



Department for
Business, Energy
& Industrial Strategy

EMPLOYMENT AGENCY STANDARDS (EAS) INSPECTORATE

Annual Report 2016 - 2017



November 2017

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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. More broadly, EAS continued to establish its role 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. As part of improving the strategic oversight and direction of this work, Professor Sir David Metcalf was appointed as the Director of Labour Market Enforcement (the Director) on 1 January 2017 to oversee the work of the three bodies to ensure that enforcement is better coordinated and aligned. EAS actively worked in partnership with key stakeholders to support the Director and his team to develop the first enforcement strategy (published 19 July 2017) to tackle labour market exploitation.

Regulatory amendments

5. On 8 May 2016 a number of amendments to The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016 (Statutory Instrument 510 of 2016) came into force. The aim of the amendments were to:
 - (a) prohibit employment agencies from undertaking generic recruitment advertising solely in other European Economic Area countries giving greater opportunities to British worker-seekers; and,
 - (b) to reduce certain other regulatory burdens on employment agencies and businesses where possible to give them greater freedom in the way they work whilst retaining sufficient protections for work-seekers.

Enforcement powers

6. 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.
7. LME undertakings can be put in place when a trigger offence, such as a breach of EAS legislation, is identified. An LME undertaking is an agreement given by the employment agency and/or business to bring their business into compliance.

8. The undertaking stipulates the measures required to prevent further non-compliance and sets out the time period as agreed with EAS, within which the measures need to be taken (a maximum period of two years). An Undertaking provides an opportunity for an employment agency or employment business to put things right at an early stage. Compliance with the undertaking is monitored by EAS.
9. If the business or individual does not agree to the undertaking within the specified time, or does not comply with it once issued, EAS or one of the other enforcement bodies can apply to a court for an LME order. This is a stronger enforcement lever. Failure to comply with an order can lead to a custodial sentence of up to two years and/or an unlimited fine.
10. Training in use of these new powers has been undertaken and all of the Labour Market Enforcement bodies are considering cases where these powers could be utilised.

Intelligence-led working

11. EAS committed to improving its intelligence-led working in the 2015/16 annual report. To drive this forward, EAS worked in close partnership with a variety of stakeholders and put information sharing agreements in place with key partner organisations. These include: HMRC's National Minimum Wage team, Gangmaster and Labour Abuse Authority, the Pensions Regulator, Health and Safety Executive, Home Office Immigration Enforcement, Scottish Government, Local Police Forces, SAFERjobs, Department for the Economy (Northern Ireland), trade associations, Trade Unions and others.
12. Improved intelligence-led working has contributed to the development of a number of joint operations which EAS has led or worked in partnership on with other enforcement bodies.

EAS Role and Responsibilities

13. The recruitment sector plays an important role in ensuring that the labour market works effectively by enabling people to find permanent or temporary work.
14. EAS' mission is to work with recruitment agencies, hirers and work-seekers to ensure that the regulatory framework for employment rights is complied with and to ensure that anyone who uses the services of a private recruitment agency to find work is treated fairly.
15. 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. In 2016/17, EAS had a budget of £0.5m.
16. 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.
17. EAS can also consider prohibiting individuals from running an employment agency/business on account of misconduct or unsuitability. The maximum prohibition period is 10 years.

Awareness raising

18. EAS increased its work to raise awareness and compliance with the law. The measures targeted workers and industry and included:
 - distributing information leaflets to provide those running employment agencies and those using their services with information on basic legislative requirements and contact points in case of complaint;
 - setting up pop-up stalls in key businesses, such as supermarkets, in priority sectors and geographical areas known to have a substantial agency worker population;
 - updating and refreshing guidance on employment agency issues on Gov.UK; and
 - working 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

19. 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

20. EAS received 828 complaints in 2016/17 compared to 781 in 2015/16. This represented just under a 10% increase in the volume of complaints. 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.

21. Approximately one third of the complaints were resolved and advice provided on how to remedy the issues at the initial screening stage.

Number and outcome of EAS operations

22. 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. This targeted approach enabled EAS to deploy its resource more efficiently, meaning that it carried out fewer visits but achieved higher outcomes per visit.

23. 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.

24. EAS inspectors have also worked on wider joint operations with other enforcement partners, including Immigration Enforcement and the police.

25. The outcomes of the operations are detailed below:

Month	Type	Number of Visits	Infringements
June 2016	West Midlands	11	26
August 2016	Nottingham	17	64
October 2016	Locum Doctors	19	43
November 2016	Airline Industry	14	43
January 2017	South Wales	27	104
March 2017	Scotland	20	86
Total		108	366

EAS dealt with nearly **10% more complaints in 2016/17** than the previous year.

