

# **Compliance and enforcement of the National Minimum Wage: the case of the Leicester textiles sector**

A report by the Low Pay Commission  
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# Contents

Contents .....	iii
Introduction .....	v
The state of the textile industry in Leicester .....	vi
Characteristics of the sector in Leicester.....	vi
Non-compliance in Leicester .....	vii
Executive summary.....	ix
Conclusions and recommendations .....	xi
<b>Chapter 1: What is driving change in Leicester?</b> .....	13
Covid-19.....	13
Increased enforcement activity .....	14
Action by retailers.....	14
Multi-stakeholder forums .....	16
Conclusions .....	16
<b>Chapter 2: Worker complaints</b> .....	18
What workers told us .....	19
Insecurity and complicity .....	20
Workplace culture.....	22
Reporting underpayment.....	23
Language and culture .....	25
Conclusions .....	25
<b>Chapter 3: Enforcement powers and processes</b> .....	27
Operation Tacit .....	28
Enforcement processes, powers and limitations.....	29
Rights of access .....	29
Challenging documentation .....	30
Problems pursuing companies .....	30
Responsiveness and communication.....	31
Involvement of immigration enforcement.....	32

## National Minimum Wage

Contrast with audit processes.....	33
Conclusions .....	34
<b>Chapter 4: Conclusions and recommendations</b> .....	<b>35</b>
Enforcement bodies have made a real effort to get to grips with the problem .....	35
The review of Operation Tacit must be transparent and broad-based .....	36
Unlocking worker complaints is critical .....	37
Enforcement bodies must bridge the information gap .....	38
Government needs to take action on insecurity .....	39
References .....	40

# Introduction

**1** At the Low Pay Commission, we are responsible for recommending the levels of the National Living Wage (NLW) and National Minimum Wage (NMW) to the Government each year. To do this, we monitor the effects of the minimum wage across society, taking evidence from employers, workers and other interested parties. We have an interest in how different low-paying sectors are affected by the minimum wage, of which manufacturing and textiles in particular are important examples. We have an interest in the impacts of the minimum wage in different regions of the UK, and the East Midlands has long been an area with a relatively high proportion of low-paid workers. Lastly, we have an interest in the nature and prevalence of non-compliance with the minimum wage, and the efforts of enforcement bodies to identify and pursue this. All of this means the issue of illegal pay and working conditions in Leicester's textiles sector has been on our radar for a number of years.

**2** Problems in this sector and location have been regularly documented over the last decade. A brief list would include Channel 4's Dispatches programme, which reported from Leicester factories in 2010 and again in 2017; a report commissioned by the Ethical Trade Initiative in 2015 outlining conditions in the sector; a major piece in the Financial Times on underpaid workers in the city in 2018; BBC documentaries examining the sector broadcast in 2019; and enquiries by Parliament's Joint Committee on Human Rights (2017) and Environmental Audit Committee (2018 and 2020).

**3** Much of this came to a head in 2020, when the issue of working conditions under Covid-19 triggered renewed attention in the sector and new interest in previous reporting and research. This led to a concerted programme of joint action by enforcement bodies, to pool information and resources and investigate Leicester textile factories, from the autumn of 2020 onwards. The purpose of this report is to understand what has changed in Leicester since the high watermark of scrutiny in 2020.

**4** Our focus in this report is narrow, on one location and one sector, and there are distinct local factors at work. The conclusions we draw and the recommendations we make, however, are relevant for labour market enforcement and efforts to improve the conditions of low-paid workers in any sector and any location across the UK.

## **The state of the textile industry in Leicester**

**5** It is hard to know the real scale of the textile sector in Leicester and the scale of illegal working within it. As officials at Leicester Council summarised for us, the textile sector remains a largely hidden part of the local economy. There is no central list of manufacturers operating in the city, and different groups have very different views on the prevalence and nature of non-compliance.

**6** In the course of our conversations, it became clear that the sector had changed significantly in recent years, in response to several factors. These include the Covid-19 pandemic, increased media attention, greater activity by enforcement bodies and, perhaps most significantly, changes in retailers' approaches to their supply chains. The challenges described to us in Leicester are deep-seated and have been persistent over a period of decades; in this report, we face a challenge in looking both forwards and backwards. Some groups we met expressed frustration at what they saw as backward-looking narratives which dwelt on historical abuses and ignored present progress. Others were more sceptical about narratives of progress and claims that the sector had moved on. A survey of 108 workers carried out earlier this year on behalf of the Garment and Textile Workers' Trust found that the majority of those surveyed were underpaid, with a variety of other abuses reported (Rights Lab, University of Nottingham; School of Law, De Monfort University 2022).

**7** Change can be fast-moving and there is a risk in generalising about the present based on historical evidence. But it would be a mistake to be complacent and to conclude the structural factors which have made non-compliance possible in Leicester have been completely eradicated. Most of the people we spoke to believed underpayment and other non-compliant practices were still ongoing. Their evidence does not quantify the scale of this, but they were all credible and knowledgeable witnesses. In this report, we do not try to quantify the scale of non-compliance in Leicester textiles manufacturers, or to compare this to other sectors or locations in the UK.

## **Characteristics of the sector in Leicester**

**8** Leicester is a major hub for garment manufacturing in the UK. While the UK textile sector on the whole has declined in recent decades, with jobs and production moving to lower-wage settings overseas, the sector in Leicester began to grow from 2008 onwards (Centre for Sustainable Work and Employment Futures, University of Leicester 2015), driven by online brands and retailers. While retailers can generally source items more cheaply from overseas, manufacturing in Leicester has the advantage of comparatively quick lead and turnaround times, flexibility and quality.

**9** The textile sector in Leicester has long been characterised by the large number of manufacturers. This in turn has tended to intensify price competition in the sector; a few large retailers and brands have substantial buying power, with lots of smaller manufacturers competing for their orders. Outsourcing production has been very common, leading to a network of smaller factories and workshops. Subcontracting has been a key part of the manufacturers' business model, making it very hard to reliably estimate total numbers of manufacturers in operation; estimates we heard for the pre-pandemic period ran to over a thousand although, as we go on to explain, this number is likely to have fallen in recent years. Added to this is the rapid turnover of companies which may come into and out of existence for brief periods (for example, one NGO told us that 17 new garment factories had been set up in domestic addresses in Leicester in May 2020) and the prevalence of informal work. Supply chain auditors with long experience of the local sector spoke to us of unregistered small-scale manufacturers, identifiable only if you listened in the street for the sound of sewing machines.

**10** All of this, we heard, engenders a 'race to the bottom', with manufacturers and subcontractors competing over who can do the work quickest and cheapest. It also means there is a lack of transparency within the sector. One retailer complained to us that, whereas in other countries they could take concerns to industry associations and unions, that was not possible in Leicester. Factories are not represented in any trade association and workers very rarely belong to a union. The retailer told us they face issues around transparency and honesty in dealing with manufacturers in Leicester; they described this as a barrier to building relationships, understanding and resolving issues, and ultimately to expanding their operations in the city.

## **Non-compliance in Leicester**

**11** Non-compliance – in any setting – is rarely as simple as an employer just paying an hourly rate below the minimum wage. Reporting into Leicester over the years, and our own conversations, have highlighted a range of abuses. The most common practice reported is underpayment of the minimum wage via misstatement of hours of work. Workers told us about situations where they are paid for a stated number of hours at the minimum wage, but in reality work longer than is officially recorded. This has the effect of reducing workers' average hourly pay below the minimum wage. Hours above the stated number may be paid cash-in-hand, if at all. Some workers are made complicit because they claim benefits on the basis of their recorded hours, rather than their actual hours.

**12** In an effort to control this practice, retailers and supply chain auditors increasingly insist on biometric machines for workers to clock in and clock out. We heard, however, that these too can be circumvented, for example via a second, hidden machine or a separate paper record. One auditor told us

## National Minimum Wage

they had done two visits in recent months where they had identified additional clock card machines in another part of the building from the brand new biometric system.

**13** A more rudimentary means of underpayment is for managers to demand that workers hand back part of their pay – effectively extorting workers rather than underpaying them. Workers will receive pay that is minimum wage-compliant, but will then be coerced into withdrawing cash and returning this to managers, bringing their actual earnings below the minimum wage. Another frequently cited abuse is non-payment of holiday pay.

**14** While these abuses have been well described in various qualitative accounts over the years, the nature of underpayment means its prevalence is almost impossible to accurately gauge at a particular time. In the Garment and Textile Workers' Trust's recent survey, 56 per cent of workers reported pay below the minimum wage, 55 per cent did not get holiday pay and 49 per cent did not receive sick pay. Around a third of workers surveyed had received neither a contract nor payslips. However, the report also makes clear that this survey cannot be taken as representative of the sector as a whole.

