



**BIS** | Department for Business  
Innovation & Skills

**EMPLOYMENT AGENCY STANDARDS**

Annual Report for 2008/09

NOVEMBER 2009



I am very pleased to publish the latest annual report for the Employment Agency Standards (EAS) Inspectorate.


The 2008/09 year was a period of transformation and enhancement for EAS. In August last year, the Vulnerable Worker Enforcement Forum, chaired by Pat McFadden, recommended ways to improve EAS's effectiveness, particularly through strengthening its powers, increasing its resources and raising its profile among vulnerable workers.

During the period covered by this report, we doubled the number of EAS inspectors and took significant steps to promote the Inspectorate's profile. A successful awareness campaign (overseen by the Fair Employment Enforcement Board) more than tripled the number of calls from workers and employers to the EAS helpline. The Inspectorate also started to work more closely with other enforcement bodies, particularly the Gangmasters Licensing Authority, with whom they signed a Memorandum of Understanding.

The expanded EAS started to raise its game by taking tougher action against rogue employers. The Inspectorate recovered more than double the amount of pay for workers in 2008/09 than it did in the previous year, and prosecuted one agent for non-payment of workers. It also held a series of blitzes in high-risk areas and sectors – from Corby and Plymouth to Glasgow and Manchester, and from the entertainment industry in London to agencies in the construction industry across Great Britain.

Towards the end of the year, Parliament granted increased powers for EAS through the Employment Act 2008. From April 2009, EAS has access through the courts to unlimited fines for certain offences. It can also seize bank records and share intelligence with HMRC on National Minimum Wage offences.

I recognise that EAS has more to do to fulfil its potential, but I believe that this annual report gives a good testament to its progress. We remain firmly committed to protecting vulnerable agency workers from exploitation and protecting legitimate employment agencies from being undercut by rogues.

A handwritten signature in black ink, appearing to read 'Lord Young', written over a light blue rectangular background.

**LORD YOUNG, MINISTER FOR EMPLOYMENT RELATIONS**

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# 1. Introduction

This report outlines the performance and achievements of the Employment Agency Standards Inspectorate (EAS) between April 2008 and March 2009. The Inspectorate is part of the Department for Business, Innovation and Skills.

It is structured around the following key strategic outcomes:

- (i) strengthening enforcement;
- (ii) raising awareness; and
- (iii) delivering customer service.

## ***Mission Statement***

2. The mission of EAS is:

*To work with agencies and employers to raise standards within the industry and to ensure compliance with employment rights, particularly for vulnerable agency workers.*

## ***EAS's Responsibilities***

3. The EAS enforces the Employment Agencies Act 1973, and the associated Conduct of Employment Agencies and Employment Businesses Regulations, across Great Britain. The Inspectorate has powers to tackle rogue employers through issuing warnings; seeking prosecutions; and prohibiting individuals from running an employment agency for up to 10 years.

## ***Changes to EAS Resources and Structure***

4. In September 2007, Ministers announced that they would double the number of staff in EAS during 2008. The Inspectorate completed the recruitment and training programme for additional staff in September 2008 and now has 24 trained inspectors operating in the England, Scotland and Wales. The new team includes a number of inspectors who have joined EAS from enforcement backgrounds in other regulators, such as Department for Work and Pensions (DWP) and UK Borders Agency (UKBA).

There have also been changes to the EAS management team, and the Department has separated the agency regulations policy team from EAS to allow the Inspectorate to focus on enhancing its delivery capability.

5. To ensure proper caseload management and national coverage the Inspectorate was divided into three regional teams – South East, South West and North. Each regional team is headed up by a Regional Lead Inspector who ensures close monitoring of case allocation, provides an oversight of caseloads, identifies trends and clusters of complaints in their region and provides management support for the inspectors. The head office management team is made up of the Head of EAS, a Senior Investigations Manager, two Investigations Managers and an administrative Inspectorate Support Team. The Inspectorate holds regular all-EAS staff meetings to plan investigations and share best practice.

6. This restructuring has allowed the Inspectorate to target resources in the field and allow the head office team to focus on intelligence gathering, monitoring overall performance and outputs of EAS and ensure timely investigations of more complex cases.

