

**dti**

**EMPLOYMENT AGENCY  
STANDARDS INSPECTORATE**

**Annual Report for  
2005/06**

**MARCH 2007**

***Foreword by Jim Fitzpatrick MP – Minister for Employment Relations***

I welcome this second annual report of the Employment Agency Standards Inspectorate, and my first as Minister for Employment Relations.

Employment agencies play a key role in today's flexible labour market. Agency work offers a number of benefits for workers including a way into the labour market for sections of the workforce, including those seeking to enter or return to the world of work, older workers and those who welcome the flexibility that agency working offers. For businesses, agencies offer a flexible solution to changing levels of demand, covering absences and meeting peak periods.

It is important that employment agencies and employment businesses meet their obligations to all those who use their services, whether they are work seekers or hirers. While the great majority of agencies treat their workers fairly, the Government's labour market strategy paper "*Success at Work – Protecting vulnerable workers, supporting good employers*" published in March 2006 highlighted a set of issues that can affect the most vulnerable agency workers which the Government wishes to address. The current consultation paper on measures to protect vulnerable agency workers – <http://www.dti.gov.uk/files/file37724.pdf> - sets out the proposed approach on these issues – seeking to take action against those that would mistreat their staff whilst seeking to avoid burdening legitimate agencies.

The Employment Agency Standards (EAS) Inspectorate has a duty to enforce the legislation governing employment agencies and businesses, including to investigate complaints and to work with the industry to raise standards.

This report outlines the work of the Inspectorate over the year 2005/06 and provides details of the activity of its helpline. I hope all those interested in the industry will find this report useful.

A handwritten signature in black ink, appearing to be 'Jim Fitzpatrick', with a long, wavy underline.



## **1. Introduction**

This is the second report of the DTI's Employment Agency Standards (EAS) Inspectorate and covers the period April 2005 to March 2006. The EAS Inspectorate is responsible for enforcing the provisions of the Employment Agencies Act 1973 and associated Conduct of Employment Agencies and Employment Businesses Regulations 2003, which came into force on 6 April 2004.

The private recruitment industry, which has a major role to play in the modern flexible labour market, has grown substantially over recent years and now extends to all sectors of the economy. In particular, there are now many specialist agencies that provide work-finding services exclusively for specific occupations and professions, many of these highly skilled.

### ***Businesses covered by the 1973 Act***

The 1973 Act divides those operating within the private recruitment industry into two categories – employment agencies and employment businesses.

- An employment agency introduces work-seekers to prospective employers, for direct employment by those employers. This is usually known in the industry as “permanent recruitment” even though the employment may only be for a fixed period.
- An employment business supplies individuals it employs to hirers for temporary assignments or contracts where the individuals work under the control of hirers. This is usually known as ‘supply of temporary workers’.

A number of companies will cover both sides of the business and therefore fall into the definition of both employment agency and employment business. For ease of reference, wherever possible throughout this Report, ‘agency’ will be used to refer to both employment agency and employment business.

## **2. Background**

### **The EAS Inspectorate**

The EAS Inspectorate was set up in 1976 to enforce the provisions of the Employment Agencies Act 1973 and associated Regulations. EAS inspectors investigate all relevant complaints received (i.e. those which allege that an employment agency has breached the employment agency legislation). They visit agencies' premises, where appropriate, and inspect their records. The 1973 Act enables inspectors to enter any relevant business premises, which they believe are being used for the purposes of an employment agency or employment business, to inspect those premises and any records or other documents. They can also take copies of any relevant documents. Inspectors also undertake spot checks in those sectors where on a risk-based analysis they consider that breaches of the legislation are more likely to occur.

Although inspectors seek in the first instance to achieve compliance through advice and persuasion, the Inspectorate can take prosecution action, where appropriate, in a Magistrates' Court against an agency found to be in breach of the legislation. If the prosecution is successful, the agency may be fined up to £5,000 for each offence. Inspectors can also apply to an employment tribunal for orders prohibiting those persons who are considered to be unsuitable from operating an agency for up to 10 years.

