

Director's statement on the publication of the Labour Market Enforcement Annual Report 2018/19

This speech launches my [annual report](#) as Interim Director of Labour Market Enforcement (DLME) but it also an opportunity for me to comment on how compliance and enforcement strategy might respond to COVID-19 and its aftermath, including issues which have been highlighted by public and political concern about the treatment of workers in the Leicester garment trade.

In March 2018 my predecessor, Sir David Metcalf, submitted his first full [annual Labour Market Enforcement \(LME\) Strategy](#) to government. Today I am pleased to publish my annual report, assessing progress made in taking forward the recommendations from that Strategy. This annual report was submitted to ministers in February 2020 and assesses progress in taking forward those recommendations up to last October. I should like to pay tribute to the work of Sir David, as well as the excellent support I have received from the Office of the Director of Labour Market Enforcement team and the positive engagement I have had with our sponsor departments (Home Office and Department for Business, Energy and Industrial Strategy) and the enforcement bodies.

Government fully accepted 29 of 37 recommendations from the 2018/19 LME Strategy. Of the remainder, it partially accepted 2, committed to consult on 3 and rejected 3 others. Up to October 2019, 14 recommendations had been fully implemented or significantly progressed, while some progress had been made on another 14.

As well as being one of my statutory duties, the DLME annual report plays an important role benchmarking progress in labour market compliance and enforcement. Sometimes incremental change is difficult to see and of course bad news is always more newsworthy. So, I am pleased today to report on important, albeit sometimes gradual changes to improve the enforcement system. There have been welcome changes in the regulations themselves including the end of the Swedish derogation, new rules to improve access to and clarity of payslips for workers and a new day one statement of rights for all workers.

I have also been pleased to see real progress in the bodies that I oversee: working better together with each other and wider agencies with a stake in compliance and enforcement, becoming more outward looking and making better use of information. It is also good to see that Labour Market Enforcement Undertakings (LMEUs) and Orders (LMEOs) are increasingly being used by the enforcement bodies.

Less positively, I believe prosecutions are still being underused as a deterrence tool and penalties for non-compliance remain too low. Given

concerns about supply chains – for example, highlighted by the Independent Anti-Slavery Commissioner in her recent report on Operation Fort – I am disappointed that following the public consultation, there has yet to be any forward momentum on recommendations around joint responsibility in supply chains and hot goods. Also, there continue to be major gaps in information, particularly concerning the underlying incidence of non-compliance, which I hope my Office will be able to address through an innovative research project.

Of course, since the 2018/19 LME Strategy and follow-up annual report were delivered, the labour market and economy more generally are looking a lot different. While the recommendations made across all 3 full LME strategies since 2018 still stand, I want to use the opportunity of the publication of this annual report to reflect on how the COVID-19 pandemic and its economic fallout could and should change the debate about enforcement and compliance.

First, it is important to acknowledge the fast and comprehensive economic response of the government. The raft of measures introduced, including the job retention scheme, business grants and loans and the self-employment support scheme, have been decisive interventions which have helped protect businesses and individuals through what we all hope is the worst of the pandemic, and given both employers and workers a breathing space before the long haul to get our economy back on to an even keel.

The 3 enforcement bodies whose work I oversee are also deserving of praise for their response given the scale and unexpectedness of this crisis. The bodies moved their processes to remote working remarkably quickly and have continued to undertake enforcement visits where there is a risk to welfare of workers. The Gangmasters and Labour Abuse Authority (GLAA) put in place a temporary licensing scheme and has communicated well about how it is dealing with the crisis. The Employment Agency Standards Inspectorate (EAS) was very proactive in getting information out to agencies and alerting them to new risks. HM Revenue & Customs (HMRC) and National Minimum Wage (NMW) enforcement work has been impacted partly by temporary redeployment of staff to the furlough scheme, but also by so many businesses being effectively closed and hence unable to respond to requests for access to payroll records. Again, though, I have been encouraged that HMRC-NMW has, nevertheless, continued with their investigations, especially in relation to more severe non-compliance. I know each body will be reviewing how it has adapted to COVID-19 and I will look forward to reading and assessing these reflections.

