

Employment Agency Standards inspectorate

A Hampton Implementation Review Report

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November 2009

## **Employment Agency Standards inspectorate**

This review is one of a series of reviews of regulatory bodies focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a review team drawn from the Better Regulation Executive, from the Maritime and Coastguard Agency and the Human Fertilisation and Embryology Authority, in April 2009.

Further information about the reviews can be found at:

<http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementingprinciples/reviewing-regulators/page44054.html>

## EXECUTIVE SUMMARY AND CONCLUSIONS

Key findings from the review:

The Employment Agency Standards inspectorate (EAS) is emerging from a period of significant organisational change over the last 18 months. The change appears to have been well focused and well managed. EAS has a clear sense of purpose understood by staff and stakeholders. The direction of travel is very positive and EAS are already delivering on their plans to become more Hampton compliant.

- EAS should seek to maintain the existing momentum of organisational change. Of particular importance here are the more risk based ways of working EAS are developing. These are key in addressing sectors with persistent problems (i.e. model and entertainment agencies and construction) which appear to have increased in scale.
- EAS's strategy and operational systems should keep up with changes in the industry – particularly the use of the world-wide web and mobile telecommunications.
- Currently sanctioning options are limited. EAS has insufficient powers to address rogue businesses (i.e. no 'stop now' orders or administrative penalties available).
- The EAS capacity to store, analyse and share data related to business risk and non compliance is weak.

Issues for follow-up identified during the review:

The key follow up issues identified during the Review are:

- All staff in management positions within EAS should be aware of the **Regulators' Compliance Code** and have a clear understanding of what Hampton principles are seeking to achieve.
- EAS should put more emphasis on providing clear, concise and accessible advice to business in order to secure compliance.
- EAS should put in place systems for measuring the effectiveness of its advice and guidance to

business.

- EAS should improve intelligence gathering and access to data within the Inspectorate to improve its understanding of agencies and businesses that fall within the scope of regulation. Two-way sharing of intelligence with other regulatory agencies should be increased, particularly to detect 'rogue businesses'.
- Key individuals within EAS understand the risks of their industry but we saw little evidence of this understanding reflected in the way EAS operates.
- EAS should develop a risk-based assessment process for determining priorities for inspection. This should include some measure of the risk associated with individual employment agencies.
- EAS should review its inspection processes with reference to best practice in other regulatory agencies.
- EAS should publish a simple enforcement policy that is directed at agencies and workers.
- EAS should report more actively on the outcomes of enforcement activities.

## INTRODUCTION

Introductory background information about the regulator such as the rationale for establishing it:

The Employment Agency Standards inspectorate was created in 1976 to regulate employment agencies previously regulated by local authorities. From 1976 until 1994 EAS operated a regime which required all agencies to have a licence. Up until 2005 EAS regulated agricultural and food processing agencies. Regulation for these sectors was taken over by the Gangmasters Licensing Authority (GLA).

The legislation establishing the regulator:

The regulator was set up in 1976 to enforce the provisions of the Employment Agencies Act 1973 and the associated Conduct of Employment Agencies and Employment Business Regulations 2003 (amended 2007). The Employment Act 2008 came into effect in April 2009.

The regulator's statutory remit or objectives:

EAS's Mission 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."*

This review was conducted before the increase of EAS powers from the 2008 Act came into effect in April 2009.

The regulator's budget:

£1.056m for 2009-2010 (excluding costs such as accommodation, marketing and legal advice).

Number of staff (including breakdown of policy and frontline staff):

31 staff in total, 24 regional based inspectors (some part-time), 3 managerial staff (who also carry warrant cards and carry out inspections) and 4 administrative staff in the Inspectorate Support Team. EAS does not have policy, legal, marketing or infrastructure support staff within their organisation. Instead, these are supplied when required by the Employment Relations (ER) Directorate or by professional teams of specialists in the Department for Business, Innovation and Skills (BIS)<sup>1</sup>, the host organisation for EAS.

