# Non-compliance and enforcement of the National Minimum Wage

A report by the Low Pay Commission

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# Contents

# Introduction

**1** The Low Pay Commission (LPC) is the independent body, whose main role is to make annual recommendations to the Government on the levels of the National Living Wage (NLW) and National Minimum Wage (NMW). To this end, we carry out a detailed consultation every year with employers, workers and other interested groups involved in low-paying sectors and jobs, to understand the state of the economy and labour market and the effects of the minimum wage. The LPC is a social partnership, made up of Commissioners representing employers' interests, those representing workers' interests and independent Commissioners.

**2** The majority of this report was written before the escalation of the Covid-19 outbreak in March 2020 and before the enforced closure of many businesses in response to the outbreak. We recognise that in this context, the questions we discuss and recommendations we make in this report may seem secondary to the Government's immediate priorities, in dealing with the pandemic and the severe pressure it has created for workers and businesses alike. But the current situation has also brought to wider attention the importance of low-paid workers to many vital services, including health and social care and the production and distribution of food. An effective enforcement system is essential in protecting workers in these and other sectors, and ensuring a level playing field for businesses as well.

**3** This is the third stand-alone report we have published on non-compliance and enforcement, although our interest in these issues goes back to our creation in 1998. Understanding the practical workings and administration of the minimum wage has always been important to us; the NLW and NMW are only truly effective in raising workers' pay and preventing exploitation if they are enforced. In addition, non-compliance undermines competition by allowing some employers to unfairly undercut their competitors. For these reasons, we consider it an important part of our responsibilities to collect evidence on non-compliance with the minimum wage, to report this evidence and to make recommendations to the Government.

**4** In April 2020, the NLW increased to £8.72, reaching the target of 60 per cent of median earnings originally set by the Government in 2015. Since 2016, there have been consistent large increases in the minimum wage, supported by record employment levels and sustained economic growth. Initially, this led to a jump in the number of workers covered by the top rate of the minimum wage (that is, paid within 5p of the rate): from 1 million to 1.6 million in 2017. (Coverage has remained stable at around 1.6 million workers since then). Since 2016, these minimum wage increases have been accompanied by rises in measured underpayment and in enforcement activity. At the same time, the resources and staff dedicated to minimum wage enforcement have never been greater, having been progressively scaled up since 2016.

**5** In its remit to the LPC this year, the Government set a further target for the NLW to reach two-thirds of median earnings by 2024. In addition, the age threshold for the NLW will be reduced to 23 in 2021, and to 21 by no later than 2024. This new remit was announced in the early stages of the Covid-19 outbreak, and before the scale of its effects on the economy and society were clear. Commissioners will assess those effects in making their recommendations to the Government on the 2021 NLW and NMW rates in the autumn. No matter the pace of future increases in the minimum wage, it will continue to be important to evaluate and improve the enforcement system, to consolidate the advances of recent years and address the remaining gaps in compliance.

**6** The Government consulted in 2019 on the creation of a single enforcement body, which for the first time would bring different elements of labour market enforcement together into a single agency. It was expected that legislation would be brought forward in an Employment Bill to create this body, although the ongoing Covid-19 crisis may delay this. Whether and at whatever point the single enforcement body is created and assumes responsibility for minimum wage enforcement, it will face many of the same challenges as HMRC do today, and so the comments we make on HMRC's activity will apply equally to the new body. Alongside the Director of Labour Market Enforcement, we would note that it is essential any reorganisation of the enforcement system does not undermine data access for minimum wage enforcement teams, who currently make use of HMRC tax information in their risk model.

**7** The numbers alone only tell us a limited amount about the nature of non-compliance with the minimum wage. They cannot tell us how far non-compliance is deliberate or how far it is a product of error, ignorance and negligence. But they are still worth tracking and using to shape the Government's approach to this challenge. A key theme running through this report is how we can get more out of the data we have, and make smarter, better use of the available information. We believe the Government has made good progress with this in recent years, but there remains more that can be done.

