



Department
for Business
Innovation & Skills

**EMPLOYMENT AGENCY
STANDARDS INSPECTORATE**

Annual Report 2015-2016

JULY 2016

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EAS role and responsibilities

1. EAS has two key strategic drivers:
 - Ensuring effective enforcement and compliance of the law; and
 - Delivering efficient customer service.
2. The recruitment sector plays an important role in ensuring that the labour market works effectively by enabling people to find permanent and temporary work. The mission of EAS is to work with recruitment agencies, hirers and work-seekers to ensure compliance with employment rights, particularly for vulnerable workers, and to ensure that everyone who uses the services of a private recruitment agency to find work is treated fairly and within the law.
3. The work of EAS has a legislative basis as set out in the Employment Agencies Act 1973 and the Conduct Regulations across Great Britain. The Department for Employment and Learning in Belfast is responsible for enforcing employment agency legislation in Northern Ireland.
4. EAS has powers to tackle employment agencies by seeking compliance with the employment agency legislation. Where necessary, EAS will issue warning letters to agencies 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.
5. EAS can also consider prohibiting individuals from running an employment agency on account of misconduct or unsuitability. The maximum prohibition period is 10 years. The current list of prohibited persons is available through the GOV.UK website www.gov.uk/government/uploads/system/uploads/attachment_data/file/403653/employment-agency-standards-inspectorate_prohibited_people_list_4_.pdf

Legislative and regulatory changes

6. This report outlines the performance and achievements of the Employment Agency Standards (EAS) inspectorate for the period April 2015 to March 2016 as part of the Government programme on illegal working and migration. Over 2014 and 2015, a number of consultations and subsequent changes to regulations and legislation took place which affect EAS' operational framework.
7. Between the 29 July and the 2 September 2014 the Government consulted on a proposal to amend the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("the Conduct Regulations") to include a new regulation relating to the advertising of job vacancies by employment agencies and employment businesses. The proposal was to ensure that all job vacancies for work-seekers with hirers were advertised in English and in Great Britain at the same time or before they

advertised the vacancies in EEA countries. The proposal was taken forward and the Conduct Regulations were amended accordingly in January 2015¹.

8. On 13 October 2015, the Government launched a six-week consultation² to seek views on proposed specific amendments to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (“the Conduct Regulations”) and on a proposal to prohibit employment agencies and employment businesses from placing generic recruitment advertising, in relation to vacancies in Great Britain, in other EEA countries but not in Great Britain.
9. Following that consultation and the Government response, Parliament approved The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016³. These amendments will come into force on 8 May 2016.
10. Ensuring that workers and work-seekers are treated fairly in the labour market is an ongoing priority. The Government ran a consultation on this issue, ‘Tackling Exploitation in the Labour Market’⁴, from October 2015 to December 2015. The sponsor departments are BIS and the Home Office. In its response⁵, the Government set out a number of proposals to tackle labour market exploitation⁶. The measures taken forward include: -
 - A statutory Director of Labour Market Enforcement whose remit is to set priorities for the enforcement bodies across the spectrum of non-compliance, (the Employment Agency Standard Inspectorate (EAS), Her Majesty’s Revenue and Customs’ National Minimum Wage (NMW) team and the Gangmasters Licensing Authority (GLA)). The Director of Labour Market Enforcement is responsible for an annual labour market enforcement strategy, which will set Government priorities for the year.
 - The establishing of a central intelligence hub to be overseen by the Director. The purpose of the hub is to enable the sharing of details of complaints and intelligence as part of developing a robust evidence base to inform joint enforcement action by the enforcement bodies;
 - The creation of a new type of enforcement order, a labour market enforcement undertaking, supported by a criminal offence for non-compliance; and
 - An extension of the remit of the Gangmaster and Labour Abuse Authority (GLAA) to other labour market enforcement functions.

¹ www.legislation.gov.uk/ukdsi/2014/9780111123256

² www.gov.uk/government/uploads/system/uploads/attachment_data/file/467260/BIS-15-550-conduct-regs-reforms-and-overseas-recruitment.pdf

³ www.legislation.gov.uk/uksi/2016/510/contents/made

⁴ www.gov.uk/government/consultations/labour-market-exploitation-improving-enforcement

⁵ www.gov.uk/government/consultations/labour-market-exploitation-improving-enforcement

⁶ www.gov.uk/government/consultations/labour-market-exploitation-improving-enforcement