**15** As we've noted, the sector has been through substantial change in recent years, including major enforcement efforts. We describe the enforcement activities in greater detail later, but their initial conclusions are that non-compliance is no more prevalent than in other sectors or areas. So the structure of this report starts from a question: why have enforcement bodies found relatively little non-compliance in Leicester, when so many other bodies and individuals we spoke to believe it to be widespread and flagrant? Each chapter looks at a different explanatory factor for this disconnect. Chapter 1 looks at recent changes to the textiles sector and the drivers of these; have successive waves of sectoral change led to reduced rates of underpayment? Chapter 2 explores the position of textile workers and their reluctance to report abuses. Chapter 3 considers the powers and processes of enforcement bodies themselves and some of the ways in which these are limited. Chapter 4 brings together our conclusions and recommendations for the Government.

**16** Our main concern is with the minimum wage, and as such this report's focus is on minimum wage underpayment and the role of HMRC as the body who enforce the NMW. To an extent this focus is artificial and NMW underpayment is only one part of a wider picture of worker exploitation, where forms of exploitation (and the enforcement body responsible for taking action) can overlap. The distinction mentioned above, between underpayment and extortion, is one example. The example of Leicester makes a good case for a single labour market enforcement body.

**17** Lastly, we would like to thank all the individuals who gave evidence to us. Many groups and people were generous with their time, and all their contributions have helped shape our thinking on the challenges of enforcing the minimum wage.

# Executive summary

**1** This report draws together evidence we have gathered on non-compliance and enforcement in the textile sector in Leicester. We have focused on this sector and location because of the frequent reports of minimum wage underpayment within it, and because it has been the target of sustained enforcement activity by several agencies since 2020. This sector is a useful frame for thinking more widely about the challenges of dealing with serious and persistent non-compliance. The evidence we have gathered is focused on Leicester, but the conclusions we draw and recommendations we make are relevant for labour market enforcement across the UK.

**2** Our starting point is a question: why have concerted efforts by enforcement bodies found relatively modest non-compliance in Leicester, when other bodies and individuals we spoke to believe it to be widespread and flagrant? There are three areas we explore to understand this disconnect: i) recent structural changes in the sector meaning some evidence of underpayment may be historic and so less reflective of current situation; ii) workers' vulnerability and reluctance to provide information to enforcement bodies; iii) and the powers and processes of enforcement bodies themselves.

**3** Leicester is the UK's largest hub for textile manufacturing and has long been characterised by the large number of manufacturers. There are several factors which have brought substantial change to the Leicester textile industry, contributing to a turbulent few years, with businesses closing and a degree of consolidation. The Covid-19 pandemic, lockdowns and an increase in enforcement activity have all had an effect. Demand for garments shifted during the pandemic, affecting the business models of retailers and the manufacturers they source from. At the height of the pandemic's first wave, Leicester and its textiles manufacturers became a focus of media attention following reports that poor working conditions were enabling transmission of the virus. This attention in turn led to labour market enforcement bodies increasing their activity in Leicester, initiating Operation Tacit, a significant joint undertaking which has involved visits to and investigations of hundreds of factories.

**4** The greatest driver, though, has perhaps been retailers taking greater control of their supply chains. Rigorous auditing and restrictions on complicated chains of subcontracting have narrowed the space for non-compliance. This consolidation has created opportunities for better jobs but also brought risks of a narrower manufacturing and employment base.

## National Minimum Wage

**5** While the exact impact of all this change on compliance is impossible to know, what's clear is that the sector has changed substantially. For some we spoke to the picture was of greater professionalism and improved compliance, particularly as rogue employers were thought more likely to have closed. However, others worried about greater job insecurity resulting from a smaller sector overall. This change means that some evidence for non-compliance may be historic and not accurately reflect the current situation. However, our own conversations and qualitative research by others suggest that non-compliance remains a risk in the area. A vital asset in detecting what non-compliance remains is evidence from workers themselves, but there are barriers to be overcome here too.

**6** For the UK as a whole the overall numbers of workers in any sector who report underpayment looks low compared to statistical estimates of this problem, and have been falling in recent years. In April 2019, we estimated 345,000 workers were underpaid. Yet in 2019/20, Acas received just over 8,000 calls related to the minimum wage, of which 2,730 were referred onto HMRC. Leicester is no different, and we heard that complaint volumes were even lower than in comparable sectors. Despite the notoriety of the city's textile sector and the frequency with which non-compliance had been reported in the media, the agencies set out on Operation Tacit with low levels of intelligence on and low volumes of complaints from the sector.

**7** Workers in Leicester explained their reluctance to report underpayment. At the heart of this are fear and low expectations. Workers are afraid of losing their hours and incomes, worried about moving jobs and often grateful just to have employment. There is a deep distrust of enforcement bodies and a lack of faith that complaining will make any difference, other than to put their livelihoods at risk. Workers question how they would prove underpayment when it's just "your word against theirs" and talk of being "coached" by bosses in what to say if an enforcement officer speaks to them. Language and cultural barriers also play a role, as does uncertainty over where to make a report.

**8** We believe that, in general, the reluctance of workers to make a complaint or provide intelligence to enforcement officers is a problem for enforcement activity. Low levels of reporting stymie enforcement activity and make it harder to challenge rogue employers. In turn, this increases workers' negative expectations; if they do not see enforcement as making a difference, they will be less likely to report in the future. HMRC recognised the challenges in Leicester and were taking innovative approaches to overcome deep-seated mistrust.

**9** Operation Tacit has involved hundreds of visits to textile manufacturers in Leicester. On this basis enforcement bodies have concluded that the scale of non-compliance in the sector is no higher than other sectors or parts of the country. This finding needs important context.

**10** Given the significant combined impact of Covid-19, restructuring of supply chains and concerted enforcement activity it is unsurprising that levels of non-compliance are lower than might have been expected. It is possible, perhaps likely, that had Operation Tacit taken place before Covid-19 it would have identified more breaches. Indeed, HMRC told us that large numbers of businesses closed either before they were due to be visited or part way through an investigation. It's possible that some of these businesses were non-compliant and closed to avoid detection.

**11** Furthermore, our report sets out some of the reasons that enforcement might struggle to find non-compliance – especially when workers (often for understandable reasons) keep silent about abuses. HMRC's powers of access are limited and rely on permission from company owners. HMRC can request documents but not search for them, and cannot conclude records are inaccurate if there is no evidence – such as worker testimony – to support this. This makes it possible in principle to conceal non-compliance, particularly if workers do not report abuses. The rapid turnover of companies and potential for phoenixing (dissolving a company to avoid liabilities and setting up a new company to continue the same business) present another layer of challenge.

## Conclusions and recommendations

**12** We recognise enforcement bodies' investment of time and resources in Leicester. It is clear the bodies have made a real effort to understand the problem, the area and the limits of their own approaches. They have visited and investigated large numbers of employers, developed novel approaches and engaged with local bodies.

**13** Encouraging greater numbers of workers to report underpayment and other abuses is important for the success of enforcement. BEIS and HMRC recognise this problem, and there is research ongoing to understand the barriers to worker complaints. This should be at the centre of the Government's strategy and there should be a specific policy aim to increase complaint volumes. Bodies that workers trust – such as trade unions and charities – have an important part to play in identifying and reporting abuses. There are important rules which restrict the information HMRC can share with third-party complainants, but there is more to be done to keep these groups engaged.

**14** A review of Operation Tacit will be carried out by the Director for Labour Market Enforcement (DLME). We recommend the DLME's review is public and broad-based. The terms of reference for this review should require the DLME to seek views from other participants in the Apparel and General Merchandise Public Private Protocol (AGM PPP, a large sectoral forum), rather than just enforcement bodies. The review's conclusions should be made public and this should be done quickly once the review is complete.

## National Minimum Wage

**15** The questions now facing the enforcement bodies are what level of resource to commit to continued work in Leicester, how to balance this with other at-risk sectors and areas; and how to apply what they have learned in Leicester elsewhere. The most important outcome must be that any progress that has been made in Leicester, whether due to enforcement activity or other factors, is not lost.

**16** We urge enforcement bodies to make clear the intelligence they need to take action. Operation Tacit is arguably a high-watermark for information-sharing and collaboration between official bodies and other actors. But retailers, auditors and NGOs we spoke to remained unhappy about the responsiveness of enforcement bodies and thought intelligence they supplied had been ignored. Enforcement bodies, on the other hand, felt low levels of intelligence had been shared. These are irreconcilable accounts. Enforcement bodies need to bridge this gap by making clearer the standard of information they require in order to act. HMRC told us they had done this with groups in Leicester, but the groups we spoke to still seemed unsure on this count. The alternative is a progressive loss of trust and momentum.

