Compliance and enforcement of the National Minimum Wage

A report by the Low Pay Commission

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Introduction

1 Our principal role as the Low Pay Commission is to recommend to the Government the level of the National Minimum Wage (NMW), including the National Living Wage (NLW). Each year we gather evidence on the effects of the minimum wage across society, speaking to workers, employers and any other interested parties. In the course of these discussions, we hear evidence about compliance with and enforcement of minimum wage rules. The question of how high the minimum wage can go is intrinsically linked to the question of whether the rules are understood, accepted and followed. In a series of standalone reports we have tried to assess the state of play in this area and to point to areas we feel need more attention or a different approach. This report addresses some notable aspects of the compliance challenge and makes several recommendations to the Government.

2 Non-compliance with the NMW can take different forms, whether paying workers an hourly rate below what they are due, unfairly deducting money from their pay or not paying for all working time. Regardless of the form it takes, non-compliance deprives low-paid workers of their due and upsets the level playing field between businesses. There are different ways of thinking about underpayment and different sources of evidence we can consider. We can look at what the enforcement body is doing. We can look at the numbers underpaid. Our scope is wider this year.

3 In last year's report we considered a single location and sector which had been the focus of much reporting and intense enforcement activity: the textile industry in Leicester. Our report tried to reconcile the conflicting findings of different actors; while many local bodies believed non-compliance was widespread, enforcement bodies' conclusions were much more restrained. A key explanation we pointed to was the reluctance of workers to speak out about abuses of their rights.

4 While there were specific local factors at work in Leicester, much of what we heard exemplified the more general conditions which enable underpayment and exploitation to persist. At the heart of it were fear and low expectations. Insecurity, precarity and uncertainty over their rights discouraged workers from raising complaints. The sense that it was the same everywhere depressed their expectations that they could get a better-paying job anywhere else. These experiences are not unique to the workers in Leicester. We hear about them from low-paid workers across the economy, across the country, year in and year out. Seen in this way, underpayment is not an isolated problem, but one that is interconnected with wider questions about employment conditions and low-paid workers' experience of the labour market.

5 This year we have looked at the persistence of underpayment for individuals from year to year. Employee shortages have been the defining feature of the labour market since the UK began to emerge from the pandemic. Several factors have combined to reduce the labour pool and leave employers struggling to fill roles. On the face of it, workers should be in a position of greater bargaining power and we hear many examples where this is the case: workers' preferences have switched, they are less likely to work unsociable hours and will start searching for a different job more quickly if their current one does not match their expectations.

6 When we published our 2022 Report, we noted a substantial rise in levels of underpayment even as coverage of the minimum wage had fallen. The Office for National Statistics have since revised the Annual Survey of Hours and Earnings. We now estimate that 334,000 workers were underpaid in April 2022, rather than 507,000 as previously stated. This means underpayment fell by around 100,000 between 2019 and 2022. This revision offers reassurance; it is a relief to know underpayment has not grown substantially. Less positive is the fact that underpayment as a share of coverage (the number of workers paid within 5 pence of a minimum wage rate) has barely moved, even as the labour market has grown significantly tighter. It remains the case that more than one in five minimum wage workers are underpaid in the data. In the broader context of high vacancy levels and widely reported recruitment difficulties, this requires explanation and points to two coexisting states: on the one hand, a tight labour market that empowers some workers, while others continue to find their power restricted.

7 One word relevant to this situation is monopsony. In the context of the labour market, this term describes the situation where competition for workers between employers is limited. It stems from two sources: a low concentration of employers in a given area, and search frictions which prevent workers from moving to a better-paid job elsewhere. We have commissioned innovative research into this question and will be presenting the results to the Government in the autumn.

8 We are at the beginning of a crucial period for the National Minimum Wage (NMW). In 2024, subject to economic conditions, the National Living Wage will reach the Government's target of two-thirds of median earnings. This year will also mark the twenty-fifth anniversary of the NMW, a moment to celebrate a central feature of the UK labour market, which has driven pay increases for low-paid workers without imperilling their employment. We must, however, guard against complacency. The evidence we consider in this report shows there remains work to do to safeguard these workers' gains.

Executive Summary

Underpayment: the view from the top down

1 Measuring non-compliance with the minimum wage is always problematic. We rely on data sources which may include things they should omit, or omit things they should include. In 2020 and 2021, the disruption caused by the pandemic and the presence of the furlough scheme created serious problems in identifying low-paid workers, tracking coverage of the minimum wage and measuring underpayment.

2 We now estimate that around 334,000 workers were paid less than the National Minimum Wage (NMW) rate to which they were entitled in April 2022. It should be noted that this figure has been revised substantially downwards since the publication of our 2022 Report. This figure represents a fall in numbers underpaid since April 2019, although underpayment as a share of coverage has remained stable. The data indicate that more than one in five workers covered by the NMW were underpaid. The source of these figures is employer surveys, so will unlikely include the more serious or deliberate underpayment. The hourly underpayment we measure varies from as little as 1 pence per hour to much greater margins. The key survey takes place each April, within a month of minimum wage rates increasing.

3 Last year we looked at the factors which discourage workers from reporting underpayment and keep them locked into underpaying or exploitative jobs. This year we have analysed how far the same workers are underpaid from one year to the next. Using data from the Annual Survey of Hours and Earnings (ASHE) covering 2012-2019, we find that one in three workers who are underpaid in a given year are still underpaid the next year. The surest way for them to increase their pay and escape underpayment is to move jobs; workers staying in the same job are much more likely to remain 'stuck' in underpayment.

Underpayment: the view from the bottom up

4 Even though the labour market has tightened since the pandemic, and vacancies have scaled record levels, the obstacles to changing jobs continue to weigh heavy in the minds of the low-paid workers we speak to. The view from above can look very different to the view from below. The prevalence of insecure work can make job moves feel risky, especially for those workers who have succeeded in gaining more security over time. Workers slowly accrue employment rights over their first two years in a post. They also accrue other advantages that are harder to measure: a constructive relationship with their managers, a degree of reliability in their shift patterns and flexibility when required, and respect and recognition within the workplace. Temporary workers view tenure as key to being made permanent. Moving jobs places these things at risk.

5 Even if a worker has motivation to move, it is not a given they will have the opportunity. Although around half of minimum wage workers travel to work by car, they are more likely than the average to commute on foot or by bus. Poor transport links restrict the jobs accessible to low-paid workers, and expensive fares eat into their earnings. There are larger inefficiencies in the ways jobs are advertised and workers find out about vacancies; large employers are increasingly turning to sophisticated digital channels to recruit, but these are not available to every business. Word of mouth recruitment remains a major recruitment tool, meaning that workers need to be connected to the right networks to know about other opportunities.

6 More generally, insecure employment leaves workers in a position of greater dependency on their employers and creates the conditions for exploitation. We have long been proponents of changes to level up workers' rights and reduce one-sided flexibility which benefits employers alone. We see this as a measure which would empower workers, level the playing field for good employers and support compliance. Importantly, if these changes give workers the confidence to move jobs, they would also help businesses to recruit. An extreme case of the more general problem is the situation of seasonal migrant workers in agriculture, where restrictions on their mobility are deepened by the terms of their visas and linguistic and cultural isolation.

7 Aligned with all of this, very few workers continue to report underpayment, despite the abundant evidence and anecdote suggesting it does in fact take place at a considerable scale. The circa 3,000 contacts HMRC receive each year do not compare favourably to the overall estimates of hundreds of thousands of underpaid workers, or to the volumes received by comparable points of contact. The pipeline to HMRC is only delivering a trickle of cases.

What this means for enforcement

8 HMRC is tailoring its efforts to the scale and nature of the problem. It does commendable work upstream with employers; and takes seriously the need to test and learn from different approaches, as witnessed by the development over the last two years of geographically-focused initiatives. But resources are limited, which has an inevitable effect on the deterrence effects perceived by employers.

9 At the centre of the enforcement body's work is a split between proactive and reactive work, or targeted versus complaint-driven cases. In their targeted work, HMRC can use a broad-based risk model to strategically target their activity; in complaint-driven work, they abdicate this strategic control and respond to what comes in. It remains the case that, measured by the ratio of cases where arrears are found, complaint-driven cases have a better likelihood of success than targeted ones.

10 For this reason, it seems desirable to increase the pipeline of reports received. A closer working relationship with third parties – in particular, social partners among employer and worker representatives – seems an appropriate and productive way to do this. The response to our recommendations last year on third-party complaints shows a reluctance on the part of the Government to think creatively about how to achieve this.

11 Even if this were achieved, the volume of cases and the time taken to settle each case impose a bottleneck on enforcement activity. We need to know more about whether resource is being targeted effectively – and to do this, we would need better data to be collected and made available by HMRC, which should enable a proper comparison with the ASHE underpayment figures.

Conclusions

12 The enforcement body is conscious of the need to test and learn, to maximise effectiveness of its limited resource. We should give credit to HMRC for its willingness to do this.

13 Nevertheless, changes can be made to better identify the scale and nature of the problem. The Director of Labour Market Enforcement is preparing a major survey looking at this. And there is more that can be done to collect and use the data from HMRC's own caseload. We do not have basic demographic data about the workers for whom they identify arrears, or their employment arrangements. If we had these data, we could start to understand whether the underpayment we're measuring in official data sources is the same as the underpayment HMRC find in their cases. This would be the starting point for a better assessment of the effectiveness of enforcement. In addition to this, there are other recommendations we have made which continue to be unimplemented and could help improve the awareness and enforcement of workers' rights.

14 In the longer term, the biggest wins are likely to come from identifying and addressing the factors associated with vulnerability. There is always more that can be done to make sure workers are well-informed and well-connected, particularly in high-risk occupations. There is more to do, as well, to streamline the reporting system for workers – to make it more approachable and more comprehensive.

15 A truly comprehensive strategy would go beyond enforcement and think about workers' power, their mobility and their willingness to assert rights. Our 2018 recommendations on one-sided flexibility are one starting point for this. In the context of our post-2024 work, we need to think about the factors associated with non-compliance. This could be sectoral; in the context of specific employment arrangements (e.g. salaried work); or linked to wider questions about workplace conditions and rights. We will also look in depth at the factors affecting workers' mobility and the nature and extent of monopsony in the UK labour market. This will be an important complement to our work on non-compliance and enforcement.

Our recommendations to the Government

Take forward the LPC's 2018 recommendations on one-sided flexibility.

Ensure more regular naming rounds to create momentum and increase coverage.

Expand the data HMRC collects on its caseload, in particular:

- whether underpayment is formal or informal.
- the characteristics of underpaid workers involved.
- the working arrangements of underpaid workers.

Chapter 1

Evidence on the scale and nature of underpayment

1.1 This chapter sets out our analysis on the scale and nature of underpayment. We first published our analysis of the 2022 Annual Survey of Hours and Earnings (ASHE), including levels of underpayment, in our 2022 Report. Since then, the underpayment data in the 2022 ASHE have been substantially revised by the Office for National Statistics (ONS), and now shows a fall in the number of underpaid workers rather than an increase. The first part of this chapter covers our analysis of the most recent revised data and a comparison with recent years; the second part of the chapter uses linked data over a longer time period to look at how workers move in and out of underpayment over time.

How we estimate underpayment

We know that payment below the legal minimum wage takes place. Workers and employers we meet tell us about it, and HMRC identifies hundreds of thousands of workers each year who have been paid less than they were due. Measuring the scale of underpayment, however, is difficult.

We use two data sources to measure underpayment: the Annual Survey of Hours and Earnings (ASHE) - a survey of employers based on a one percent sample of employee jobs taken from HM Revenue and Customs' (HMRC) Pay As You Earn (PAYE) records) and the Labour Force Survey (LFS) - a large household survey. As we set out in this chapter, both sources suggest that hundreds of thousands of workers are being underpaid. Both have limitations, set out in detail in Appendix 1. But we are confident that these sources are measuring something real.