Enforcement

11. Enforcement of the legislation is guided by a structured assessment of risk. Under its strategy for 2015/16, EAS carried out a series of targeted inspections in geographical locations or occupation sectors. Some of these were conducted by EAS in a single agency capacity and others in partnership with other enforcement agencies.
12. This targeted strategy included inspections of employment businesses in Southampton (EAS only); Medway towns (Chatham, Gillingham, Gravesend, Strood and Rochester) some inspections were with The Pensions Regulator and HMRCs National Minimum Wage officers, Norwich (with HMRC's National Minimum Wage officers), Derby (EAS only) and Leeds (with Pensions Regulator officers). The employment businesses that were targeted supplied temporary workers to various sectors including industrial, catering, driving, hospitality, and IT. EAS also targeted supply teacher agencies and care agencies, led by The Pensions Regulator.
13. A summary of the findings is in the table below:-

Month	Type	Number of visits	Infringements
May 2015	Southampton	37	85
June 2015	Medway Towns	17	45
July 2015	Care agencies	18	31
July 2015	Norwich	32	97
October 2015	Derby	21	76
January 2016	Supply teacher agencies	34	98
February 2016	Leeds	33	96

14. The majority of infringements of the employment agency legislation that were identified during these targeted operations related to non-compliance with the content of the terms that were issued to temporary workers or hirers, or the information that is required to be collected and passed on to the worker or hirer. In each case where infringements were found, EAS issued a warning letter to the relevant employment business and sought compliance with the relevant provisions of the legislation.
15. In addition to driven targeted operations driven by EAS as an entity and joint working on targeted operations or specific cases with HMRC's National Minimum Wage team, The Pensions Regulator and the Gangmaster Labour Abuse Authority, EAS inspectors have worked on wider joint operations with other enforcement partners, including Immigration Enforcement and the police.

16. EAS did not bring any prosecutions or seek any prohibition orders during 2015/16. There are however, five possible cases currently being investigated by EAS where consideration may be given to initiate proceedings. These cases are at various stages of investigation including gathering evidence for legal consideration.
17. Between 31 March 2013 and 1 April 2015, EAS brought nine prosecutions in the Magistrates' Court and in seven of these cases obtained successful convictions against the individuals and companies involved.
18. In the same period, EAS successfully applied for three prohibition orders. There are 18 individuals currently prohibited from running, or being involved in running, an employment agency or employment business.

Successful prosecutions

- a) In July 2013, EAS prosecuted a person at Wrexham Magistrates' Court who operated an employment agency. The defendant pleaded guilty to providing additional services to work-seekers for a fee before providing any work-finding services. The defendant was sentenced to pay compensation to two work-seekers totalling £4,080 and an additional £1,329 in costs.
- b) In November 2013 at Leeds Magistrates' Court, EAS prosecuted three persons (a limited company and two of the company directors) trading as an employment business. Workers were being recruited from Romania and supplied to work in residential care homes throughout the UK. Each person pleaded guilty to providing additional services and making it a condition that work-seekers use and pay for these services before they were found work. The Directors were each fined £2,100 (£4,200) and the company was fined £1,000. In addition, the parties were ordered to pay victim surcharges totalling £240 and £392 towards costs.
- c) In January 2015, EAS prosecuted two persons (a limited company and a Director) who failed to pay a temporary worker's wages and who had provided insufficient information in the terms and conditions to a temporary worker. The defendant was found guilty and ordered to pay compensation to the worker totalling £6,506.19, as well as being fined a total of £600.00 and being ordered to pay a victim surcharge of £15.00 and a contribution towards costs of £5,000.00.
- d) In January 2015 at Westminster Magistrates' Court, EAS prosecuted a person who ran an employment business and failed to pay wages to four temporary workers totalling £10,000.00. EAS commenced the investigation in 2010. The defendant failed to appear at a hearing in November that year and the Court issued a warrant for his arrest. The defendant could not be located and it seemed that he had left the UK. He returned to the UK in January 2015 and surrendered to the Court. In a subsequent hearing he pleaded guilty to the charges against him. He was ordered to pay compensation and outstanding wages to the four workers and was conditionally discharged for a period of 2 years.

