

# Call for evidence for Labour Market Enforcement Strategy 2024 to 2025 Acas response

8 September 2023

This is the Acas Council response to the [Labour Market Enforcement Strategy 2024 to 2025 call for evidence](#).

## Our response

1. Acas welcomes the opportunity to respond to the Director of Labour Market Enforcement's (DLME) call for evidence to inform the new strategy for the year 2024 to 2025.
2. Acas is a statutory, non-departmental public body with a duty to improve employment relations throughout Great Britain. Acas has considerable practical experience of employment relations and of the issues that can be experienced by workers and employers across all areas of employment law and workplace practice, including those that fall within the remit of the enforcement agencies.
3. Acas offers several services in connection with its duty, including:
  - a national helpline which in 2022 to 2023 handled some 649,000 calls from individuals and employers
  - a website offering guidance and online training with approximately 14.4 million visits in 2022 to 2023, equating to around 40,000 individual sessions every day
  - a conciliation service in employment disputes, both collective and individual – in 2022 to 2023, Acas handled over 600 collective conciliations and received nearly 105,000 early conciliation notifications
  - training on a wide range of workplace-related topics, provided to around 41,000 delegates in 2022 to 2023
4. Acas works closely with the 3 enforcement bodies overseen by the DLME and acts as a channel for signposting and referrals to these bodies. Where a caller to our national helpline wishes to make a complaint about their employer on any issue relevant to one of the enforcement bodies, we provide immediate advice and guidance and, where appropriate, transfer them to the relevant body. Annex A provides further details.

## Our approach to this submission

5. This response focuses on those statements and questions set out in the call for evidence on which Acas is able to offer an evidence-based contribution, namely:
  - Statement 2.1: Workers and employers are sufficiently aware of employment rights and know where to go for help
  - Statement 3.1: Coordinated enforcement actions by the enforcement bodies are helping to achieve a more compliant labour market
  - Statement 4.2: Lack of contractual clarity around employment status can put people at greater risk of exploitation
  - How might the effectiveness of labour market enforcement be improved?
  - Given the lack of progress with a Single Enforcement Body, are there benefits that it might have brought that you can envisage being delivered within the existing legislative framework?

6. The evidence and views set out in this response draw on data from Acas's operational services, insights from a specially convened focus group of Acas helpline advisers, and the views of the Acas Council which comprises employer representative, worker representative and independent members.

7. The Acas helpline is a rich source of information on the issues that are of concern to individuals, employers and their representatives across Britain, including those relating to the areas overseen by the 3 enforcement bodies. Where evidence from the Acas helpline is cited, it should be noted that Acas helpline users represent a particular sub-population of the labour market, consisting of those with concerns or queries and who are aware of and motivated to contact Acas. As such, that evidence does not claim to be representative of all those facing challenges that fall within the remit of the enforcement agencies. Helpline calls do, however, provide valuable insight into the kinds of challenges that individuals can face in a range of contexts relevant to the enforcement agencies.

8. Acas is in active liaison with the DLME around the sharing of our data and very much welcomes further liaison to explore how further data and insights from Acas's services might be used to inform the DLME's and enforcement bodies' work.

## **Statement 2.1. Workers and employers are sufficiently aware of employment rights and know where to go for help**

### **Awareness of employment rights**

9. Acas strongly cautions against any complacency that workers and employers are sufficiently aware of employment rights.

10. Acas dedicates a significant amount of its resources to providing guidance and information to foster a clear understanding of employment rights, responsibilities and good practice principles. However, we know from both our operational experience and our research that many individuals and employers remain unaware of their respective rights and obligations.

11. Acas's evidence indicates particular challenges around awareness of applicable rights and responsibilities for individuals and employers using flexible contracts (such as zero hours contracts, some forms of agency work, and dependent forms of self-employment). A recent focus group of helpline advisers confirmed the ongoing persistence of challenges identified in an [analysis of calls to the Acas helpline previously reported by Acas](#). These include:

- Holiday entitlement, maternity rights and sick pay – individuals and employers with low awareness of whether those in atypical contracts are entitled to these statutory rights, and if so how to calculate the relevant details on pay or time off
- Working time – uncertainty over aspects such as entitlement to pay while 'on call' and 'travelling time' between assignments
- Deductions from pay, unpaid wages and minimum wage – ostensibly self-employed workers enquiring about protection against changes to their remuneration package, such as sudden reductions in their rate of pay or the deduction of new fees or charges from their pay. Others, notably delivery drivers and couriers, concerned that they earn less than the National Living or Minimum Wage after accounting for necessary costs such as providing their own vehicle, insurance and fuel costs
- Variation of terms and conditions – uncertainty about whether there is a right to be consulted or to be given a minimum notice period of changes to working hours or other terms and conditions, especially for longstanding zero hours workers and agency workers
- Notice and dismissal – uncertainty among individuals and employers about rights to notice of termination, redundancy pay and protection against unfair dismissal for longstanding zero hours, agency and self-employed workers. For example, where workers had fallen out of favour with their manager and were then left uncertain if they had been dismissed or simply left off the rota temporarily