What we don't know is whether the data sources are telling us the whole story. There is likely to be some misrepresentation of legitimate practice (for example, because a surveyed worker misremembers their rate of pay) and some underpayment which goes under-recorded (for example, if an employer doesn't accurately log working hours for payroll). In addition, the prevalence of underpayment changes over the year, with its highest point in April, immediately after new rates have come into force.

Improving our estimates of the scale of underpayment is vital for getting the policy response right. We go on to discuss some of the ways this could be done. One significant project is the Director of Labour Market Enforcement's research into the scale and nature of non-compliance in the UK labour market, launching this year, which will give a more comprehensive view of the problem than has been gathered before.

Measured underpayment decreased in 2022

The Annual Survey of Hours and Earnings shows that underpayment fell as coverage decreased

1.2 As Table 1.1 below sets out, we estimate 334,000 workers were underpaid in April 2022 – or around one in five of those covered by the minimum wage.[1] This is a substantial decrease of almost 100,000 on the 2019 figure (428,000), and it came as minimum wage coverage also fell from 2.0 million in 2019 to 1.6 million in 2022. In other words with fewer minimum wage workers overall than before the pandemic we saw a proportionate fall in the number who are underpaid. Underpayment as a share of coverage remained stable over the period, falling only from 21.6 to 21.5 per cent.

1.3 The 2022 underpayment figure of 334,000 shown is far less than the figure of 507,000 reported in our main 2022 Report. At the time we highlighted concerns over the reliability of the data, pointing to the large number of salaried workers apparently underpaid at the previous NLW rate of £9.50. Upon investigation the ONS identified that data for a group of non-hourly paid workers had been miscoded, resulting in this overestimate of minimum wage underpayment. On 18 July 2023, it issued a correction statement and revised the bulletin and associated datasets from its 'Low and high pay in the UK: 2022' publication using corrected data from ASHE.

Table 1.1: Underpayment by NLW and NMW rate, 2019 and 2022, UK, ASHE

Age	Underpayment		Coverage		Underpayment as share of coverage	
	2019 thousands	2022 thousands	2019 thousands	2022 thousands	2019 per cent	2022 per cent
25+	364	260	1649	1,235	22.1	21.1
23-24	12	30	57	103	21.6	29.1
21-22	20	22	98	80	20.9	27.5
18-20	19	12	116	82	16.3	14.6
16-17	3	2	36	25	9.4	8
AR	9	8	31	31	29.7	25.8
Total	428	334	1987	1,557	21.6	21.5

Source: LPC analysis of ASHE data, low-pay weights, chain linked, UK, 2019-2022.

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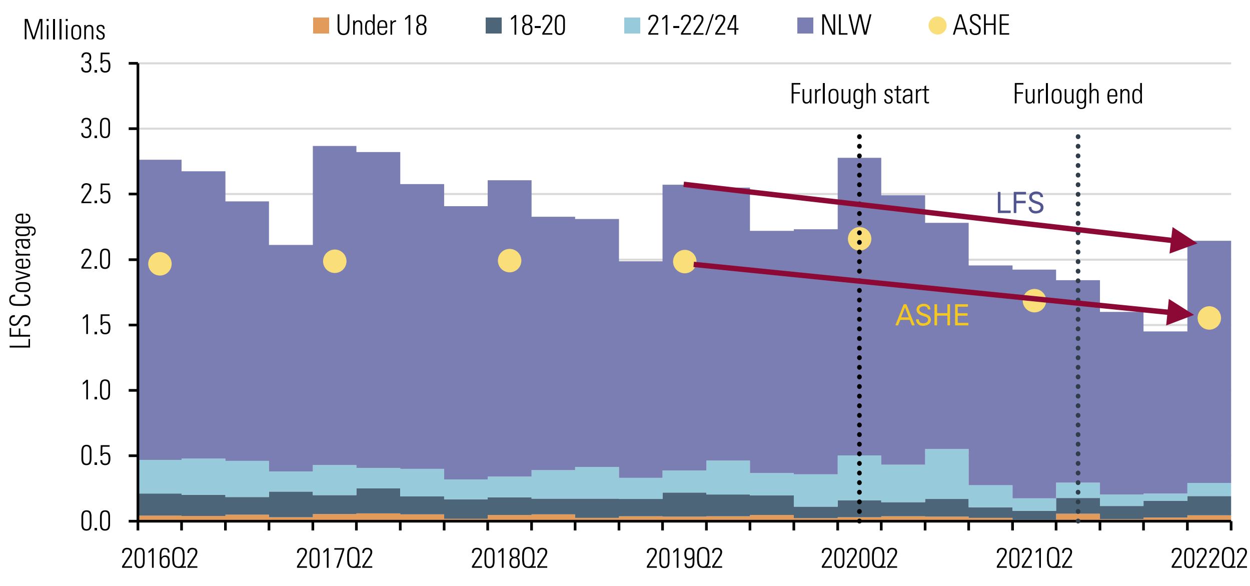
Labour Force Survey data show a similar picture

1.4 We also look at underpayment data in the Labour Force Survey (LFS). This is quarterly survey of workers, who are less likely to provide precise information about their pay. As a result, the underpayment estimates in LFS are always higher than those in ASHE, and the trends we see in the data do not always accord. As would be expected, underpayment in the LFS is always at its highest following the minimum wage's April uprating and declines in subsequent quarters. In the analysis that follows, we focus on the trends between 2019 and 2022; data for both 2020 and 2021 were affected by the Covid-19 pandemic and the Coronavirus Job Retention Scheme, so we do not consider them to provide reliable estimates of underpayment.

1.5 As Figure 1.1 shows, both LFS and ASHE recorded similar falls in minimum wage coverage following the April 2022 uprating, with totals dropping below those in 2019. Figure 1.2 illustrates the decreases in underpayment for both ASHE and LFS in 2022, again below levels seen in 2019. Total underpayment was lower in 2022 than at any point since the introduction of the NLW.

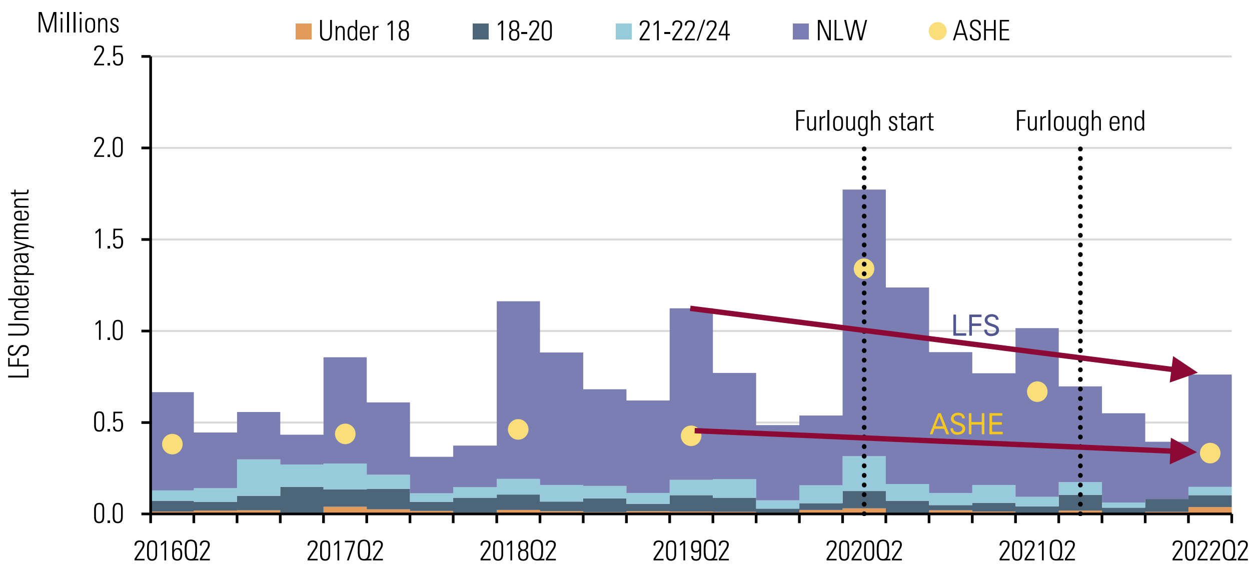
1.6 As consistently observed over time, in part due to the self-reported nature of the survey, LFS shows a higher total figure for underpayment (around 760,000 compared with 334,000 in ASHE) – but we have less confidence in this figure as a guide to overall levels. One factor which may affect the level of underpayment measurement using the LFS is whether the minimum wage rate is a round number. Low-paid workers are more likely to state their pay correctly if it is: in 2022 the rate was £9.50, whereas in April 2019 it was £8.21.

Figure 1.1: ASHE and LFS minimum wage coverage, UK, Q2 2016-Q2 2022



Source: LPC analysis of LFS data: imputation methodology, quarterly, 2016 Q2- 2022 Q2 and ASHE data: low-pay weights, chain linked, UK, 2016-2022.
Note: Data from 2020 and 2021 were affected by the pandemic.

Figure 1.2: ASHE and LFS minimum wage underpayment, UK, Q2 2016-Q2 2022

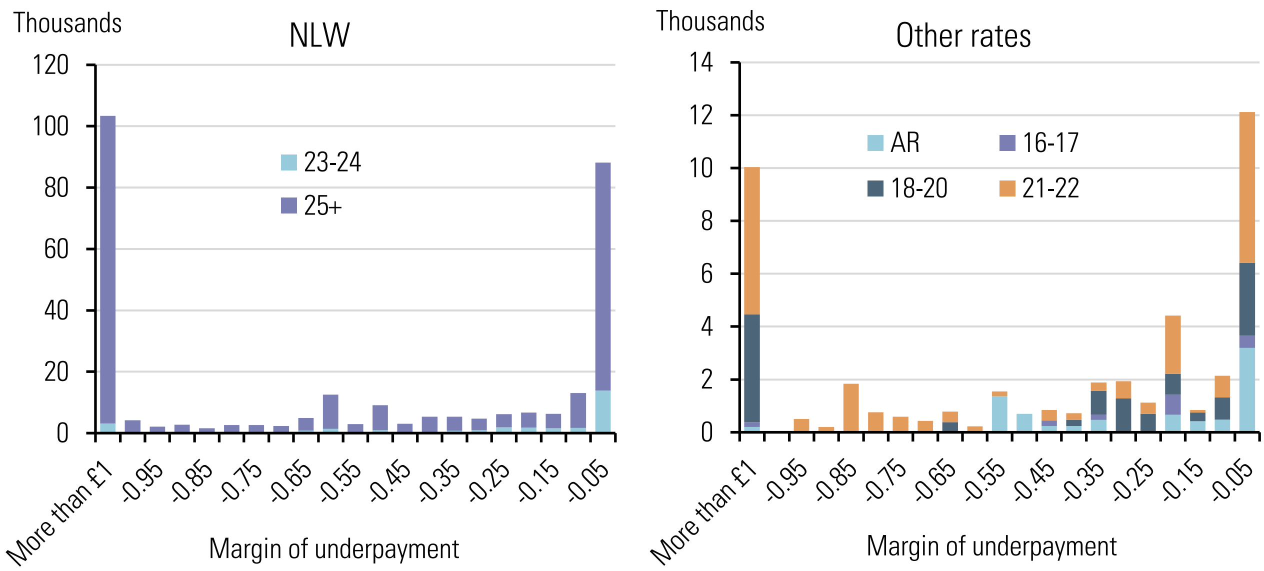


Source: LPC analysis of LFS data: imputation methodology, quarterly, 2016 Q2- 2022 Q2 and ASHE data: low-pay weights, chain linked, UK, 2016-2022.
Note: Data from 2020 and 2021 were affected by the pandemic.