### **Governance**

7. The Vulnerable Worker Enforcement Forum was set up in June 2007 to consider the nature and extent of abuse of worker rights, examine the effectiveness of the existing enforcement framework and identify possible improvements. Following publication of the Forum's final report in August 2008, the Government has been taking forward a major programme to improve enforcement and awareness of the basic employment rights for vulnerable workers, including the work of EAS, under the auspices of the Fair Employment Enforcement Board. This Board, which is chaired by the Employment Relations Minister, brings the workplace enforcement bodies together with key external stakeholders on a regular basis to drive progress on the vulnerable worker programme.

It has met three times so far and has been reviewing progress on two of the key projects: the launch of the Pay and Work Rights helpline and the vulnerable workers awareness-raising campaign.

## **2. Strengthening Enforcement**

8. Significant progress was made during 2008/09 in strengthening our enforcement of the employment agencies legislation.

9. As part of a shift towards a more risk-based regime, the expanded team of inspectors carried out a series of blitzes on agencies operating in high risk sectors across Great Britain:

- an investigation in Corby (October 2008);
- an investigation in Plymouth (November 2008);
- an investigation of agencies supplying workers to the construction industry (December 2008);
- an investigation of agencies supplying workers to the industrial sector in Teesside (January 2009);
- an investigation of agencies in the modelling and entertainment sectors in London (March 2009). Inspectors revealed 39 breaches of the legislation across nine agencies, who were all issued with warnings. Breaches identified included charging legal fees and sub-standard accounting practice.

After each of these investigations, EAS issued press notices to promote the Inspectorate's work and to raise our profile with both employers and workers. These received good coverage in the trade, local and national press (e.g. The Mirror, London Evening Standard, Recruiter magazine).



### **Case-study**

In December 2008, EAS held a blitz on agencies supplying workers to the construction industry. Using locally sourced intelligence, together with information previously provided by unions working in the construction sector, 52 agencies were identified and inspected to establish compliance with their obligations. Of the agencies inspected, 36 were found to be breaking regulations, with a total number of 181 separate infringements. These agencies were all issued with warning letters. Since then, corrective responses have been received from 32 of the agencies confirming that the agencies have amended their practices. The remaining four agencies were re-visited to establish compliance against the threat of further action if they fail to demonstrate compliance.

10. Over the course of 2008/09, EAS recovered £63,341 for workers (a significant increase on the £26,000 recovered during 2007/08).

11. In March 2009 EAS secured a successful prosecution against an employment agency operating in the entertainment sector (see text below). During the period covered by this report, other cases were considered for potential prosecution or prohibition. Some were deemed not to be in the public interest and some cases are ongoing.

Gerald Leslie Hemming, trading as an employment business under the trading name of Hemmings Leisure pleaded guilty to seven charges of contravening the Employment Agencies Act 1973 and associated regulations. Five charges related to non-payment in relation to a number of performers (work-seekers) and two charges in respect of a detriment in the contract issued to the performers which restricted them from obtaining future work other than through Hemmings Leisure.

Following a complaint, EAS Inspectors contacted and obtained statements from five work-seekers who had not received their full fee for performing at entertainment venues. Hemmings Leisure contracted with each work-seeker but did not pay them the full contracted fee after the work was carried out. One of the workers was comedian Tom O'Connor.

At the sentencing the District Judge remarked that he found “withholding payment when paid in advance – serious deceitful, despicable behaviour and not the behaviour of an ordinary decent businessman. It may be too far to call you a fraud or a cheat but it is not far off the mark. You take on work and agree fees and you get paid but did not pay”.

Hemmings was ordered to pay total compensation to workers of £3,575 and costs and fine of £4,000 - totalling £7,675. The Judge ordered payment of £200 a month. The defence ask that he be allowed to make payment of £100 a month but the Court refused.

### 3. Awareness Raising

12. In February and March 2009, the Department delivered a £1.2 million campaign to raise awareness of employment rights among vulnerable agency workers. The aims were to build a higher profile for the EAS and to increase awareness of the special safeguards for agency workers. This had a significant impact on the volume of calls to the EAS helpline and visits to the relevant guidance on the Directgov website.