The sectors and

EAS regulates a total of 17,000 businesses which

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<sup>1</sup> At the time of the review EAS were located within the Department for Business, Enterprise and Regulatory Reform, which has since become the Department for Business, Innovation and Skills.

number of businesses regulated either directly or indirectly:

includes private recruitment agencies (for permanent employees), recruitment business (for temporary employees) and entertainment and model agencies. Most industrial and business sectors in the UK use private recruitment agencies. Trade associations exist for agencies in the following sectors:

- 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.

## THE HAMPTON VISION

*Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.*

Any findings relevant to whether the regulator is risk-based:

Risk based working within EAS appears to be very limited and that which takes place is informal and infrequent. Inspectors conduct monthly 'Blitz' operations which are targeted investigations on businesses within certain sectors and regions where problems have been reported. It is unclear how risk based this targeting is as EAS does not operate a risk rating scheme for the businesses it regulates.

Individual inspectors often have a personal understanding of the scale and likelihood of harm a business may create for workers but this is not codified or recorded centrally and therefore is not in a form accessible to others or for analysis.

Since the review visit, the Review Team understands that EAS has now started to use weekly intelligence meetings to pool information from complaints and identify areas or companies that are high risk.

Any findings relevant to whether the regulator is transparent and accountable:

Scope exists for EAS to be more transparent and accountable. There is also a lack of awareness of the Regulators' Compliance Code.

EAS do not publicise an enforcement policy or report on their enforcement activities (other than anonymised statistics in their annual report). The document entitled 'General Enforcement and Procedural Guidance', available through the website, is not a policy document and is aimed at staff.

EAS currently do not have an independent board providing oversight of their strategy and operations. EAS are accountable to Employment Relations officials within BIS and ultimately to the minister for Employment Relations (previously Pat McFadden, now Lord Young). The Vulnerable Worker Enforcement Forum recommended that a Fair Employment Enforcement Board be set up to provide oversight of

EAS and to ensure EAS coordinate with other workplace regulators. The review team support the creation of such a board. Since the review visit, the Review Team understands that the board has met four times.

Any findings relative to whether the regulator encourages economic progress:

The review team felt that EAS have become more risk based in the last 12 months but that scope existed to become much more so.

Conversations with EAS stakeholders indicate that economic progress is encouraged by the way EAS operates. In fact some believe this is supported at the expense of worker and citizen protection. The evidence for latter is very limited and inconclusive.

Historically EAS has taken a 'softly softly' approach to the businesses it regulates. Despite this, some businesses levelled slightly negative comments at EAS, although these were minor matters relating to the style of EAS inspections.

EAS state that the administrative burden upon businesses has fallen since 2006. However, if licensing were to be introduced for this sector - as some stakeholders wish - then this would in our view inhibit economic progress whilst also failing to control rogue businesses.

No economic assessment has been conducted to identify the scale of the harm to workers if EAS did not exist.

## DESIGN OF REGULATIONS

### ***Hampton principles***

*All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.*

*When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.*

Key findings on Design of Regulations: With the exception of section 9 of the regulations relating to the 1973 Employment Agencies Act the design of regulations is good. Section 9 is believed to prevent the sharing of information with other regulatory agencies.

It is thought that changes in the Employment Act 2008 - coming into effect April 2009 - will improve the sharing of information with other agencies – specifically HMRC on National Minimum Wage (NMW). EAS also has a signed Memorandum of Understanding (MOU) with the GLA to support greater closer working. However, there is a risk that the perceived limitations imposed by section 9 will continue to seriously restrict the enforcement capabilities of EAS.

Background information such as the regulator's role in developing regulations: Responsibility for the development of policy has recently shifted from the EAS operational delivery team to a separate policy Branch in the Employment Relations Directorate of BIS. However there is a close working relationship between the two arms of the Directorate and good sharing of information to help the development of policy.

Consultations on new regulations are also undertaken under the BIS banner but EAS have ample opportunity to influence these.

Stakeholders have participated actively in initiatives through the Vulnerable Workers Enforcement Forum.

The Employment Relations Directorate would seem to be making good and early use of impact assessments in the development of policy, calling on the services of BIS's economists, and using data provided by EAS.