Many underpaid workers were paid just below the NLW rate

1.7 The amount a worker is underpaid can be small or large. If we focus on the age group of workers aged 23 and over entitled to the NLW shown in Figure 1.3 (LHS) we see that almost 90,000 were paid within five pence of the current NLW. The chart also highlights the considerable tail of underpayment with more than 100,000 workers aged 23 or over identified in ASHE as being paid more than one pound below the current NLW. The picture is similar for other minimum wage rates.

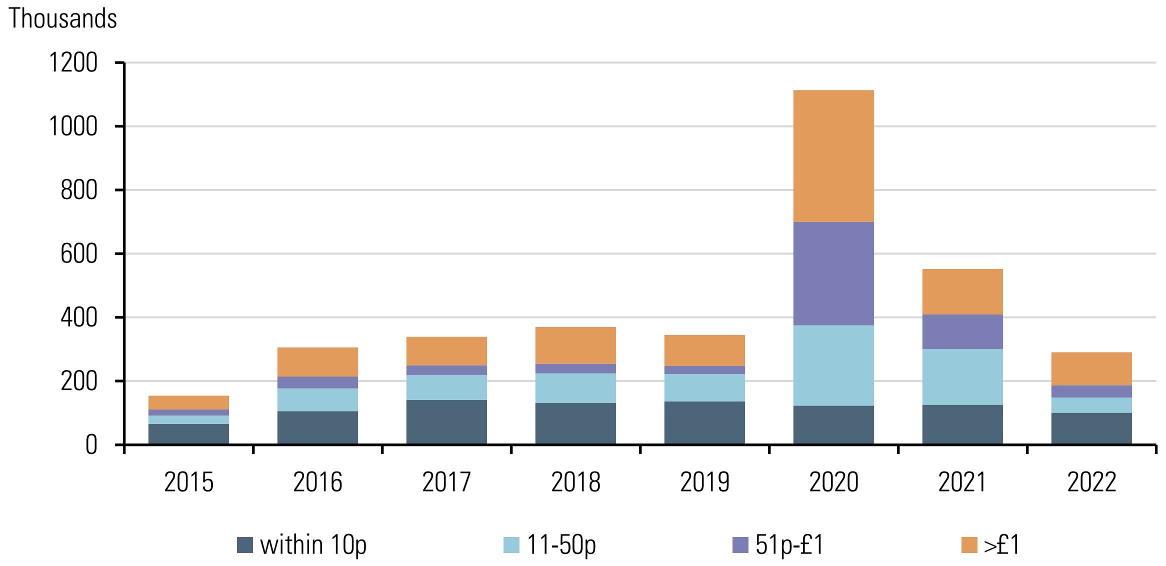
Figure 1.3: Margins of underpayment for workers entitled to the NLW (left-hand side) and other NMW rates (right-hand side), ASHE, UK, April 2022



Source: LPC analysis of ASHE data: low-pay weights, UK, 2022.

1.8 Figure 1.4 compares those paid below the main adult rate from 2015-2022 based on the level of underpayment. Since the introduction of the NLW in 2016 there has been a group of between 100,000 – 140,000 workers underpaid by up to 10 pence an hour – with some of this likely due to calculation error as well as a large group of around 100,000 underpaid by at least £1 an hour. Excluding the pandemic affected data of 2020 and 2021, this pattern of underpayment has been fairly consistent over time.

Figure 1.4: Degree of underpayment in main adult rate, UK, 2015-2022



Source: LPC analysis of ASHE data: low-pay weights, unchain linked, UK, 2015-2022.
Notes:
a. Data refer to main adult rate in effect on 1 April.
b. Includes those aged 25 and over prior to 2021 and those 23 and over from 2021 onwards.
c. Data from 2020 and 2021 were affected by the pandemic.

What forms does non-compliance take?

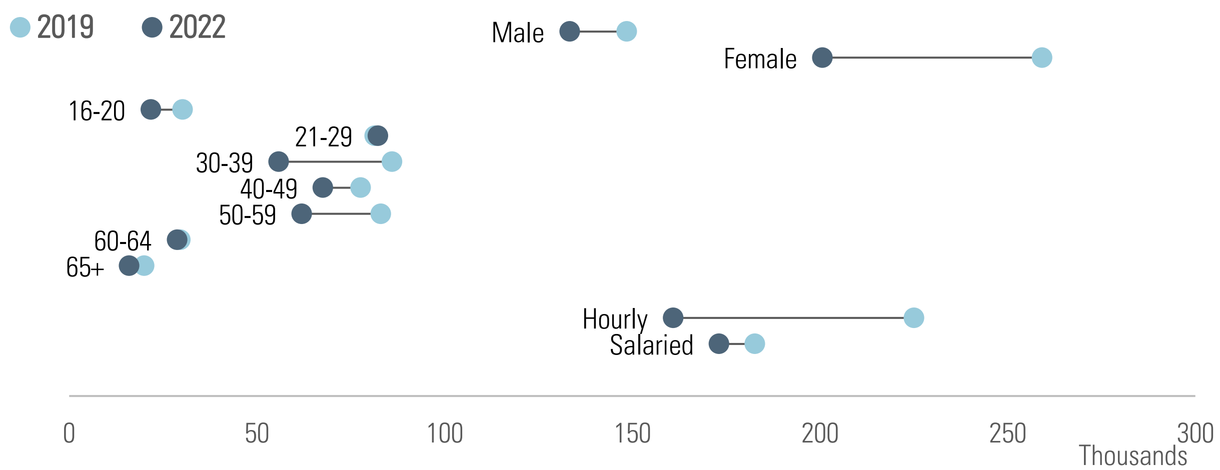
Non-compliance takes varied forms and is not necessarily as straightforward as an employer paying the wrong rate. The most recent naming rounds provide a useful, non-exhaustive breakdown of the kinds of underpayment HMRC has identified in the relevant cases.

The most frequent category (in the two most recent rounds) involves deductions or payments that take pay below the minimum wage – and indeed this is a category frequently mentioned as an area of difficulty by employers we meet. This includes a wide range of deductions, from food to uniform, training costs or salary sacrifice schemes. The second most frequent category is unpaid working time which takes pay below the minimum wage. This covers travel time, rounding of clock-in times and additional work before or after a shift. Less common categories include the failure to pay the correct rate to apprentices, failure to pay the uprated minimum wage, failure to correctly apply the accommodation offset or errors over worker status (for example, incorrect classification of a worker as self-employed). The ‘other’ category represents a significant proportion of the cases in naming rounds and can include cases where workers’ hourly rates are below the NMW.

ASHE shows a decrease in the number of female and hourly paid workers who were underpaid

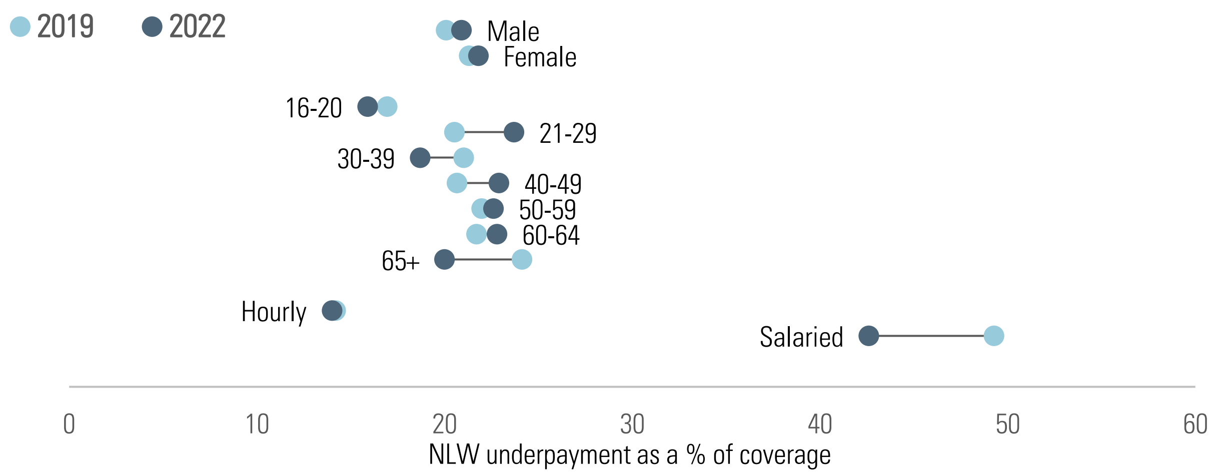
1.9 Figure 1.5 shows how the decrease in underpayment measured in ASHE compared with 2019 levels was largely concentrated among female and hourly paid workers with reductions of 45,000 and 51,000 respectively. All age groups saw falls in underpayment with the exception of the 21-29 year old group – though this increase is likely to be explained by more younger workers becoming eligible for the NLW following the reduction of the age entitlement to 23 from 25 in 2021. NLW coverage for those in their twenties increased from 240,000 in 2019 to 265,000 in 2022. Figure 1.6 shows how across a range of worker characteristics commensurate reductions in both underpayment and coverage resulted in similar figures for underpayment as a share of coverage in 2022 compared with 2019 for most groups.

Figure 1.5: Minimum wage underpayment, total levels, by worker characteristic, UK, 2019 and 2022



Source: LPC analysis of ASHE data: low-pay weights, unchain linked, UK, 2019 and 2022.

Figure 1.6: Minimum wage underpayment as a share of coverage, by worker characteristic, UK, 2019 and 2022



Source: LPC analysis of ASHE data: low-pay weights, unchain linked, UK, 2019 and 2022.

HMRC data collection

The Government publishes an annual report on HMRC’s enforcement activity, which shows the range of data HMRC collects in respect of enforcement cases. It offers an insight into the scale and variety of HMRC’s activity and – to an extent – the profile of employers found to have underpaid workers. It offers much less insight into the profile of the underpaid workers caught up in HMRC cases. We do not know if they are male or female, young or old, working formally or informally.

In 2020 we recommended that HMRC should evaluate what data are recorded in non-compliance investigations, and consider how this could be used to develop measures of cost-effectiveness. Chief in our minds was richer data on underpaid workers and their working arrangements, which would let us draw comparisons with the underpayment measured in ASHE and LFS.

Our 2021 non-compliance report drew out three key questions which would shed light on whether the data sources were measuring the same kind of underpayment which HMRC identifies in its caseload:

- **Formal versus informal.** Are the underpaid workers identified by HMRC paid cash-in-hand, or are they present on PAYE systems? Knowing this would allow us to better understand whether the underpayment in ASHE (a survey of workers on PAYE) represents 'typical' non-compliance or not.
- **Worker characteristics.** ASHE underpayment data tells us certain groups are more likely to be underpaid than others (for example, women, micro business workers, or salaried workers). Knowing about the characteristics of HMRC's caseload (for example, age, gender or ethnicity) would help tell us if ASHE is a good measure; and would tell us which groups are being reached by enforcement and which not.
- **Working arrangements.** Are the workers in enforcement cases temporary or permanent staff? Are they agency workers? Or on zero-hour contracts? Are they salaried or paid by the hour? If we understood more about the workers HMRC were getting to, it would be another point of comparison with the data and an opportunity to think about other policy responses to minimise non-compliance.

The fact that HMRC does not collect or make available caseload data is a missed opportunity to scrutinise the real nature of underpayment and evaluate the effectiveness of enforcement.

Underpayment is persistent over time

1.10 The ASHE data also allows us to track individual workers, to see if they remain with the same employer and how they move in and out of underpayment. We have used this longitudinal data in the past to look at pay progression (Low Pay Commission 2022), but not underpayment. For the first time this year, we have used the longitudinal data where workers remain in employment to look at how far individual workers are underpaid year to year. This is not the first time we have looked at pay progression and the relationship between changing jobs and an individual’s pay growth. We summarise some of these previous findings in the box below.

1.11 As in other areas, the pandemic had a major disruptive effect on ASHE data, one which persists into 2022 (because the analysis of pay growth and progression uses 2021 as a base year). Our analysis here focuses on the period between 2012 and 2019, when the data were generally reliable and consistent. Once we have another iteration of ASHE, we will look at workers’ transitions between April 2022 and 2023.