12. Acas helpline advisers also note lack of awareness and misconceptions in terms of how employment rights may be enforced. This includes confusion among some callers that Acas has a role in enforcing rights on workers' behalf. Advisers described how helpline users often regard all employment rights as criminal matters, making statements such as "I want to report this... what kind of penalty will be imposed?" Anecdotally, advisers reported a perception that such calls are becoming more common.

13. Acas notes that when employment rights change, due to new legislation or developments in case law, all such changes inevitably create gaps in awareness and potential for new areas of confusion. In this regard, Acas notes that the anticipated removal of the 'interpretive effects' of EU-related case law under the Retained EU Law (Revocation and Reform) Act 2023 may lead to new case law developments across a wide area of employment rights during the lifetime of the next DLME strategy. See further the recent [Acas Council response to the government's consultation on retained EU law employment law reforms](#).

14. In Acas's view, therefore, efforts to raise awareness and understanding of employment rights and obligations amongst both workers and employers are fundamental to ensuring the effective implementation of regulation and minimising the potential for confusion and disputes. This is of perennial importance and should be a key priority for the DLME enforcement strategy.

### **Awareness of where to get help**

15. An ongoing renewal of efforts to raise awareness of sources of reliable advice on employment rights is similarly of paramount importance. It is important to consider not only the provision of relevant and clear guidance, but also the accessibility of that guidance for users and improving the journeys they take towards obtaining the advice they need.

16. Acas has an especially important role to play in this regard with its online and helpline advice services. Our statutory independence, and our impartiality between employer and worker perspectives, means that we are uniquely positioned to provide authoritative, balanced and trusted information and guidance. Moreover, our services not only help raise awareness of employment rights and responsibilities, but also offer practical advice on options for redress and early resolution in the workplace.

17. While Acas's services have extensive reach (see the headline data in paragraph 3) we recognise the need to work continually to maintain and extend our reach and influence. We therefore strongly encourage the DLME to work with Acas as a key partner in its endeavours to ensure that workers and employers are sufficiently aware of employment rights and know where to go for help.

18. Acas is, of course, not the only source of such advice. Findings from two Acas-commissioned YouGov surveys in 2021 to 2022 asked employers and individuals about the sources of information and advice they use when dealing with a workplace issue. These found that nearly a third of employers (32%) and more than half of employees (52%) did not seek information, advice or guidance from somewhere outside their organisation, while a broad range of sources were used by those that did.

19. Given the wide array of sources that users may choose to access for help on employment rights, it is important to address the potential for confusing and ineffective user journeys across these. Acas regularly engages with key stakeholders to discuss effective mutual signposting and would welcome discussing wider strategies for doing so with the DLME and other stakeholders. Acas would be happy to share our YouGov survey data with DLME to inform such discussion.

20. One issue to consider here is that many workers with challenges relevant to the enforcement agencies are vulnerable workers whose first language may not be English. Acas provides an interpreting and translation service on its helpline covering over 400 languages. Co-ordinated action between advice service providers to signpost vulnerable users to this service, and to other specialist services by other providers, could contribute to making the process of seeking advice easier and more effective for such workers.

21. Acas recommends therefore that the DLME should consider how the enforcement bodies can collaborate with a range of important stakeholders operating in this area, with a view to improving user journeys and helping users to access the right information from the right source at the right time.

### **Statement 3.1. Coordinated enforcement actions by the enforcement bodies are helping to achieve a more compliant labour market**

22. Acas agrees that coordinated action by the enforcement bodies and other key stakeholders, including Acas, is important to raising awareness and compliance. In Acas's view, such coordination has brought positive results and the DLME should consider what more should be done in this regard.

23. Acas works closely with the enforcement bodies both to increase the understanding of our respective roles and to streamline the process for making enforcement referrals and signposting customers. Officials in Acas are in regular contact with their counterparts in all the enforcement bodies to discuss both immediate and longer-term operational issues. Representatives from the enforcement bodies also periodically engage with Acas helpline staff to talk about the work of the enforcement bodies and how we can collaborate in the most efficient and effective manner.

