

**dti**

**EMPLOYMENT AGENCY  
STANDARDS INSPECTORATE**

Annual Report for 2004/05

OCTOBER 2005

**dti**

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We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

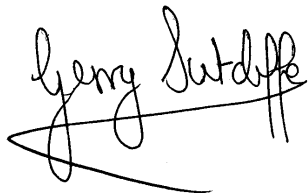
## ***Foreword by Gerry Sutcliffe MP – Minister for Employment Relations***

I welcome this first annual report of the Employment Agency Standards Inspectorate. It covers an important period in its work since the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (Conduct Regulations) came into force during 2004/05. These regulations gave effect to the Government's commitment in the Fairness at Work White Paper, published in May 1998, to review and update the private recruitment industry legislation.

Employment agencies and the workers that they find work for have an important role to play in today's labour market. Agency work is an essential element in a flexible labour market in which employers and workers work in partnership. Agency work offers a way into the labour market for sections of the workforce, including those seeking to return to the world of work, older workers and those who welcome the flexibility that agency working offers.

Agency workers have access to core employment rights, including the National Minimum Wage and the right to four weeks paid holiday. It is important that employment agencies and employment businesses and everyone in the industry realise that they have an obligation to those who use their services, whether these are work seekers or hirers wishing to use their services. It is the interests of all parties in the labour market that this activity is underpinned by regulations ensuring fairness and key standards in the industry. Employment law provides protection for agency workers, and the Employment Agency Standards (EAS) Inspectorate has a duty to enforce that legislation, including to investigate complaints and to work with the industry to raise standards.

This report outlines the work of the Inspectorate, and provides some guidance to the new Regulations, and details of the EAS Helpline. I urge all those involved in the world of agency work to read it.

A handwritten signature in black ink that reads "Gerry Sutcliffe". The signature is written in a cursive style with a long horizontal stroke at the bottom.

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## 1. Introduction

This is the first report of the DTI's Employment Agency Standards (EAS) Inspectorate and covers the period April 2004 to March 2005. The EAS Inspectorate enforces the legislation that sets minimum standards within the private recruitment industry in Great Britain.

The past year was a significant milestone for both the private recruitment industry and the EAS Inspectorate. On 6 April 2004, the beginning of the period covered by this Report, the Conduct Regulations took effect.

The Conduct Regulations represented a major overhaul of the main Regulations giving effect to the Employment Agencies Act 1973 (1973 Act). Since previous Regulations had been in force for some 27 years, it was felt that they needed updating and contained a number of outdated requirements that were no longer required. However, the majority of the Conduct Regulations were not new requirements, but a restatement of existing provisions. Nevertheless, the Conduct Regulations had a major impact the work of the EAS Inspectorate over the year covered by this report.

The private recruitment industry, which has a major role to play in the modern flexible labour market, has experienced dramatic growth over recent years to the extent that there is probably now no sector of the economy that does not rely to some extent on the services it provides. Moreover, there are now many specialist agencies that provide work-finding services exclusively for specific occupations and professions.

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

The 1973 Act defines 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.

The majority of agencies are scrupulous and treat their clients, both work-seekers and employers, fairly and do everything they can to comply with the legislation. Nonetheless, it is the minority that flout the law to the detriment of those who use their services that tarnish the image of the industry. In this respect, EAS takes care to adopt

the appropriate enforcement action using a risk-based approach, offering advice, supporting business and assisting with compliance but taking firm action, including prosecution or prohibition where necessary. In our experience, the overwhelming majority of agencies found to be in breach of any provisions in the legislation following a visit by an EAS inspector willingly change their working arrangements to ensure that they comply with the legislation.

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 them so that standards continue to improve. To this end we will take every opportunity to reach out to all our stakeholders.

## **2. Work of 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 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 most likely to occur.

Although inspectors seek 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.

## **3. 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 ensure that it meets that responsibility, there are statutory regulations and also a number of 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, and
- the IT, modelling and entertainment sectors.

Each of these associations will have a code of practice, which its members agree to follow, 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.

#### **4. 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 can be downloaded from the EAS website: [www.dti.gov.uk/er/agency/newregs.htm](http://www.dti.gov.uk/er/agency/newregs.htm)

#### **5. 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. As the number of recruitment providers increased, local authorities, to protect work-seekers from mistreatment, obtained private Acts, for example requiring recruitment providers to operate in accordance with by-laws.

##### ***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.

Sections 13(2) and (3) of the 1973 Act define employment agency and employment business respectively as follows:

- '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' 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.

In plain English, the employment agency introduces work-seekers to prospective employers to be employed by those employers and the employment business supplies its own workers to work on a temporary basis under the instruction and control of the hirer.

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, 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.