The EAS also operates a telephone Helpline (0845 955 5105), which is open from 9.30 to 16.30 each working day, to provide advice on the Inspectorate's work and to assist in interpretation of the legislation. Each year the Helpline handles on average some 10,000 enquiries, including around 1,000 complaints about the conduct of agencies.

The Inspectorate consists of 12 field inspectors (some of whom work part-time), four staff who operate the Helpline and a management team of three (who also carry warrant cards). The Helpline and management team are located in London.

### **The Private recruitment industry**

The private recruitment industry carries a distinct responsibility to treat those who use its services (both work-seekers and hirers) fairly. In order to help ensure that it meets that responsibility, there are statutory regulations and also a number of industry codes of practice and best practice guidance covering the various sectors within the industry. There are a number of trade associations representing the various elements of the private recruitment industry. These sectors include:

- the high street agencies providing services for the commercial, industrial, driving, construction, catering and care sectors,
- the modelling and entertainment sectors, and
- the IT and technology sector.

Each of these associations will have a code of practice, which its members agree to follow, and will normally issue best practice guidance for its members. Trade associations also have disciplinary procedures to consider complaints concerning their members' breach of the codes of conduct. Penalties for those found to be in breach could include expulsion from the association and possibly a fine.

### **3. Guidance**

The DTI produced, in conjunction with the Recruitment and Employment Confederation and Equity, a detailed guide on the provisions in the Conduct Regulations. In addition we have issued a short guide on the legislation, which also sets out the EAS service commitment to its clients. The guidance and details of the legislation can be

downloaded from the EAS website at [www.dti.gov.uk/employment/employment-agencies/index.html](http://www.dti.gov.uk/employment/employment-agencies/index.html)

## **4. Legislation**

### ***History***

The private recruitment industry in Great Britain, which provides services to work-seekers and employers looking to fill vacant posts, has existed for over 100 years. Indeed, regulation of the recruitment providers is almost as old as the industry itself. It began during the first five years of the twentieth century when the Glasgow and Manchester Corporations and the London County Council obtained powers to make by-laws to regulate entertainment employment agencies. At that time the provisions largely concerned the prevention of fraud or immorality and the provision of adequate accommodation for those in service.

### ***The Employment Agencies Act 1973***

The primary legislation regulating the private recruitment industry in Great Britain is the Employment Agencies Act 1973, which came into force in 1976. There is equivalent legislation for Northern Ireland which can be found on the Department for Employment and Learning website at [www.delni.gov.uk/index/er/employment-agency-and-business-regulations.htm](http://www.delni.gov.uk/index/er/employment-agency-and-business-regulations.htm)

The 1973 Act places a number of obligations on agencies; the main one being to prevent a person carrying on an employment business or employment agency from requesting or directly or indirectly receiving any fee from a work-seeker for providing work-finding services. The only exception is that agencies can charge work-seekers for the provision of such services for certain occupations in the entertainment, modelling and sports sectors. The Conduct Regulations, which are the main Regulations giving effect to the 1973 Act, came into force on 6 April 2004 and replaced the previous Regulations, which were introduced in 1976.

### ***Exemptions***

Section 13 of the 1973 Act also sets out various exemptions to the legislation. For example, the services designed to find persons employment and of supplying employers with persons for employment do not include:

- (a) any business which is carried on exclusively for the purpose of obtaining employment for former members of Her Majesty's naval, military or air forces;
- (b) the exercise by a local authority or a police authority of any of their functions.

### ***Conduct of Employment Agencies and Employment Businesses Regulations 2003***

When the Conduct Regulations were introduced in 2004, certain obligations in the previous legislation, which were considered to be outdated and placed undue restrictions on the recruitment industry, were removed and other new obligations were introduced to protect workers.