**17** The problem of insecure work and uncertainty over hours and schedules was central to the difficulties faced by the workers we spoke to. Unpredictable hours and incomes meant workers were less likely to exercise their rights and more likely to find themselves trapped with exploitative employers. A more mobile and confident workforce would be harder to exploit and more likely to raise issues with their employers and with official bodies.

### Summary of recommendations

We recommend the review of Operation Tacit by the Director of Labour Market Enforcement (DLME) should engage with a wide variety of relevant stakeholders and should be made public.

We urge the DLME to take a view, in light of Operation Tacit, on whether there is a case for further regulation of the textiles sector.

We recommend HMRC addresses previous LPC recommendations to improve and promote third-party complaint protocols.

We urge the Government to take action on the measures we recommended in 2018 to address one-sided flexibility.

# Chapter 1

## What is driving change in Leicester?

### Key points

There are several factors which have brought change to the Leicester textile industry in the last couple of years, with businesses closing and a degree of consolidation in the sprawling sector. The Covid-19 pandemic, lockdowns and an increase in enforcement activity have all had an effect.

The greatest driver, though, has been action by retailers to take greater control of their supply chains. Rigorous auditing and restrictions on complicated chains of subcontracting have narrowed the space for non-compliance. This consolidation has created opportunities for better jobs but also brought risks of a narrower manufacturing and employment base.

We heard mixed views about whether changes in the sector had been for the better; for some, the picture was of greater professionalism and improved compliance, while others worried about reduced employment and greater insecurity.

**1.1** Our goal in this report is to reconcile two conflicting accounts about the textiles sector in Leicester. On the one hand, a variety of sources over more than a decade have reported endemic non-compliance in this sector; on the other, enforcement bodies have not found underpayment or other abuses to be more prevalent than other comparable sectors and locations. The first explanation we look at centres on how the sector has changed in recent years. There have been significant changes over the course of the pandemic which could mean the assessment of non-compliance today is different from what it would have been several years ago.

### Covid-19

**1.2** Leicester attracted considerable attention in the summer of 2020. During Covid-19 lockdowns, it was alleged that factories had remained open illegally, and that conditions in the factories were putting workers at risk of infection (Labour Behind the Label 2020). These reports triggered a wave of interest from both media and official bodies. They led to renewed scrutiny of purchasing and supply chain practices in Leicester. They ultimately led to a dedicated, multi-agency enforcement initiative, in the

## National Minimum Wage

form of Operation Tacit. Covid itself represented a significant disruption to business and demand; we heard that many businesses were shuttered during pandemic lockdowns, and may not have reopened since. It is the view of the enforcement agencies that those businesses that closed were more likely to be non-compliant.

## Increased enforcement activity

1.3 Operation Tacit has been a major intervention by enforcement agencies, involving the pooling of information and a large-scale programme of joint engagement visits and enforcement activity. Described to us as the largest such initiative enforcement bodies have undertaken, it has clearly been a substantial investment of time and resources. A full review of the lessons learned in the operation is forthcoming (led by the Director of Labour Market Enforcement). We discuss the process and conclusions of Operation Tacit in greater detail in Chapter 3. The conclusions presented to us in March 2022 were nuanced; although enforcement bodies had found issues of non-compliance in the course of their visits, these were not as widespread as the media had suggested and, they believed, were essentially no different to any other industry. Operation Tacit brought greater scrutiny of manufacturers in Leicester, who were suddenly more likely than businesses in other sectors or locations to receive a visit from inspectors. It is not possible to know to what extent this had a 'cooling' effect on non-compliant businesses, but it is reasonable to suggest it would have had some effect.

## Action by retailers

1.4 Perhaps the most far-reaching changes to the sector have been driven by retailers. NGOs and researchers have long suggested that to drive change there needs to be a focus on the retailers and their purchasing practices, and we met with groups who had been campaigning for due diligence legislation to put more legal responsibility on retailers purchasing garments from factories. As one academic put it, "large companies run the show". This seems to be borne out by what we heard about ways large retailers had changed their practices.

1.5 We met with one retailer who had taken significant steps to reform their supply chains and increase transparency over pay and labour conditions. They had introduced a common code of conduct and no longer permitted their manufacturers to subcontract. This had been a challenge for manufacturers and in many cases had obliged these contracting businesses to bring more skills and workers in-house. This had been a 'learning journey' for retailer and manufacturers alike. The retailer had taken a hard line with any businesses who did not comply with the new requirements, removing them as manufacturers. The number of manufacturers they worked with had fallen substantially.

**1.6** A key part of this retailer's reforms had been developing and implementing robust costings which reflected the cost of minimum wage compliance. The retailer's buying teams were expected to be aware of what prices were deliverable while complying with the minimum wage and other rules, and alert to any signs of non-compliance. This in turn meant they as a company were more attentive than previously to the impact of the rising minimum wage; we heard about a potential turn to greater use of piece rates in tandem with new systems to track individual productivity.

**1.7** All of this has meant the sector has consolidated; there are fewer manufacturers, while brands are also potentially sourcing less from Leicester. A supply chain auditor told us about one brand which had gone from contracting with 50 factories in Leicester to only four. This has benefits and disadvantages. There is a more transparent supply chain, where retailers should find it easier to be assured of labour conditions and pay. There were opportunities for growth, as manufacturers no longer able to outsource had to grow to meet demand. There are opportunities for greater professionalisation as well – retailers and manufacturers we spoke to told us about their development offer to workers, including upskilling and the offer of language courses for those who did not speak English as a first language.

**1.8** Against this, there was a clear risk to employment; the greater rigour over supply chains and consequent manufacturer exit meant a rising risk of lost jobs. Manufacturers told us they thought workers had already been displaced into other sectors such as food production. Retailers were conscious of the potential adverse consequences for workers when they ended their relationship with a manufacturer; but their primary concern was to clean up their supply chains.

**1.9** Manufacturers thought the short-term future of the sector in Leicester was precarious. The most important factor in this would be the decisions of large retailers, and whether they continued (or recommenced) sourcing from Leicester. The manufacturers we spoke to also operated factories overseas; these were their profit centres, while operations in Leicester ran at a loss. But the advantage of having a UK operation was agility and the continued closer relationship with UK-based retailers. These operations were closer to the consumer and had a quicker turnaround time, which was important for the online business model. Leicester had the advantage of a large skilled workforce, but labour costs were several times higher than abroad; more than one person we spoke to cited the difference between the National Living Wage of £9.50 and a minimum wage in Morocco of £1.24. Lastly, manufacturers expressed concerns about hardship among workers, especially at a time when living costs were rising fast. This included both those who had lost out from sectoral consolidation and those who remained in work.

## National Minimum Wage

1.10 Campaigning groups also highlighted the risk of the market in Leicester segmenting. ‘Good’ brands, we heard, would sign up to agreements to make their supply chain more transparent and improve conditions, but there were concerns that this would push other worse manufacturers further into the shadows, for instance selling to market stalls rather than high street retailers.

## Multi-stakeholder forums

1.11 Recent years have seen a greater level of cooperation and dialogue between different actors. In part, this has come via the Apparel and General Merchandise Public Private Protocol (AGMPPP). This forum brings together retailers, unions, enforcement bodies and the local authority (but not manufacturers) to discuss and progress issues around non-compliance. Begun in 2019, the AGMPPP was given greater impetus by media attention in 2020 and the initiation of Operation Tacit, growing and taking on more brands, NGOs and trade unions. It continues to facilitate joint work on purchasing protocols, and has created a space for unions and brands to agree how they might work together, with measures including access to workers and a protocol for dealing with reports of non-compliance. The most tangible outcome of this work to date has been investment in a team of dedicated community workers offering advice and support to textiles workers, the Fashion Workers Advice Bureau Leicester (FAB-L). The work of this team offers hope for closer engagement with the local community, a long-running problem we discuss in the next chapter. We heard, however, that momentum behind the AGMPPP had slowed in recent months. And the absence of a voice from manufacturers themselves is a significant weakness.

## Conclusions

1.12 We asked many of the groups and individuals we met whether things had got better or worse in Leicester in recent years. There was a consensus that things had changed; but less agreement over whether improvements would endure. Some workers we spoke to told us that the Covid-19 pandemic meant there were now more workers and fewer companies, so there was more scope to treat workers worse. In contrast, other workers thought more audits in factories and more visible enforcement activity had improved conditions and led to more compliant employers. There was a stark gender divide in outlook, with women feeling conditions had deteriorated and men more optimistic.