13. For the duration of the publicity campaign, calls to the EAS helpline nearly quadrupled (from 80 to approximately 350 calls a week), and have remained at double the pre-campaign volumes since then, suggesting that the increase in awareness has been sustained. During the campaign, there were also more than 138,000 visits to the employment agency campaign page on the Directgov website.

#### ***Working with the recruitment industry***

14. The Inspectorate works closely with the Recruitment Employment Confederation (REC) and The Employment Agents Movement (TEAM) trade associations, who have been very supportive of EAS's strengthened approach. As part of the campaign, the Department wrote to c.13,000 employment agencies across Great Britain to make them aware of the improved guidance provided on the Business Link website [businesslink.gov](http://businesslink.gov); to make them aware of the campaign; and to invite them to put posters in their windows. This received a positive welcome from the industry.

15. EAS inspectors spend a large amount of time raising awareness of the regulations among recruitment agencies. Where possible, they are encouraged to do this through collective events. Examples during 2008/09 included presentations to local meetings run by the TEAM trade association, and attending an event for Polish workers.

***Working with Local Authorities***

16. HMRC and the Employment Agency Standards Inspectorate ran a 12 month pilot with Newham Borough Council to encourage local council inspectors to pass on suspicions of non-compliance with National Minimum Wage (NMW) and employment agency standards. Evaluation of the pilot in May this year established that further work to improve the council inspectors' understanding of the potential indicators of non-compliance with NMW would be useful. As a result, HMRC are working with Newham Council on shadowing opportunities for the inspectors to improve this understanding.

## **4. Delivering Customer Service**

17. During 2008/09, we received 3,606 calls to our helpline and 750 enquiries via the EAS website. We met our target of responding to 75 per cent of cases within six weeks.

18. EAS received 18 Freedom of Information requests during the year, and responded to 83 per cent within the deadline. The most frequent request was for detailed information about our investigations. We do not publish the detail of our investigations, or reveal information captured during an inspection, unless it leads to a public prosecution or prohibition.

### ***Working with other enforcement bodies***

19. As part of delivering better customer service and increasing our impact, EAS has been working more closely with the other workplace enforcement bodies. One important example is the Gangmasters Licensing Authority (GLA), with whom EAS signed a Memorandum of Understanding during this period. Learning from GLA good practice, the Inspectorate is now issuing more press notices to promote its activities, has held some joint management sessions with GLA and has adopted the practice of weekly intelligence meetings to review data from the EAS helpline and elsewhere.

### ***Best Practice Group***

20. The EAS Inspectorate has also played a key role in the Best Practice Group that was launched in autumn 2008 to provide more collaboration at working level across the five enforcement bodies and build on the work of the 'single points of contact' network that had already been established. It has met monthly in the run up to the soft launch of the helpline in May, and continues to do so.

21. The Group discusses operational issues relating to how the bodies work together on complaints referred by the new helpline. It has also developed protocols for better joining up 'behind the scenes' in the context of

the new helpline and agreed a 'Cross Agency Agreement' for these protocols, in particular with regards to how to handle multi-issue complaints. The Group will continue to focus on ensuring effective joint working and will look to share more details on past and future enforcement activity, risk assessment techniques and other enforcement best practice, and sector and geographical intelligence wherever possible.

### ***Process Review***

22. Following the doubling in size of the Inspectorate, EAS commissioned a process review to find ways to speed our response to customers and to streamline our operations. We received a set of recommendations that are designed to simplify our processes, allow us to make more use of modern IT systems and to empower individual inspectors. We have already implemented the majority of these recommendations and will complete the rest by the end of 2009/10.

## 5. Forward Look

23. Further steps were taken at the end of the 2008/09 year to improve protections for agency workers and strengthen the EAS.

24. Following implementation of the Employment Act 2008 in April 2009, the EAS now have stronger powers of investigation:

- to access bank and other financial records and to seize documents;
- to share information with HMRC's National Minimum Wage inspectors;
- and
- to seek unlimited fines for certain offences.

