



Department for
Business & Trade

Employment Agency Standards (EAS) Inspectorate

Annual Report 2021 – 2022



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Foreword

This report covers the activity of EAS for 2021-22, which coincided with the country emerging from the Global Pandemic. The Pandemic initially saw significant disruption to both the recruitment sector and the work of EAS whilst simultaneously creating challenges that both the recruitment sector and EAS met head on.

I am proud of the fact that The Employment Agency Standards Inspectorate (EAS) has adapted to all post pandemic challenges and continues to consistently deliver for the public. By adopting a flexible and adaptive approach to its delivery model, EAS continues to evolve with the changing business and social landscape, with more work-seekers using apps or social media to identify opportunities while the recruitment sector reduces its high street footprint. We continue to build on our strong links with cross Whitehall partners to help ensure that we continue to provide the right support to those working in the recruitment sector. I am keen to reflect upon some key achievements during the last reporting year. We have:

- Deepened relationships with key stakeholders in the recruitment sector to develop a collective understanding of the opportunities and barriers to increasing complaints.
- Adapted to the post pandemic model of working including hybrid and remote working, with a phased return to face-to-face operational activity where there was a higher risk of non-compliance, for example those businesses who are working with the vulnerable.
- Ensured agency workers and business are continually and consistently able to access the full range of Government support as we recover from the pandemic.
- Continued to deliver strong outcomes in supporting the sector and those working within it, for example through prosecutions, Labour Market Enforcement Undertakings/Order's (LMEU/O's), recovered pay and visits.

As the regulator for the recruitment sector, we have continued to support all those operating in it, during a challenging period. In doing so, I am proud of the way EAS worked with and supported businesses during this challenging period. Indeed, regardless of the challenges facing businesses our role remained to work with them to robustly deal with non-compliance of our legislation and this work continued. The sector's continued support in dealing with these matters in an efficient and co-operative manner is appreciated.

Ben Bruten
Head of EAS

Executive Summary

The Employment Agency Standards Inspectorate (EAS) is located within the Department for Business and Trade (DBT). EAS is the government regulator for the private recruitment sector, regulating all employment agencies and employment businesses that provide work-finding services in Great Britain.

Post pandemic there continued to be significant fluctuations in the healthcare, distribution, warehousing, and retail sectors, with EAS providing effective, adaptive, and flexible support in very tough economic times.

During the reporting year:

- EAS cleared 2170 complaints, a significant increase from 2020/21.
- Completed 118 targeted inspections.
- Found 724 infringements and issued 212 warning letters.
- Recovered a total of £169,230 for workers which is an increase of 28% on 2020/21
- EAS also sought legal advice on 22 cases, resulting in 2 successful prosecutions, 3 prohibitions and 1 LMEO.
- Successfully secured a legal confirmation of the scale and scope of the Employment Agencies Act 1973 and the associated regulations at the Court of Appeal.
- Adapted to a hybrid working pattern to combine face to face operational activity and remote working, rising to challenges that both present.

As with previous years, this report will focus on the three core principles: Advise, Protect and Enforce and some of the core activity undertaken.

Agency Workers and Enforcement Landscape

EAS Role and Responsibilities

The private recruitment sector continues to play a crucial role in ensuring that the labour market works effectively, helping work-seekers to find temporary or permanent work that suits their needs.

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) which applies across Great Britain. The Department for the Economy in Belfast is responsible for enforcing employment agency legislation in Northern Ireland.

EAS' aim is to work with private recruitment agencies, hirers, and work-seekers to ensure compliance with the regulatory framework. It also seeks to ensure that anyone who uses the services of an agency to find work is afforded statutory protection of their employment rights. The budget for 2021/2022 of £1.525m remained static and EAS recruited its full complement of

18 frontline inspectors, supported by colleagues on Intelligence, Risk, and IT (Information Technology).

EAS' Strategic Approach

EAS has two key strategic drivers:

- Ensuring effective compliance with the legislation and, where necessary, taking enforcement action against employment agencies and businesses;
- Providing excellent customer service.