1.13 One NGO thought that while some of the worst factories had been forced to close down, this had led to even more exploitative conditions such as women using sewing machines at home or night working. They thought that average wages had risen in the sector, but remained below the minimum wage. Enforcement bodies told us there were fewer ‘cloak and dagger’ companies remaining, driven

out by both the pandemic and higher levels of enforcement, leading to a picture of rising compliance. Retailers and manufacturers, too, were conscious of the potential effect on workers from consolidation, but were otherwise confident there was a positive story on improving conditions and closing down the space for non-compliance.

**1.14** It will take time to track the lasting impact of recent developments in Leicester. The experience shows, though, that it is possible to change engrained practices and it is plausible this has had an effect on overall levels of non-compliance. The largest driver of this appears to have been retailers taking greater command of their own supply chains. The key questions for the future will be how broadly this approach takes root, and whether the compliant business models are sustainable in the long-term.

## Chapter 2

# Worker complaints

### Key points

Enforcement of the National Minimum Wage across the UK is undermined by low volumes of worker complaints. Leicester is no different, and we heard that complaint volumes were even lower than in comparable sectors. Enforcement bodies embarked on Operation Tacit with low levels of intelligence on and worker testimony from the city's textile sector.

Workers in Leicester told us about the reasons for their reluctance to report underpayment. At the heart of these are insecurity and low expectations. Workers are afraid of losing their hours and incomes, worried about moving jobs and often grateful just to have employment. There is a deep distrust of enforcement bodies and a lack of faith that complaining will make any difference, other than to put their livelihoods at risk. Workers question how they would prove underpayment when it's just "your word against theirs" and talk of being "coached" by bosses in what to say if an enforcement officer speaks to them. Language and cultural barriers also play a role, as does uncertainty over where to make a report. HMRC recognised these challenges and were taking innovative approaches to overcome deep-seated mistrust.

Low levels of reporting stymie enforcement activity and make it harder to challenge rogue employers. In turn, this increases workers' negative expectations; if they do not see enforcement as making a difference, they will be less likely to report in the future.

**2.1** We have already noted the disconnect in the evidence; journalists, researchers and campaigning organisations are convinced there is large scale non-compliance with the minimum wage in Leicester, and yet targeted action by enforcement bodies did not find this. Our view is that the central explanation for this disconnect is the absence of worker complaints and testimony. In this chapter we detail both what workers told us about the nature of non-compliance and their reticence to complain.

**2.2** At the LPC, we have made repeated statements and recommendations on the importance of facilitating worker complaints in recent years. This is a general issue that goes beyond Leicester and is relevant across all types of non-compliance. HMRC have access to a wealth of information and their

own tools for risk assessment, but the enforcement system is enhanced by on intelligence, and the best source of this will always be workers themselves. Reports of underpayment reaching HM Revenue and Customs (HMRC) look small next to any statistical estimate of underpayment. For example, in April 2019 (the latest year for which reliable data are available), we estimated 345,000 workers were underpaid. Yet in 2019/20, Acas received just over 8,000 calls related to the minimum wage, of which 2,730 were referred onto HMRC (Department for Business, Energy and Industrial Strategy 2022). Across all HMRC's NMW work, the number of 'complaint-led' cases opened was already falling before the pandemic, and then (as would be expected) fell further during Covid lockdowns.

**2.3** Overall, HMRC's activity is determined by two different 'upstream' sources: complaint-led cases and proactive ones. The former group tend to result in a higher 'hit rate' – HMRC are more likely to successfully prove underpayment and secure workers' arrears. Between 2014/15 and 2020/21, 46 per cent of all complaint-led cases closed by HMRC resulted in arrears being repaid to workers, compared with 32 per cent of targeted cases. A lower volume of complaints means a higher relative volume of targeted cases, which HMRC are statistically less likely to close with arrears.

**2.4** In Leicester, we heard that lack of intelligence had been the central problem at the start of Operation Tacit. When enforcement bodies first sat down to pool their knowledge, they realised they had very little recorded information. In part, this is likely to be a consequence of low complaint levels from within the sector. HMRC told us the numbers of reports from textile workers in Leicester, before Operation Tacit, were lower than would be expected in comparable sectors and locales. One retailer also bemoaned spurious complaints to their own whistleblowing line from manufacturers seeking to cause trouble for their competitors.

**2.5** All of this matters greatly, because the absence of worker-supplied intelligence leads to a vicious circle. A lack of worker testimony means that, when they do visit workplaces, HMRC may find it harder to identify malpractice and do not have the grounds to challenge what they hear from employers. This then further undermines worker confidence and means they are even more reluctant to make a complaint to the authorities. In our conversations with workers, we sought to understand what made them reluctant to come forward.

## **What workers told us**

**2.6** We spoke to two groups of workers with long experience within the Leicester textiles sector. The workers were male and female but all drawn from the South Asian community. All had extensive experience of working in Leicester factories. All had experienced underpayment and agreed that this continued to occur; but all also told us that they currently worked for 'good' employers, where they

## National Minimum Wage

were paid legally. What we heard from workers was consistent with evidence from a range of other sources over the years. This includes the recent University of Nottingham Rights Lab report “Fashioning a beautiful future”, which includes evidence from many textile workers in Leicester and discusses the nature of underpayment in some detail.

## Insecurity and complicity

**2.7** Jobs in garment factories are insecure. Workers’ hours and incomes are unpredictable and they rarely have proper contracts. The issues we heard echoed those we highlighted during our work on one-sided flexibility (see box below) and that we continue to hear from low-paid workers across the economy. Community workers told us the lack of job security put people ‘on edge’. Several workers told us they did not have a contract of employment. They thought this was routine practice, and that if workers in factories did have a contract, ‘it effectively means nothing’ (a third of the workers surveyed by the Garment and Textile Workers’ Trust did not have written contracts). Others we spoke to told us they regularly received fewer hours than stated in their contract, with the distribution of hours determined by ‘pot luck’ or favouritism. Workers could be sent home unexpectedly, meaning incomes fluctuated week-to-week. We were told it was common practice for factories not to retain employees for over two years so they did not become eligible for redundancy payments.

### One-sided flexibility – what can be done?

In 2018, in the wake of Matthew Taylor’s review of modern working practices, the Government asked the LPC for advice on ‘one-sided flexibility’. This term is used to refer to the set of practices requiring unreasonable requirements around workers’ availability; unpredictability making it difficult for workers to manage finances; and an overarching fear of losing future work if they raised a concern or turned hours down. Evidence from workers in Leicester shows many of these features.

We recommended a package of measures intended to give workers greater protection against unfair work practices (Low Pay Commission 2018). These were:

- A right to switch to a contract which reflects your normal hours. This is not about a worker requesting a change to the amount of work they do, but rather proper recognition of their normal hours. We believed this would help to tackle the fear of employer retaliation by providing a guarantee of the worker’s normal hours.
- A right to reasonable notice of work schedule – to encourage employers to provide workers with their work schedule in advance so that individuals can plan their lives.
- Compensation for shift cancellation or curtailment without reasonable notice – to discourage employers from cancelling shifts at the last minute or partway through a shift.

- Information to workers – the written statement of terms from employers should detail the rights we are proposing here.

Although these measures were accepted in principle by the Government, implementing legislation has yet to be brought forward.

**2.8** In common with other low-paid workers we speak to, workers were downbeat at any suggestion of leaving the textiles sector: they had trained and acquired skills in this area, and were reluctant to leave behind their experience and start anew in a different area. Our recent review of the National Living Wage (Low Pay Commission 2022) found that textile workers were the least likely to move to another employer or progress into higher paying work. This lack of job mobility makes them particularly vulnerable to exploitation. This finding was mirrored in work done for the Garment and Textile Workers' Trust, which found that job search skills or resources, skills and qualifications, English-language skills and perceived gender roles all limited workers' expectations of their own employability.

**If you could change one thing about your workplace or working conditions, what would it be?**

"the most important thing would be to have fixed hours, so I can budget knowing how much I will earn that month."

"a strong contract which enables workers to have long-term prospects."

"a safe environment with no mental torture would be the most important improvement."

"a permanent role and job security."

"everyone in the industry should be offered a 40-hour full time contract, and factory workers in general need to stand united on having their needs heard."

**2.9** The story around working hours, though, was not only about hours being withheld by employers. Workers reported that overtime was sometimes available, but often paid cash in hand. The workers we spoke to reported an element of complicity, whereby some workers accepted employers underreporting their actual hours, so they could then maximise the benefits they received. This then undermines workers' willingness to complain about any abuse suffered. Factory owners we spoke to told us workers came to them specifically seeking to work 16 or 20 hours and unwilling to take on full-time contracts. Supply chain auditors working in Leicester told us that false payslips understating hours to collude with benefit fraud was a widespread practice. They themselves looked for systematic use of benefit hours thresholds in factories' employment records as a potential red flag for non-compliance. In businesses they investigated as part of Operation Tacit, HMRC looked at RTI returns and the number of workers making benefit claims. They told us they had found no substantial evidence to support these allegations.