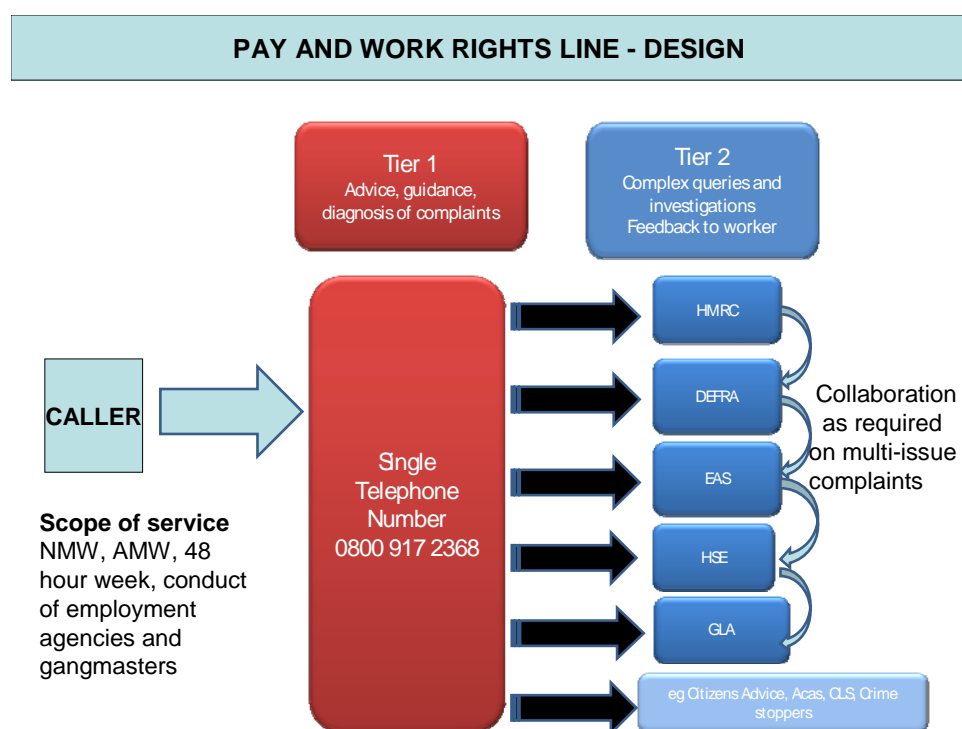
25. Before April 2009, EAS also published its mission and a set of targets for the first time (see Annex B). Inspectors' targets have been aligned with these for 2009/10 and we will report on our performance at the end of the next annual reporting period.

26. The new regime is already delivering results: in 2009/10 EAS prosecuted an employment agency for non-payment, and has retrieved over £125,000 of workers' wages. (This is already more than double money retrieved for the whole of the 2008/09 period covered by this report.)

### ***Pay and Work Rights Helpline***

27. On 22 September 2009, the Government launched a free, single enforcement helpline, known as the Pay and Work Rights Helpline (0800 917 2368). Previously, there were five separate helplines about government-enforced employment rights operated by five enforcement bodies. The new helpline has significantly simplified and streamlined access to these bodies. It enables workers and employers to obtain information and advice and report abuses in these areas all via one number. In this way, the burden of navigating the system is transferred from the worker to the system itself.

28. The structure of the new telephone gateway is as follows.



29. Opening hours have been extended significantly: the new helpline is open from 8.00am to 8.00pm Monday to Friday, and from 9.00am to 1.00pm on Saturdays, ensuring that the service is available outside standard working hours. Language Line translation facilities are also available for migrant and other callers where needed.

30. The new helpline started taking calls in May 2009 with calls to the existing Employment Agency Standards, National Minimum Wage and Agricultural Minimum Wage (AMW) helplines being diverted to it. The number of calls is expected to increase when the helpline is actively promoted in the autumn as part of our major awareness raising campaign for vulnerable workers. Around 80 per cent of enquiries are dealt with by the helpline operators; complex queries or complaints are referred via a secure electronic link to the relevant enforcement bodies.