New requirements include:

(i) restrictions on the arrangements for charging transfer fees when temporary workers supplied by an employment business are employed by the hirer, are supplied to that hirer by another employment business, or are employed by a third party to whom the hirer has introduced them;

(ii) an obligation on the private recruitment industry to establish the suitability of candidates has been included in the new Regulations. 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;

(iii) stronger provisions to ensure that workers are paid in full and on time;

(iv) 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;

(v) restriction on the charging of upfront 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. An agency can only charge an up front fee to a work seeker 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 the agency provides other work finding services, the fee charged can be no more than a reasonable estimate for producing and circulating the publication;

(vi) following reforms of the 1973 Act by the Employment Relations Act 1999, the legislation also applied to the work-finding services provided to incorporated work-seekers. The Conduct Regulations enable work-seekers that are companies to choose to opt out of the Regulations, or to be covered by the Regulations. If they exercise the choice to opt out, then both the limited company and the worker must give notice to this effect to the employment agency or employment business before they are introduced to a hirer. The opt-out is not selective; if companies choose to opt out then none of the Regulations apply.

Copies of the Regulations can be purchased from local offices of The Stationery Office or can be downloaded from the website [www.hmsso.gov.uk](http://www.hmsso.gov.uk).

## **6. Work of the EAS over the past year**

The workload for all in the EAS during the course of the year covered by this report was particularly heavy. As would have been expected with the introduction of new legislation, there was a significant increase in the number of complaints received, requests for interpretation of the legislation, telephone enquiries, the level of general correspondence and invitations for staff to address groups of agencies, work-seekers and other interested parties. A total of 1,380 complaints were received or initiated, an increase of nearly 30% over the previous year and the highest number ever received by

the EAS. The recent increase is at least partly a function of the changes introduced by new Conduct Regulations and the resulting publicity generated. It is worth noting that, despite the growth in the number of complaints, the number of infringements identified was only some 12% above the previous year and less than in some previous years.

As the recruitment industry, and those that use the services it provides, were having to come to terms with the obligations and provisions in the new Conduct Regulations, EAS inspectors found that the length of time spent on each visit increased significantly because of the need to explain the implications of the new Regulations. Moreover, the inspections gave many of the agencies the opportunity to seek the inspectors' advice on the various aspects of the new legislation.

The detailed guidance produced in conjunction with Recruitment and Employment Confederation and Equity has proved a very useful reference document for all those with responsibility for dealing with the legislation.

Over the past year we have monitored the effect of the new legislation on the operation of the private recruitment industry and will continue to do so.

Revised performance targets were introduced for the EAS Inspectorate in 2003-04. It was agreed that each inspector would have a target of 150 cases to be cleared per year.

Details of the cases handled by the Inspectorate are set out in annex 8, details of complaints and inspections carried out by industrial sector are set out in annex 9, with infringements found by industrial sector in annex 10. These show that the main sectors where the inspectors are involved are:

- Entertainment and modelling (taken together) - 24% of cases, and 23% of infringements
- Industrial /drivers – 22% of cases, 20% of infringements
- Secretarial/admin (i.e. all office-based work)- 21% of cases, 18% of infringements

## **7. Prosecutions and prohibition cases**

A number of cases were considered for prosecution and prohibition during the year. However, there were no prohibitions and the only successful prosecution case undertaken by the EAS during the year was overturned on appeal.

**8. EAS case statistics April 2003 to March 2004; and April 2004 to March 2005**

<b><u>Investigations</u></b>	<b><u>2003-04</u></b>	<b><u>2004-05</u></b>
Complaints received or initiated	1,065	1,380
Complaint cases cleared	968	1,239
Cases found as out of scope of the 1973 Act	327	349
Cases found as substantiated	308	377
Cases found as unsubstantiated	333	513

Cases still in progress	278	505
Targeted inspections/follow up inspections	563	265
Total infringements found on all cases	1,600	1,796
Corrective letters sent	600	640
Total cases (complaints and inspections) handled	1,628	1,504

**9. Complaint and inspections carried out (by industrial sector) 1 April 2004 to 31 March 2005**

<i><b>Industrial Sector</b></i>	<i><b>Number of Cases</b></i>	<i><b>Percentage of Total</b></i>
Health Care	167	11%
Industrial/Drivers	336	22%
Secretarial /Admin	317	21%
Entertainment	191	13%
Modelling	165	11%
Nannies /Au Pairs	75	5%
Hotel & Catering	73	5%
IT / Online	10	1%
Professional & Managerial	91	6%
Teachers / Tutors	79	5%
Total:	1504	100%

**10. Analysis of infringements found (by industrial sector)  
1 April 2004 to 31 March 2005**

<b><i>Industrial Sector</i></b>	<b><i>Number of infringements</i></b>	<b><i>Percentage of Total</i></b>
Health Care	187	10%
Industrial/Drivers	360	20%
Secretarial /Admin	324	18%
Entertainment	224	12%
Modelling	189	11%
Nannies /Au Pairs	131	7%
Hotel & Catering	153	9%
IT / Online	16	1%
Professional & Managerial	63	4%
Teachers / Tutors	149	8%
Total:	1796	100%