The policy landscape in this area is complex and unsurprisingly causes confusion to both workers and businesses. Many different bodies are responsible for employment regulations: HM Revenue and Customs (HMRC), EAS, GLA, etc. Evidence of confusion is that between 20 and 25% of calls to the EAS helpline promoted during Winter 2008 related to the interests of other enforcement bodies or out of scope calls such as people looking for jobs.

Note: The planned Pay and Works Rights helpline (which has been launched since the review) should help address any confusion.

Any examples of significant good regulatory practice:

Over the last 12 -18 months the involvement in the development of policy and impact assessments has become more active. A new sense of rigour to ensure that regulations are enforceable and proportionate is detectable.

Review findings:

The extent to which the review team believes the regulator is acting in line with the Hampton principles:

Regulations appear to be well designed with the exception of section 9 of the 1973 Act. To some extent this is incompatible with Hampton as it (apparently) prevents sharing of intelligence<sup>2</sup> with other regulatory agencies. Given the confusion amongst workers and employers regarding the individual scope of employment regulators, the sharing of information could compensate for the poorly designed policy landscape. An example of best practice is the MOU with the GLA.

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<sup>2</sup> From April 2009 EAS have been permitted to share information with HMRC and National Minimum Wage inspectors (NMW).

## ADVICE AND GUIDANCE

### ***Hampton principle***

*Regulators should provide authoritative, accessible advice easily and cheaply.*

Key findings on Advice and Guidance:

Businesses commented that advice they received from EAS was good although there was room for improvement in the manner in which it was communicated.

Background information such as the means by which the regulator provides advice and guidance:

The manner of the inspection is very focused on files and is more of an audit than an inspection. This approach does not easily provide opportunities to give advice to employment agency staff. Despite this inspection format, inspectors do manage to advise businesses when they attend their premises for an inspection.

The EAS section of the BIS website and Businesslink.gov.uk carries advice for businesses. This includes comprehensive guidance on the Conduct Regulations.

EAS publish their enforcement guide for inspectors on the BIS website. Nothing similar is available for stakeholders or workers.

EAS have a document entitled "General Enforcement and Procedural Guidance" available through the website, but this is not a policy document and the review team would encourage EAS to produce a separate Enforcement Policy for the public.

Any examples of significant good regulatory practice:

Those employer stakeholders the review team met state that they are well advised by EAS inspectors and that relationships are good between EAS and businesses and between EAS and Recruitment and Employment Confederation (REC) and The Employment Agents Movement (TEAM).

The helpline is well regarded by employee stakeholders. Prior to the EAS awareness campaign of Winter 2008 the helpline handled 10,000 calls per year. The awareness campaign is widely regarded as a success and at the time of review the rate of calls to helpline had increased dramatically; the monthly rates

had nearly quadrupled.

Use of the guidance for workers on the DirectGov website also increased.

Review findings:

EAS do provide authoritative advice easily and cheaply.

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

The review team would expect insights emerging from the analysis of the above campaign to inform the future strategy of EAS. In particular enhancements in the provision of advice, guidance and general communication to both employer and employee stakeholders.

In particular inspectors should help the less knowledgeable businesses understand their regulatory obligations in plain language and approach from the perspective of the business.

## DATA REQUESTS

### ***Hampton principle***

*Businesses should not have to give unnecessary information or give the same piece of information twice.*

Key findings on Data Requests:	Businesses are not burdened by EAS data requests.
Background information such as the data required by the regulator; the means by which business can return data, etc:	<p>Employment agencies do not have to fill in any EAS registration forms. EAS do not make any regular requests for data.</p> <p>Recruitment agencies are required by legislation to maintain certain records – such as workers terms of employment - as evidence of compliance with relevant regulations. EAS inspectors examine and audit recruitment agency records as part of investigations.</p>
Any examples of significant good regulatory practice:	<p>A ‘Hampton best practice tension’ exists here. Currently businesses are not supplying data but are being inspected. If EAS were to adopt a more risk based approach to inspection, it would be possible to avoid some inspections in exchange for businesses supplying data. Lower risk businesses could be offered a choice; self assess and supply data or have an inspection. Such an approach would require EAS to develop a robust risk model supported by a reliable database containing details of all relevant employment agencies and businesses.</p> <p>An additional benefit of such a database would be to reduce the number of questions inspectors would have to ask during an inspection.</p>
Review findings: The extent to which the review team believes the regulator is acting in line with the Hampton principle:	<p>Based on the evidence the review team saw, EAS do not make unnecessary data requests upon businesses.</p> <p>It is likely that data that is supplied by businesses could be better used; although it is difficult to assess if any of this is unnecessary or is supplied more than once. It is highly likely that this data is supplied much more than once between businesses and other government agencies that regulate employment, of which EAS is one.</p>

