

Call for evidence for the Labour Market Enforcement Strategy 2023 to 2024 Acas response

31 May 2022

This is the Acas Executive response to the [Director of Labour Market Enforcement's \(DLME\) call for evidence for the Labour Market Enforcement Strategy 2023 to 2024](#).

Our response

Acas welcomes the opportunity to respond to the DLME's call for evidence to inform the new strategy for the year 2023 to 2024.

Acas (Advisory, Conciliation and Arbitration Service) is a statutory, non-departmental public body with a duty to improve employment relations throughout Great Britain. Acas offers several services in connection with this duty including conciliation in employment disputes, both collective and individual, online guidance and training as well as tailored advice for organisations looking to improve their working arrangements.

Acas also operates a national helpline which in 2021 to 2022 dealt with some 640,000 calls on a wide range of employment relations and workplace issues. In running the helpline, Acas recognises that not all callers will have English as a first language. A translation service is therefore provided to help such callers and, during 2021 to 2022, this service was used on average just under 300 times a month.

Acas works closely with all 3 of the enforcement bodies overseen by the DLME and acts as a channel for 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. The following table lists 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.

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

| Enforcement body | 2018 to 2019 | 2019 to 2020 | 2020 to 2021 | 2021 to 2022 |
|------------------|--------------|--------------|--------------|--------------|
| HMRC | 1,895 | 2,762 | 1,911 | 2,156 |
| GLAA | 33 | 57 | 45 | 53 |
| EAS | 386 | 580 | 414 | 725 |
| Total | 2,314 | 3,399 | 2,370 | 2,934 |

The number of referrals rose until the beginning of the coronavirus (COVID-19) lockdown in 2020 when they declined substantially. Since the ending of lockdown, the number of referrals has increased but it has not reached the levels seen in 2019 to 2020. There are a number of reasons for this.

The first is that the overall volume of calls to the Acas helpline has declined. In 2019 to 2020 we received just over 790,000 calls whilst in 2021 to 2022 this number was down to just under 650,000. Although the number of referrals to the enforcement bodies has not returned to 2019 to 2020 levels, referrals as a percentage of all helpline calls has remained steady at around 0.4%.

Other potential reasons for the lack of immediate increase in the volume of enforcement referrals could relate to vulnerable workers being more concerned about keeping their jobs rather than raising a query with Acas.

Whilst overall we are witnessing a tight labour market, factors standing in the way of individuals raising a query include that:

- many small firms went out of business during lockdown
- some workers returned to their home countries following Brexit
- various court cases on employment status may have had the effect of making employers more careful about the contractual relationships they have with workers

Although the number of referrals from the Acas helpline is still slightly below pre-lockdown levels, there has been an increase in the number of visits to the page on the Acas website which gives advice about what to do if a person has not been paid the National Minimum Wage (NMW). In 2019 to 2020, there were 11,800 visits to this page, but this had increased to just over 18,000 in 2021 to 2022.

Officials in Acas are in regular touch with their counterparts in all the enforcement bodies and we discuss both immediate and longer-term operational issues. Representatives from the enforcement bodies also periodically engage with staff working on the Acas helpline to talk about the work of the enforcement bodies and how collaboration can be carried out in the most efficient manner.

The Acas helpline is a rich source of information on the issues that are of concern to those working in Britain today, including those relating to non-compliance with subjects regulated by the various enforcement bodies including NMW and agency work. The views set out in the remainder of this response are based on insights we have received from a number of Acas staff who work on the helpline and deal with calls on a daily basis.

We have grouped our response into the broad categories set out in the call for evidence. We have not, however, answered every question posed in the call, only those where we have a contribution to make. The evidence does not purport to be statistically significant, nor representative of all those facing challenges that may go through to the enforcement agencies. However, they provide insight into the kind of challenges facing individuals in different contexts.

Recent changes in how the UK labour market is operating

This part responds to the question 'what changes have you observed or experienced?'

Turning first to recent changes in how the labour market is operating, a number of Acas's helpline advisers report an uptick in the number of calls about employment status. It is difficult to be precise on what has caused this, but the publicity given to court cases on the subject in the past year or so (for example, the Supreme Court ruling in the Uber case) may well have had an impact. Some calls on employment status relate to the shift away from self-employment following IR35 rules, but others result from a simple lack of clarity around working relationships.

A good example of this lack of clarity has emerged following the end of the Coronavirus Job Retention Scheme (CJRS). Some of Acas's helpline advisers have been taking calls from zero-hours workers who feel that they should be classed as employees because they had been furloughed, whilst the organisation they work for disagrees with this interpretation. This sort of confusion often lies at the heart of many of the problems that Acas deals with when answering calls about employment status.

Workforce

This part responds to the question 'what has been the experience of workers arising from changes to the labour market?'