## National Minimum Wage

**2.10** An academic we spoke to noted that workers expected no more than the low figures that they get paid. HMRC officers concurred that workers were 'happy just to have a job' and this was a factor in a reluctance to complain. Workers feared that if they stood up and complained, and their company closed, they would have no work. One textile worker quoted in the Garment and Textile Workers' Trust's report sums up prevailing low expectations: "There are some factories where they behave badly. But most of them are good. The only problem is they don't pay us minimum wages. That's it".

**2.11** This long-standing issue of low expectations is not unique to the textiles sector or Leicester. This quote from qualitative research with underpaid workers in 2014 summarises the issue: "We all just accept it because this is the norm in the catering field. Everyone gets below the minimum wage so there is no point complaining. Even if you leave one job you will get another one paying more or less the same, so what is the point" (Department for Business, Innovation and Skills 2014).

## Workplace culture

**2.12** We heard multiple accounts from workers of intimidation and harassment within workplaces. The workers we met were scared of directly complaining about working conditions to their supervisors: 'no one complains; if they did, the boss would say "there's the door, use it"'. One worker told us that supervisors openly compared how many garments people could produce or their quality and bullied those who could not work as well. Workers were singled out for verbal abuse in front of other staff to deliberately humiliate and shame them. Supervisors were often family members of factory owners and therefore acted with impunity. There was a culture of fear among workers, who assumed their boss would find out if they complained and they would be fired. One worker explained that, if enforcement bodies visited the factory, their boss would act on any suspicions about who had made the complaint and fire the person immediately. Another worker thought it was inevitable bosses would know who had made a call to the authorities, because any such call would probably have followed a bullying incident. We were told that 'employers have instilled fear in their workers'.

**2.13** Workers felt grateful just to have work and were not confident they could find it elsewhere. We heard multiple accounts of workers being told their P45 could be withheld or 'marked' in such a way that they would never work again if they were thought to be causing trouble. Supply chain auditors with experience of collecting worker testimony told us 'the fear of retribution is ... very real among these workers, to the point where they will sit and shake in meetings or hold your hand as they're talking to you'. One worker told us they had experienced factory owners and managers coaching workers on how to respond to questions from enforcement bodies.

**2.14** In addition, workers live in close-knit communities and are concerned about social impacts from reporting underpayment; being cast out by family, friends, thought of as a snitch or somehow letting the community down. One worker shared their personal experience of being dismissed unfairly and then having a member of the community asking him whether they had told anything to the authorities. A community worker told us that in the past, when someone has reported something, this had generated a sense of distrust, with people trying to find out who the 'mole' was. The taboo around reporting, the fear of violence and the sense of shame at being a 'snitch' were powerful disincentives to reporting underpayment. People believed that if they came forward, they may never get another job, and this was particularly the case where workers came from a close-knit community.

## Reporting underpayment

**2.15** The workers we spoke to were aware of their rights to the minimum wage and to holiday pay but were less certain of how to report underpayment. In factories we visited, whistleblowing and other helpline numbers were prominently on display. Workers thought that while this would be the case in 'good' factories, where the bosses were not bullies, this would not be the case everywhere.

**If there was a problem at work, who would you speak to and what would the employer's reaction be?**

"I would go to the job centre or contact HMRC. In general if other employees found out they would fire the employee for this."

"I would contact the union who would sort out the issue as they are helpful. The employer would get upset and you could potentially lose your job."

"I'm not sure who to report to, perhaps the job centre. However if I did this, I would lose my job."

"I would not know who to go to for help apart from the community centre."

"I had previously called Acas and Citizens Advice because they are confidential and provide advice without sharing your details with your employer. However they cannot help you, and their role is valued but is limited to advice not action."

**2.16** Layers of subcontracting also create confusion when it comes to reporting underpayment. Enforcement bodies thought these led to workers misreporting – claiming they were working for a given retailer or manufacturer, when in fact they were further down a subcontracting chain, often invisible to the primary retailer. This kind of confusion could be discouraging for workers and other bodies who might wish to report and might create difficulties for enforcement bodies.

**2.17** Beyond the fear of identification, negative expectations of enforcement were another substantial obstacle to reporting. More than one worker told us they would phone an enforcement line if they were

## National Minimum Wage

confident it would result in action – but they were sceptical that official bodies could help them. Workers doubted they could prove underpayment when it was just “your word against theirs”. The complexity of calculations needed to work out amounts owed was another factor. They suspected that bosses and accountants would collaborate to produce consistent records, which workers would be unable to challenge. All of this demonstrates the vicious circle, where lack of worker reporting stymies enforcement activity, which further suppresses worker reporting.

### Reporting underpayment – the worker journey

HMRC are responsible for investigating NMW underpayment. There is a long road, however, between a worker realising they are underpaid and HMRC opening a case, and there are various stages where a worker might lose confidence and drop out.

Acas (the Advisory, Conciliation and Arbitration Service) operate a confidential helpline where workers can report underpayment and seek advice on employment-related issues. The steps Acas follow offers a good model of the barriers workers must go through to report underpayment.

Acas will usually begin by asking whether workers have raised their issue with their boss. Given the accounts of bullying and intimidation we heard from workers in Leicester, this would be an immediate red line for workers, even with Acas offering to play an arbitrating role. Workers have statutory protections against detriment from raising grievances; but in practice these are only enforceable via a tribunal, which is in no way an easy option for workers. By doing this worker lose their anonymity and many face a real risk of reprisals including losing shifts and potentially their job.

If a worker is unwilling to talk directly to their boss, Acas will typically test whether other workers are affected by the issue (in which case there would be scope for collective grievance); or whether there are bodies who could take up the complaint on the workers’ behalf, typically a trade union. It is unlikely textile workers would belong to a union; and unlikely they would be in a position to organise collective grievances. A culture of fear and insecurity mitigates heavily against this.

At this point, Acas will typically propose reporting underpayment to HMRC. Workers can do this themselves via an online form; or Acas can transfer them across directly on the phone. Some of the factors Acas note as discouraging workers from pursuing the HMRC option overlap with those we heard from workers.

- Callers may not have faith in their anonymity being protected.
- They may have tried to contact HMRC directly and been frustrated by the lack of a direct phone line.
- Their confidence may be undermined by the complexity of calculations involved, and the fact that Acas themselves are not able to represent them or provide definitive advice.

- They may feel that the sums involved are too small and not worth the trouble of pursuing.

Two additional factors may act as obstacles to workers engaging with the Acas helpline. There may be a language barrier; although Acas offers interpreting services, non-native English speakers may still be discouraged from calling the helpline in the first place. And workers may not be able to call during the helpline's opening hours of Monday to Friday, 8am to 6pm.

## Language and culture

**2.18** Language and cultural barriers are a further issue which can mean enforcement bodies struggle to build trust with vulnerable workers. This was frequently raised as an explanation for the discrepancy between what enforcement bodies found as opposed to auditors, journalists or researchers. One retailer suggested that these latter groups may be able to get more access to workers than enforcement bodies because they speak the same language and come from a similar background to the affected workers, which is less often true of enforcement officials. One supply chain auditor described their approach to us as "basically about workers opening up". A few things made this easier; the auditor was able to speak the workers' language, came from their community and was not seen as enforcement. Workers were vulnerable and scared of their employers and "don't know what's on the other side".

**2.19** In our discussions, HMRC recognised this lack of confidence and described their work attempting to build trust by engaging employees outside of their workplace. They had conducted outreach programmes at food banks working with campaign groups to talk to workers outside of their workplace. They have distributed leaflets and spoken to workers in their own languages. However, there remained "a little bit of a barrier" as workers were aware they were from Government. Some workers, we heard, had shared "basic information, but nothing we can act on". HMRC remained confident that trust was being developed over time and were keen to work closely with other bodies in the community. They hoped this would help bridge the gap with the community and enable them to gather better intelligence. In Leicester, as elsewhere, they had no doubt there was a reluctance from workers to speak with the enforcement bodies and make disclosures in interviews on premises.

## Conclusions

**2.20** It is clear that the reporting process as currently constituted does not work for low-paid workers such as those we met in Leicester. There is a fundamental lack of confidence in the process. There are signs that enforcement bodies recognise this and are working to overcome these issues. The efforts at community engagement we heard about are a clear positive which ought to continue.