Progression, mobility and the minimum wage

We have previously found that each year around 40 per cent of minimum wage workers (who remain an employee) move off the rate and into better-paid employment. This leaves around 60 per cent of the minimum wage population who remain covered by the rate year to year.

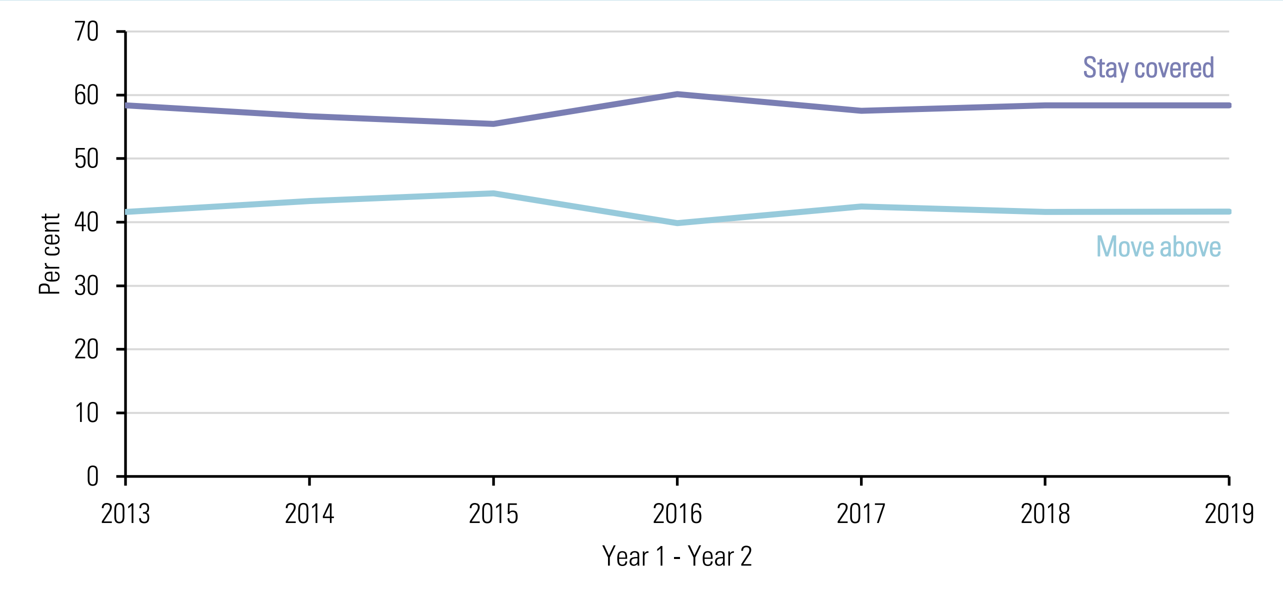
Lower-paid workers are more likely to change jobs between years than better-paid workers. Both personal characteristics and job characteristics help explain why low-paid workers are more likely to move jobs than better-paid workers. For instance, low-paid workers tend to be younger and therefore more likely to be experimenting with different career choices. Low-paid jobs also are more likely to be temporary or insecure contracts, which make it easier for both firms and workers to terminate the employment.

As in the labour market more widely, minimum wage workers tend to see greater pay rises if they move jobs rather than staying in the same job. Before the NLW was introduced, minimum wage workers who moved employers could expect to see their pay grow by more than 10 per cent on average, but those who stayed in the same job saw it increase by less than 3 per cent on average. (Low Pay Commission, 2022).

A fast rising minimum wage has reduced the relative advantage of moving jobs for minimum wage workers by guaranteeing larger increases for workers who remain in their current jobs on the minimum wage. Since 2015, minimum wage workers who have remained with the same employer have seen their pay increase by more than 5 per cent each year.

In the NLW Review (Low Pay Commission 2022a), we found no evidence to suggest the NLW had negatively affected the rate at which minimum wage workers moved off the minimum wage into better-paying employment. Academic research on the topic has also found no evidence to suggest the NLW reduced progression rates off the minimum wage (see for example, Avram and Harkness, 2019).

Figure 1.7: Chance of remaining a minimum wage worker if covered in Year 1, ASHE, UK, 2013-2019



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, 2012 – 2019, UK.

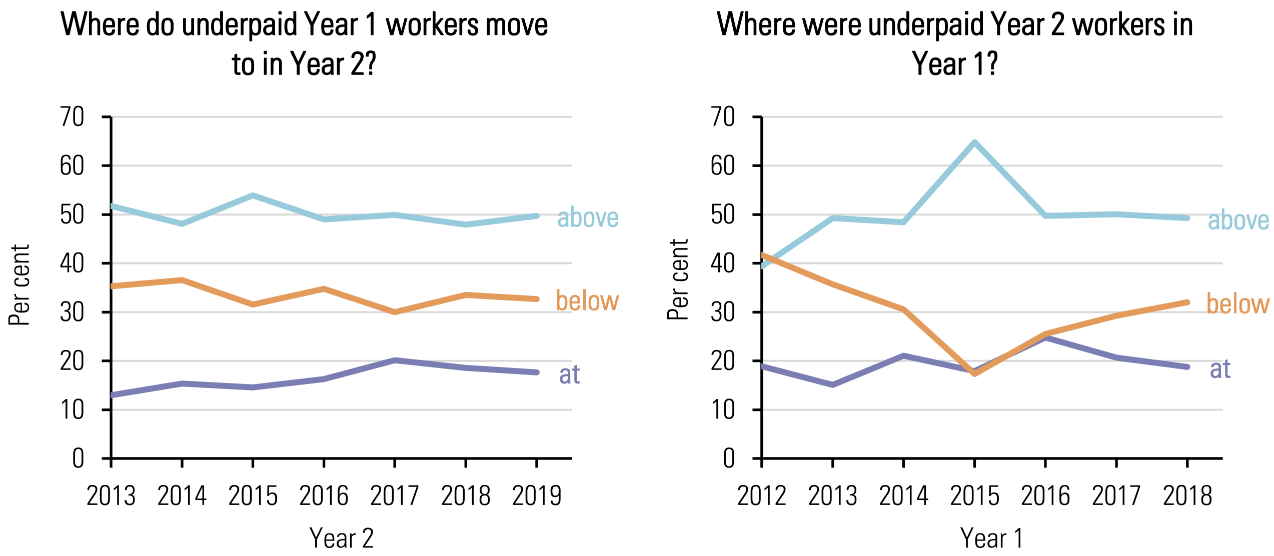
Note: Data from 2020 – 2022 were affected by the pandemic.

Around one-third of underpaid workers are still underpaid the following year

1.12 The charts below show what happens to underpaid workers from year to year. On the left-hand side, we see where underpaid workers go: of those workers underpaid in Year 1, are they still underpaid in Year 2? On the right-hand side, we see where underpaid workers have come from: of those workers underpaid in Year 2, were they underpaid in Year 1? Around half of the workers underpaid in Year 1 went on to be paid above the minimum wage in Year 2. Another 15-20 per cent of these workers tended to be paid at the rate. The remaining one-third, however, were underpaid in both years; they had not managed to escape underpayment.

1.13 The picture is similar, if noisier, looking back from Year 2 to Year 1. In general, around half of the workers underpaid in Year 2 had fallen into underpayment after being paid above the minimum in Year 1. Around 20 per cent had been paid at the rate then slipped into underpayment. The share who were underpaid in both years zigzags in a range between 20 and 40 per cent.

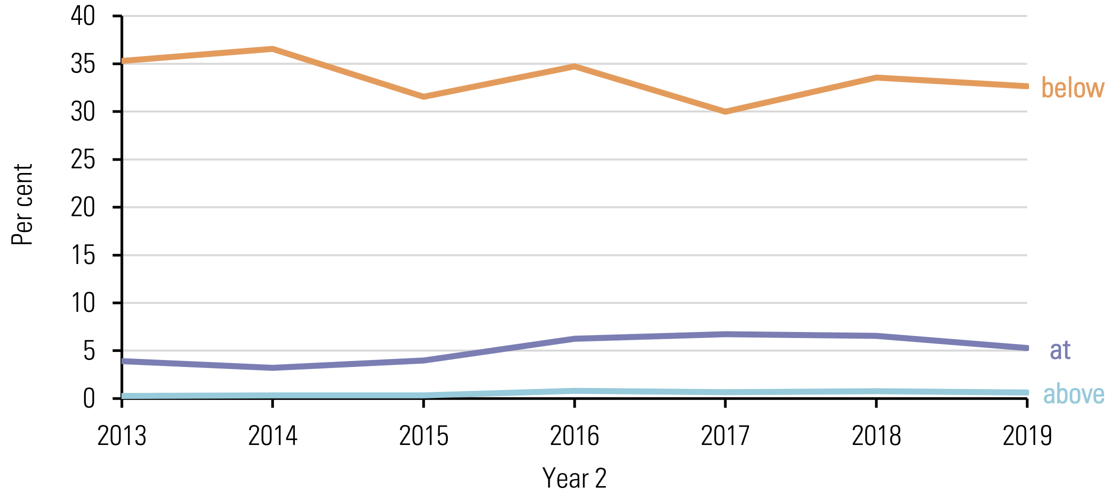
Figure 1.8: Transitions of workers to and from underpayment, UK, 2012-2019



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, 2012 – 2019, UK.
Note: Data from 2020 - 2022 were affected by the pandemic.

1.14 As a corollary to the charts above, Figure 1.9 looks at the chance of being underpaid in Year 2 given a worker's status in Year 1. We have already seen the orange line in the left-hand chart above. The purple line shows that, for those paid at the minimum wage in Year 1, there was a slight increase over the period in chance of underpayment in next year, albeit this remained low. And if a worker was paid above the minimum wage in Year 1, there was very little chance of being underpaid in Year 2.

Figure 1.9: Chance of underpayment in Year 2 by Year 1 status, UK, 2012-2019



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, 2012 – 2019, UK.
Note: Data from 2020 - 2022 were affected by the pandemic.

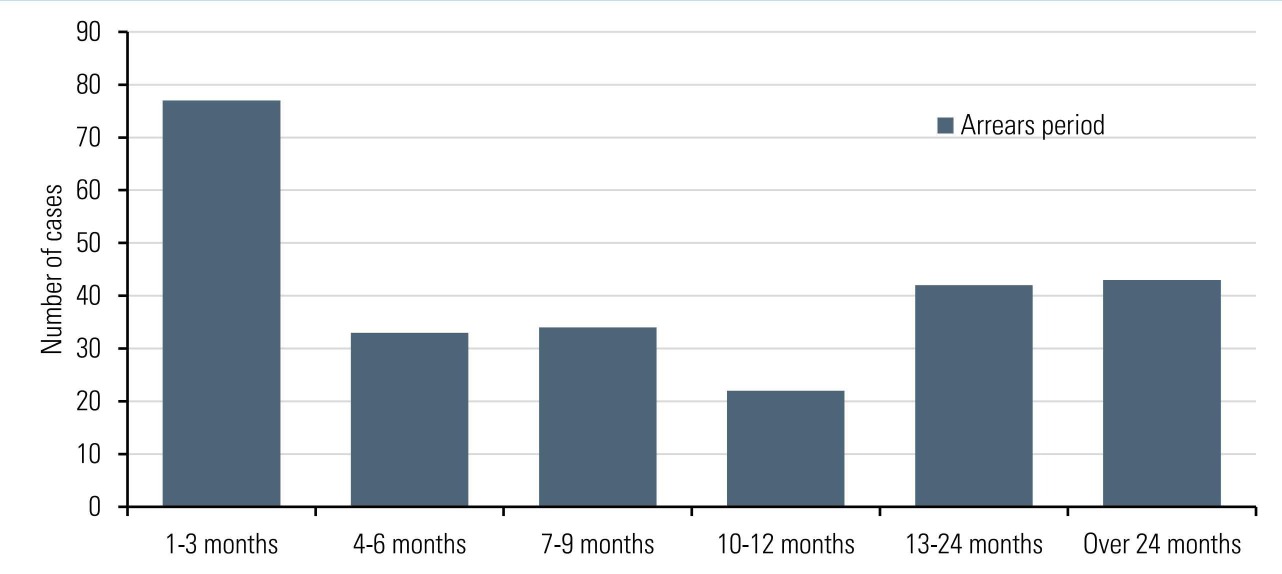
Evidence from HMRC cases

Data published by the Government as part of NMW naming rounds also confirms that around one third of underpayment goes on for at least a year. In the six most recent rounds,[2] the published data include the length of the arrears period (i.e. how long the worker was underpaid for). For cases where arrears were identified for multiple workers, we cannot tell how far the different arrears periods overlap. But in cases which only found arrears for a single worker (216 cases in total across the five rounds), we can see how long the underpayment lasted.