- 26. 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 onto 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.
- 27. The number of cases in the entertainment and modelling sector was unusually high equating to 19% of the total number of complaints/target visits that EAS conducted during the year.
- 28. The infringements identified in this sector equated to 20% of the total number of infringements found during the reporting period.
- 29. A number of these cases related to a campaign through social media to contact EAS about websites offering work opportunities in the entertainment sector but which may have been operating illegally by, for example, charging fees when there was no regulatory permission to do so.
- 30. In addition EAS received 42 referrals where individuals had paid fees to photographic studios and were seeking refunds. EAS does not regulate photographic studios so the complaints were referred onto Trading Standards or Action Fraud.

The Modelling and Entertainment Sector generated the largest number of complaints and was the largest non-compliant sector this reporting period.

Prosecutions and Prohibitions

- 31. EAS investigated 11 potential prosecution or prohibition cases (involving 21 defendants running employment agencies or employment businesses). There was one successful prosecution and one successful prohibition during the reporting period. Prosecution proceedings have commenced in another case but this has not yet been concluded.
- 32. In any potential prosecution case, it is not always possible for EAS to gather the necessary evidence to meet the test in the Code for Crown Prosecutors.
- 33. These cases are not progressed to full proceedings as they might not meet the required evidential standard. Such cases are now assessed for to see whether there is scope to issue an LME undertaking and/or orders.

34. There are a number of other cases at different stages of the investigation process. They include:

- websites advertising jobs in the entertainment sector and charging fees to work-seekers to access information;
- employment businesses withholding the payment of wages to its temporary workers; and
- entertainment/model agencies failing to pass money to work-seekers that they have received on behalf of those work-seekers;

Successful prosecution

35. In November 2016, a former Director of an employment business was prosecuted following a full criminal investigation and prosecution following a referral to the Department of Business, Energy and Industrial Strategy by Companies House.
36. The defendant pleaded guilty to eight charges contrary to the Conduct of Employment Agencies and Employment Businesses Regulations 2003. He was fined a total of £16,000 and ordered to pay £16,979.38 towards prosecution costs and disqualified from being a director of a company for two years.

Successful prohibition

37. In March 2017, EAS successfully applied for a prohibition at Bristol Employment Tribunal against a person who operated an employment business. He supplied care workers to care homes and hospitals. The agency recruited a large number of workers from the Philippines who came to the UK on student visas. The agency engaged these workers as “self-employed” workers and supplied them to hirers. This employment arrangement was contrary to the Immigration Act 1971.

Successful Prosecution – Working in partnership.

Defendant was fined a total of £16,000 and additionally ordered to pay £16,979.38 towards prosecution costs.

Defendant disqualified from being a director of a company for 2 years.

Banned

In March 2017 a person who operated an employment business supplying workers to care homes and hospitals, was convicted and imprisoned for **3 years** of immigration offences. In addition, this person was disqualified from being a company director for **five years** and a prohibition order was issued for the maximum term of **10 years**.

38. In February 2016, the individual was convicted of immigration offences, committed between January 2011 and January 2013, and was given a three year custodial sentence. He was also disqualified from being a company director for five years and is subject to a 10 year prohibition order.
39. Currently 12 individuals are prohibited. The current list of prohibited persons is available through the GOV.UK ¹.

Money recovered

40. Over the course of 2016/17, EAS recovered around £69,500 for individuals who had been exploited. The majority 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.
41. Since April 2008, EAS Inspectors have recovered around £1.33 million for individuals whose employment rights have not been met.

In 2016/17 EAS recovered £69,500 for workers.

Since April 2008 Inspectors have recovered £1.33m.

Freedom of Information Requests

42. EAS received eight Freedom of Information requests during the period 2016/17 and responded to 100% of requests within the deadline. The most frequent requests were around sector specific data. There were also some requests for information about EAS investigations. EAS does not publish the detail of investigations, or reveal information captured during an inspection, unless it leads to a public prosecution or prohibition. Section 9 of the Employment Agencies Act 1973, which sets out the inspectors' enforcement powers, makes it illegal for EAS inspectors to disclose any information to any third party that has been obtained during any EAS investigation.
43. Further details and analysis of the data relating to 2016/17 can be found in the Annexes.

¹ <https://www.gov.uk/government/publications/list-of-people-banned-from-running-an-employment-agency-or-business/employment-agency-standards-inspectorates-eas-people-prohibited-from-running-an-employment-agency-or-business>

EAS Strategy 2017/2018

Strategic Direction

44. The Director of Labour Market Enforcement is responsible for producing an annual strategy setting the strategic direction which the three enforcement bodies must have regard to in order to ensure enforcement efforts are coordinated and targeted.
45. 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 arising from the Review into Modern Employment Practices led by Matthew Taylor.
46. 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.
47. 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.
48. Further detail on the 2017/18 strategy for EAS is in Annex D.

Strengthen partnership working

49. 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.
50. A robust partnership between the three enforcement bodies contributes to ensuring that abuse in the labour market is quickly identified and the perpetrators dealt with using the full range of new and existing powers.
51. 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.
52. This work complements the publicity strand of delivery whilst also ensuring EAS can be proactive in identifying emerging trends and potential risks.

Awareness raising

53. EAS will build on the work of 2016/17 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.
54. This will include a programme 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.
55. 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.