EAS state that they are an intelligence-led regulator although this is likely to be true only in part. They are certainly complaint-led but intelligence should include much more than complaints.

Within EAS two separate client management databases are in use one in Access, the other in Excel. Both do not appear to be keeping pace with the demands that staff place upon them, particularly over the last 12 months. Specifically:

- Accuracy - estimated at 60% accurate for the Access database
- Businesses have neither assigned risk rating or compliant/not compliant flag
- Records only business premises not individuals running businesses without premises
- Does not permit recording of intelligence
- Does not permit sharing of data with other government departments – either in or out (see also section 9 of '73 Act) e.g. Companies House, VOSA, Home Office, GLA, HMRC.
- Query and analytical functions not available

It is possible that the existing databases are a constraint on the effectiveness of EAS.

EAS is actively working to commission a new integrated database that will interact with the Pay and Work Rights Helpline to allow EAS to capture intelligence and use risk analysis more effectively.

## INSPECTIONS

### ***Hampton principle***

*No inspection should take place without a reason.*

Key findings on Inspections: Inspectors appear professional in their approach. The style of inspection is advisory and supportive - if slightly formal and limited by the checklist method.

Scope exists for improvements of operational process (i.e. more joint working with other regulators) and greater use of a risk based approach.

Any relevant background information such as the number of inspections and the number of businesses inspected; the regulator's risk model etc

Inspections of lower risk businesses are unnecessary when a desk-based approach to monitoring compliance would be preferable. Scope exists for greater use of email and phone calls to resolve complaints or for preliminary investigation work.

EAS has recently doubled the number of inspectors from 12 to 24. It has also widened the expertise of the team by recruiting from other regulators e.g. DWP, UKBA and the Home Office. EAS should consider recruiting some inspectors from people who have worked in the recruitment industry, including the possibility of secondments.

Inspections are driven largely by responses to complaints. This leaves limited time for random or targeted inspections. However, inspection teams do organise monthly 'blitzes' of agencies considered high risk, sometimes working with the GLA. When investigating complaints inspectors do not appear to interview agency workers in their workplace. If workers were willing to be interviewed there then this would be a way of making the most of an inspection, for all concerned.

The premises visited by EAS and the sharing of information are constrained by S9 of the Employment Agencies Act. In particular, prohibitions on the sharing of information limit the scope for joint working and cooperation with other enforcement bodies.

Despite the increase in the size of the Inspectorate, there is a need to make better use of the resources available so that they are targeted at areas of highest

risk. The EAS claims to decide priorities on a risk basis. However, the current approach is based on a designation of particular agency business areas as high risk, e.g. those supplying social care workers. No consideration seems to be given to what is known about the compliance record of individual agencies, e.g. membership of professional bodies such as REC.

The inspection that the review team observed was an example of both an avoidable inspection and a duplication of administrative effort.

The lack of an effective database of recruitment agencies and the outcome of previous inspections means that inspections are taking place 'blind'. Questions about the nature of an agency's business are asked at the start of an inspection, it is likely that EAS may already hold this information on its records. Hence the duplication of effort point above.

Review findings:

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

The review team are unclear how frequently risk based inspection is practised. The team were also unclear how widely understood the broader concept of 'risk' is within EAS. It is likely that EAS has some way to go to meet this Hampton principle.

Based on the evidence the review team saw EAS should consider reviewing their risk assessment process to make best use of available resources by targeting non compliant businesses. This could include better use of intelligence to determine when an on-site inspection is necessary and when issues may be resolved by a phone call or letter.