Successful prohibitions

- e) In August 2013, EAS successfully applied for a prohibition at Birmingham Employment Tribunal against a person who operated an employment business in supplying teachers to schools. The individual purported to be a qualified teacher and was supplied by another employment business to a school (the agency that supplied the worker was not at fault). The individual subsequently set up his own employment business and supplied himself to the same school where it was alleged he sexually assaulted a child. He was arrested and subsequently convicted of this offence in 2011. The prohibition order was for the maximum term of 10 years.
- f) In March 2014, EAS successfully applied for a prohibition order at Manchester Employment Tribunal against a person operating an employment agency who was placing false advertisement for jobs with a hirer and without the hirer's permission. The person was prohibited from running an employment agency or employment business for 7 years.
- g) In April 2014, EAS successfully applied for a prohibition order at Reading Employment Tribunal against a person who operated as an employment business and was involved in supplying temporary workers, mostly catering or ground staff, to London Heathrow airport. The person running this activity had been convicted in 2008 for fraud by HMRC. He was sentenced to 6 years in prison. He was also required to pay £1.7million as confiscation under the Proceeds of Crime Act. Although a partial payment was made this person failed to comply with the confiscation order and was sentenced to serve a further 4 years in prison. He was released in 2014 and EAS made an application to prohibit him. He was banned for 10 years.

Money recovered

- 19. Over the course of 2015/16, EAS recovered around £83,000.00 as a result of their interventions in securing compliance during their investigations. Most of this amount related to non-payment of wages or money owed to temporary workers, or where job finding fees were being charged to work-seekers.
- 20. Since April 2008, EAS Inspectors have recovered around £1.25 million.

Freedom of Information (FOI) requests

- 21. The inspectorate received eight Freedom of Information requests during the period 2015/16 and responded to 100% of requests within the deadline. The most frequent requests were for specific sector data. There were also some requests for information about our investigations. EAS does not publish the detail of its investigations, or reveal information captured during an inspection, unless there is a subsequent 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, subject to certain legal gateways with other enforcement partners.

EAS Strategy 2016/17

22. This EAS strategy for 2016/17 aims to provide a programme of targeted enforcement operations in either a particular high risk sector or geographical location while maintaining the expected service levels for the resolution of complaints being investigated through EAS. The targets will be based on intelligence or information where there is likely to be a higher incidence of non-compliance with the employment agency legislation. The approach will be reviewed as appropriate to reflect:
- Ministerial priorities;
 - Joint enforcement activity with enforcement partners such as The Pensions Regulator or Immigration Enforcement; and
 - Specific joint working with the GLAA and HMRC (NMW) under the direction of the new Director for Labour Market Enforcement.
23. The EAS Business Strategy for 2016/17 can be found at Annex H. The outcomes from this strategy will be published in the Annual Report for the year 2016/17.

Pay and Work Rights Helpline

24. From April 2015, the services provided under the Pay and Work Rights helpline were transferred to the Advisory Conciliation and Arbitration Service (Acas). The new number is 0300 123 1100. More information about how to contact Acas or submit an on line complaint form to EAS, HMRC National Minimum Wage, Gangmasters Licensing Authority, Health and Safety Executive (HSE) - about working time issues, including maximum weekly working hours, the Agricultural Wages Team in the Rural Payments Agency - about agricultural wages, can be found on the GOV.UK website – www.gov.uk/pay-and-work-rights.
25. In addition, employers and workers are able to contact Acas for free and confidential advice on all employment rights and workplace issues.

Contacting EAS

26. Further information about the legislation that agencies and employment businesses are obliged to comply with are on GOV.UK - www.gov.uk/employment-agencies-and-businesses.
27. There is further information on GOV.UK about agency worker rights – www.gov.uk/agency-workers-your-rights.
28. 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 their complaint in writing can complete the complaint form which is available on GOV.UK - www.gov.uk/pay-and-work-rights. Completed forms that relate to employment agencies or employment businesses will be forwarded to EAS for consideration.

Annex A: EAS case statistics – 2011 to 2016

Cases	2011-12	2012-13	2013-14	2014-15	2015-16
Complaints received	643	828	714	603	781
Complaints cleared	784	916	779	581	730
Targeted inspections	407	229	46	23	194
Infringements (cleared cases and inspections)	2,146	1,479	320	186	782
Warning letters issued	602	471	179	133	275

Annex B: Complaints and targeted inspections by agency type 1 April 2015 to 31 March 2016

Types of agencies	Number of cases	% of total cases
Healthcare (carers/nurses/doctors)	89	10%
Industrial	196	21%
Drivers	87	9%
Construction	59	6%
Secretarial/Commercial/Admin (office workers)	122	13%
Entertainment (actors/extras)	144	16%
Models (promotional workers)	25	3%
Nannies/Au Pairs/Childcare (domestic workers)	22	3%
Hotel/Catering/Hospitality	19	2%
IT/Online	49	5%
Professional/Executive (engineering and technical)	25	3%
Teachers/Tutors	87	9%
Total	924	100%

Annex C: Complaints and targeted inspections by agency type 1 April 2014 to 31 March 2015