## National Minimum Wage

**2.21** More generally, the insecurity of work is a barrier to reporting and, ultimately, an enabler of exploitation. The Government should bring forward measures to address insecurity – such as those we proposed in 2018 – as soon as possible.

# Chapter 3

## Enforcement powers and processes

### Key points

Operation Tacit has involved hundreds of visits to textile manufacturers in Leicester. On the basis of these visits, enforcement bodies have reached conclusions about the scale of non-compliance in the sector. But there are reasons that enforcement might struggle in catching non-compliance.

HMRC's powers of access are limited and rely on permission from company owners. HMRC can request documents but not search for them, and they cannot conclude records are inaccurate if there is no evidence – such as worker testimony – to support this. This makes it possible in principle to conceal non-compliance, particularly if workers do not report abuses. The rapid turnover of companies and potential for phoenixing (dissolving a company to avoid liabilities and setting up a new business to continue operations) present another layer of challenge.

The private audit system has more flexibility than HMRC to act where there are suspicious patterns within a company. It operates to different standards and requires manufacturers to actively prove their compliance, rather than having to build a case against them.

It is hard to know to what extent non-compliance can be concealed from enforcement bodies. The bodies are confident their procedures and evidence base are robust. But the culture of fear affecting the workforce and workers' unwillingness to come forward makes it reasonable to be cautious in drawing conclusions from enforcement activity.

**3.1** As noted in Chapter 1, Operation Tacit has probably been the largest joint operation UK labour market enforcement bodies have undertaken. A review of the lessons learned in the operation is imminent and will be carried out by the Director of Labour Market Enforcement (DLME). Nevertheless, in March we heard from the agencies involved about their experience in Leicester and what they thought they had achieved.

**3.2** We also spoke to other parties about their views on enforcement: retailers, manufacturers, supply chain auditors, campaigning groups, academics and workers. As previously noted, in most cases, there was a disconnect between these groups' understanding of the situation in Leicester and expectations of enforcement activity, and the enforcement bodies' findings. The underpayment these bodies have identified has been less than might be expected, given reporting on the sector. The

## National Minimum Wage

absence of worker testimony is one explanation. In this chapter we explore another potential factor – how enforcement bodies can overcome the concealment of underpayment.

# Operation Tacit

**3.3** Operation Tacit has involved a significant commitment of time and resources. Enforcement bodies estimated they had made between 400 and 500 joint visits to factories, conducted around 200 investigations and invested time in developing engagement and information-sharing with other actors in the sector. The operation involved HMRC's NMW enforcement teams alongside the police, the National Crime Agency, the Gangmasters and Labour Abuse Authority, Home Office Immigration Enforcement and the Health and Safety Executive. HMRC estimated that in the course of Operation Tacit they had visited more than half of the textiles manufacturers currently operating in Leicester. The starting point for much of this work was 'engagement visits' to textile manufacturers. These were not 'enforcement visits' as would be conducted if enforcement bodies had specific intelligence about non-compliance. Instead, the bodies carried out consensual visits to build their evidence base and understanding of the sector. If the bodies suspected a risk of non-compliance in the course of an engagement visit, they would then conduct an enforcement visit.

**3.4** We heard that the starting point for the operation was a general shortage of information. When media stories broke in 2020, enforcement bodies told us they had limited intelligence on the sector. For some bodies including HMRC, the garment sector had not historically been prioritised as high-risk.

**3.5** Over the course of Operation Tacit, HMRC and other enforcement bodies have drawn the conclusion that there is no substantial evidence of widespread non-compliance. HMRC told us that although there had been some cases of serious non-compliance, the level of non-compliance they identified was below the level they would expect to find in any other manufacturing sector. They had interviewed workers, and made a point of doing this away from their work area to reinforce confidentiality. Only in one case had workers said they were being paid less than minimum wage.

**3.6** However, as outlined in Chapter 2, they also recognised that the way to get to serious non-compliance was not through conventional methodology. This had to be done by building relationships with people on the ground to gather intelligence – not just workers but wider networks including auditors and brand compliance teams. The challenge they described to us was how to direct resource to mount the most effective compliance behavioural change.

## Enforcement processes, powers and limitations

**3.7** HMRC were confident in their ability to identify underpayment and did not believe non-compliance was being concealed in premises they visited. Nevertheless, on the basis of a range of testimony, we have tried to understand whether the processes enforcement bodies use – and the powers available to them – are adequate to identify the kinds of non-compliance described to us. This is a difficult question and we heard a variety of views on the adequacy or otherwise of the current enforcement regime.

### Rights of access

**3.8** Although the picture varies by enforcement body, HMRC has strong permissive powers to investigate cases of minimum wage underpayment, as determined by the National Minimum Wage Act. Section 14 of the Act grants them the right to enter any relevant premises, to speak to any relevant person and to inspect and take away any relevant documents.

**3.9** In the Act, relevancy is broadly defined. A relevant person can be any person an officer believes to be an employer or to qualify for the NMW. A relevant premises means any premises which an officer believes to be where an employer carries on business or uses in connection with their business. These powers are backed by criminal offences. Any employer obstructing HMRC in their duty is potentially guilty of a criminal offence.

**3.10** In theory, these are strong powers which confer the right to enter locations and ask for documents. In practice, HMRC's approach is not to 'fish' for offences. They seek permission from employers to enter premises and speak to workers. They will only enter a premise and request documents if they have first identified a risk of underpayment. This draws us back to the problems outlined in Chapter 2; a lack of reporting from workers undermines enforcement activity, at the same time as a lack of enforcement activity undermines the pipeline of worker reporting.

**3.11** A retailer we spoke to gave an example of an unannounced factory visit (where a member of that retailer's compliance team had been present) carried out by Home Office and police: "we knew there was something behind a closed door, but no-one could do anything about it because they didn't have a warrant or the right level of access". The retailer argued that right of entry seemed a necessary right for enforcement bodies. Enforcement bodies, on the other hand, were wary of the potential for abuse of rights of access, especially on the basis of weak evidence; suspecting something behind a closed door would not be sufficient evidence for them to enter.

### Challenging documentation

**3.12** There are other qualifications to be made around HMRC's powers. The right to 'inspect and take away' relevant documents is not the same as the right to search for documents, for example to open drawers and look for additional documentation. Employers may not have documents to hand or may want to refer the officers on to their agent or accountant. Finally, HMRC officers have to accept the documents they receive in good faith and consider them impartially.

**3.13** If there is no evidence to suggest a discrepancy in the records, an officer will not have grounds to challenge them. If they identify discrepancies within the documents, or suspect they are incorrect or false, they can refer the case on to HMRC's fraud investigation teams, who then have greater powers to obtain a warrant and search premises. Worker interviews are one way in which HMRC cross-check the records and information provided by an employer. It is not the only way to do so, and HMRC told us they have access to a wide range of information and are able to build a comprehensive picture of an employer's activity and workforce before they set foot on a premises. Nevertheless, if there is no worker testimony – or if workers are reluctant to alert authorities to underpayment – the enforcement bodies are deprived of an important means of challenging employers.

### Problems pursuing companies

**3.14** As noted in the report introduction, the large number and rapid turnover of companies is a feature of the sector in Leicester. There are legitimate reasons why a director may dissolve a company, and there is nothing illegal in doing so. Many of the groups we spoke to, however, told us that use of 'phoenixing' – the repeated dissolution of companies, to shed liabilities – was part of a common business model in Leicester. Workers gave examples of previous employers closing their factories then rapidly reopening with the same staff under a new name. It was suggested that employers were using this practice of 'phoenixing' to avoid legal recourse, but such a tactic would also have the effect of neutralising investigations by enforcement bodies. HMRC consider director history as part of their risk assessment process; and auditors told us about their work looking for patterns of behaviour in company and director histories indicative of fraud. They also bemoaned the fact that penalties for non-compliance were levied on companies, rather than reaching back to controlling directors. HMRC told us that they work with the Insolvency Service to disqualify company directors for breaches of employment law. We are keen to understand more about the outcomes of this work.

**3.15** For their part, HMRC described how they were dealing with the high turnover of companies. At the start of Operation Tacit, we heard, the intelligence received was 'significantly aged' and officers would find businesses were long gone and workforces changed before they could start investigations.

As one officer told us, “the workers tend to move around as fluidly as the work does”. We heard, however, that it was hard and frustrating work to track these companies down. HMRC told us that of around 200 companies identified for investigation at the start of Operation Tacit, they found that around 30 had ceased trading before an investigation could commence, and around 20 more subsequently ceased trading during the course of investigation. It was not possible to know to what extent these closures were part of the ongoing consolidation of the sector described in Chapter 1. HMRC planning to revisit closed companies, and were tracking directors of closed companies as well as workers to look for patterns of behaviour indicative of phoenixing.