If EAS are reviewing their risk assessment process it would be sensible to also review inspection processes. EAS could benefit from assessing which areas of best practice within other regulators could improve EAS inspection processes.

## SANCTIONS

### ***Hampton & Macrory principles***

*The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.*

*Regulators should be transparent in the way in which they apply and determine administrative penalties.*

*Regulators should avoid perverse incentives that might influence the choice of sanctioning response.*

*Regulators should follow up enforcement actions where appropriate.*

Key findings on Sanctions:

The EAS has a well established procedure for dealing with complaints against most employment agency businesses. The complaint led inspection procedure follows what is more or less an auditing process and therefore mainly targets those businesses that are generally compliant.

Persistently non compliant and rogue businesses are rarely sanctioned effectively.

Background information such as a summary of sanctions available to the regulator and any data on sanctions imposed by the regulator:

The EAS's powers are limited to the following:

- To issue warning / corrective letters to Agencies Prohibition Orders for up to 10 years (via application to an Employment Tribunal) on account of an individual's misconduct or unsuitability;
- Prosecution; and
- Powers to be granted in April 2009 with the introduction of the Employment Act 2008 will allow the EAS to seek unlimited fines for certain offences.

Any examples of significant good regulatory practice:

The EAS uses its inspectors well to warn businesses of potential breaches of Regulations. They make good use of the warning letters, fully explaining the issues raised, what corrective action needs to be taken and what the penalties for non-compliance would be.

Review findings:

The Review Team felt that more could be done to comply with the principles relating to those businesses that persistently break regulations. The highest risk

The extent to which

the review team believes the regulator is acting in line with the Hampton principles and Macrory characteristics:

businesses are currently very difficult for EAS to identify and therefore rarely have the most severe sanctions imposed.

Those sanctions currently in place are not wide ranging as they are either mild or severe with little gradation in between.

EAS do operate in a reasonably transparent manner - all the legislation and guidance is available on the website and they do run well publicised campaigns.

Follow up advisory work is undertaken for those businesses receiving the warning letters.

## FOCUS ON OUTCOMES

### ***Hampton principle***

*Regulators should measure outcomes and not just outputs.*

Key findings on Focus on Outcomes: The EAS now has a mission statement and new targets which help give it a clear focus. These are now published on the website. The roles within the Inspectorate are clearly defined and understood, staff have bi-monthly meetings and there are regular meetings with the Minister.

Background information such as the regulator's key objectives: The EAS does have a clear sense of purpose and this is understood by the Industry although there are frustrations with elements of the legislation which hamper joint working (section 9 of the 1973 Act) and targeting of the more serious malefactors. The new strategy will inform objectives and targets for the following years. The targets are also viewed within the framework of the Employment Relations Directorate's desired objectives.

Any examples of significant good regulatory practice: The EAS has introduced a mission, targets, a new single employment helpline and is planning Customer Satisfaction Surveys. Quarterly reports will be produced for the Board to show how the Inspectorate is working towards these stated goals.

The extent to which the review team believes the regulator is acting in line with the Hampton principle: EAS is clearly working hard towards complying with this principle. In recent months EAS have identified a clear link between this work and achieving greater compliance in the "rogue" areas of business as well as encouraging joint inspections and greater intelligence sharing.

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**Appendix 1:  
Review team  
membership**

Caroline Raeburn was, at the time of the review, an Enforcement Officer with the Maritime and Coastguard Agency (MCA), an Executive Agency of the Department for Transport. She previously worked for HM Immigration Service as an Immigration Officer at Heathrow Airport.

Charles Lister OBE at the time of the review, was leading a programme of change at the Human Fertilisation and Embryology Authority (HFEA) focussing on inspection and licensing. He was previously Head of Policy at the HFEA. Prior to that Charles held a range of policy positions at the Department of Health.

Clive Jones is an Assistant Director in the Innovations Projects unit within the Better Regulation Executive (BRE) a directorate of the Department for Business, Innovation and Skills (BIS). Prior to joining the BRE he was a researcher in the LSE's Centre for Analysis of Risk and Regulation. Clive has also held various consulting and management positions in business; specialising in Marketing and eCommerce.

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