24. This ongoing collaboration, together with steps taken by Acas in terms of training and developing its advisers, has seen a significant increase in the referrals made from the Acas helpline to all 3 enforcement bodies over the last few years. Further details are provided in Annex A.

25. Acas has found that publicity campaigns undertaken by the enforcement bodies, including with Acas's collaboration, can also have other positive impacts. For instance, Acas collaborates with the HMRC on its national and local NMW campaigns and the Acas helpline number is included in campaign letters that HMRC sends out to employers. Calls connected to the March to April 2023 national campaign were monitored and found to result in an increase of between 0.9% to 2.1% calls on this topic each week during this campaign. Acas also partners with HMRC to run joint webinars to increase knowledge and promote good practice. For example, in July 2023 Acas and HMRC held a joint webinar, 'Helping employers get the National Minimum Wage right', which attracted almost 800 attendees.

26. While such initiatives can be helpful there are some issues, such as those in the textiles industry in Leicester, that are especially hard to penetrate as evidenced, for example, by the Low Pay Commission (LPC) investigation into [Compliance and enforcement of the National Minimum Wage: the case of the Leicester textiles sector](#) (LPC, 2022). Deep-seated problems around poor and unsafe working conditions here are combined with a culture of reticence among workers to speak out, for fear of losing their jobs or facing other detrimental treatment from employers, family and the local community, so that efforts at enforcement by the different enforcement agencies have not been as effective as desired.

27. Achieving impact in such cases can require collaboration between a wider set of stakeholders. In [Acas's response to the Call for evidence for the Labour Market Enforcement Strategy 2023 to 2024](#), we provided detail of a collaborative initiative between Acas, the Trades Union Congress (TUC), Leicester City Council and a local charity, to encourage reporting on an anonymous basis together with trade union access to factories to identify problems. This is an example of how actors at a local community level can respond to labour exploitation and non-compliance to complement and enhance the work of the enforcement agencies. Over the last year, we have also used insights from our helpline to inform the LPC investigation noted above.

28. Acas suggests therefore that the DLME should explore how the enforcement bodies can coordinate actions with a wider set of stakeholders in such cases. We would be happy to share more information with the DLME on our insights and work in Leicester to inform its considerations in this regard.

#### **Statement 4.2. Lack of contractual clarity around employment status can put people at greater risk of exploitation**

29. Acas notes that in the vast majority of employment relationships determining employment status is relatively straightforward and causes little confusion or difficulty for employers or individuals. However, Acas agrees that a lack of contractual clarity around employment status, as well as the complexity of the current legal tests for status, can cause a great deal of uncertainty and confusion and that this provides a basis, in some cases, for deliberate misclassification of individuals' status to avoid employment rights and obligations.

30. In this regard, Acas helpline advisers confirm the ongoing persistence of challenges identified in previously published evidence from Acas around the impacts on the effectiveness of statutory rights and on working relationships where clarity of employment status is lacking. In particular, Acas's evidence suggests that there can be a great deal of uncertainty around employment status among both individuals and employers engaged in flexible contracts. This can include a lack of clarity around the boundary between 'employee' and 'worker' statuses, and between the 'worker' and 'self-employed' statuses and where an umbrella company is involved. See for example

31. In terms of the legal tests for status, Acas finds a general lack of knowledge and understanding of these among its users, as well as difficulties encountered in interpreting how these tests apply in the circumstances of particular working arrangements.

32. As regards contractual ambiguity, analysis of Acas helpline calls suggests that many atypical workers have different interpretations of their employment status than that stated in their written contracts. For example, some described their situation as being "kept on freelance" or "not really self-employed" and told how they felt taken advantage of in respect of their status and unfairly excluded from employment rights.

33. Such differences of interpretation about status can be due to genuine confusion or lack of understanding among employers and individuals around how the tests for status apply to a particular working arrangement. In other cases, Acas's evidence supports the view that the ambiguity in the legal tests can be used by unscrupulous employers to contractually miscategorise the status of employees or workers.

- Accounts given by callers to the Acas helpline indicate that some employers may be choosing to do so directly as a means to reduce or avoid the costs of employment obligations. Some callers related how their employer had told them that they would need to 'become self-employed', without any substantive change in the working relationship itself, explicitly to enable the employer to avoid the costs of sick pay, holiday pay, maternity pay or other obligations.
- Calls to the helpline further provide some evidence of organisations citing self-employed status as a reason not to discuss or specify clear terms and conditions of the working arrangement. For example, one caller told how, on enquiring about his rights to his manager, he had been dismissively told, "you do not have a contract, you are self-employed".