In around one third of these cases where there is only one worker involved (85 of the 251 cases), the arrears cover a period of 12 months or longer. In 43 of the 251 cases, the arrears covered a period of 24 months or longer, with the longest period being 71 months. (Employers' period of liability for NMW arrears is six years, or 72 months.) The median arrears in the cases where underpayment lasted over 12 months are £2,250. These are significant sums for low-paid workers, especially at a time when living costs are squeezed.

[2] Rounds 14 to 19, published between March 2018 and June 2023. The cases collected in these rounds themselves span wider periods, between 2011 and 2019.

Figure 1.10: Length of arrears period in cases notified in NMW naming rounds 14-19, UK



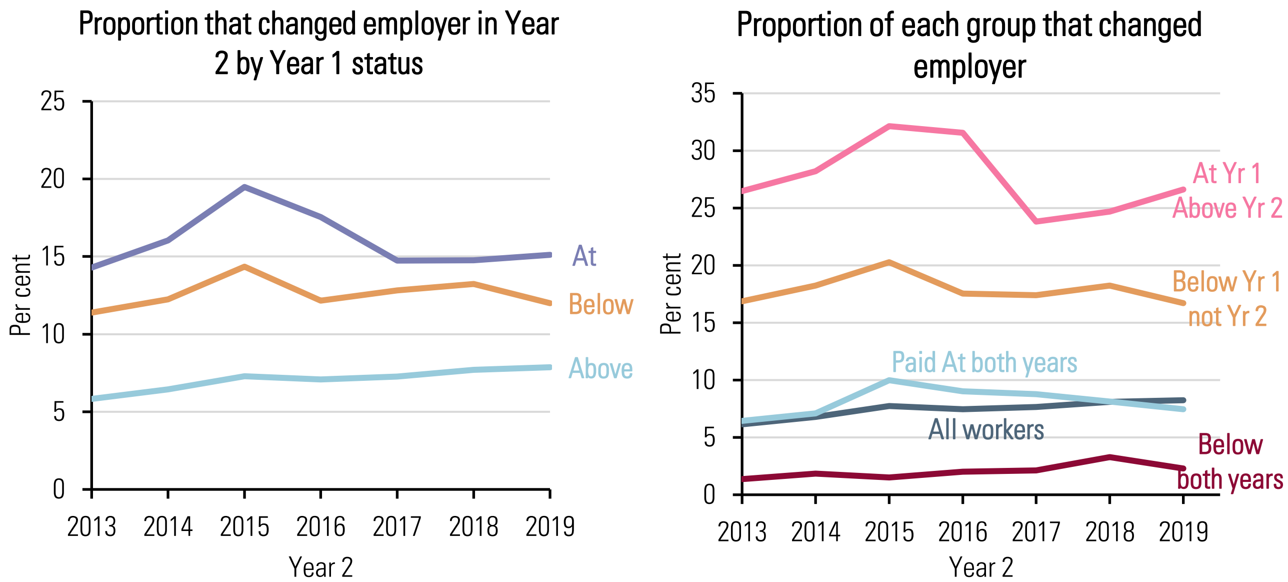
Source: LPC analysis of data published alongside NMW naming rounds.

Moving employer is a stepping stone to higher pay

1.15 The charts below look at the impact of changing employer on the likelihood of being underpaid. They look at shares of different groups of workers that change employer. The left-hand side shows the share that changed employer in Year 2 by status in Year 1. We see that workers paid above the minimum wage are the group least likely to change employer. As expected, workers covered by the minimum wage are more likely to do so, but the underpaid group are consistently slightly less likely to leave their employer than those paid at the rate. This is important because changing employer is a reliable route to increase a worker’s pay and help escape underpayment.

1.16 To emphasise this point, the right-hand side uses the same data to look at the share of workers changing employer by combinations of status in both years. The group least likely to have moved employer are those workers who were underpaid in both years. The share of this group who changed employer lagged both the overall average and the average for the minimum wage population. The groups most likely to move employer are those whose pay rose relative to the minimum: whether from below the minimum wage to at or above it (orange line), or at the minimum wage to above it (pink line).

Figure 1.11: Share of workers changing employer, by minimum wage underpayment status, UK, 2012-2019

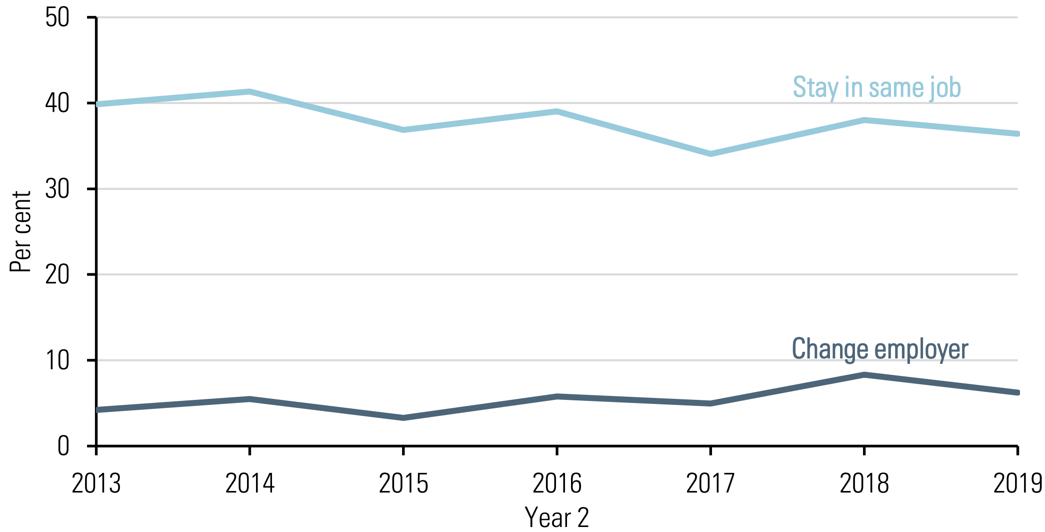


Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, 2012 – 2019, UK.
Notes:
a. Data from 2020 - 2022 were affected by the pandemic.
b. Analysis does not include small group that move job with same employer.

Underpaid workers who change employer are far less likely to remain underpaid

1.17 We have already seen that one in three underpaid workers remain underpaid from year to year. Figure 1.12 below looks at those underpaid in Year 1 and their chances of remaining underpaid by whether they stayed in the same job or changed employer. It shows that workers were much more likely to remain underpaid if they stayed in the same job rather than changing employer. Fewer than 10 per cent of underpaid workers who changed employer continued to be underpaid; whereas around 35-40 per cent of underpaid workers who remained in the same job continued to be underpaid.

Figure 1.12: Share of workers underpaid in Year 1 and Year 2, by employment transition status, UK, 2012-2019



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, 2012 – 2019, UK.
Note: Data from 2020 - 2022 were affected by the pandemic.

Chapter 2

Why does underpayment persist for low-paid workers?

2.1 As we have seen, the data suggest underpayment has risen even as coverage has shrunk, and that there is a sub-set of minimum wage workers for whom underpayment appears to persist. The key question we want to ask is: is it plausible that underpayment can persist or increase when coverage is falling? While acknowledging the limitations of the data, there are several reasons this might be the case.

Worker mobility and power

2.2 We have just looked at the relationship between persistent underpayment and the likelihood of workers changing jobs. Job mobility has been a dominant theme of the evidence we've heard from workers in recent years, particularly the trade-offs between security, familiarity and opportunity. Even in an ostensibly tight labour market, where employers across low-paying sectors tell us they are struggling to recruit, low-paid workers see real risks and barriers to moving jobs.

2.3 There are several factors driving this. Firstly, the qualifying periods for employment rights mean that moving job can entail a tangible loss of rights. Paternity leave, maternity and paternity pay are all only accessible after 26 weeks; protection against unfair dismissal and statutory redundancy pay only after two years.

"I've literally just earned my employment rights at work. So me leaving to somewhere else, I'm back to square one. At least now I can go to a union. I've got the law behind my back if anything goes wrong."

Hospitality worker, Birmingham

'If I take the risk of going for another job, in this market the jobs are like 'last one in first one out' … the fear and the anxiety that would give me'.

Retail worker, North Wales

2.4 Security over hours of work also plays an important role in workers' decisions, particularly in sectors where minimum-hours contracts are prevalent. As another hospitality worker told us: "You've got to work your way up again. Hope that you get a good, decent amount of hours. Hope that you get paid, just the right amount." In the course of visits in recent years, we have spoken to many retail workers who were reluctant to move jobs; workers who had been with the same employer for many years feared they would lose the hours, income security and non-pay benefits they had slowly accrued over time if they moved to another company. As one worker told us: 'I don't want to leave and enter an insecure environment with worse conditions.'

"It's also starting all over again. You don't know what job, what employment you're going to. You don't know these people."

Hospitality worker, Birmingham

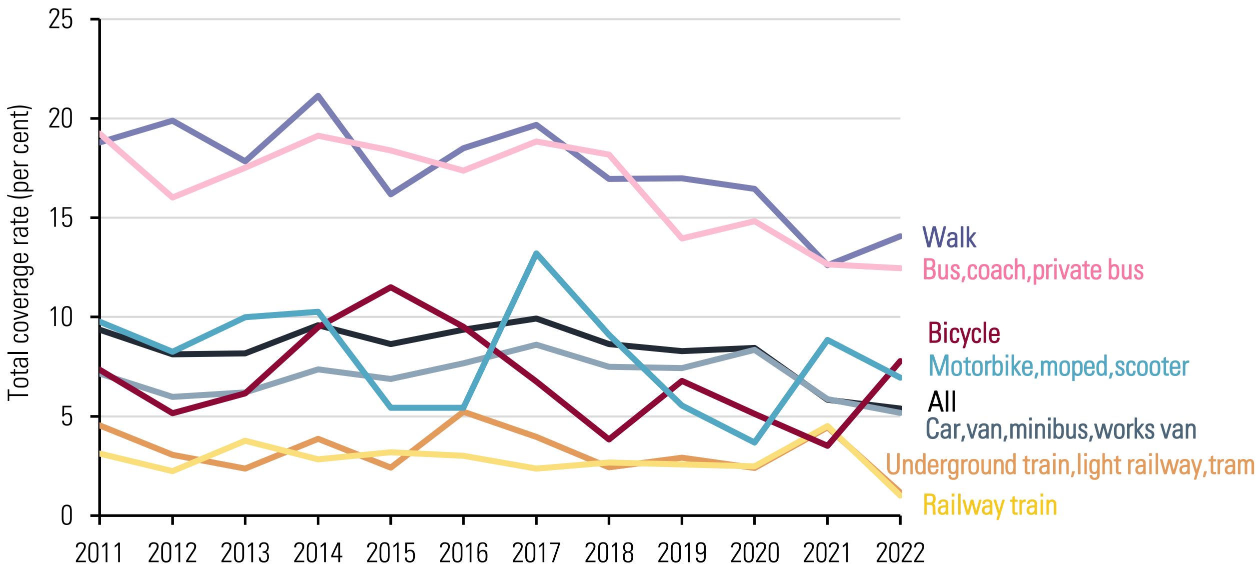
'It's such a risk if I was to move to another bar, I'm looking at that bar and wondering how do I know how they treat their staff? but I have absolutely no idea. I could go in there and it'd be worse. You're kind of trying to figure out if the situation that you're in is better, even if you're getting paid less'.