The key provisions of the Regulations include:

- (i) provisions to ensure that workers are paid in full and on time;
- (ii) an obligation on the private recruitment industry to establish the identity and suitability of candidates.
- (iii) Agencies supplying temporary workers to work with the vulnerable (e.g. children and the elderly) will be required to carry out additional checks to ensure the workers are suitable. If new, adverse information comes to light, they will have to withdraw the worker or inform the employer;
- (iv) restrictions on the arrangements for charging transfer fees when temporary workers supplied by an employment business are employed by the hirer;
- (v) restriction on the charging of fees by employment agencies operating in the entertainment and modeling sectors. Any fee for providing work-finding services charged by the agency to work-seekers is only payable out of the work-seekers' earnings in employment, which the agency has found for them, with the exception of fees for inclusion into a model book or publication containing details of work seekers, if it is the only work finding service that the agency provides. If an agency provides other work finding services, the fee charged can be no more than a reasonable estimate for producing and circulating the publication.
- (vi) special provisions requiring employment agencies that provide work-finding services for the entertainment and modelling sectors and receive money on behalf of those workers to maintain properly audited client accounts to hold that money.

Copies of the Regulations can be downloaded from the Office of Public Sector Information at [www.opsi.gov.uk/si/si2003/uksi\\_20033319\\_en.pdf](http://www.opsi.gov.uk/si/si2003/uksi_20033319_en.pdf)

## **5. Work of the EAS during the reporting year**

The EAS takes a risk-based approach to enforcement, offering advice, supporting business and assisting with compliance but taking firm action, including prosecution or prohibition where necessary against those that mistreat their workers. It is the Inspectorate's experience that, following action by an EAS inspector, the overwhelming majority of agencies found to be in breach of any provisions in the legislation willingly change their working arrangements to ensure they comply with the law.

The EAS Inspectorate shares the industry's commitment to raise standards and much progress has been achieved in recent years. We will continue to work closely with those operating within the industry to encourage continued improvement in standards.

During the period covered by this report, a total of 1,097 complaints were received or initiated, a 20% decrease on the previous year. However the figure for complaints in 2004/05 was the highest ever number received by the EAS and was partly a function of the changes introduced in 2004 by the Conduct Regulations. This year's figure for complaints represents a return to more usual levels.

However, the number of infringements identified increased by some 80% – a total of 3,256 as opposed to 1,796 the previous year. One reason for this increase is that in 2004/05, when the Conduct Regulations were new, the emphasis of the EAS was on helping agencies to comply and helping to raise understanding of the Regulations as agencies came to terms with the new legislation. Now that the Regulations have been in place rather longer, the emphasis is on ensuring compliance and enforcement where necessary.

We are continuing to monitor the effect of the revised legislation on the operation of the private recruitment industry.

Last year, each full-time inspector had a target of 150 cases to be cleared per year (with lower targets for those working part-time). While this target was broadly achieved, the Inspectorate began the year with an appreciable backlog of cases. With the aim of clearing the backlog and reducing delays in clearing cases in line with the EAS published aim to conduct investigations into complaints within 6 weeks of receipt, it was agreed for the current reporting year (ie 2006/07) that the emphasis should be placed on case clearance times rather than overall case numbers. The new target is based on a percentage of cases being cleared within set time limits. At this stage, indications are that the backlogs have largely been cleared.

Details of the cases handled by the Inspectorate are set out in annex 7, details of complaints and inspections carried out by industrial sector are set out in annex 8, with types of infringements found by industrial sector in annex 9. These show that the main sectors where the inspectors are involved are:

- Entertainment and modelling (taken together) – 23% of complaints and inspections, and 32% of infringements
- Industrial/construction /drivers – 17% of complaints and inspections, and 24% of infringements
- Secretarial/admin (i.e. all office-based work) – 20% of complaints and inspections, and 12% of infringements

### **Consultation on measures to protect vulnerable agency workers**

The Government has published, on 20 February, a consultation document on measures to protect vulnerable agency workers, whilst not placing burdens on the majority of reputable agencies.

DTI's labour market strategy paper *Success at Work – Protecting vulnerable workers, supporting good employers*, published in March 2006, highlighted that while the bulk of UK employment legislation was in place we need to consider the issue of certain subsets of workers who, due to a variety of factors, may be more at risk of being denied their employment rights than their fellow workers and are less able to protect themselves. We therefore announced in *Success at Work* a further package of measures designed to offer further protections to the most vulnerable of agency workers.