One important issue from the crisis will be to understand more widely where workers turned to report concerns and seek help and advice. The enforcement agencies initially had fewer complaints and received less intelligence at the beginning of lockdown, although this is now recovering to expected levels, however the Advisory, Conciliation and Arbitration Service (ACAS) saw a big spike in calls at this time. I am also aware that third sector organisations, who are often the first port of call for vulnerable workers, have also worked hard to adapt their services to the situation, supporting their clients as best they could within the lockdown restrictions and dealing with the impact on their own resources.

One of the wider consequences of the lock down in society has been innovation in the use of digital channels and services. With both the medium-term issues of safety and longer-term questions of effectiveness in mind, I am encouraging the agencies to consider how they could use technology more effectively. Looking further forward, my own view is that there is significant scope to explore how IT solutions could enable more accurate real-time remote record checking and hence boost compliance. Digital apps and platforms may also have the potential to provide better and safer routes for workers and the public to report concerns including, for example, whistleblowing to employers higher up labour supply chains.

As I reflect on the recent progress made by the enforcement bodies, I believe now is also a real opportunity to think about how the COVID-19 crisis has impacted the wider context for compliance and enforcement.

It is clear the crisis has exposed challenges facing casual workers and some groups among the self-employed. Research from the Standard Life Foundation based on a survey of households suggests that many people have fallen between the cracks of government schemes and that many more believe their situation will deteriorate in the coming months as the furlough scheme and Self-employment Income Support Scheme are wound down. As the Resolution Foundation has shown, lower earners are 3 times as likely to have lost their job or been furloughed as high earners and are more than twice as likely to do jobs exposing them to health risks. There are also important geographical and demographic, including racial, dimensions to the economic impact of the virus. These demand a range of policy interventions if we are to have a fair and sustainable recovery.

It is important to recognise that this is not simply about financial challenges for those affected directly. If people are pressured into working, or feel they have no choice, they may take health risks which not only put them at risk individually but also undermine the efforts to maintain a downward trajectory in cases.

A marked development as the crisis has developed is the greater public concern about poor working conditions and exploitation of those key workers on whose efforts we have so much relied. It has brought long standing issues to the forefront of attention. This is particularly true for care workers. My annual strategy for this year (2020/21) – delivered to government in March but hopefully soon to be published – highlights the many problems affecting the social care workforce, ranging from non-payment of the minimum wage to risks of severe labour exploitation. Public awareness around delivery drivers and food couriers has also become more acute, with many of the couriers who have come to our front doors lacking protections and entitlements because they are questionably designated as self-employed.

A concern for my Office, the enforcement agencies and wider law enforcement is what has happened or may be happening to workers in high risk sectors such as hand car washes and nail bars. With these businesses closed down there is a blind spot about what is happening to vulnerable workers in these sectors. Have they moved to other industries and employers? Is there an opportunity to reach them in more compliant sectors or are they being driven into greater

exploitation, further out of the reach of the support from compliance and enforcement efforts?

And, of course, the crisis has also highlighted the issue of workplace health and safety seen rightly now as essential to safeguarding people's wellbeing and managing risk so that businesses can operate safely. We sometimes think of health and safety through a primarily industrial lens of hazardous substances or dangerous equipment but challenges such as social distancing or attending to the physical and mental wellbeing of staff working from home or having to use public transport come on top of the growing recognition pre-pandemic of mental health as a major workplace issue. Systematic non-compliance feeds more non-compliance. In the garment industry in Leicester and other cities, long standing issues about factory and building safety, non-payment of the minimum wage and the risk of exploitation have now been added to by concerns about social distancing and protective equipment.

