worked together across a variety of sectors, sharing valuable intelligence and operational expertise as a result. This has laid vital foundations for increased and ongoing joint working in the future, which I will continue to monitor and consider in future Strategies.

Looking ahead, as mentioned in chapter two of this report, assessing value for money in terms of enforcement activity and how this relates to each bodies' use of resources is a priority for the Office of the Director of Labour Market Enforcement. This will be a central feature of my 2019/20 Enforcement Strategy (to be delivered to government in spring 2019).

Additionally, my Office will look to build on the work of the Information Hub outlined in chapter four and, in collaboration with the bodies, seek to build upon the findings of the independent research commissioned by my Office. This will further expand our understanding of labour exploitation to inform and direct enforcement efforts in the future.

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