# Executive summary

**1** We estimate that over 420,000 workers were reported as receiving less than the minimum wage they were entitled to in April 2019. Around 360,000 workers entitled to the National Living Wage (NLW) did not receive it – 22 per cent of all workers covered by the rate. Both of these estimates represented slight falls on the previous year. There are limitations to our ability to estimate underpayment: for example, the data sources we use do not capture the grey economy and can be distorted by the timings of surveys. Nevertheless, the trend in recent years has been for measured underpayment to rise, and we should welcome any sign of this reversing.

**2** Some of the measured underpayment we observe involves fine margins and could reflect employer error or slow adaptation to incoming rates. Around one in three underpaid NLW workers were paid within 5 pence of the NLW, and a quarter were paid between the current and the previous rate. But a lot of the underpayment we find involves wider margins, with workers paid below the previous NLW rate. Around 115,000 NLW workers were reported to be paid more than £1 per hour less than they were entitled to.

**3** Rates of underpayment vary between sectors. Most underpaid workers are concentrated in the largest low-paying occupations of retail, hospitality and cleaning and maintenance. But the relative rates of measured underpayment in some other occupations – childcare in particular – are substantially higher and have been rising in recent years. The characteristics of underpaid workers tend to track those of low-paid workers in general, with some variations: women are more likely to be underpaid than men; those working full-time are more likely to be underpaid than their part-time counterparts; and salaried workers are much likelier to be underpaid than those paid hourly.

**4** The Government's policy response to non-compliance can effectively be divided into activities focused on supporting compliance, and those focused on identifying and taking action against underpayment. Effective communications are essential above all for the former. The Government's acceptance of our previous recommendations and commitment to improving the guidance available to employers are welcome, as is the forthcoming resumption of naming rounds for employers found to have underpaid. Getting these communications right will be important in securing the confidence of employers in the system.

**5** Building the profile of the enforcement system among workers is just as important. The volume of underpayment-related enquiries received by HMRC fell in 2018/19 and remains small compared with our estimates of the numbers of underpaid workers. The Government has accepted recommendations we made last year to build workers' confidence in the complaints and enforcement processes. We welcome this and look forward to seeing concrete action.

**6** HMRC's enforcement work identified more underpayment for more workers in 2018/19 than ever before: £24.4m in arrears for 220,000 workers. In addition, there are signs of more successful targeting of resources, with the numbers of cases based on targeted (rather than complaint-led) enforcement rising particularly quickly. The total volume of cases closed has risen, as has the 'strike rate' of successful cases. But the headline figures are driven by a relatively small number of cases and tell us a limited amount about how HMRC are weighing different activities.

**7** There has been positive work in recent years in making use of a range of information sources to shape enforcement activity. The logical next step in improving enforcement is to develop measures for the cost-effectiveness of different activities. To achieve this, HMRC will need to evaluate the data it collects and the way it classifies cases. This can help evaluate the relative effectiveness of different strands of enforcement work, important in a context where minimum wage coverage may expand in coming years.

**8** The non-compliance challenge varies substantially between different sectors and groups. In this report, we pick out two strategic challenges in particular, although this is by no means an exhaustive list. We repeat an earlier recommendation for Government to take responsibility for adequately funding those sectors where it directly or indirectly sets rates of funding to mitigate the risk of workers being underpaid.

**9** The first challenge we pick out in this report is apprenticeships. Surveys continue to show very high levels of underpayment of apprentices. Among some age groups, as many as one in three apprentices are reported as underpaid. The highest levels of underpayment are recorded for apprentices aged 19 and over in their second year – that is, after their minimum wage has increased from the Apprentice Rate to the appropriate NMW for their age. But the problem is not only located here – large proportions of younger, 16-18 year old apprentices in their first year, also report underpayment. Although the structure of the minimum wage plays a role in the pattern of underpayment observed, there is strong evidence for non-payment of training hours as the main driving factor for this. The Government should consider ways to address this, including by retooling its communications and enforcement efforts to focus on this specific risk. It is something we will continue to investigate via our consultation and research programme.

**10** The second challenge we pick out is around workers' access to payslips. This is an area where Government has recently acted on our past recommendations, to ensure pay advice states the hours workers are paid for. But despite these changes to regulations, we continue to hear about the problems workers face in accessing their pay information. There is room to improve the promotion of new regulations, but also to look at their enforcement. The Government should keep these regulations under review and consider whether the current approach is sufficient to ensure employers keep adequate records and make them available to workers.