Getting health and safety right, especially when it is more broadly defined, is an issue which underlines the importance of proper staff engagement. It has been good to see the cooperative spirit of working between the government and the trade unions during the crisis. I commend again the new much lower threshold – introduced on the first of April – for workers to mandate the right to representation, information, and consultation. I also welcome the recent increase in trade union membership and what appears to be a greater recognition among some employers of the role unions can play in sustaining effective employee relations.

Another issue highlighted by the crisis, but which has ramifications beyond it, is the emergence of labour shortages in sectors reliant on migrant workers, particularly agriculture. The anecdotal reports that many UK workers expressing an interest in Pick for Britain have not gone through to taking up a job, or not stuck it out for long highlights the conditions and risks in this sector, on which I also reflect in greater depth in my 2020/21 Strategy. It should also alert us to some of the issues which will surface under the planned – more restrictive – immigration regime following our exit from the EU.

Overarching all this, an extended period of economic recovery is bound to see more people desperate for work and more employers desperate to stay in business. This is an environment in which the temptation of non-compliance will be greater, while the resistance of those at risk to being exploited may be further reduced, something which threatens to undermine the competitiveness of those who stick by the rules.

In summary, the crisis and its aftermath have surfaced new dangers and vulnerabilities, deepened public understanding and concern, and started to shine light on a set of new policy and operational challenges.

Fortunately, the government has the opportunity to respond to these factors quickly through the Employment Bill – which will, I hope, address some of the issues still outstanding from my Good Work report of 2017 – and lead to the creation of a Single Enforcement Body (SEB).

We are still awaiting the results of the SEB consultation but, as this is a manifesto commitment, I expect government to go ahead with the establishment of the body. My Office made a substantive response to that consultation last year, and the recent crisis has only strengthened my views further. I believe there is now a strong case to re-examine the scope for the SEB being much more ambitious than simply folding the EAS, GLAA and HMRC-NMW into 1 body.

A broader, better funded SEB would have several advantages:

- enhanced intelligence, sophisticated use of data and strategic capacity – building on links within HMRC, the National Crime Agency (NCA) and police to be able to develop a holistic approach to deep rooted problems of serious criminality, while also tackling the less severe end of the spectrum effectively
- the scope to create a joined up local compliance and enforcement service staffed by field officers. These officers would have effective but proportionate powers (perhaps building on the existing LAPD model) and be able to cover the range of compliance and enforcement issues, possibly including some capacity to identify health and safety issues. For example, in regard to concerns about garment factories in Leicester part of the solution is the long-term development of relationships with, and profile and trust among, employers and employees. A local SEB team could build strong collaborations with other local agencies, most obviously the police and local authorities.
- clearer route for complaints and support for workers, developing a 'brand' and reputation for the organisation that engenders trust and clarity over its role, its contact routes, and its enforcement response. In this, I believe we also need to look again at the role and management of an Employment Tribunal System which, despite the hard work of those within it, is under increasing strain
- the scale to engage employers and sectors in a joined-up way to develop collaborative and targeted approaches. There has been some speculation that the government has become interested in strengthening sectoral institutions as part of its industrial and recovery strategy. The GLAA has worked hard to develop protocols with groups employers in certain at risk industries, including the apparel protocol with the fashion trade, but a SEB could be more ambitious, developing comprehensive sector-wide compliance and enforcement strategies, starting with high risk areas like construction and social care

As well as re-examining the ambition and the remit of the SEB, I repeat the point I made in my response to the government consultation: that the process for shaping and designing the SEB should seek to engage stakeholders much more actively and openly. This is partly because they have a lot to offer, but also because the success of the SEB depends critically on its capacity to

be a catalysing force in wider society. My Office stands ready to play a significant role in hosting and shaping this engagement.

The COVID-19 crisis has been tragic and far reaching. We have a profound responsibility to those who have suffered and those at risk of further suffering. Acting on what we have learned, committing to more comprehensive action on compliance and enforcement and seeking to develop a single enforcement body fully primed for the challenges ahead would be an important and fitting way for this country to live up to that responsibility.