Hospitality worker, Wales

2.5 Fatalism about pay and conditions can also be a restricting factor. In Scotland, we heard from retail workers that similar wages were restricting worker mobility "whether you're in one company getting low pay and then another company, you're going to face the same situation and it doesn't address the real problem of low wages". When asked whether she would consider moving jobs, one social care worker in Scotland told us 'I've tried different places and it's the same conditions everywhere'.

2.6 There are also physical barriers restricting mobility. The inadequacy of transport links outside big cities, and the ways this restricts job choice, are constant themes in our discussions with low-paid workers, and increasingly with employers as well. Figure 2.1 looks at the rate of coverage of the minimum wage by mode of transport used to travel to work. It shows that individuals who walk to work or travel by bus are most likely to be covered by the minimum wage, more so than those who travel by train or car.

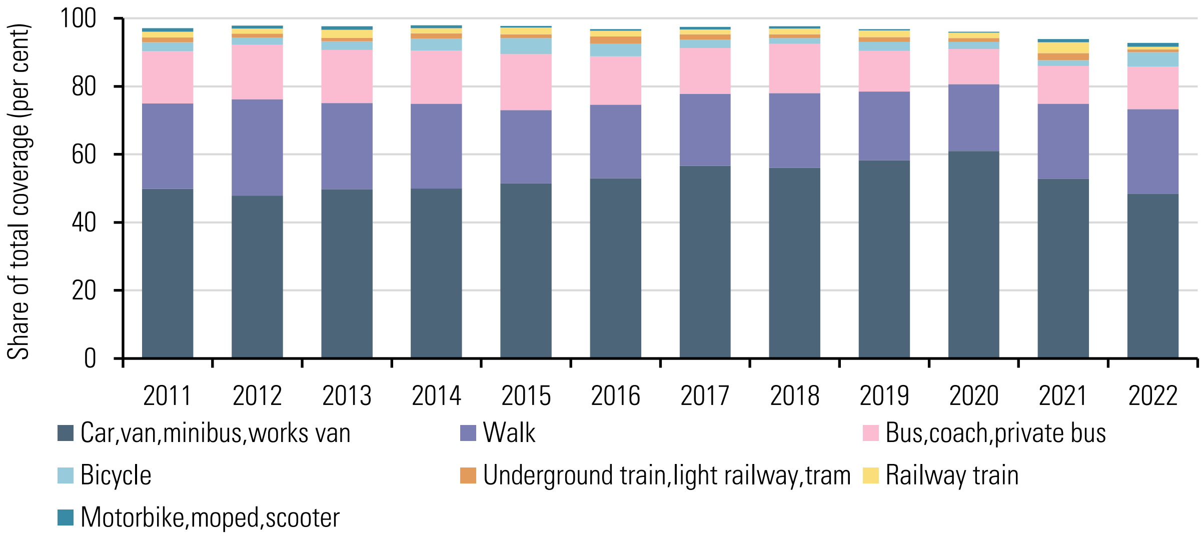
Figure 2.1: NLW coverage by commuting mode of transport, LFS, UK, 2011-2022



Source: LPC analysis of LFS data: imputation methodology, quarterly, UK, 2011-2022.

2.7 Figure 2.2 shows that, despite coverage rates being lower, for those who drive to work they make up around half of total coverage. One quarter of covered workers walk to work and around one in eight minimum wage workers travel by bus or coach.

Figure 2.2: Share of total LFS coverage, by mode of transport used when commuting, LFS, UK, 2011-2022



Source: LPC analysis of LFS data: imputation methodology, quarterly, UK, 2011-2022.

> ‘[Public transport] limits greatly the kind of jobs I can take ... It keeps me in a profession I don’t fancy any more. Retail jobs are the ones I can get to … It means I can’t take a higher paid job in a rural area, it locks you in, it restricts where you end up living.’
>
> Retail worker, Kent

2.8 A related question is whether workers see the job opportunities available. In the last couple of years, we’ve spoken to myriad employers unable to find workers, and workers who thought there were no other opportunities available to them. Even allowing for geographic mismatches, there seem to be obvious inefficiencies in the recruitment process. Larger employers are more likely to tell us they have invested in digital capability around recruitment, drawing lessons from their own marketing departments to attract workers. As one hospitality employer told us, ‘the days of a poster in the window or on a toilet door as a mechanism for recruitment are long gone. You need to be a lot more sophisticated about it.’

2.9 Less sophisticated models, however, are still with us, and are likely to be more prevalent among smaller employers who cannot rely on the ‘name recognition’ of their larger competitors. Non-digital networks and personal connections remain important for low-paid workers finding out about jobs. The 2019 Employer Skills Survey showed that word of mouth/personal recommendation was the number one recruitment method, used by 71 per cent of employers. This was higher (81 per cent) in hospitality, and among employers with ‘hard to fill’ vacancies (85 per cent), suggesting these methods may not be the best way to find staff. This reliance on personal recommendations means workers need to be connected to the right networks to know about and find new jobs. The increasing use of social networks by employers replicates this need for being in the right networks online. The advertisement and recruitment process is an underappreciated barrier to a smoother-flowing job market where low-paid workers are more likely to exercise their right to leave. The existence of scams targeting online jobseekers, as noted in the recent Director of Labour Market Enforcement Report (Director of Labour Market Enforcement 2023) and covered in the media (Jacobs 2023), is another factor adding to the perception of risk among workers.

Seasonal migrant workers

The risks created by limiting worker mobility and power are particularly visible in the case of migrant workers. The most obvious recent example of this among low-paying sectors relates to workers on seasonal visas in agriculture. We looked closely at this group in our review last year of the Accommodation Offset, and their situation has been extensively reported by others.

The Migration Advisory Committee's 2022 Report set out some of the ways in which migrants are comparatively more vulnerable to exploitation than UK workers. Language barriers may mean they cannot access information on their rights and are less likely to report exploitation. Levels of unionisation are lower. Several factors conspire to make migrant workers more than usually dependent on their employers, among which features the provision of accommodation. Finally, non-compliant working conditions in the UK may still be preferrable to those in workers' home countries.

We found that the terms of seasonal agricultural workers' visas and their working conditions both placed them in a relationship of greater-than-normal dependence on their employer. These same factors limited workers' mobility, both physically and in terms of their ability to change jobs. Workers are linked to a particular labour provider, and although they have the right to request a transfer to another site of work, in practice we have heard that this process can work slowly, or not at all. A worker submitting a request risks spending time waiting without work between assignments. Workers are dependent on their employer for accommodation, transport and support in an emergency. Workplaces and accommodation sites are geographically isolated, generally in areas with poor or non-existent transport connections.

Compounding this geographical isolation is cultural isolation, language barriers and a lack of familiarity with the institutions of the UK labour market. Seasonal agricultural workers – unlike the EU workers who previously provided labour on farms – are increasingly drawn from countries without a significant immigrant population in the UK. This deprives them of own-language support and information. In addition, workers on a six-month visa are unlikely to see redress for any underpayment within the time they are in the UK.

For all of the above reasons, the incentives are stacked against low-paid workers complaining, and enforcement may have a harder time finding and remedying exploitation among this group. As Focus on Labour Exploitation (FLEX) told us during our work on the offset, seasonal migrant workers "stand to lose a lot more by doing something than they might ever gain". The Work Rights Centre described workers seeking their support as perceiving 'a huge risk in speaking out because you may then end up not getting work above the very, very minimum hours and you have to make this money back.'

Worker power

2.10 Low job mobility limits worker power, by preventing workers from voting with their feet. More generally, a variety of other factors within the workplace can discourage workers from asserting their rights and leave them in a position of greater dependency vis-à-vis their employer. These power imbalances and the precarity they create are a recurrent theme in our conversations with low-paid workers, and an important factor in enabling exploitation.

2.11 Most commonly, irregular and unpredictable hours can increase workers' dependency on their employers. We have explored this subject in previous reports. Part-time work and flexibility are not inherently exploitative. For some low-paid workers, the difficulty of finding a suitably flexible job – for example, to fit around childcare commitments – can be a real problem. Often, however, in arrangements where flexibility benefits employers over workers, precarity creates the conditions for exploitation. In sectors and workplaces where the use of short hours contracts is prevalent, getting a full-time post or just regular, reliable working hours can be a powerful disincentive to workers moving.

2.12 In other circumstances, a worker's ability to reliably get the hours they want from week to week can depend on their relationship with their manager. The threat of 'zeroing down' (where workers have their hours cut to the contractual minimum) can have a powerful effect on workers' behaviour, whether it is deployed deliberately or not.

> 'My hours change every week. My days change every week. Some days I'm starting at seven and working till six…and then you get others coming in two till ten. You just don't know whether you're coming or going.' **Retail worker, North Wales.**

2.13 Low-paid workers often lack formal contracts of employment. We routinely meet with workers who do not have a written contract or statement of their terms and conditions. Informality keeps workers in the dark about their rights and leaves them more dependent on managers for their pay, hours, and leave entitlement. A compulsory written statement of rights from employers to workers was one of the measures we recommended in 2018 (Low Pay Commission 2018), as part of our enquiry into one-sided flexibility. This is the only one of our recommendations to be implemented thus far, but our conversations with workers reveal widespread failure to provide this information.

2018 LPC recommendations on one sided flexibility

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), but the Government has yet to bring forward legislation to implement these. Our recommendations 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.

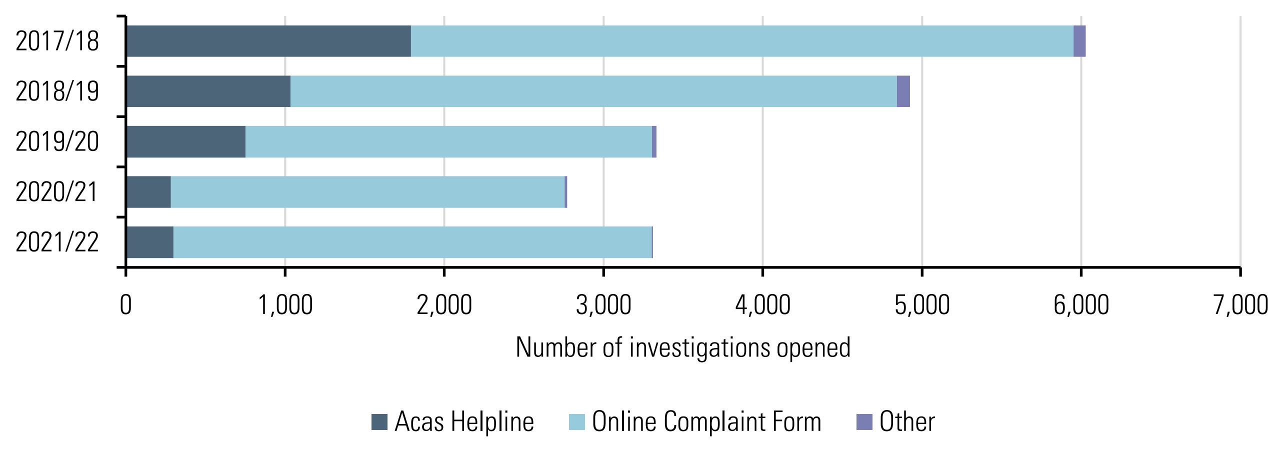
Enforcement bodies lack 'upstream' intelligence

2.14 Workers continue to report non-compliance relatively rarely, and the reasons for this are closely connected to the lack of power and mobility discussed above. Our non-compliance report last year set out the factors which discourage or prevent workers from reporting low pay, many of which overlap with the reasons they may be reluctant to change jobs: insecurity of hours and incomes; informality and uncertainty over their rights; workplace bullying; and linguistic or cultural barriers. In general, workers lacked confidence in the reporting process. This reluctance demonstrates the disconnect and disempowerment experienced by some low-paid workers; and reinforces those same things, by impairing enforcement. As our 2017 report into non-compliance and enforcement noted, 'anecdotal evidence suggests that workers are more likely to complain once they have left an underpaying job'. The converse of this is that workers not in a position to change job are less likely to assert their rights or report underpayment. This is another area where the enforcement body could offer insight by recording and sharing data on complainants.