We believe we have identified the key abuses requiring action but where respondents can identify further measures – legislative or otherwise – that would remedy abuses not practiced by legitimate agencies which would make a real difference to workers but without burdening legitimate agencies, we will consider addressing these as well when we take the consultation forward. The document can be found at [www.dti.gov.uk/employment/employment-agencies/vulnerable-agency-workers-consultation/index.html](http://www.dti.gov.uk/employment/employment-agencies/vulnerable-agency-workers-consultation/index.html) (the consultation closes on 31 May 2007).

### **EAS enforcement and the Hampton review**

The Hampton review was commissioned by HM Treasury to look into reducing administrative burdens of regulation on business without reducing protection for consumers and workers. The Hampton report identified multiple inspections and overlapping data requirements, as well as inconsistent practice and decision-making between and within regulators, as the main burdens faced by the regulated community. The report concluded that regulators should use risk assessment as an essential means of directing resources where they can have the maximum impact on outcomes. By eliminating unnecessary inspections, more resources should be directed at compliance advice to the regulated community. The Hampton principles discourage routine inspection and stress the need for regulators to reduce the burden of inspections on the majority of businesses.

In line with the Hampton principles, the EAS is in the process of moving to a more risk-based approach. The EAS is seeking to identify areas of higher risk in the industry with a view to concentrating non-complaint-based enforcement activity in these areas, while providing help and assistance to the majority of employment agencies and businesses who are seeking to comply with the relevant regulations.

The move to a more risk-based enforcement strategy seeks to:

- free inspectors to pursue more serious cases
- enable more time to be allocated to prosecutions and prohibitions
- enable the EAS to devote more resources to pursuing areas where there is likely to be a higher risk of non-compliance
- be more business-friendly, by reducing burdens on the compliant

- optimise use of resources.

We are also piloting an initiative to see whether making targeted visits to a particular geographical location and/or targeting a particular industry in a region is an effective way of raising standards and awareness in the industry and improving the EAS's knowledge of an industry sector/region. In October 2006, the majority of the Inspectorate took part in an intensive series of inspections in Glasgow. The impact of this particular initiative is still being evaluated and we anticipate undertaking other such targeted inspections over the next few months.

### **EAS working with the Gangmaster Licensing Authority**

The Gangmasters Licensing Authority (GLA) was established on 1 April 2005 following the introduction of the Gangmasters (Licensing) Act 2004. The GLA is responsible for introducing and operating a new licensing scheme for labour providers working in the agricultural and horticultural sectors and those gathering shellfish and working in related food processing and packaging sectors.

Section 27 of the Gangmasters (Licensing Act) 2004 which came into force on 1 October disapplies the Employment Agencies Act 1973 in relation to those activities carried on by employment agencies and businesses which require a licence under the GLA. The GLA opened for business for licence applications in April 2006.

The EAS involvement has been as follows:

- the Helpline team have provided advice to the GLA on the suitability of applications for licences based on the EAS's information on applicants
- a number of Inspectors have been working with their GLA colleagues over the transitional period and a Memorandum of Understanding between the EAS and GLA has recently been agreed to facilitate close co-operation between the organisations.

GLA licensing conditions are based on and broadly consistent with the Conduct Regulations.

### **Joint Working Enforcement Pilot (JWEP)**

The Government is seeking to develop closer joint working between departments responsible for enforcing workplace regulations. Intelligence-sharing links already exist between a range of government departments and law enforcement agencies which are relevant to activity against illegal working. The Home Office are piloting a new approach in the West Midlands. The Joint Workplace Enforcement Pilot (JWEP) is exploring the scope for closer co-ordinated working between Government workplace enforcement departments to tackle both the use and mistreatment of illegal migrant workers and the EAS a part of the pilot.

