



Restating the case for a Single Enforcement Body

Findings based on a study by Professor Alexander Trautrimis, Dr Oana Burcu, Kate Garbers (University of Nottingham Rights Lab) and Katherine Lawson (Office of the Independent Anti-Slavery Commissioner), February 2023.¹ Policy brief led by Katherine Lawson.

The ambition to create a Single Enforcement Body (SEB) for the UK labour market addresses recognised insufficiencies and complexities in UK labour market enforcement. Despite a strong case for reform, fundamental questions remain about the funding, remit and powers for a SEB that is more than the sum of its parts.

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Key research findings

UK labour compliance and enforcement organisations are expected to perform unwieldy roles for which they have limited powers, mandates and funding. There are concerns that the labour market enforcement system is currently failing at multiple levels and there is therefore a clear case for reform.

However, there is a lack of political will for reform despite cross-party commitment to the establishment of a single labour inspectorate and anticipated legislative changes relevant to addressing exploitation in the UK.

The creation of a SEB brings multiple benefits:

- A single point of contact for workers and businesses
- A more joined-up approach and improved working relationships between existing agencies
- Consistency in enforcement and compliance across the constituent nations of the UK
- Addressing labour market infringement and abuses across the spectrum of offences where they occur, rather than taking a sector-led approach to enforcement
- Clarity over grey areas in employment law

For the SEB to succeed, it must:

- Build workers' trust in the system to encourage reporting
- Operate independently from government with accountability mechanisms in place, such as an independent board to review performance
- Protect migrant worker victims from immigration enforcement
- Operate independently from Home Office powers and governance
- Hold wider remit and powers, particularly around investigations and applying penalties
- Be adequately funded to support proactive and open collaboration with businesses and non-governmental organisations

Why is this important?

Three main UK enforcement bodies have a remit to address labour market exploitation: the Gangmasters and Labour Abuse Authority (GLAA), Employment Agency Standards Inspectorate and the National Minimum Wage Unit at HM Revenue and Customs (HMRC). These bodies cover exploitative practices ranging from negligence through to exploitation, severe labour abuse and modern slavery.

Concerns over the fragmented nature of labour market compliance were highlighted in the Director of Labour Market Enforcement's 2018/19 UK Labour Market Enforcement Strategy, which referenced calls from a consultation to inform the strategy for a single, joined up labour inspectorate.²

The government subsequently launched a consultation in 2019 to consider consolidating the three agencies under one Single Enforcement Body (SEB).³ Despite this, detailed plans about the development of a SEB appear to have stalled, with recent indications that little progress will be made in this legislative session.⁴

In addition to the consultation, the government announced a Modern Slavery Bill in the Queen's Speech (2022). It is understood that this Bill will contain clauses on strengthening the requirements for businesses in publishing modern slavery statements, extending these requirements to public bodies and increasing the accountability of companies to drive out modern slavery from their supply chains. The SEB was expected to play a watchdog function in this field.

Despite the challenges of political prioritisation, calls for reforms to employment law and the deeply fragmented enforcement landscape continue. Against this backdrop, policy discussions on the future of the SEB must not be allowed to stall.

Considerations for policymakers, practitioners and partners

- **Adequate funding and resource:** Respondents expressed concern that a SEB could face severe funding limitations within the context of continued austerity and constraints for institutional resourcing.
- **An increase in powers and remit:** Supported by adequate funding and resource to support meaningful reform of labour market enforcement.
- **A clear remit:** It must be clear what categories and areas of enforcement the SEB covers, and whether this will include the gig and informal economies as well as the formal economy. The SEB presents an opportunity to address a current lack of clarity across enforcement law and practice.
- **Defined powers:** Existing labour market enforcement bodies have recourse to an array of powers, ranging from normative, compliance-led influence through to light and hard enforcement powers. Any increase in legislative powers for a SEB must be matched by sufficient funding and resource.
- **Guidelines for businesses:** Assisted by clearly defined powers of the SEB, guidelines should be issued to businesses to ensure they understand and can meet expectations on labour market compliance.
- **A strengths-based partnership approach:** The SEB should embody a truly functional partnership whereby partners' (enforcement agencies, civil society, businesses domestically and internationally) contributions are recognised and compensated.
- **Transformative institutional change:** The SEB needs to recruit a more varied body of staff with wider experiences and backgrounds, whilst supporting current staff through training and opportunities for promotion to encourage retention of expertise.

Research overview

This research project, initiated and produced by the Rights Lab in collaboration with the Office of the Independent Anti-Slavery Commissioner (IASC)⁵ revisited the notion of establishing a SEB and examined the relevant remit, powers and governance structure required for an inspectorate that can most effectively meet current and future labour exploitation challenges.

The research involved desk-based evidence and literature reviews of academic and grey literature; and interviews with experts from academia, third sector organisations representing workers directly, fair trade organisations, businesses, enforcement agencies and government representatives. The findings in this briefing reflect the views of respondents.