2.15 Our best estimates of underpayment run to the hundreds of thousands, and indeed HMRC find arrears for hundreds of thousands of workers each year. Despite this, in recent years HMRC have received around 3,000 worker complaints per year. Including third-party information, the total number of contacts came to 6,254 for 2021/22, although this comprises a wide span of kinds of information, from a worker reporting and evidencing underpayment to anonymous and unevidenced tip-offs. In 2021/22, 6,254 contacts resulted in 825 opened cases. In evidence to us, HMRC has spoken of a 'discrepancy rate' of seven in ten – which is to say that of ten workers who think they might be underpaid, seven will be mistaken.

2.16 It is not obvious what the 'right' number of contacts should be for HMRC, but our belief is that the current volumes reflect a level of dysfunction in workers' awareness of their rights and the profile of the enforcement body. A helpline run by Unseen, a charity supporting victims of modern slavery, received 7,300 calls in 2022 (Unseen UK 2023), a higher volume than HMRC despite a more limited target demographic. The Work Rights Centre's helpline supported over 1,400 migrant workers in the same period – a smaller figure, but drawn from a much smaller population (Work Rights Centre n.d.).

Figure 2.3: Source of complaint-led NMW investigations opened by HMRC, UK, 2017/18-2021/22



Source: LPC analysis of DBT supplementary data for the 2021/22 National Minimum Wage Enforcement and Compliance report.

Third-party complaints

2.17 Our 2022 report on compliance and enforcement made four recommendations. Two of these were addressed to the Director of Labour Market Enforcement and concerned her review of Operation Tacit. We hope to see the publication of this review in due course. The remaining two were addressed to the Government. The first of these concerned our 2018 recommendations on one-sided flexibility, which we discuss on page 25. The second concerned third-party complaints.

> We recommend HMRC addresses previous LPC recommendations to improve and promote third-party complaint protocols. Specifically, this should include:
>
> - communicating where the bar is for 'actionable' intelligence.
> - setting a standard for providing prompt and regular feedback to third parties.
> - promoting options for underpaid individuals to nominate a third-party agent to act on their behalf.

2.18 We care about third-party complaints because enforcement activity does not take place in a vacuum. In every location, in every sector, there is an ecosystem of businesses, workers, trade unions, and other organisations who are better informed about working practices than it is practical for officials to be. The opacity of enforcement activity leads to disengagement by these groups – the less they know about how their input is treated and what progress is made, the more likely they become disillusioned and cease to participate.

2.19 As discussed in last year's non-compliance report (Low Pay Commission 2022b), rules around taxpayer confidentiality restrict the feedback on ongoing cases which HMRC can provide to any stakeholder, whether a third party or someone directly involved in the case. Essentially, HMRC officials cannot provide anything which discloses personal information. Our argument was that HMRC should explore the potential to provide regular, aggregated, non-disclosive feedback on their activity, concerning, for example, a particular sector or location. This would help more groups to feel they have a stake in the enforcement process.

2.20 DBT and HMRC 'partially accept' two of the three legs of our recommendation and fully accept the third but, in sum, do not commit to any substantial changes to the way third-party complaints are handled.

2.21 In response to the first part of our recommendation, they argue 'it would not be operationally expedient to set and communicate a minimum level of information required for HMRC to open a case because this varies across cases'. They instead highlight the way complaint routes currently work to coax relevant information from contacts and point to the forthcoming addition of a 'digital assistant' to the online form. There is no remedy proposed to the problem we identified in Leicester – that third parties reported submitting lots of intelligence, while HMRC thought little to no 'actionable' intelligence had been received.

2.22 The departments state that HMRC cannot commit to providing feedback on the outcomes of investigations, because of their duties to protect taxpayer confidentiality. Instead they say they 'will use existing channels to provide appropriate feedback and advice', as well as pointing to their annual data releases and naming rounds as feedback mechanisms. The departments accept the recommendation to promote the option to nominate a third-party agent, and say this will be integrated into HMRC's ongoing 'promote and prevent' work.

2.23 While we appreciate the Government's response, we are disappointed at the lack of changes proposed and, in addition, the failure to acknowledge the problem. In the long term, we believe it would be a positive thing for enforcement bodies to work in closer partnership and collaboration with the sectors for which they are responsible. A more responsive third-party protocol is one route towards this, but not the only one. We note the calls from both the TUC and, more recently, the Resolution Foundation (Slaughter 2023), for the integration of a social partnership model into the enforcement approach.

Implications for policy and enforcement

2.24 We have outlined the many factors which make plausible the persistence of underpayment for low-paid workers, even in a tight labour market. The next question is how the Government should respond to this. This can be divided into an enforcement and a policy response. On the enforcement side, we have to be clear-eyed about the scale of the problem relative to the quantity of resource available. But in targeting this resource and evaluating their work, we believe the Government can do more to make use of the available data. On the policy side, it is important to think about non-compliance as part of a bigger picture; one that involves broader questions of rights and employment conditions.

Enforcement resource and strategy

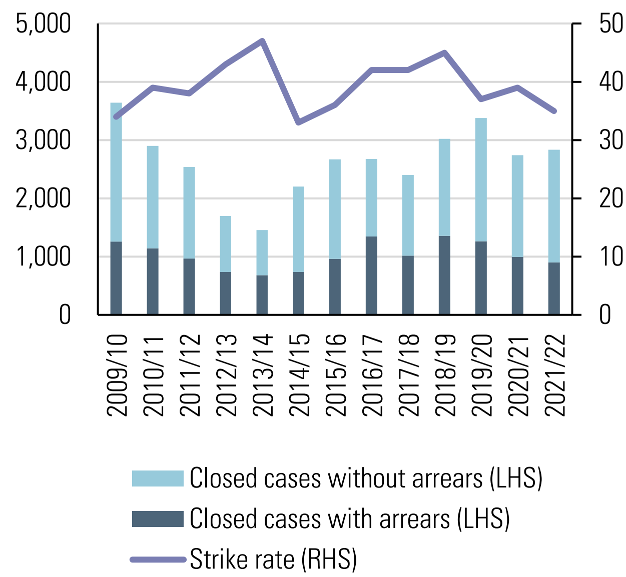
2.25 The questions discussed in this report about the persistence of underpayment do not fundamentally change enforcement bodies' task in identifying and targeting risk, but the non-reporting of underpayment does make this more difficult.

2.26 It is clear to us that HMRC is making an effort to tailor their efforts to the scale and nature of the problem. In its evidence to us, HMRC has discussed alternative approaches to building deterrence effects at the local level. Over the last two years, they have trialled 'geographical compliance approaches' which involve intensive engagement in a given local area, first to offer compliance support to employers and then to undertake targeted enforcement activity. A comprehensive internal evaluation of these initiatives is in process; on initial evidence, officials' view has been that the 'ripple effect' of intensive targeted activity has shown itself effective in building awareness and generating compliance. It will be interesting to see how far this activity can be scaled up and how the lessons learned from it can be applied at the national level.

2.27 Over the last decade, HMRC has tended to 'close' between 2,000 and 3,000 cases per year – between 5 and 6 cases per member of staff. The number of cases closed per year has remained stable for a long time, despite the uplift in resources following the NLW's introduction in 2016. Its 'strike rate' – the proportion of closed cases which conclude with the identification of arrears – has ranged roughly between 35 and 45 per cent, with the rates for 2021/22 at the lower end of this range.

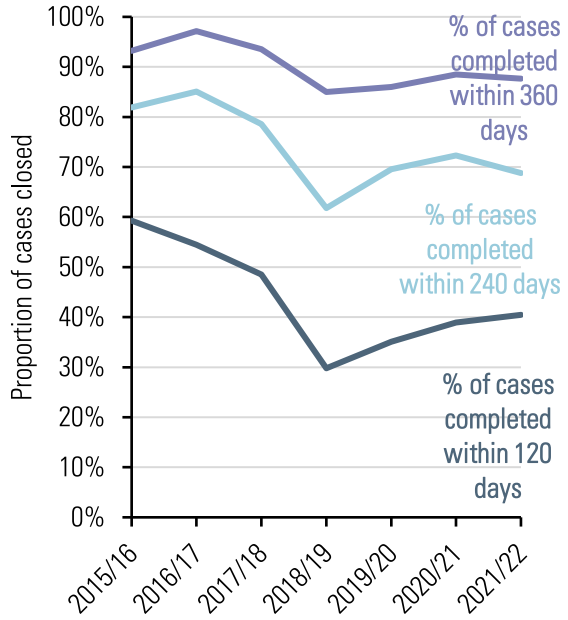
2.28 Closing an enforcement case is not a quick process. In 2021/22, around 40 per cent of HMRC's caseload was closed within 120 days. Around 30 per cent of the caseload took between 120 and 240 days to close, and more than 10 per cent of cases took longer than a year. It is understandable that cases are not 'open and shut' – it's desirable for HMRC to take well-evidenced decisions and allow employers reasonable time to meet their requests and appeal their judgements. But the length of the process contributes to the resource bottleneck and is perhaps the most salient feature of the enforcement process for employers and (especially) workers. Even if a case is resolved within (for example) three months, it still represents a meaningful wait for low-paid workers short of money they are entitled to.

Figure 2.4: Number of cases closed by HMRC and strike rate, UK, 2009/10-2021/22



Source: LPC analysis of DBT NMW enforcement and compliance data.

Figure 2.5: HMRC customer responsiveness, UK, 2015/16-2021/22

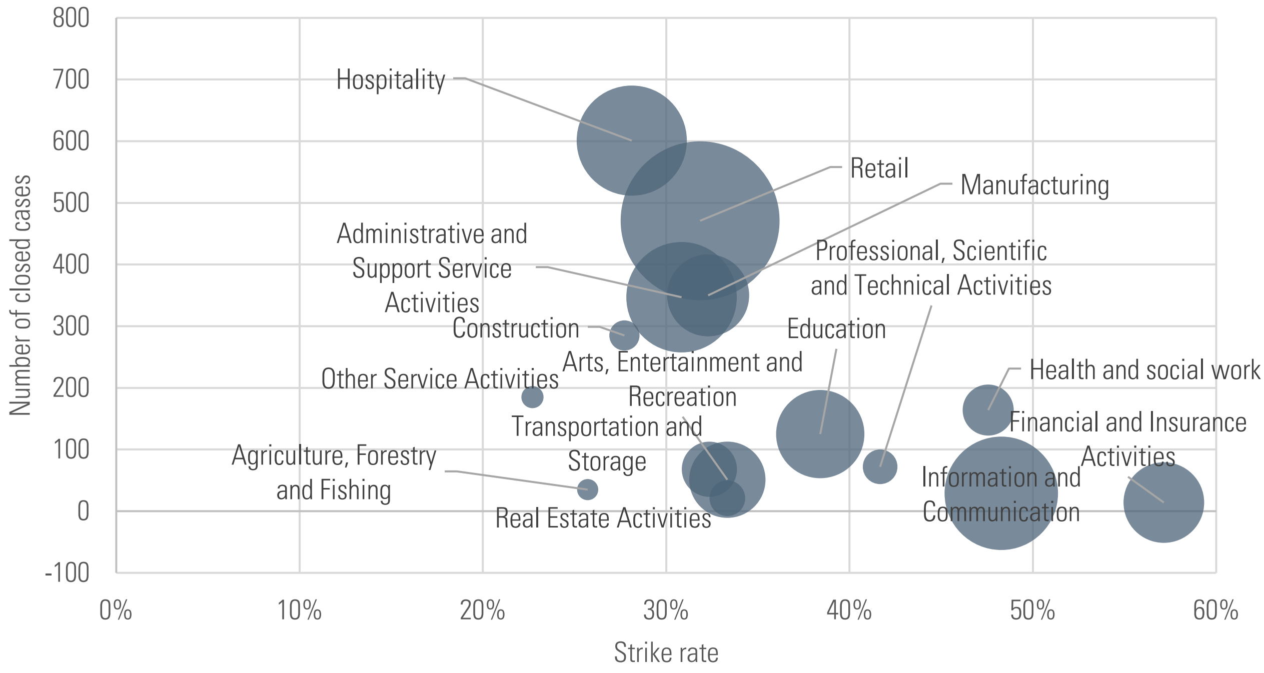


Source: LPC analysis of DBT NMW enforcement and compliance data.