The pilot, launched in September 2005 and led by the Home Office Immigration Nationality Directorate, draws together a co-located team of enforcement and intelligence officials from the UK Immigration Service, HM Revenue & Customs, Department for Work & Pensions, Department of Trade & Industry, Health & Safety Executive and Gangmasters Licensing Authority. The UK Police Service, Crown Prosecution Service, Office of Immigration Services Commissioner, Department also support the pilot for Environment, Food and Rural Affairs and local authorities.

The pilot team shares information and co-ordinates operations against employers and any type of business involved in the deliberate use or supply of illegal migrant workers.

### **Leicester Labour Providers Group**

During the past year, EAS has also contributed to the work of the Labour Providers Group, chaired by a representative of Leicester City Council's Employment Support Unit (ESU).

The group's aim is to organise an awareness campaign, targeting vulnerable workers in the Leicester area, focusing on their rights, particularly in relation to national minimum wage entitlements and deductions from wages. There has been local media coverage about the initiative, as a result of which a number of employment agencies and people with an interest have come forward and joined the group.

## **6. Prosecutions and prohibition cases**

We do not hesitate to prosecute where this is appropriate, but we only take this action where other routes to compliance have failed or are clearly not appropriate. In the overwhelming majority of cases where our inspectors discover breaches in the legislation they find that, when made aware of these infractions, companies agree to change their procedures and/or pay any money owed to a worker. During this reporting year the DTI undertook just over 1,000 inspections of agencies and recovered over £20,000 of workers' wages that were illegally withheld. It is unlikely that the workers would have recovered the money by other means.

A number of cases were considered for prosecution and prohibition during the year of the report. To date, there has been one successful prosecution during the current year for a breach of a prohibition order, where the defendant was fined £2,500, and ordered to pay a confiscation order of over £20,000 under the Proceeds of Crime Act.

**7. EAS case statistics April 2004 to March 2005; and April 2005 to March 2006**

<b><u>Investigations</u></b>	<b><u>2004-05</u></b>	<b><u>2005-06</u></b>
Complaints received or initiated	1,380	1,097
Complaint cases cleared	1,239	1,112
Cases found as out of scope of the 1973 Act	349	372
Cases found as substantiated	377	276
Cases found as unsubstantiated	513	464
Cases still in progress	505	483
Targeted inspections/follow up inspections	265	375
Total infringements found on all cases	1,796	3,256
Corrective letters sent	640	659
Total cases (complaints and inspections) handled	1,504	1,487

**8. Complaint and inspections carried out (by industrial sector) – 1 April 2005 to 31 March 2006**

<b>Types of agencies</b>	<b>Number of cases</b>	<b>% of total cases</b>
Healthcare (carers/nurses/doctors)	151	10%
Industrial/Construction/Drivers (agricultural workers)	349	24%
Secretarial/Commercial/Admin (office workers)	297	20%
Entertainment(actors/extras)	169	11%
Models (promotional workers)	173	12%
Nannies/Au Pairs/Childcare (domestic workers)	79	5%
Hotel/Catering/Hospitality	88	6%
IT/Online	27	2%
Professional/Executive (engineering and technical)	95	6%
Teachers/Tutors	59	4%
<b>Total</b>	<b>1487</b>	<b>100%</b>

N.B. Categories are the same as last year's report but with added detail for clarification

**9. Analysis of infringements found (by industrial sector) 1April 2005 to 31 March 2006**

<b>Types of agencies</b>	<b>Number of infringements</b>	<b>% of total cases</b>
Health Care (carers/nurses/doctors)	230	7%
Industrial/Construction/Drivers (agricultural workers)	553	17%
Secretarial/Commercial/Admin (office work)	394	12%
Entertainment (actors/extras)	507	16%
Modelling (including promotional workers)	527	16%
Nannies/Au Pairs/Childcare (including domestic workers)	48	1%
Hotel/Catering/Hospitality	226	7%
IT/Online	376	12%
Professional/Executive (engineering and technical)	284	9%
Teachers/Tutors	111	3%
<b>Total:</b>	<b>3256</b>	<b>100%</b>

N.B. Categories are the same as last year's report but with added detail for clarification