



Department
for Business
Innovation & Skills

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

Annual report 2011 to 2012

FEBRUARY 2013

Contents

Contents	1
Introduction	2
EASs Responsibilities	2
Improved risk assessment	2
Enforcement	2
Case Study 1	4
Case study 2.....	5
Case study 3.....	6
Raised Visibility.....	7
Customer Service	7
EAS staffing	8
Freedom of Information Requests.....	8
Working with other enforcement bodies.....	8
Forward Look.....	9
Targets	9
Enforcement review	9
Agency Worker Regulations	9
Annex A: Case Statistics 2010/2011.....	10
Annex B: Complaint and inspections carried out (by agency type) – 1 April 2011 to 31 March 2012.....	11
Annex C: EAS Targets for Next Period (2012/2013).....	14
Objective 1 – To increase compliance with the EAS regulations	14
Objective 2 – To improve EASs effectiveness and impact.....	14
Objective 3 – To deliver good customer service	14

Introduction

1. This report outlines the performance and achievements of the Employment Agency Standards inspectorate (EAS) between April 2011 and March 2012. 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 of and compliance with the law;
 - (ii) Raising awareness of EAS and the legislation it enforces;
 - (iii) Delivering efficient customer service.

EASs 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 as amended (the Act), and the associated Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended (the Conduct Regulations), across Great Britain. The Department for Employment and Learning in Belfast is responsible for enforcing employment agency legislation in Northern Ireland.
5. EAS 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 severe cases, the inspectorate can consider prosecution or prohibiting individuals from running an employment agency for up to 10 years.

Improved risk assessment

6. Progress continued to be made during 2011/2012 in strengthening our systems to effectively seek compliance with the employment agency legislation. The EAS continue to improve their risk matrix to be able to target the more high risk sectors.

Enforcement

7. Enforcement of the employment agency legislation is guided by a structured assessment of risk. Successes during 2011/2012 included:
 - Targeted inspections nationwide into the healthcare sector. EAS carried out 64 targeted inspections and identified a total of 127

infringements;

- Targeted inspections nationwide into the catering and hospitality sector. EAS carried out 45 targeted inspections and identified a total of 88 infringements;
- Targeted joint inspections in South Wales with colleagues from HMRC National Minimum Wage Teams. EAS carried out 25 inspections and identified a total of 107 infringements;
- Targeted regional inspection in the Northampton area. EAS carried out 27 inspections and identified a total of 103 infringements.

Most of the infringements that were found during these inspections related to non compliance with the issue, or content, of terms issued to hirers or work-seekers; recording information about the vacancy with hirers; written notifications not being sent to hirers or work-seekers; record keeping.

- Several lengthy and complex investigations resulting in 3 successful prosecutions in April and May 2012;
- EAS recovered £128,523.06. Most of this money related to non payment of wages to temporary work-seekers or where fees were charged to work-seekers for working services.

Case Study 1

EAS received a complaint from a work-seeker regarding non-payment by an employment business. The work-seeker supplied his services through his limited company and entered into a contract with an employment business and was supplied to a hirer.

The work-seeker carried out work for the hirer and submitted invoices and timesheets to the employment business but was not paid. The EAS investigation found that the employment business had not processed the payment due to a dispute relating to the hours worked and being claimed by the work-seeker. There was also a dispute relating to whether or not the work-seeker (as a limited company) had given notice to the employment business that he wanted to opt out of the Conduct Regulations. Under regulation 32 of the Conduct Regulations a limited company work-seeker can give notice to opt out of the regulations, provided that such a notice is issued before the employment business introduces or supplies the work-seeker to a hirer; and the hirer is informed by the employment business of such an opt out notice.

The conclusion of the EAS investigation identified that the opt out notification was not valid and the placement of the work-seeker was covered by the Conduct Regulations. EAS sought compliance with the regulations and the employment business processed a payment to the work-seeker totalling almost £23,000.

Case study 2

EAS received numerous complaints from work-seekers who had been resident in the Philippines and had applied to a UK based employment agency seeking work opportunities in care homes throughout Great Britain. Each work-seeker had paid large fees to the employment agency to be found work as carers and a place at a college to study for an NVQ. The work-seekers arrived in the UK and started work.