34. Where clarity around status is lacking due to contractual ambiguity and/or the complexity of these tests, further impacts can include both an undermining worker confidence to query and assert employment rights, and ambiguity around options for redress which can create barriers to effective resolution.

#### **Undermining of worker confidence to query and assert rights**

35. Acas finds that where clarity around employment status is lacking, workers can feel anxiety and apprehension when it comes to asking questions about contractual or statutory entitlements, or raising other types of concerns or grievances about treatment and conditions at work, in case they are perceived to be asserting rights that they are not entitled to and looked on less favourably thereafter.

36. For workers in insecure contracts, this can be exacerbated by a fear that their employer may respond by restricting future work opportunities – a practice sometimes referred to as being 'zeroed down'. Acas has previously labelled this predicament a form of 'effective exclusivity' from rights as, with little or no recourse open if their hours are reduced, such workers understandably may refrain from asserting their rights.

#### **Ambiguity around routes for resolution and redress**

37. The complexity and openness to interpretation of employment status also can make it difficult for parties to resolve uncertainties or disputes which depend on employment status when these are raised. One of the key difficulties here is the need to consider the relevance of numerous specific aspects of a working arrangement, many of which can be open to interpretation. This means that it can be very difficult for employers and individuals to obtain clear guidance about status in their particular situation, to assess their positions objectively, and to make informed decisions towards resolving their disagreements in an early and satisfactory manner.

38. Where employment status remains unclear even after guidance has been sought, parties can face a more complex and uncertain array of potential routes for addressing their concerns. As tribunal and/or civil court options may potentially be appropriate depending

on employment status, such individuals can remain uncertain about which route may be the appropriate one for them. In such situations, some callers to the Acas helpline expressed the view that making a tribunal claim to establish their status seemed too arduous a prospect, and/or too risky in terms of their income security, without their being able to make a better advance assessment of their likely status, although this was a course of action some callers were considering.

### **How might the effectiveness of labour market enforcement be improved?**

39. For the many reasons noted above, in Acas's view improving the effectiveness of labour market enforcement requires a continual effort to address low awareness of rights and responsibilities, and of options for legal redress and enforcement, in all types of working arrangements and in particular in non-standard contractual arrangements and for vulnerable workers.

40. Acas refers to and reiterates its considerations as set out in the [Acas Council's response to the government's consultation on the Taylor Review's recommendations for the enforcement of employment rights](#) which, in Acas's view, remain relevant to today's labour market challenges. These are, in sum:

#### **Measures to encourage workers to raise concerns**

41. In Acas's view, there is a need for regulatory measures to provide a greater level of reassurance to those in insecure working arrangements when it comes to asserting their statutory employment rights. Acas recommends that the statutory protection against detriment for asserting employment rights should be strengthened to provide clear protection for such workers from actions such as a reduction in regular working hours (including non-guaranteed hours), or income or other opportunity, in response to asserting a right. This would provide more confidence for such workers to use available routes for redress, including workplace grievances, Acas early conciliation and employment tribunal claims. Protection against victimisation for taking such steps would provide a further level of reassurance.

42. Acas has also previously recommended that there would be merit in introducing a streamlined employment tribunal process to enable individuals to determine their employment status by way of a standalone claim that does not require the assertion of a breach of a right. Such status claims should be decided by an employment tribunal judge following a full hearing. It remains Acas's view that this would bring greater clarity and efficiency in determining status which would support the effectiveness of labour market enforcement.

#### **Additional awards, penalties and powers at tribunal**

43. In Acas's view, repeated non-compliance with employment tribunal decisions, and failure to apply them to broadly comparable circumstances in an organisation, undermines the effectiveness both of the tribunal system and of employment law, as well as good employment practices and standards in the workplace. Strong action should be taken against employers who repeatedly ignore their responsibilities and the decisions of employment tribunals.

44. To deter repeated non-compliance, Acas believes that there is merit in considering how employment tribunals might be empowered to take a broader and more constructive approach, for example to make recommendations to employers in appropriate cases to encourage the improvement of working practices in those organisations where a pattern of non-compliance comes to the tribunal's attention.

#### **Improving management practices and workplace cultures**

45. Acas's practical experience and evidence shows that individuals are more likely to feel confident to raise concerns where there is a positive culture of trust in their workplace. This points to the important interconnection between efforts to encourage compliance and encouraging and supporting good relationships between employers, individuals and their representatives through good management practices which foster effective worker voice, engagement and wellbeing.

46. An important context for the challenge here, however, is a growing body of evidence which suggests that the quality of leadership and people management in the UK workplace in general is lagging behind our key international competitors. In Acas's view, a key focus that has been missing in the past here has been a sufficiently sustained policy commitment and co-ordination of action towards improving workplace practices, particularly around how people are led and managed and investment in management training and development.