The director asks in the call for evidence about the experiences of workers arising from changes to the labour market. The kinds of issues raised with our helpline include:

- workers in the healthcare sector, particularly workers in care homes and residential care who cite problems with low wages, long hours and poor management that in some cases are leading them to leave the industry. The pandemic was felt to have further negatively impacted on individual satisfaction with their work
- changes made in people's working arrangements to cope with COVID-19 and the desire to reverse these now that the lockdown is over. This is most typically seen in working from home arrangements. Individuals may fear being encouraged or even forced to return to the workplace but express reluctance due to increased costs of transport, childcare or commuting time. They argue that their work can be done just as well from home and going into an office is not something they see as being vital to them being able to fulfil their contract. COVID-19 will undoubtedly have a major impact in the future on the way work is carried out and this move towards greater homeworking is just one aspect of that
- high fuel prices for work-related travel, where costs are not fully reimbursed and real pay is being reduced to less than the NMW

Workforce engagement

This part responds to the question 'what examples can you share of initiatives that have assisted workers to understand and enforce their rights – particularly as regards harder-to-reach workers?'

Acas has found that the publicity campaigns undertaken by the enforcement bodies themselves can have a positive impact in this regard. For instance, following a recent NMW publicity campaign by HMRC in the hotels sector in East Anglia, we had an influx of calls to our helpline from individuals inspired to check on their employment rights. Interestingly, the calls were not just asking about NMW, but also enquiring about other rights they may be entitled to.

Initiatives from the enforcement bodies can be helpful but there are some sectors that they find hard to penetrate. One of these has been the garment industry in Leicester. For some while now international clothing brands have been using factories and workshops in the Leicester area to produce textiles. Workers in these factories have often found their employment rights being infringed, including the NMW not being paid as well as other problems around poor and unsafe working conditions. Unfortunately, due to a combination of factors, the workers involved, who are almost all women, are often too scared to speak out for fear of losing their jobs or facing other reprimands from employers, family and the local community.

Efforts at enforcement by the different enforcement agencies have not been as effective as would be desired. Anecdotally, there is a perception that this is in part because the agencies work independently and are not co-ordinated, and that they do not really have any 'teeth' that can properly tackle the particular combination of problems in this area.

A range of organisations came together a few years ago to attempt to provide a local solution to the problems being experienced by the garment workers in Leicester and Acas has been working with this group to try and improve the situation. One of Acas's advisers in the East Midlands has established relationships with the workers in the industry and has also helped set up a forum with the garment factories in Leicester to raise awareness and develop action plans.

More recently Acas has been working with the TUC, Leicester Council and a local charity to develop a workplace arbitration model for use by the garment sector in Leicester. This model has emerged from a recognition that reliance on workers directly reporting problems is likely to continue to be ineffective and operates instead through charity work in the local community to encourage reporting on an anonymous basis, together with trade union access to factories to identify problems. Where problems are identified, the model will seek to use the leverage of clothes brands over factories in the supply chain as a means for driving up standards, with binding Acas arbitration as a final means of resolving issues.

It is still early days in the development of this new arbitration model, and we will be keeping it under review, but it is an example of how a local community can respond to labour exploitation and non-compliance. Acas would be happy to share more information on its work

in Leicester with the DLME.

Acas itself also works with the Department for Business, Energy and Industrial Strategy (BEIS) at regular intervals to raise awareness of the NMW and we partner with bodies such as HMRC to run joint webinars to increase knowledge and promote good practice. A particularly effective way of engaging with the widest range of people is to get an issue covered on one of the popular TV or radio consumer shows. For example, HMRC recently joined with Martin Lewis for the Money Saving Expert newsletter which drew attention to sources of advice and assistance on the NMW, including Acas sources of help.

Recruitment

This part responds to the question 'what changes have you observed to recruitment patterns and practices? For example, online recruitment and offshore recruitment'.

An interesting development is incidences of callers whose only contact with their employer is over WhatsApp, often with no email addresses for these employers or formal mechanism for contact. This has created a challenge for workers in finding out more about the terms and conditions of their work, as well as how to raise and progress complaints. Callers who report this have often been recruited through online platforms such as LinkedIn and are zero-hour or casual workers.

Employment models

This part responds to the questions:

- 'do you have evidence of these being associated with worker exploitation?'
- 'do you have evidence of other employment models that might give rise to compliance concerns?'

The director asks in this call for evidence about compliance problems with some of the newer forms of employment including umbrella companies. As you may know, [Acas responded to the recent government call for evidence on the umbrella company market](#). You will see from this that Acas has observed a number of problems for individuals working through these companies including:

- unexpected deductions from pay
- misunderstandings over pay in general and holiday pay in particular
- confusion around employment status