2.29 The low number of complaints in a year makes HMRC's decisions about where to deploy its resource all the more consequential. The chart below summarises HMRC's activity by sector in 2021/22, plotting the number of closed cases against strike rate. The size of the bubbles represents the value of arrears identified. As would be expected, the caseload was concentrated in the sectors with most low-paid workers: hospitality, retail, and administrative and support service activities (which includes cleaning). More notable are the bubbles towards the bottom right of the chart: investigations in non-low paying sectors such as finance and ICT yielded above-average strike rates and substantial arrears. It is notable too that investigations in the health and social work sector gave a relatively high strike rate, but that there were relatively few such investigations and modest arrears.

2.30 For a long time, social care has been the sector where workers and their representatives are most likely to allege widespread underpayment, mainly as a result of failure to pay for travel time. As the Low Incomes Tax Reform Group summarised in our 2022 consultation: 'huge cost pressures are effectively being pushed onto private service providers, who in turn have to find ways to operate at a lower cost. Care workers are already likely to be at risk of being underpaid the NMW because of non-payment of their travel time and expenses.' Recent research by the Resolution Foundation (Cominetti 2023) estimates that a typical domiciliary care worker, earning the occupational median of £11.07 per hour, would have an effective hourly rate of £9.20 once travel time was taken into account. This is 30 pence less than the previous NLW rate of £9.50.

Figure 2.6: Number of NMW investigations closed and strike rate, by sector, UK, 2021/22



Source: LPC analysis of DBT NMW enforcement and compliance data.

Naming rounds

Since 2014, the Government has published 19 naming rounds, publicly naming employers found by HMRC to have underpaid their workers. These rounds should form an important part of the Government's approach to raising awareness of the minimum wage and deterring non-compliance, but they have been hamstrung by long gaps between publications. Before the most recent round in June 2023, the previous round was published in December 2021.

The repeated delays in publishing these rounds means a large backlog of cases has built up, and that naming is anything but timely. The most recent cases published in June 2023 involved underpayment that had taken place up to September 2019; many more of the cases dated to 2018 or 2017. The earliest dated to 2013.

The fact that the backlog has built up, and cases are so dated, weakens the impact of these rounds considerably. Employers are called to task for underpayment that has taken place years previously and which may relate to mistakes they have long since addressed. The round in June attracted significant media attention; it would be a shame if we had to wait another 18 months for the next round. We repeat the recommendation we originally made in 2019, for the Government to restart regular naming rounds to create momentum, increase coverage and allow stakeholders more time to prepare and support.

Policy implications

2.31 Later this year, and subject to economic conditions, we will make what is likely to be our final recommendation guided by the current target for the NLW, to reach two-thirds of median pay. We will also advise the Government on what should happen to the NLW after 2024.

2.32 Reaching two-thirds of median earnings will mean the end of hourly low pay by one definition[3] – or at least it would, if it were not for the continuing problem of underpayment. Whatever policy follows the two-thirds target, continuing ambition for the minimum wage needs to be married to ambition and ingenuity in enforcement, the continuing development of HMRC's capabilities and work to recognise and respond to risks as they emerge.

2.33 Alongside this, there should be a recognition of the importance of looking at low-paid workers' experience in the round. There has been renewed interest recently in the case for a single enforcement body. The fundamental argument for a single body is in streamlining a complex patchwork of reporting systems for workers, to make it more approachable and more comprehensive. This recognises something important about people's experience of work: that different rights are not siloed, and treating them as if they were is only likely to discourage workers and dissuade them from reporting problems.

2.34 In the same way, the problem of non-compliance needs to be thought about alongside the bigger question of how to promote good work in low-paying sectors. What we have sought to show in this report is that underpayment can continue to exist because a host of interconnected conditions limit workers' confidence in asserting their rights, and make them vulnerable to exploitation. In the longer term, the biggest wins are likely to come from identifying and addressing the factors associated with vulnerability. An effective strategy would think about workers' power, their mobility and their willingness to assert rights – and identify the barriers to each of these. Our 2018 recommendations on one-sided flexibility are one starting point for this.

2.35 We will come back to these questions in our work on the NLW after 2024. In particular, we will look at the conditions needed to support further increases in the minimum wage, and the evidence of monopsony in the UK labour market. Monopsony is a term describing a situation where competition for workers between employers is limited, and it comes from two sources. The first is low concentrations of employers in an area. The second is 'search frictions' – for example, the time, cost and effort of finding a new job – which prevent workers from moving to a better-paid job elsewhere and therefore mute the effect of competition between employers. We have commissioned innovative research into this question and will be presenting the results to the Government in the autumn. We expect our findings in this area will be an important complement to work on non-compliance and enforcement in the future.

Our recommendations to the Government

Take forward the LPC's 2018 recommendations on one-sided flexibility.

Ensure more regular naming rounds to create momentum and increase coverage.

Expand the data HMRC collects on its caseload, in particular:

- whether underpayment is formal or informal.

[3] The OECD define low pay as "the share of full-time workers earning less than two-thirds of gross median earnings of all full-time workers." However because the UK minimum wage is hourly HMT used two-thirds of hourly pay (HMT: Budget 2018)

- the characteristics of underpaid workers involved.
- the working arrangements of underpaid workers.

Appendix 1
How we estimate underpayment

1 We use two data sources to measure minimum wage underpayment: the Annual Survey of Hours and Earnings (ASHE) and the Labour Force Survey (LFS). ASHE is based on a one per cent sample of all UK employees drawn from HM Revenue and Customs (HMRC) Pay As You Earn (PAYE) records. It is the most detailed and comprehensive source of earnings information available and is our main resource for understanding the scale and nature of non-compliance.

2 But, for a number of reasons, it is unlikely to give us a true estimate of underpayment. Firstly, there are cases where a worker can be paid below the National Minimum Wage (NMW) rates for legitimate reasons (for example, if employers use the Accommodation Offset; if commission and bonuses count towards the minimum wage; and if special arrangements are in place for piece rates). Equally, there are certain factors resulting in illegal underpayment which would not be picked up by ASHE (for example, deductions from pay due to salary sacrifice schemes). Perhaps most significantly, as a survey of PAYE employers, ASHE will not include data on the informal economy, and so misses what may be the most significant location for non-compliance.

3 The timing of ASHE, too, can affect our estimates of non-compliance. The survey is conducted each April, shortly after the NLW is uprated. This means that – following the change in uprating date in 2016 from October to April – ASHE now records underpayment at the point in the year when it is likely to be highest – immediately after employers have had to adjust to the new rate. This is not a problem in itself, but is something to bear in mind when considering the estimates produced from ASHE.

4 In addition, the precise survey date changes annually (it must be after the new tax year starts, 6 April, but cannot be in a week that includes Easter - Good Friday and Easter Monday are public holidays), and this can distort the number of workers who are recorded as being underpaid (as employers are not legally required to increase pay until the first full pay period after the uprating of the minimum wage) and complicate comparisons between years. The Office of National Statistics (ONS) is able to identify and flag these cases to enable us to produce a more accurate estimate. However, survey dates earlier in April result in a larger volume of flagged cases upon which to make assumptions about post-April minimum wage compliance.

5 To complement the ASHE findings we use alternative measures from the LFS. This quarterly survey of workers is a less reliable source of information on pay and hours. It relies on workers self-reporting, and their responses may be prone to rounding or mis-remembering (it tends to produce higher numbers for both minimum wage coverage and underpayment). But such a household survey is more likely to pick up individuals working in the informal economy than a survey of businesses; and it is able to show trends over the course of the year, with underpayment spiking in the second quarter then declining in subsequent quarters.

6 LFS underpayment estimates are derived using respondents' stated hourly pay as this variable is known to be more reliable for low-paid workers than the derived hourly pay variable. As stated hourly pay is not provided by all survey recipients, we impute for those cases with missing values using a 'nearest neighbour' regression methodology.

Appendix 2

Our previous recommendations on compliance and enforcement

1 The table below sets out the recommendations we have made on compliance and enforcement since 2018.

2022 Report (Accommodation Offset)	
1	The value of the Accommodation Offset as a proportion of the NLW will not significantly increase until we have some assurance that there are robust minimum standards in place for accommodation and that these are enforced.
2	We recommend a minimum hours requirement before accommodation costs can be deducted, for workers at risk of no or very low pay as a result of accommodation charges.
3	We recommend that seafarers be exempt from the Accommodation Offset while on board ship.
4	We recommend that BEIS and the Home Office work together to address the interactions between the Accommodation Offset and the minimum hourly rates set for seasonal workers visas in agriculture.
2022 compliance report	
1	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.
2	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.
3	We recommend HMRC addresses previous LPC recommendations to improve and promote third-party complaint protocols.
4	We urge the Government to take action on the measures we recommended in 2018 to address one-sided flexibility.
	2021 Report (domestic workers)
1	Our recommendation is that exemption 57(3) should be removed. If the government intends to introduce a visa route for au pairs and does not wish to repeal the exemption, then 57(3) must be amended so that it does not provide a loophole for exploitation.
2020 compliance report	
1.	We recommend the Government evaluates what data are recorded in non-compliance investigations, and considers how this can be used to develop measures of cost-effectiveness.
2.	We recommend the Government monitors the effects of the increase in the threshold for naming employers found to have underpaid workers.
3.	We urge the Government to take responsibility for the delivery of the new higher NLW target in the sectors where it is the main source of funding.
4.	We recommend the Government uses targeted communications to both apprentices and their employers to highlight underpayment risks, and in particular the problem of non-payment of training hours.
5.	We recommend HMRC review the way they record apprentice underpayment, and to publish the numbers and profile of the apprentices they identify as underpaid.
6.	We recommend that HMRC review their approach to investigations involving apprentices, to understand whether these investigations would identify non-payment of training hours.
7.	We join the Director of Labour Market Enforcement in recommending that the Government reviews the regulations on records to be kept by an employer, to set out the minimum requirements needed to keep sufficient records.
2019 compliance report	

	We urge the Government to use all available opportunities to improve the measurement of underpayment, and to investigate new methodologies for assessing the scale of non-compliance.
8.	We recommend that the Government continues to invest strongly in communications to workers.
9.	We urge the Government to consider how to build confidence in the complaints process, and to work with trade unions to understand the current barriers to reporting.
10.	We recommend that the Government's communications should build confidence in the third-party complaints process, including via guidance or case studies around successful complainants. We urge the Government to work closely with Acas, trade unions and other bodies to achieve this.
11.	We urge the Government to invest time in getting the guidance to employers right, as this will simplify the task of enforcement in the longer term.
12.	We recommend that the Government restart regular naming rounds to create momentum, increase coverage and allow stakeholders more time to prepare and support.
One-sided flexibility (2018)	
13.	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.
14.	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.
15.	Compensation for shift cancellation or curtailment without reasonable notice – to discourage employers from cancelling shifts at the last minute or partway through a shift.
16.	Information to workers – the written statement of terms from employers should detail the rights we are proposing here.

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