Continuous Improvement

56. To drive further efficiencies EAS will embed a new case working and case management software system (scheduled for September 2017). This will support greater automation of working systems. It will decrease the amount of time inspectors use to deal with administrative duties thus increasing the capacity of inspectors to conduct more investigations to ensure compliance and work more closely with industry.
57. Alongside the introduction of a case working and case management system, EAS will continue to explore IT solutions to support the gathering and utilisation of intelligence. This system will support EAS in accessing a greater range of data from a variety of sources to support intelligence led operations.

Enforcement Approach

58. 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.
59. 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 offenses of such severity are dealt with using the appropriate enforcement powers.

Contacting EAS

60. Further information about the legislation that agencies and employment businesses are obliged to comply with are on Gov.UK - <https://www.gov.uk/employment-agencies-and-businesses>
61. There is further information on Gov.UK about agency worker rights – <https://www.gov.uk/agency-workers-your-rights>
62. 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 - <https://www.gov.uk/pay-and-work-rights>.

Annex A - EAS case statistics - 2011 to 2017

Cases	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Complaints received	643	828	714	603	781	828
Complaints cleared	784	916	779	581	730	750
Targeted inspections	407	229	46	23	172	142
Infringements found (cleared cases and inspections)	2,146	1,479	320	186	782	782
Warning letters issued	602	471	179	133	275	387

Annex B - Complaints cleared and targeted inspections carried out (by agency type) – 1 April 2016 to 31 March 2017

Types of agencies	Number of cases	% of total cases
Healthcare (carers/nurses/doctors)	80	9 %
Industrial	124	14%
Drivers	39	4%
Construction	85	10%
Secretarial/Commercial/Admin (office workers)	62	7%
Entertainment(actors/extras)	173	19%
Models (promotional workers)	109	12%
Nannies/Au Pairs/Childcare (domestic workers)	4	1%
Hotel/Catering/Hospitality	29	3%
IT/Online	21	2%
Professional/Executive (engineering and technical)	41	5%
Teachers/Tutors	32	4%
Sector not listed	93	10%
Total	892	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 infringements	% of total cases
Healthcare (carers/nurses/doctors)	147	19%
Industrial	134	17%
Drivers	19	3%
Construction	62	8%
Secretarial/Commercial/Admin (office work)	73	9%
Entertainment (actors/extras)	155	20%
Models (promotional workers)	23	3
Nannies/Au Pairs/Childcare (domestic workers)	1	1%
Hotel/Catering/Hospitality	46	10%
IT/Online	10	1%
Professional/Executive (engineering and technical)	60	2%
Teachers/Tutors	52	7%
Total:	782	100%

Annex D - EAS Business Delivery Strategy 2017-18

Ref.	Action	Timing	Outcomes
1	<p>Investigate all relevant complaints received.</p> <p>Where necessary work with other enforcement partners and agree a joint approach on a case by case basis.</p>	On-going	<p>Complaint cases cleared by the most appropriate intervention, making the best use of resources, and securing compliance with the law.</p> <p>EAS Inspectors to carry out their first action within 10 days of receipt of the case.</p> <p>80% of complaint cases cleared within 6 weeks from the date of receipt of the complaint.</p> <p>95% of complaint cases cleared within 12 weeks from the date of receipt of the complaint.</p>
2	Carry out a series of targeted operations both in partnership with other partner organisations and also on a unitary basis.	<p>Current EAS led operations planned for:</p> <p>July/August 2017</p> <p>September 2017</p> <p>October 2017</p> <p>November 2017</p>	<p><u>Operations as part of LME</u> Effective sharing of targets with other enforcement partners (NMW, GLAA, Pensions Regulator). Effective collaboration with other enforcement partners and developing working protocols.</p> <p><u>EAS unitary operations</u> Better targeting of risk, and sectors to establish an increased identification of non-compliance.</p>
3	Improve the profile and visibility of EAS compliance to maximise the deterrent effect and raise compliance and awareness of the employment agency legislation.	<p>Sept 2017 – Contact Local Authorities to raise profile</p> <p>Oct 2017 – Conduct meetings with devolved administrations to promote EAS.</p> <p>On-going – Make</p>	<p>Encourage an increase of queries regarding alleged breaches of EAS legislation/regulations.</p> <p>Increase queries from the professionals in the industry regarding how to be compliant with the legislation/regulations.</p>

Ref.	Action	Timing	Outcomes
		presentations to businesses and industry to highlight good and bad practice.	
4	Further improve risk profiling skills and use of intelligence tools to enable greater focus on resources and where they will have the greatest impact.	On-going.	Continue to build a range of contacts both nationally and locally within the police force. Identify and utilise existing Intelligence systems from across the UK to inform risk profiling.
5	Implement a dedicated EAS case working system to support the efficient and effective use of resource.	April 2018.	Provision of more detailed and more timely management information, supporting a reduction in case progression time leading to greater operational utilisation of staff on front line activity.



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Department for Business, Energy & Industrial Strategy
3 Whitehall Place, London SW1A 2AW
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