### ***Joint working between the workplace enforcement bodies***

31. We expect that the Pay & Work Rights helpline will also deliver significant benefits from an enforcement perspective as, for the first time, helpline operators have been trained in the full range of government-enforced rights. They are therefore able to diagnose and refer issues that may be of relevance to more than one enforcement body. This will also provide a powerful stimulus to collaboration between the enforcement bodies which have been working much more closely on multi-issue complaints and considering joint investigations wherever possible.

### ***Continuous improvement of EAS***

32. In March this year, EAS underwent a Hampton Implementation Review to measure its approach and performance against the Hampton Report principles. The Review Team is expected to make a number of recommendations which EAS will look to implement.

33. A related issue is whether EAS should start to work toward gaining the new powers available under the Regulatory Enforcement and Sanctions Act 2008, which would broaden EAS' range of sanctions for non-complaint agencies. These powers could include monetary penalties, restoration notices and stop notices in addition to EAS' existing powers to issue warning letters, prosecute agencies or prohibit directors from being involved in the running of an employment agency or employment business. EAS are currently talking to the Better Regulation Executive to assess what it needs to do to gain these powers, which would furnish EAS with a set of flexible sanctions to use that were proportionate and appropriate to the risks faced.

### ***Further Policy Developments***

34. Following feedback from business and union groups, the Department issued a consultation in March 2009 that set out proposals on a package of measures designed to tackle the abuse of upfront fees, clarify lines of responsibility between agencies and hirers and further reduce regulatory

burdens for the sector. The Government received a total of 349 substantive responses and also held meetings with a number of key stakeholders.

35. In its response the Government outlined its plan to tackle the abuse of upfront fees by banning the taking of these fees from models, extras and walk-ons. Coupled with the tightening of the current cooling off period, including its extension to 30 days for certain occupations, we are confident that these measures will be effective in targeting the rogues that abuse wannabe actors and models.

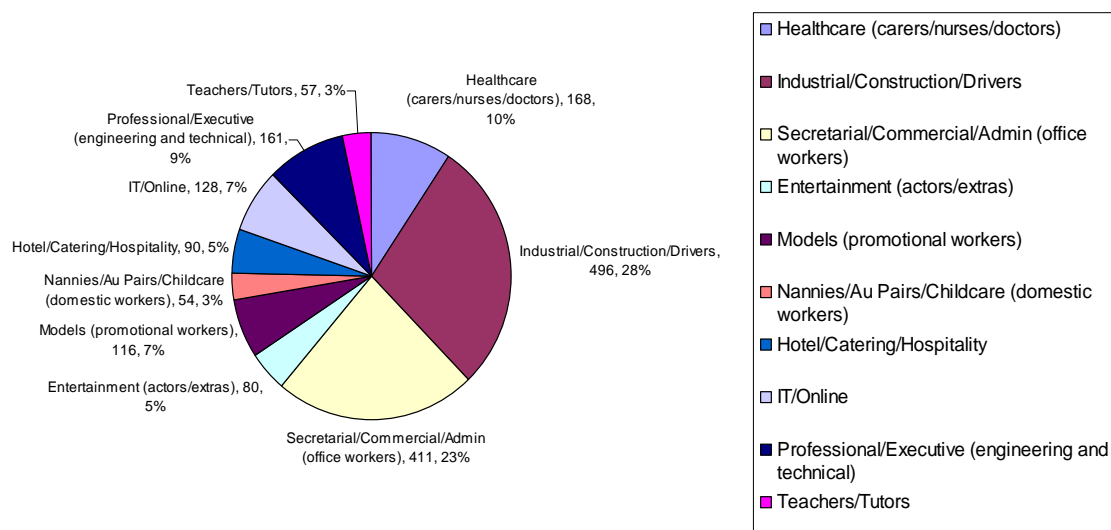
36. The response also outlined measures to streamline the recruitment process by removing unnecessary burdens when agreeing terms and increased clarity and reduced burdens when agencies carry out suitability checks. There were also amendments to the requirements when recruiters place adverts, to aid the awareness of work-seekers on the nature of the job that was being applied for. It is planned for these changes to come into effect in October 2010.