**11** In this report, we make the following recommendations:

- 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.

- We recommend the Government monitors the effects of the increase in the threshold for naming employers found to have underpaid workers.

- 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.
- 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.
- We recommend HMRC review the way they record apprentice underpayment, and to publish the numbers and profile of the apprentices they identify as underpaid.
- We recommend that HMRC review their approach to investigations involving apprentices, to understand whether these investigations would identify non-payment of training hours.
- 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.

# Chapter 1

# The nature and extent of underpayment

**Key findings**

We estimate that over 420,000 workers were reported as receiving less than the minimum wage they were entitled to in April 2019. There are limitations to our ability to estimate underpayment, but the trend of recent years has been for measured underpayment to rise. 2019 saw this reverse slightly.

Any margin of underpayment is illegal. Some measured underpayment involves fine margins and could reflect employer error or slow adaptation to incoming rates. But just as much of the underpayment we find involves wider margins, with workers paid below the previous NLW rate.

Rates of underpayment vary between sectors. Most underpaid workers are in the largest low-paying occupations of retail, hospitality and cleaning and maintenance. But the relative rates of measured underpayment in some other sectors – childcare in particular – are substantially higher.

Measuring underpayment will be vital in addressing it. We once again urge the Government to use all available means to improve the measurement of this problem.

## How we estimate underpayment

### ASHE and the LFS

1.1 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.

1.2 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 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 employers, ASHE will not include data on the informal economy, and so misses what may be the most significant location for non-compliance.

1.3 The timing of ASHE, too, can affect the amount of non-compliance which it finds. 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.

1.4 In addition, the precise survey date changes annually, 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) are 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.

1.5 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.

1.6 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.

## Using estimates of non-compliance

1.7 Given these considerations, the estimates of non-compliance set out in this chapter are most usefully treated as indications of direction of travel. We know that minimum wage underpayment exists, both anecdotally, through workers and employers we meet, and because the enforcement body identifies hundreds of thousands of workers as underpaid each year. We can be confident ASHE and the LFS are measuring something real – but it is unlikely they are telling the whole story, whether by over-estimating some parts of the problem or under-estimating others. Nevertheless, we believe it is clear that underpayment is a real challenge and does exist in various forms on a wide scale.

1.8 We present underpayment figures in this chapter both as absolute numbers and as a share of minimum wage coverage. The former gives a sense of the absolute scale of the problem, the latter a sense of the relative likelihood of different groups of being underpaid. Thinking in terms of coverage also lets us account for broader changes to the minimum wage population – whether the increasing number of underpaid workers is proportionate to the rising numbers of minimum wage workers overall, or whether something is happening which means minimum wage workers are more likely to be underpaid. Both measures are important in considering the nature of the challenge and how we should respond to it.

1.9 In last year's report, we noted the importance of assessing the scale of underpayment and urged the Government to use all available opportunities to improve its measurement, including investigating new methodologies. In its recent evidence to us (Department for Business, Energy and Industrial Strategy 2020), we were pleased to see the Government accept this recommendation, stating that it would be working with all interested parties to improve these measures. We reiterate the continued importance of this work and look forward to seeing progress over the coming year.

# The extent of underpayment

## Annual Survey of Hours and Earnings

1.10 Table 1.1 sets out the numbers of workers measured as underpaid in the 2018 and 2019 ASHE surveys, showing that, across all the rates, underpayment declined both in absolute terms and as a proportion of minimum wage coverage. This represents the first fall in total underpayment since 2015 and, as Figure 1.1 shows, follows several years in which the proportion of NLW workers underpaid has steadily risen. The levels of underpaid workers recorded are higher than in the period preceding the NLW's introduction, but the change in uprating date from October to April influences this.