These sit alongside the established principles of:

- Advise – providing advice, guidance and support to work-seekers, hirers and businesses about current legislation to support and protect all parties in the employment relationship.
- Protect - vulnerable work-seekers where their employment rights may be denied.
- Enforce - legislation, where serious and/or repeated non-compliance is identified.

Advise

During this reporting year EAS continued to build on existing relationships with a wide range of trade bodies, sector representatives and charities who have an ongoing interest in EAS' work. Existing relationships with the Home Office, DBS (Disclosure and Barring Scheme), Cabinet Office, HMT (His Majesty's Treasury) and HMRC (His Majesty's Revenue and Customs) continued to be built upon. A good example of our cross Whitehall partnership working to ensure the recruitment sector needs are recognised, was the work EAS continued with colleagues in the Home Office to ensure the continued provision of electronic Right to Work Checks and the introduction of ID service providers.

EAS provides a range of information, utilising several communication mechanisms to support both businesses working in the recruitment sector and work-seekers. This includes developing our own material, as well as helping other organisations such as the Arbitration, Conciliation and Advisory Service (Acas) develop or improve their information. Information specifically for employment businesses was launched during 2021/22, and similar guidance is being developed for work-seekers.

EAS delivered a range of webinars to help support employment agencies and employment businesses. They covered a range of topics from what to expect on an inspection to Key Information Documents. The aim was to advise and explain what our role is in ensuring compliance with the regulatory framework and can be especially useful prior to an EB's first inspection.

Following the pandemic EAS has continued to work with a range of other government departments and bodies:

- With Home Office (HO) and Trade Bodies regarding the future of Right to Work checks,

- We worked closely with HMRC, HMT and Cabinet Office on the issue of umbrella companies, mini-umbrella companies, and the effect they are having in the labour market. Additional guidance has now been developed and published¹.
- Worked with Crown Commercial Services on the revised Framework that covers supply teachers and ancillary staff which came into place late in 2022. This also incorporated additional questions in the auditing process to better understand the use of umbrella companies and mini-umbrella companies in the supply chain.
- EAS also worked closely with the Department for Education during the development and launching of the National Tutoring Programme (NTP), to ensure full and careful consideration was given to the applicability of EAS legislation. As a result of this positive engagement, EAS was able to agree the inclusion of a mandatory check against EAS records on any person or business applying to be included in the NTP.

Protect

Following the events of the year and previous years there has been a shock to the labour market resulting in labour shortages in some sectors. Examples of this were seen in the driving, construction, and health care sectors.

EAS adapted to a hybrid working pattern and we continue to deliver targeted operations, virtually or in person depending on information, intelligence, and risk profiling. Whatever method was used, in all cases where non-compliance was found, EAS engaged with the business and, where needed, issued a warning letter, setting out the areas of non-compliance and the required corrective action. EAS requested evidence of the changes made by the business to ensure compliance had been achieved.

EAS will automatically conduct a re-visit of a business where significant non-compliance was established to ensure that the remedial steps taken remain in place. If the issues have not been rectified or the business has not maintained the changes, then enforcement action may be considered. This action also applies if during a remote inspection we have reason to believe a visit is necessary.

Alongside the investigation and enforcement activity, EAS continues to work with industry, trade associations and other organisations to support those operating in the sector to comply with its legislation. This work complements the publicity strand of delivery whilst also ensuring EAS can be proactive in identifying emerging trends, risks, and threats.

Enforce

EAS has a broad range of enforcement powers and although it aims to achieve compliance through support and education, there are instances that require a more robust response. In these instances where EAS has identified a small number of businesses that are deliberately or wilfully non-compliant, or where a business has failed to achieve compliance despite being given every opportunity to do so, a range of enforcement powers can and have been utilised. Enforcement activity here is summarised below.