### Responsiveness and communication

**3.16** A recurrent frustration for many groups was the responsiveness and information-sharing practices of enforcement bodies. This is in some ways at the heart of the disconnect in the evidence. Enforcement bodies acknowledged they had started with an information deficit which they worked hard to remedy. But other groups felt that information they provided over the course of Operation Tacit had not been acted on. Supply chain auditors and retail brands told us they had reported issues or brought whistle-blowers to speak to enforcement bodies, but received no feedback and had seen no follow-up action.

**3.17** The lack of publicly available information on enforcement activities was also a source of frustration. The individuals we spoke to generally understood that confidentiality restrictions prevented HMRC passing back information. HMRC have a statutory duty to protect taxpayer information and cannot disclose information back to third parties. Even in the case of workers who complain, HMRC are able to share very limited information on ongoing cases: whether a case has been closed or is still ongoing. They were still annoyed, however, that almost two years into Operation Tacit there were no public examples of workers receiving arrears or employers being sanctioned.

**3.18** We saw a gap in expectations in two areas: the time it takes HMRC to investigate cases; and the standard of evidence they need to investigate and find arrears. It is hard to find transparency in either of these areas. When it comes to time, HMRC statistics show how long it takes to close cases; in 2020/21, 39 per cent of cases were completed within 120 days, 72 per cent within 240 days. In the majority of cases, then, it takes HMRC four to eight months to investigate a complaint. These are average figures, covering a varied caseload. When it comes to the standard of evidence needed, there is no public information available. There are obvious difficulties for HMRC in making general statements about the evidence or intelligence they require. But our conversations in Leicester show how the absence of clarity and feedback undermines confidence in enforcement. We have long noted the issues

## National Minimum Wage

created by the way HMRC deals with third parties who report underpayment, and come back to this question in our recommendations.

## Involvement of immigration enforcement

**3.19** We heard several times that the involvement of immigration enforcement in Operation Tacit exerted a chilling effect on workers' willingness to come forward. We did not hear this directly from workers themselves, but they were generally of the view that there were workers in the sector whose immigration status made them vulnerable to exploitation. In the University of Nottingham's recent report, only 3 per cent of workers surveyed said they were "without the right to remain".

**3.20** Enforcement bodies were dismissive of this claim, and told us that outdated anecdotes about immigration enforcement had inhibited community engagement. Home Office told us that their involvement in Operation Tacit had been minimal, they had found very little non-compliance with the right to work and no returns to countries had resulted. We note, however, that not finding illegal workers does not mean there is no chilling effect for workers' willingness to come forward.

## 'Technical' breaches

**3.21** We regularly hear complaints from employers in all low-paying sectors that HMRC focus on 'technical' breaches of rules rather than 'serious' non-compliance. This claim is hard to evaluate: the category of a 'technical' breach does not exist in the regulations; NMW rules, even technical ones, are generally in place to protect workers; and it is clear that HMRC have committed significant time and resource to serious breaches of the rules. In Leicester, independent auditors offered a variation of this criticism, arguing that HMRC, by looking for 'technical' rule breaches in factories they visited, were effectively missing the wood for the trees.

**3.22** The auditors feared HMRC inspectors missed obvious indicators of non-compliance – for example, when all workers were below National Insurance thresholds. One auditor told us that they had carried out around a dozen investigations in the past 18 months which had followed HMRC investigations. The auditor alleged that HMRC had identified small infringements, they had missed red flags suggesting more wide-reaching non-compliance; for example, seeing that only 3-4 per cent of workers on the pay roll were reaching PAYE or NI contributions, which the auditor viewed as sufficient to suggest working hours were being falsified. HMRC rejected this assertion, and told us they do take this information into account. In part, this may reflect a discrepancy between the different standards of proof required between audit processes and official enforcement.

## Contrast with audit processes

**3.23** One retailer described the difference in dynamics between private audit and labour market enforcement processes; in the former, manufacturers are essentially required to prove their compliance, while in the latter the onus is on enforcement bodies to find evidence of non-compliance. There is also more space in audit processes for risk-based judgements – for example, auditors can interpret findings around PAYE or NI thresholds as risk of non-compliance, and advise retailers to act on this risk. For example, the retailer may choose not to work with this manufacturer – deeming them too risky. Enforcement bodies, on the other hand, would need positive proof that underpayment had taken place to act.

**3.24** The contrast between the work of enforcement bodies and that of supply chain auditors was frequently drawn in our discussions. More retailers have signed up to supply chain audits in recent years, in particular under the Fast Forward imprint. Auditors have developed methodologies to highlight non-compliant and exploitative practices and enable brands to address them. The sites auditors visited, by their nature, were not the ‘worst of the worst’, having signed up for the process. Nevertheless, the auditors we spoke to claimed that over a period years they had been able to uncover all the most common reported abuses in Leicester (wage theft, wages below NMW, non-payment of holiday pay).

**3.25** Auditors were distinguished from enforcement bodies by access, both to premises and to workers. Factory owners were obliged to give auditors access to their sites, as being audited was a condition of doing business with certain brands. In addition, auditors were embedded in the local area, able to talk directly to and develop trust with workers and received whistleblowing reports. The individual auditors we spoke to were from a south Asian background and spoke the same languages as many factory workers (this is also true of several of HMRC’s investigators).

**3.26** Whistleblower testimony was a significant input for auditors; but was only a starting point, with the cases they built against employers being constructed around documentary evidence, including RTI returns, output records, man hours and wage bills. They raised issues with retailers via audit reports, either as a ‘non-conformity’, or in more serious cases ‘audit evasion’. It would then be up to retailers to investigate and judge whether to continue with a manufacturer.

**3.27** It is clear that auditors work to different standards than enforcement bodies. This is a retailer-led function, built around commercial, rather than legal, responsibilities. It is still worth considering what can be learnt from their methodologies, and developing the exchange of risk information between the different sides. It may also be the case that audits, like enforcement inspections, can be evaded; in research carried out for the Garment and Textile Workers’ Trust, one manufacturer’s view is that “it’s

## National Minimum Wage

completely possible to evade the scrutiny from audits” as they “don’t actually get into the [detail] of what’s going on in a business, they just look at the outside, the paperwork”.

## Conclusions

**3.28** Operation Tacit did not find non-compliance on an endemic scale in textiles manufacturing in Leicester. Its fundamental conclusion is that although underpayment in this sector does exist, it is not exceptional in scale or nature when compared with other areas. This was the case for both HMRC’s NMW enforcement, and other enforcement regimes covered by the operation. This clearly contrasts with the evidence we heard from others.

**3.29** At the centre of this is a question of information. Enforcement bodies say they have not received the intelligence pointing to widespread non-compliance. Other groups feel they have provided relevant intelligence to HMRC, which has not been acted on. There is a contradiction here which we cannot resolve.

**3.30** Enforcement bodies are confident that their investigation processes would uncover non-compliance if it were there – particularly of the scale alleged in Leicester. But there still seems scope to conceal non-compliance – particularly in the absence of worker testimony. There may be scope to learn from the methodology of private supply chain auditors, although it is important to note that this group works to very different set of standards than the enforcement bodies.

# Chapter 4

## Conclusions and recommendations

### Summary of recommendations

We recommend the review of Operation Tacit by the Director of Labour Market Enforcement (DLME) should engage with a wide variety of relevant stakeholders and should be made public.

We urge the DLME to take a view, in light of Operation Tacit, on whether there is a case for further regulation of the textiles sector.

We recommend HMRC addresses previous LPC recommendations to improve and promote third-party complaint protocols.

We urge the Government to take action on the measures we recommended in 2018 to address one-sided flexibility.

### **Enforcement bodies have made a real effort to get to grips with the problem**

**4.1** We recognise enforcement bodies' investment of time and resources in Leicester. It is clear the bodies have made a real effort to understand the problem, the area and the limits of their own approaches. The scale of the operation is impressive; they have visited large numbers of employers, developed novel approaches and engaged with local bodies. However, this rigorous enforcement activity has not found widespread underpayment and the incidences of underpayment identified had not involved large amounts of arrears.

**4.2** Although we recognise these efforts, the conclusion that non-compliance in Leicester textiles is no higher than in other industries needs important context. The sector has had an extremely turbulent few years. The combination of Covid-19, shifts in consumer demands, radical restructuring of supply chains and a huge enforcement effort have resulted in a very different sector. Given the significant combined impact of these changes, it is unsurprising that levels of non-compliance are lower than might have been expected given the various recent media reports. It is possible, perhaps likely, that had Operation Tacit taken place before Covid-19 it would have identified far more breaches. HMRC told us that around 50 businesses closed either before they were to be investigated or part way through an

## National Minimum Wage

investigation. Whether these closures were due to economic conditions or to avoid punishment for non-compliance is impossible to know, and yet it is likely that at least some of these businesses had underpaid workers. The reality is that deterrent effects are difficult to measure, but the sheer scale of enforcement activity in the area likely prompted non-compliant employers to attempt to avoid detection.