EAS investigated this employment agency and interviewed the work-seekers. The investigation found that the employment agency was involved in providing a work finding service and that the fees that were being charged for finding or seeking to find persons work.

The conclusion of the EAS investigation was that compliance was sought and 5 workers were refunded a combined total of £22,300. The agency also amended its procedures and stopped charging fees to persons for finding them work.

Case study 3

EAS received two complaints from work-seekers who had registered with an employment business for temporary retail work over the Christmas period. Both work-seekers were sent for initial one day induction training at a large department store in London. Following this induction the store contacted the work-seekers directly to book shifts and following the work the employment business would receive a completed timesheet for each work-seeker and they would issue payments to the work-seekers.

The work-seekers complained that after the one day induction some work-seekers were given shifts by the hirer and were paid for that work but not for the initial induction day.

During the EAS investigation it was found that this hirer (the department store) did not agree with the employment business to pay for the induction day. In addition there were a number of other temporary work-seekers who had been supplied to this hirer by the employment business under similar circumstances.

The conclusion of the EAS investigation was that compliance was sought and a total of 24 workers were paid a combined total of £1080. This recovery related to the non-payment for each workers induction day. The employment business was advised to keep better records and compliance with their obligations regarding payment to temporary workers.

Raised Visibility

8. The Pay and Work Rights Helpline (PWR) was launched in September 2009, handling calls from members of the public wishing to contact enforcement agencies for further information about their rights or to make a complaint. The enforcement agencies that the PWR handle calls and emails for are EAS; HM Revenue and Customs (National Minimum Wage Enforcement); Gangmaster Licensing Authority; Health and Safety Executive on working time issues, and Agricultural Minimum Wage.
9. The PWR (0800 917 2368) has trained advisers who can give information and guidance about basic workplace rights covered by the above enforcement bodies. They can also put callers in touch with the relevant enforcement body who will investigate further and take enforcement action where necessary.
10. EAS works closely with trade associations, such as the Recruitment and Employment Confederation (REC) and The Employment Agents Movement (TEAM), and Unions, to raise awareness of EAS and the employment agency legislation for work-seekers, hirers and employment agencies and employment businesses.
11. Part of the EAS inspectors' role is raising awareness of the legislation among recruitment agencies and other organisations connected with the industry. Where possible they can do this through collective events. Examples during 2011 and 2012 included presentations to The Association of Nanny Agencies, Citizens Advice Bureaus and stalls at a number of Job Fairs throughout the country.
12. EAS continues to review its published guidance which can now be found at www.gov.uk.

Customer Service

13. During 2011/12 the inspectorate received 642 complaints. This reflects a fall in the number of complaints received during 2010/11 (958).
14. During 2011/12 EAS investigated 784 complaints, including cases that were carried over from the previous reporting year. They also carried out 407 targeted inspections during the year. This figure includes the inspections that were carried out as part of the EAS targeted exercises and set out in the Enforcement section of this report (see paragraph 7).
15. A total of 1191 cases were handled by EAS during 2011/12 which represents a fall when compared to the totals for 2010/11 (1344) and 2009/10 (2096). The cases investigated during 2011/12 were more complex and protracted and resulted in EAS identifying 2,065 infringements and issuing 917 warning letters.

EAS staffing

16. Following the announcement by the Chancellor in 2010 of the Government Spending Review, the Department for Business, Innovation and Skills and its partner organisations wanted to ensure that it was in the best possible shape to meet the financial challenges of the Spending Review. A full scale review and restructuring exercise took place during 2011.
17. At the start of the period of this Annual Report the EAS team in post was 23 (15 Inspectors, 6 Managers, 2 administration staff). At the end of 2011/12 period there were 13 Inspectors and 3 Managers. The current staff in post in EAS, as of January 2013 is 12, including the Head of EAS, two senior managers and 9 inspectors.

Freedom of Information Requests

18. EAS 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 prosecution or prohibition. However EAS is subject to the Freedom of Information Act 2000 and may have to disclose information which it holds when required to do so by that legislation.