Current state of the labour market

The labour market in the UK is complex. The government's own consultation document acknowledges that it *"can be a difficult landscape for both workers and employers to navigate"* and *highlights "the deeply fragmented" enforcement landscape.*⁶ Direct regulation in the UK is not centralised in one labour inspectorate, with critiques aimed at the disjointed labour market, a lack of clarity over enforcement bodies' remits and mandates, and grey areas of employment law.

The liberal market economy and globalisation have brought changes to the role public and private actors play in labour regulation and enforcement, and created regulatory gaps. In the UK, *"a curious dynamic is emerging (...) deregulation, greater levels of direct intervention in some areas alongside marketisation and innovative forms of collaboration between relevant state agencies"*. This is mostly driven by *"constraints imposed through economic austerity and neoliberal policies with an increasing focus on immigration and policing concerns, creating notable sets of organisational tensions within and between the agencies and the work of their relevant inspectors"*.⁷

Against the backdrop of these global and national changes, reviewing the role envisaged for the SEB is an important exercise.

Benefits of reform

Reform through the creation of a SEB may bring multiple key benefits:

- Creation of one **single point of contact** for workers and businesses alike which can serve as a source of information, advice, guidance and grievance
- Powers to address labour market infringements and abuses **across the spectrum of exploitation**, including modern slavery offences
- A more **joined-up approach** and useful working relationship between some of the agencies, such as the GLAA and HMRC
- A joined-up approach under the SEB may engender **positive change in the organisations' cultures**, although this will take time to develop
- A more **consistent approach across the constituent nations of the UK**, with a mandate and powers for the entire labour market in England, Wales, Scotland and Northern Ireland
- **Clarity over grey areas in employment law** which currently create uncertainty for businesses

Powers, features and remit

The SEB's remit would need to be wider than the current remit of the GLAA. There should be a well-resourced flexibility to examine the sectors and workers most exposed to the risk of exploitation and modern slavery, although cases of exploitation that sit outside of a labour remit and regulation of the informal economy may be too challenging for the SEB from a financial and legislative perspective.

The SEB needs to be clear on its role in order for its powers to be adequately drawn up. The SEB should be able to make use of a range of powers from compliance through engagement, fixed and variable monetary penalties, restoration and compliance notices, to deferred prosecutions, enforcement undertakings and cost recovery with the escalation to prosecution for non-compliance. Increased investigative powers would enable the SEB to respond proactively to labour market abuses.

The governance and performance of the SEB should be scrutinised, whether accountability is to government, an executive agency, or an independent board or adjudicators.

One of the main benefits of the SEB for businesses and workers is the creation of one joined up entity. Breaking down the organisational cultures of the multiple agencies being merged will be required in order to develop one coherent organisational culture.

For the SEB to deal effectively with a wider range of issues on the labour exploitation spectrum, internal specialisation may be needed with training on sector specific skills, business skills, awareness of lower level violations and a common understanding of human trafficking and migrants' rights.

Building robust partnerships and regular meetings with civil society organisations will help the SEB stay proactive and connected with on-the-ground developments. Partners should be recognised for the important role they play and should be treated and compensated appropriately. Safe ways of reporting exploitation by workers, regardless of their immigration status, are needed to encourage reporting and facilitate cooperation with victims to tackle the source of exploitation.

Adequate resourcing of the SEB to effectively undertake these functions is crucial. An underfunded SEB may achieve limited progress and a return to the same problems that the labour market and its agencies are already facing. Further, an underfunded SEB may create a culture of "passing the buck" where nobody takes responsibility for system failures.

Leadership, confidence and political will are crucial elements in reform of labour market enforcement, and are needed to drive change with the right ethos and willingness to establish a SEB that is able to succeed and execute justice in practice and not just in theory.

Endnotes

- ¹ Rights Lab and Independent Anti-Slavery Commissioner. (2023) Restating the case for a Single Enforcement Body. Available at: <https://www.nottingham.ac.uk/Research/Beacons-of-Excellence/Rights-Lab/resources/reports-and-briefings/2023/February/Restating-the-case-for-a-Single-Enforcement-Body.pdf>.
- ² Metcalf, D. (2018) *United Kingdom Labour Market Enforcement Strategy 2018/219*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf.
- ³ Department for Business, Energy and Industrial Science (2019) *Good work plan: establishing a new single enforcement body for employment rights*. Available at: <https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights>.
- ⁴ Business, Energy and Industrial Strategy Committee (2022) *Oral evidence: The work of the Business, Energy and Industrial Strategy Department, HC 529*. Available at: <https://committees.parliament.uk/oralevidence/12457/pdf/>.
- ⁵ A protocol on collaborative research was agreed by the IASC and the Rights Lab in March 2021 and this report is the latest in a series of collaborative rapid research projects. See: <https://www.antislaverycommissioner.co.uk/media/1581/iasc-and-rights-lab-collaborating-on-research-and-innovation.pdf>.
- ⁶ Mustchin, S., & Martinez Lucio, M. (2020). The evolving nature of labour inspection, enforcement of employment rights and the regulatory reach of the state in Britain. *Journal of Industrial Relations*, <https://doi.org/10.1177/0022185620908909>.
- ⁷ Ibid.