47. In Acas's view, therefore, efforts to improve the effectiveness of labour market enforcement should include a focus on addressing how government and the enforcement agencies can work with social partners, professional bodies and other agencies on a national, sectoral and regional level, to raise the quality of leadership and people management practices across the UK economy. Among the many benefits of this approach, this would foster more working environments in which workers feel confident to raise concerns, provide more managers with the skills to engage in the early resolution of concerns and, in doing so, would contribute to the creation of more compliant, inclusive and high-performing workplaces.

48. Acas would welcome working with the government, DLME and other stakeholders to support the development and implementation of such a policy focus.

**Given the lack of progress with a Single Enforcement Body, are there benefits that it might have brought that you can envisage being delivered within the existing legislative framework?**

49. As our response above suggests, in Acas's view it is both possible and important within the existing legislative framework to take steps towards realising those benefits of a single enforcement body which we outlined in [Acas's response to the government's consultation on establishing a single enforcement body for employment rights](#), including:

- raising the visibility and awareness of enforcement options, bringing greater clarity for both workers and employers
- more straightforward signposting for those seeking help and advice, which would be especially valuable for reaching high risk sectors and more vulnerable workers
- improved coordination across different employment rights issues covered by the existing bodies, providing users with a more integrated service

50. Acas plays an important role, alongside the enforcement bodies, in providing services which support all these objectives. We are keen to do all we can within our remit to support the enforcement of employment rights across the full spectrum from compliance to deterrence. As has been noted in this response, Acas already works closely with the enforcement agencies and we would very much welcome engagement in further collaborative initiatives, to align and enhance our respective services.

**Annex A: Acas referrals to enforcement bodies**

The following tables list the number of referrals made from the Acas helpline to HM Revenue and Customs (HMRC), the Gangmasters and Labour Abuse Authority (GLAA) and Employment Agency Standards (EAS) Inspectorate over the last 4 years, and referrals as a percentage of all helpline calls.

**Referrals from the Acas helpline to HMRC, GLAA and EAS from 2018 to 2019 and 2021 to 2022**

Enforcement body	2019 to 2020	2020 to 2021	2021 to 2022	2022 to 2023
HMRC	2,762	1,911	2,156	3,900
GLAA	57	45	53	149
EAS	580	414	725	1,037

Enforcement body	2019 to 2020	2020 to 2021	2021 to 2022	2022 to 2023
<b>Total</b>	<b>3,399</b>	<b>2,370</b>	<b>2,934</b>	<b>5,086</b>

**Referrals from Acas helpline to HMRC, GLAA and EAS between 2019 to 2020 and 2022 to 2023 as a percentage of all helpline calls**

Enforcement body	2019 to 2020	2020 to 2021	2021 to 2022	2022 to 2023
HMRC	0.35%	0.27%	0.33%	0.6%
GLAA	0.01%	0.01%	0.01%	0.02%
EAS	0.07%	0.06%	0.11%	0.16%
<b>Total</b>	<b>0.43%</b>	<b>0.33%</b>	<b>0.46%</b>	<b>0.78%</b>

The number of referrals had been rising until the beginning of the coronavirus (COVID-19) lockdown in 2020 when they declined substantially. Since the ending of lockdown in 2021, the number of referrals has increased, with latest figures now far surpassing the levels seen in 2019 to 2020.

The likely cause of the large increase in referrals observed in 2022 to 2023 is our renewed focus on awareness-raising and training Acas's helpline advisers regarding the work of the enforcement agencies, as well as our ongoing collaborative work with the agencies. Acas would be happy to further discuss its internal approach and practices around referrals with the DLME.

Of the calls where a helpline adviser has sufficient information from a caller to select an industry, the top industries that referrals have come from for each enforcement body in 2022 to 2023(\*) are as follows:

<b>HMRC – 3,900</b>	<b>GLAA – 149</b>	<b>EAS – 1,037</b>
Human health and social work activities – 329	Human health and social work activities – 18	Human health and social work activities – 73
Accommodation and food service activities – 272	Accommodation and food service activities – 10	Construction – 52
Wholesale and retail trade – 198	Wholesale and retail trade – 5	Transportation and storage – 39
Administrative and support service activities – 186	Administrative and support service activities – 4	Education – 26
Other service activities – 143		Other service activities – 19

\* To note, information on industry is only apparent in a minority of helpline calls. The options categories for industries were updated in April 2022 so it is not possible to compare this data to previous years.