Working with other enforcement bodies

19. As part of delivering better customer service and increasing our impact, EAS has been working more closely with the other workplace enforcement bodies. The PWR 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 or employment business is involved.
20. EAS has worked with the National Minimum Wage inspectors of HM Revenue & Customs (HMRC) on specific cases, as well as targeted inspections, and explored other opportunities for closer collaboration. During the course of the year the inspectorate held joint management meetings with HMRC, and discussed ways to work more closely together. Intelligence was also shared through the information-sharing gateway in the employment agency and national minimum wage legislation.

Forward Look

Targets

21. 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 EASs 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

22. The initial stages of the Workplace Rights Compliance and Enforcement Review (WRCER) identified fragmentation across the enforcement architecture, arising largely as a result of the underpinning regulations. The Employment Agencies Act 1973 and the Conduct Regulations were reviewed as part of the Red Tape Challenge on employment law regulation, which noted that the regulation of the recruitment sector could be improved and made more effective. A public consultation was launched in January 2013 seeking views on reforming the recruitment sector that is regulated by the Act and Conduct Regulations. This can be found at <https://www.gov.uk/government/consultations/consultation-on-reforming-the-regulatory-framework-for-employment-agencies-and-employment-businesses> and we encourage anyone with a view to respond to this consultation.

23. Following the outcomes of the Red Tape Challenge, WRCER concluded "that a single enforcement agency would not provide a significant benefit to workers. By having enforcement agencies focused on specific areas we have a well functioning, risk based system within the UK. This approach, in conjunction with the pay and work rights helpline, means that workers can easily access any agency through a single number and receive the specialist advice and support they need."

Agency Worker Regulations

24. 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.

25. 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>	<u>2011-12</u>
Complaints received	1,103	1,244	1,567	1,714	958	643
Complaint cases cleared	1,302	1,273	1,450	1,932	1,101	784
Cases still in progress	291	299	547	371	202	225
Targeted inspections	330	221	311	164	243	407
Total infringements found on all cases	1,892	1,128	2,393	2,236	2,065	2,146
Warning letters sent	558	518	692	647	917	602

Annex B: Complaint and inspections carried out (by agency type) – 1 April 2011 to 31 March 2012

Types of agencies	Number of cases	% of total cases
Healthcare (carers/nurses/doctors)	47	4%
Industrial/Construction	205	17%
Drivers	58	5%
Construction	72	6%
Secretarial/Commercial/Admin (office workers)	178	15%
Entertainment(actors/extras)	64	5%
Models (promotional workers)	58	5%
Nannies/Au Pairs/Childcare (domestic workers)	65	6%
Hotel/Catering/Hospitality	128	11%
IT/Online	53	4%

Professional/Executive (engineering and technical)	179	15%
Teachers/Tutors	84	7%
Total	1191	100%

Analysis of infringements found (by agency type) 1 April 2011 to 31 March 2012

Types of agencies	Number of infringements	% of total cases
Healthcare (carers/nurses/doctors)	268	12%
Industrial/Construction/Drivers	494	23%
Drivers	112	5%
Construction	90	4%
Secretarial/Commercial/Admin (office work)	299	14%
Entertainment (actors/extras)	209	10%
Models (promotional workers)	113	5%
Nannies/Au Pairs/Childcare (domestic workers)	64	3%
Hotel/Catering/Hospitality	148	7%
IT/Online	65	3%
Professional/Executive (engineering and technical)	145	7%
Teachers/Tutors	139	7%
Total:	2146	100%

Annex C: EAS Targets for Next Period (2012/2013)

Objective 1 – To increase compliance with the EAS regulations

- Continue to use EAS interventions to recover the maximum possible payment for workers
- Deliver three large scale risk based investigations
- Maximise publicity for prosecutions and prohibitions.

Measures:

- EAS Annual Report 2012/2013 (compared with 2011/2012)
- Feedback from industry stakeholders

Objective 2 – To improve EASs effectiveness and impact

- Improve targeting of high risk sectors.
- Increase joint working with other enforcement bodies (particularly HMRC National Minimum Wage Inspectors and the Gangmasters Licensing Authority)
- 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 2012/2013 (compared with 2011/2012)
- Feedback from other workplace enforcement bodies

Objective 3 – To deliver good customer service

- Positive feedback from employment agencies, employment businesses, and from workers on EASs 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 2012/2013 (compared with 2011/2012)
- Staff reports.

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