## Annex A: Case Statistics 2008/09

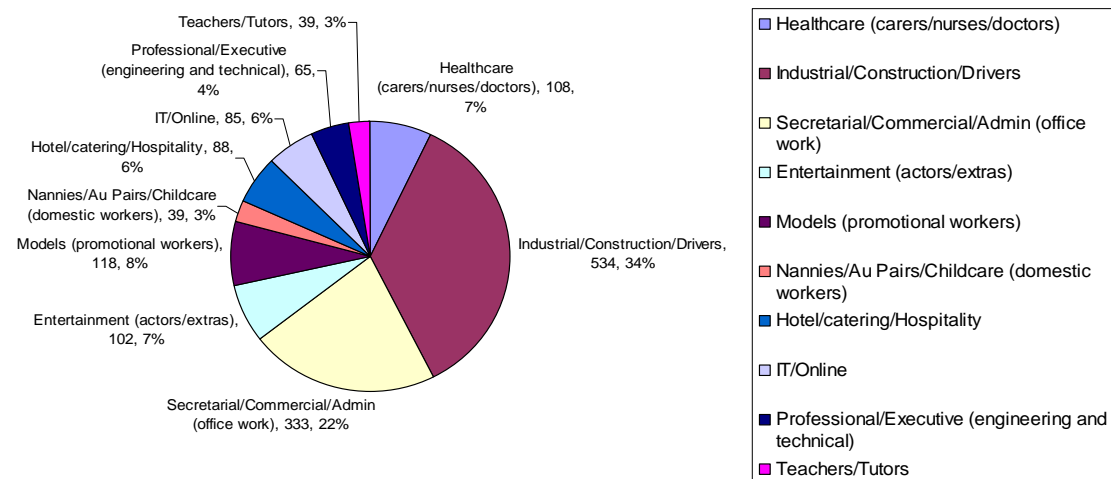
<b><u>Investigations</u></b>	<b><u>2005-06</u></b>	<b><u>2006-07</u></b>	<b><u>2007-08</u></b>	<b><u>2008-09</u></b>
Complaints received	1,097	1,103	1,244	<b>1,567</b>
Complaint cases cleared	1,112	1,302	1,273	<b>1,450</b>
Cases still in progress	483	291	299	<b>547*</b>
Targeted inspections in high risk areas /follow up inspections	375	330	221	<b>311</b>
Total infringements found on all cases	3,256	1,892	1,128	<b>2,393</b>
Warning letters sent	659	558	518	<b>692</b>

\* The large number of cases carried over at end year were due to a number of large multiple complaints in the entertainment and modelling sectors and also the increased number of complaints due to the awareness raising campaign at the end of March 2009. These have since been cleared.

### Complaint and inspections carried out by industrial sector 1 April 2008 to 31 March 2009



### Analysis of infringements found by industrial sector 1 April 2008 to 31 March 2009



## **Annex B: EAS Targets for Next Period (2009/10)**

### **Objective 1 – To ensure more robust and effective enforcement of the law**

To increase the amount of pay returned to workers following action by EAS

Complete 75% of investigations and issue any warning letters within 6 weeks of complaint being made to EAS

Papers for 90% of potential prosecutions / prohibitions submitted to HQ inspections manager within 2 months

Appropriate requests from other enforcement agencies met on time and collaborative investigations undertaken where appropriate

Measure: EAS Annual Report 2009/10 (compared with 2008/09)

### **Objective 2 – To raise visibility and reputation of EAS among vulnerable agency workers and within the industry**

Results of awareness-raising campaigns demonstrate increased levels of awareness of EAS

To publicise one large-scale risk-based investigation per month

Each inspector to participate in at least one awareness-raising event per year

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

Measure: results of awareness campaigns, media tracking and staff reports; feedback from Fair Employment Enforcement Board and other industry stakeholders; customer satisfaction surveys

### **Objective 3 – To deliver better customer service**

All complaints to EAS receive a courtesy response

Helpline available 9am – 5pm every working day

90% of enquiries receive a response within 7 working days

Freedom of Information, Ministerial and correspondence deadlines met

(After the single enforcement helpline is launched) EAS meets the target for responding to complex queries and complaints referred from the helpline provider.

Measure: customer satisfaction surveys; EAS Annual Report 2009/10