EAS is committed to ensuring that temporary workers receive the relevant protections afforded by the legislation. Unfortunately for some, they do not receive the service that they are expecting from an Employment Agency or Employment Business and will make a complaint to EAS. There are several ways in which a complaint can be made but it is strongly recommended that, if a work-seeker needs advice and guidance, they contact Acas (0300 1231100 or www.acas.org.uk). If the caller wishes to speak with an Inspector, Acas can transfer the call for them to continue the conversation and then take details of any ensuing complaint. Other ways in which a complaint can be made to EAS are:

- Email: eas@beis.gov.uk
- Online, using the complaint form which can be found here: <https://www.gov.uk/government/publications/pay-and-work-rights-complaints>
- Phone: 020 7215 4477.
- Post: EAS, Victoria 1, 4th Floor, 1 Victoria Street, London, SW1H 0ET

Labour Market Enforcement Undertakings and Labour Market Enforcement Orders

EAS has not issued any Labour Market Enforcement Undertakings (LMEU's) during this reporting year. This is because EAS has been successful in securing buy-in from businesses to make the necessary changes to their process. The LMEU sanction remains a valuable enforcement tool and will be used when it is appropriate and proportionate to do so.

There were two Labour Market Enforcement Orders (LMEO's) issued during the reporting year. These were issued by the Courts when they were sentencing two individuals following successful prosecution cases that EAS brought.

Prosecutions

In this reporting year EAS has considered enforcement action - either prosecution or prohibition - by investigating 17 employment agencies or employment businesses.

These cases have involved 22 individuals and companies, including multiple directors as well as the limited company that the relevant employment agency or employment business traded under, that EAS might bring proceedings against.

After careful consideration and reviewing all the evidence, 2 cases have resulted in prosecution proceedings (against 2 individuals as directors and the limited company they operated under). The two prosecution proceedings were successfully concluded in this reporting period. One case related to an agency representing actors and where the agency received the actor's money from a hirer but failed to pass it on. The second case related to an employment business that supplied locum GPs to hirers and had withheld wages that were due to the work-seekers.

Case study 1

EAS received a complaint from an actor, who was supplied by his agent to appear in the ITV production of Broadchurch. The complaint was made by the parents of the actor, Following the filming and completion of the job, the production company paid the actor's fees (around £29k) to his agent. The fee was not passed to the actor by the agent. EAS attempted to seek compliance by investigating the matter, but the agency was not co-operative, and it proved difficult for EAS to locate the agent and inspect the records.

EAS gathered evidence in the form of witness statements from the actor. We obtained evidence from the production company and from the agency's bank. We also liaised with Essex Police, as the agent had been arrested but not charged by the police. This was in relation to a similar issue that had been reported to Action Fraud by the parents of the same actor.

Charges in relation to EAS offences were laid at Court against the agent personally and against the agency's limited company. Although a Court summons was issued, the agent failed to appear in Court to answer to these charges. The Court issued a bail arrest warrant against the agent, and they were subsequently brought before the Court.

At a hearing at Reading Crown Court on 2 July 2021 the agent pleaded guilty to 9 charges of breaching the Employment Agencies Act 1973. They were fined and ordered to pay compensation to the worker. All court compensation awards are means tested and as a result the compensation for the actor was minimal and not reflective of the monies owed. The agent was disqualified as a director for 3 years and issued with a LME0 for two years. The LME0 prevents the agent from operating as an employment agency without informing EAS and seeking our permission.

Prohibitions

Two prohibition applications against 2 individuals were successfully concluded during the reporting period. In both cases the persons were running employment businesses and their limited company or companies had gone into liquidation. Apart from the deficiency in relation to HMRC there was evidence of misconduct sufficient for an Employment Tribunal to issue prohibition orders. One person was banned for 3 years and the other person for 8 years.

There are 2 further cases, involving 3 individuals, that are currently under consideration by EAS, for prohibition proceedings. Currently 6 individuals are prohibited, and the current list of prohibited persons is available through GOV.UK ².