Types of agencies	Number of cases	% of total cases
Healthcare (carers/nurses/doctors)	53	9%
Industrial	171	28%
Drivers	21	3%
Construction	82	14%
Secretarial/Commercial/Admin (office workers)	96	16%
Entertainment (actors/extras)	14	2%
Models (promotional workers)	17	3%
Nannies/Au Pairs/Childcare (domestic workers)	5	1%
Hotel/Catering/Hospitality	43	7%
IT/Online	48	8%
Professional/Executive (engineering and technical)	25	4%
Teachers/Tutors	29	5%
Total	604	100%

Annex D: Complaints and targeted inspections by agency type 1 April 2013 to 31 March 2014

Types of agencies	Number of cases	% of total cases
Healthcare (carers/nurses/doctors)	42	5%
Industrial/Construction	185	22%
Drivers	97	12%
Construction	84	10%
Secretarial/Commercial/Admin (office workers)	147	18%
Entertainment (actors/extras)	38	5%
Models (promotional workers)	40	5%
Nannies/Au Pairs/Childcare (domestic workers)	27	4%
Hotel/Catering/Hospitality	34	4%
IT/Online	44	5%
Professional/Executive (engineering and technical)	51	6%
Teachers/Tutors	36	4%
Total	825	100%

Annex E: Infringements by agency type 1 April 2015 to 31 March 2016

Types of agencies	Number of infringements	% of total cases
Healthcare (carers/nurses/doctors)	10	5%
Industrial	53	28%
Drivers	8	4%
Construction	29	16%
Secretarial/Commercial/Admin (office work)	27	15%
Entertainment (actors/extras)	8	4%
Models (promotional workers)	10	5%
Nannies/Au Pairs/Childcare (domestic workers)	-	-
Hotel/Catering/Hospitality	5	3%
IT/Online	9	5%
Professional/Executive (engineering and technical)	9	5%
Teachers/Tutors	18	10%
Total	186	100%

Annex F: Infringements by agency type 1 April 2014 to 31 March 2015

Types of agencies	Number of infringements	% of total cases
Healthcare (carers/nurses/doctors)	107	14%
Industrial/Construction/Drivers	167	21%
Drivers	43	5%
Construction	69	9%
Secretarial/Commercial/Admin (office work)	54	7%
Entertainment (actors/extras)	148	19%
Models (promotional workers)	28	4%
Nannies/Au Pairs/Childcare (domestic workers)	4	1%
Hotel/Catering/Hospitality	19	2%
IT/Online	11	1%
Professional/Executive (engineering and technical)	18	2%
Teachers/Tutors	114	15%
Total	782	100%

Annex G: Infringements by agency type 1 April 2013 to 31 March 2014

Types of agencies	Number of infringements	% of total cases
Healthcare (carers/nurses/doctors)	43	13%
Industrial/Construction/Drivers	76	24%
Drivers	14	4%
Construction	47	15%
Secretarial/Commercial/Admin (office work)	53	17%
Entertainment (actors/extras)	7	2%
Models (promotional workers)	7	2%
Nannies/Au Pairs/Childcare (domestic workers)	6	2%
Hotel/Catering/Hospitality	10	3%
IT/Online	19	6%
Professional/Executive (engineering and technical)	23	7%
Teachers/Tutors	15	5%
Total	320	100%

Annex H: EAS Business Delivery Strategy 2016-2017

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 three days of receipt of the case.</p> <p>80% of complaint cases cleared with six 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 four planned targeted and evidence based “street-sweep” proactive inspections of employment businesses.	EAS led operations:- June 2016; September 2016; November 2016; March 2017.	Effective sharing of targets with other enforcement partners (NMW, GLAA, Pensions Regulator). Effective collaboration with other enforcement partners and developing working protocols.
3	Focused intervention and cross-enforcement working with NMW and GLAA under the direction of the Director for Labour Market Enforcement.	October 2016 onwards	<p>Effective sharing of intelligence and better ways of working across the labour market enforcement bodies to tackle exploitation.</p> <p>Developed working protocols and MoUs.</p>
4	<p>Reach out and build relationships with other partner organisations (trade associations, unions and other worker groups).</p> <p>Improve the profile and visibility of EAS compliance to maximise the deterrent effect and raise compliance and awareness of the employment agency legislation.</p>	Before October 2016	<p>Improved guidance for agencies to achieve voluntary compliance and the consequences of non-compliance.</p> <p>Improved guidance for workers so they know their rights and where to report abuses to.</p>

Ref.	Action	Timing	Outcomes
5	Develop risk profiling skills and use of intelligence tools to enable to focus efforts where they will have the greatest impact.	October 2016	Working with other enforcement partners to share best practice and design an effective EAS Case Management System



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