**4.3** Our report sets out some of the reasons any non-compliance that remains could go undetected; principally, that workers are still reluctant to complain or share information with enforcement bodies. Without workers' collaboration with enforcement bodies it is easier for rogue employers to conceal underpayment. While the exact scale of non-compliance is impossible to determine, our conversations with workers and other stakeholders accords with the findings of the University of Nottingham's Rights Lab – that non-compliance remains a serious issue affecting too many workers and is going undetected.

**4.4** The questions now facing the enforcement bodies are what level of resource to commit to continued work in Leicester; how to balance this with other at-risk sectors and areas; and how to apply what they have learned in Leicester elsewhere. The most important outcome must be that any progress that has been made in Leicester, whether due to enforcement activity or other factors, is not lost.

**4.5** For enforcement bodies, this means continuing efforts to build local intelligence and making sure Operation Tacit activity is followed up where necessary. For all parties, this means keeping up momentum via multi-stakeholder forums such as the AGM PPP, seeking to expand that group's reach and to support improving standards in Leicester's manufacturers. It is vital that retailers sourcing production in Leicester continue to support access to workers and community engagement. This work, outside the remit of enforcement bodies, is arguably of greater importance in empowering workers and creating the conditions for a fair, sustainable industry in Leicester.

## **The review of Operation Tacit must be transparent and broad-based**

**4.6** This report reflects on some of the findings of Operation Tacit, but we have not seen comprehensive findings from the operation or had the opportunity to speak in detail to all the bodies involved. The forthcoming review of Operation Tacit by the Director of Labour Market Enforcement (DLME) will be an opportunity to fully disclose findings and lessons learned from this work. **We recommend the DLME's review should engage with a wide variety of relevant stakeholders and should be made public.** We encourage the DLME to seek views from other participants in Leicester, in particular groups involved in the AGM PPP, rather than just enforcement bodies. The review's conclusions should be made public and this should be done quickly once the review is complete.

**4.7** There are a multitude of proposed measures ‘on the table’ which could contribute to ending exploitation in the textile sector. The DLME’s 2018/19 strategy recommended joint responsibility measures in supply chains. The Joint Committee on Human Rights in 2017 recommended extending the GLAA’s licensing powers to the garment sector and in 2021, the Environmental Audit Committee recommended the Government evaluate the creation of a Garment Trade Adjudicator. None of these have been taken forward. **We urge the DLME to take a view, in light of Operation Tacit, on whether there is a case for further regulation of the textiles sector.**

**4.8** We note that there were no plans for an Employment Bill in the recent Queen’s Speech, and that consequently there is no current vehicle to bring forward the long-awaited single enforcement body. This is unfortunate; a new body would represent a unique opportunity for reform. There would be a chance to simplify the process of reporting abuses for workers; and to review enforcement powers, in particular around access to workplaces and workers. If and when a single enforcement body is eventually created, it is essential that the lessons of Operation Tacit inform the powers it uses.

## **Unlocking worker complaints is critical**

**4.9** Across HMRC’s minimum wage enforcement work, complaint-driven cases are far more likely to result in arrears repaid to workers. Yet compared to scale of the problem, the number of complaints is too low. Conservative estimates of the number of underpaid workers are counted in the hundreds of thousands; indeed HMRC found arrears for over 200,000 workers in each of the three financial years from 2017/18. And yet over that period the number of complaints from workers referred to HMRC from Acas is around 2,000 per year. Furthermore, the number of complaint-driven cases has been falling in recent years, a trend that began well before the pandemic.

**4.10** In this report we have identified some of the barriers to workers complaining. More needs to be done to understand and rectify them; the Department for Business, Energy and Industrial Strategy are currently leading research to do precisely that. HMRC have recognised the problem with their community outreach work. We encourage HMRC to continue their work to build community links in Leicester and to consider applying this model elsewhere. The work of local enforcement officers to build a profile within the local community seems a necessary precondition of building trust and encouraging workers to report underpayment.

**4.11** BEIS and HMRC have to continue to pursue the goal of raising the number of complaints from workers. However, we should also accept that some of these barriers will be unsurmountable and some exploited workers simply will not complain, though others – bodies they trust, such as trade unions and charities – could complain on their behalf. Likewise, intelligence from workers is critical, but so too is

## National Minimum Wage

that from retailers, manufacturers and other bodies. Both of these issues point to a third party complaints process and better intelligence sharing more generally, which we consider next.

## Enforcement bodies must bridge the information gap

**4.12** Operation Tacit has seen increased information-sharing and collaboration between official bodies and other actors. But many groups we spoke to remained unhappy about the responsiveness of enforcement bodies and felt that intelligence they supplied had been ignored. Retailers, auditors and campaign groups all felt reports they submitted disappeared into a 'black hole', and they were left waiting without knowing whether action had been taken. Enforcement bodies, on the other hand, felt that little 'actionable' intelligence had been shared.

**4.13** These accounts are irreconcilable. Enforcement bodies need to bridge this gap; the alternative is a progressive loss of trust and momentum. Potential complainants need to better appreciate HMRC's information requirements and standards; and HMRC needs to be better and prompter at providing feedback. To this end, **we recommend HMRC returns to previous LPC recommendations to improve and promote their treatment of third-party complaints.** Specifically, this should include:

- **communicating where the bar is for 'actionable' intelligence.** Third parties should be able to see a clear, published set of standards for the information HMRC requires to open a case; and to understand the shortcomings which could prevent HMRC taking action. In this, HMRC have to balance the risk of discouraging complaints against the benefits of managing stakeholder expectations. Our view is that it would be worth doing this to improve public understanding of enforcement.
- **setting a standard for providing prompt and regular feedback to third parties.** HMRC officials are bound by taxpayer confidentiality rules which prevent them disclosing personal information. This limits the feedback HMRC provide to third parties on individual cases. But without any feedback, third parties are likely to feel they have no stake in the enforcement process. Providing regular aggregated, non-disclosive information about a particular sector or location would be a positive step. We recognise there are challenges in doing this, and it will not be possible in every instance. But it would be worthwhile to maintain the buy-in of significant stakeholders such as trade unions, employers and industry bodies.
- **promoting options for underpaid individuals to nominate a third-party agent to act on their behalf.** The rules already allow individuals to do this in cases of minimum wage underpayment, and it is more widely by individuals dealing with HMRC in other areas, for example on tax credits.

**4.14** This is a long-standing problem. We would like HMRC to write to us and set out their response to this recommendation. If a single enforcement body is brought forward, it will be critical to build in a functional third party complaints process from its inception.

**4.15** We support HMRC's plans to follow up with closed or shuttered companies in Leicester. 'Phoenixing' – that is, the repeated dissolution of companies to shed liabilities – is easy to do and an important part of the story when it comes to worker exploitation in Leicester. HMRC's strategy needs to reflect this. Enforcement bodies told us they recognise the potential association between phoenixing and non-compliance, and track directors who may be using phoenixing to evade their responsibilities to their workers HMRC also told us that they are working with the Insolvency Service to disqualify company directors responsible for serious or persistent breaches of employment law. This is important work and we are keen to understand its outcomes.

## **Government needs to take action on insecurity**

**4.16** The problem of insecure work was central to the difficulties faced by the workers we spoke to. Workers with unpredictable hours and incomes are less likely to exercise their employment rights. Workers in insecure work are also likely to believe that any other job they move to would be equally insecure, or that hard-won employment conditions or hours commitments would have to be fought for again. This risk aversion to moving jobs traps workers with exploitative employers. Better-protected and more predictable work schedules would strengthen the hand of exploited workers. There is an existing set of proposals which would help remedy this insecurity. **We urge the Government to take action on the measures we recommended in 2018 to address one-sided flexibility.**

**4.17** However, as this report attests, having the rules in place does not guarantee protection. In an ideal world, a worker facing exploitative practices would simply leave that job for another. So it is notable that there appears to be serious exploitation of some workers at a time when many other employers are struggling to recruit. Far more needs to be done to aid low-paid workers in their mobility in the job market. This includes helping workers with their confidence, skills and awareness of other opportunities. A more mobile and confident workforce would be harder to exploit and more likely to raise issues with their employers and with official bodies. This would make the job of enforcement bodies easier; as we have shown in the course of this report, a workforce with low confidence and low expectations is an asset for rogue employers and an obstacle to successful enforcement.

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