Case study 2

Two GP locums complained to EAS of non-payment wages by an employment business. The total outstanding wages was around £25k. EAS commenced an investigation and aimed to seek compliance with the Employment Agencies Act 1973. This included issuing Warning Letters setting out the obligations under the 1973 Act and attempts were made to try and access the

employment business' records. The employment business did not take notice of the regulatory obligations set out in the Warning Letters.

EAS gathered evidence including interviewing workers and the hirers (GP surgeries) to whom the workers were supplied. EAS also obtained statements from these witnesses and carried out an interview under caution with the director.

A hearing took place at Peterborough Magistrates on 21 June 2021. The director pleaded guilty to two charges of breaching the law (withholding wages to workers). In sentencing, the Judge took into consideration the former director's financial position. The Judge issued a fine and ordered compensation for the two worker witnesses. The Judge also issued an LMEO for 2 years. This restricts the director from operating as an employment business without the permission of EAS.

EAS Performance

A key strategic objective for EAS this reporting year was to utilise the increased resources to enable more risk- and intelligence-led operations and achieve greater balance between that and dealing with complaints. EAS has increased the number of proactive visits in proportion to the rise in the number of complaints received. This is an important development as it supports businesses by combining information and guidance to help educate and support future compliance.

Number of complaints received.

In 2021/22, EAS received 2170 complaints, compared to 1827 in 2020/21. This amounted to an approximate **increase of 19%** in the number of complaints received.

When infringements were found, EAS issued a total of 212 warning letters to the relevant employment business and sought compliance with the relevant provisions of the legislation. A high proportion of breaches related to the incorrect use of the Key information Document.

Over the course of 2021/22, EAS recovered approximately £169,230.00 for individuals who were not paid for reasons ranging from administrative error to deliberate non-payment, as well as being charged fees for work finding services. The largest volume of complaints made to EAS this year continues to be about the failure of an employment business/agency to pay a worker (wages or earnings). Where EAS become involved, the majority have responded quickly and positively, often resolving the issue within a few days. Decisive and quick resolution continues to make real differences in workers lives and is appreciated. Where multiple complaints have been received, each one is dealt with on its merits and all the information is assessed to check whether an inspection needs to be undertaken to look at the agency's practices and procedures. workers, or where fees were being charged for work finding services. This is a **28% increase** in comparison to 2020/21 where £132,500 was recovered.

Further details and analysis of the data relating to 2021/22 can be found in the Annexes.

Number and outcomes of EAS operations

During the reporting year, EAS undertook 6 targeted operations covering 118 inspections, covering a range of sectors and geographical locations. It should be noted that the data below relates to the number of inspections undertaken, not closed, during the reporting year.

Type	Number of Visits	Infringements Found
Geographical (Leeds)	13	49
Geographical (Northeast)	18	104
Geographical (Scotland)	24	126
Intel (National)	30	133
Sectoral (Warehousing)	15	59
Intel (National)	18	103
	118	574

Freedom of Information Requests

EAS received 4 Freedom of Information requests during the reporting year and responded to 100% of requests within the deadline. EAS does not publish the detail of investigations, or reveal information captured during an inspection, unless it leads to a prosecution, prohibition, or the issue of a Labour Market Enforcement Order, which are a matter of public record. 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 a third party that has been obtained during any EAS investigation, without the permission of the person providing the information.

Continuous Improvement

EAS continues to make improvements to case working and upgrading software management, streamlining processes leading to increased productivity. By concentrating on emerging strategies, we continue to standardise, systemise and automate our processes to further increase productivity efficiency.

Work on The Find-IT GIS (Geographic Information System) tool ended with the delivery of a product for testing. EAS have now incorporated this system into the current case management system, and we continue to improve and upgrade this.

Information on EAS

The EAS website can be found at:

<https://www.gov.uk/government/organisations/employment-agency-standards-inspectorate>

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>

There is further information on Gov.UK about agency worker rights –

<https://www.gov.uk/agency-workers-your-rights>

Annex A - EAS case statistics – 2015/16 to 2021/22 Financial Years

The statistics presented in the following tables are derived from a live case management system and so are based on a snapshot of a moment in time. Validation of the data and derived statistics has been undertaken but is still liable to change.

Cases	2015-16	2016-17	2017 -18	2018-19	2019-20	2020-21	2021-22
Complaints received	781	828	1261	1953	1698	1827	2284
Complaints cleared	730	750	1267	1805	1836	1800	2275
Targeted inspections	172	142	145	261	303	177	118
Infringements found (cleared cases and inspections)	782	782	1071	1242	1490	900	759
Total number of warning letters issued	275	387	321	415	382	267	224

Notes:

Complaints received late in the previous reporting year are not cleared until the current reporting year so can lead to a higher reported number of cleared cases when compared to those received.

Annex B - Complaints cleared, targeted inspections and analysis of infringements carried out (by sector) – 1 April 2021 to 31 March 2022

To improve transparency, we have not aggregated some of the data and as such for some sectors it will not be possible to compare this to previous years. The data is from a live system and therefore is a snapshot and could change.

Types of agencies	Number of cases	% of total cases	Number of infringements*	% of total cases	Warning Letters	% of total cases
Childcare	2	0	0	0	0	0
Commercial	98	5	78	11	29	14
Construction	109	5	85	12	29	14
Drivers	73	3	34	5	15	7
Engineering	16	1	15	2	4	2
Entertainment	8	0	13	2	3	2
Exec/Management	3	0	4	1	1	1
Healthcare	129	6	109	15	24	12
Hospitality	53	2	18	3	6	31
Hotel/Catering	1	0	0	0	0	0
Industrial	189	9	189	26	46	21
IT/Online	17	1	13	2	6	3
Job Boards	6	0	1	0	1	0
Models	19	1	17	1	6	2
Other	112	5	97	14	20	10
Other Education	13	1	6	1	5	2
Professional	29	1	24	3	7	3
Seafarers	1	0	0	0	0	0
Teaching	24	1	13	2	5	2
Transport	9	1	0	0	0	0
Unknown	1259	58	8	0	5	2
Total	2170	100%	724	100%	212	<u>100%</u>

NB: All percentages are rounded to the nearest whole number.

Glossary

Employment Agency: For the purposes of the Employment Agencies Act 1973, "employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding persons employment with employers or of supplying employers with persons for employment by them.

Employment Business: For the purposes of the Employment Agencies Act 1973, "employment business" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity.

Labour Market Enforcement Undertakings and Orders: The Immigration Act 2016 introduced two new enforcement tools for EAS where trigger offences set out in the legislation are breached: Labour Market Enforcement Undertakings (LMEU) and Labour Market Enforcement Orders (LMEO). More information on these can be found in the Code of Practice on Labour Market Enforcement Undertakings and Orders.

Prohibition: EAS can also consider seeking to prohibit individuals from running, owning, or managing an employment agency/business because of their misconduct or unsuitability through an Employment Tribunal (ET). The maximum prohibition period is up to 10 years, and it is for the ET to determine a suitable length of time based on the information presented to it. It is possible for EAS to approach the original tribunal to seek a further order if it is deemed necessary due to the nature of the misconduct. It should also be noted that a prohibition can be sought against other persons to protect persons and prevent the misconduct that has resulted in an order being sought in the first place. Prohibitions may also be sought where individuals have been successfully prosecuted by another authority, and EAS consider that sanctions imposed make them unsuitable to run an employment business or agency.

Prosecutions: Where appropriate, EAS can consider prosecution for serious breaches of its legislation. Breaches of the legislation can be treated as 'either way' offences, which means that they could be tried in a Magistrates' or Crown Court. If convicted, in either Court, unlimited fines may be imposed against all defendants. As noted above, a court may also consider issuing a LMEO.

Umbrella Company: There is currently no legal definition of an Umbrella Company, but DBT is working on a definition. For the purposes of this report, an Umbrella Company is the organisation that employs a work-seeker and is responsible for paying them, based on information and money passed to them by an employment business.

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