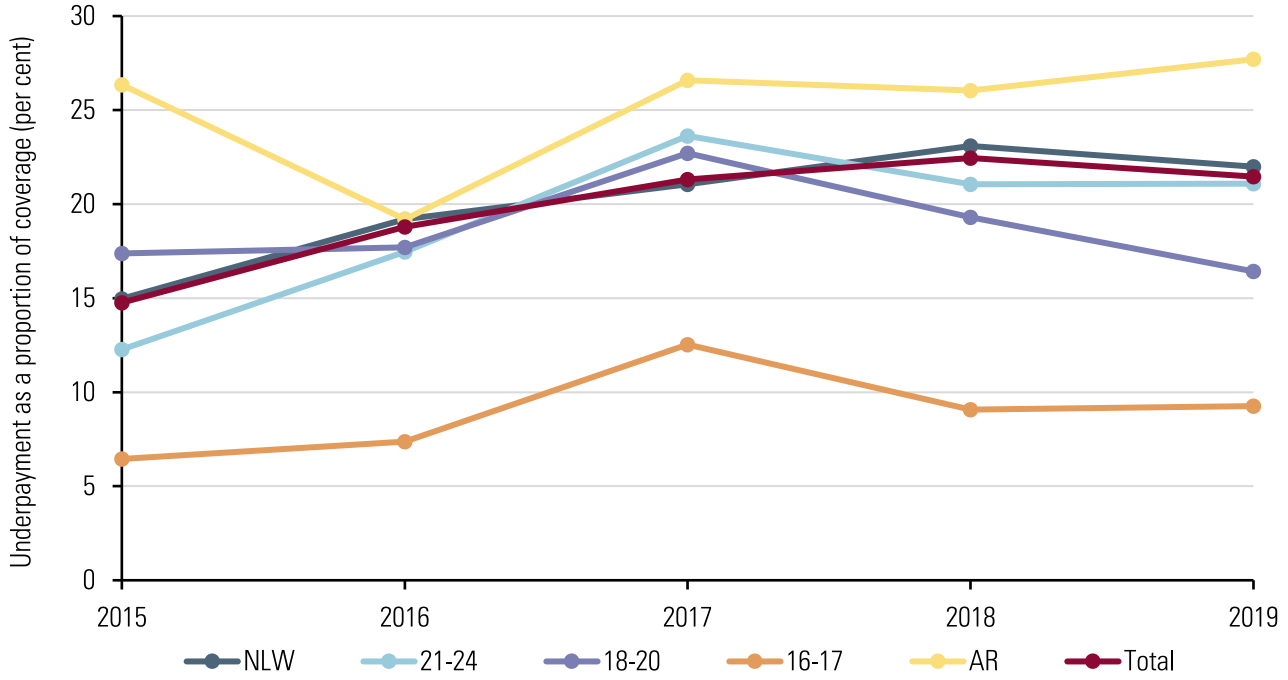
### Table 1.1: ASHE underpayment by minimum wage rate, UK, 2018-19

| Minimum wage rate | Numbers underpaid | | Underpayment as a share of coverage | | |
|---|---|---|---|---|---|
| | 2018 | 2019 | 2018 | 2019 | Change 18-19 |
| | thousands | thousands | per cent | per cent | percentage point |
| National Living Wage | 370.4 | 360.3 | 23.1 | 22.0 | -1.1 |
| 21-24 Year Old Rate | 35.1 | 32.6 | 21.1 | 21.1 | 0.0 |
| 18-20 Year Old Rate | 23.3 | 18.8 | 19.3 | 16.4 | -2.9 |
| 16-17 Year Old Rate | 3.6 | 3.3 | 9.1 | 9.3 | 0.2 |
| Apprentice Rate | 8.3 | 8.8 | 26.0 | 27.7 | 1.7 |
| **Total** | **440.6** | **423.8** | **22.5** | **21.5** | **-1.0** |

Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2018-19.
Note: Excludes flagged legitimate underpayment.

1.11 Our analysis throughout most of this report focuses on the NLW. The population eligible for and paid the NLW is much larger than for any other rate, and the data on underpayment are correspondingly more reliable. Because of this, as Figure 1.1 shows, the pattern of total underpayment tends to closely track the numbers for the NLW. The numbers of young workers underpaid the 21-24 Year Old Rate, the 18-20 Year Old Rate and the 16-17 Year Old Rate fell in each case between 2018 and 2019. The Apprentice Rate is a special case, which we look at in greater detail in Chapter 3 – in short, we think the Apprenticeship Pay Survey is a better source of information on apprentice pay than ASHE, which does not reliably count the number of apprentices in the workforce.

Figure 1.1 Underpayment – share of coverage by minimum wage rate, UK, 2015-2019

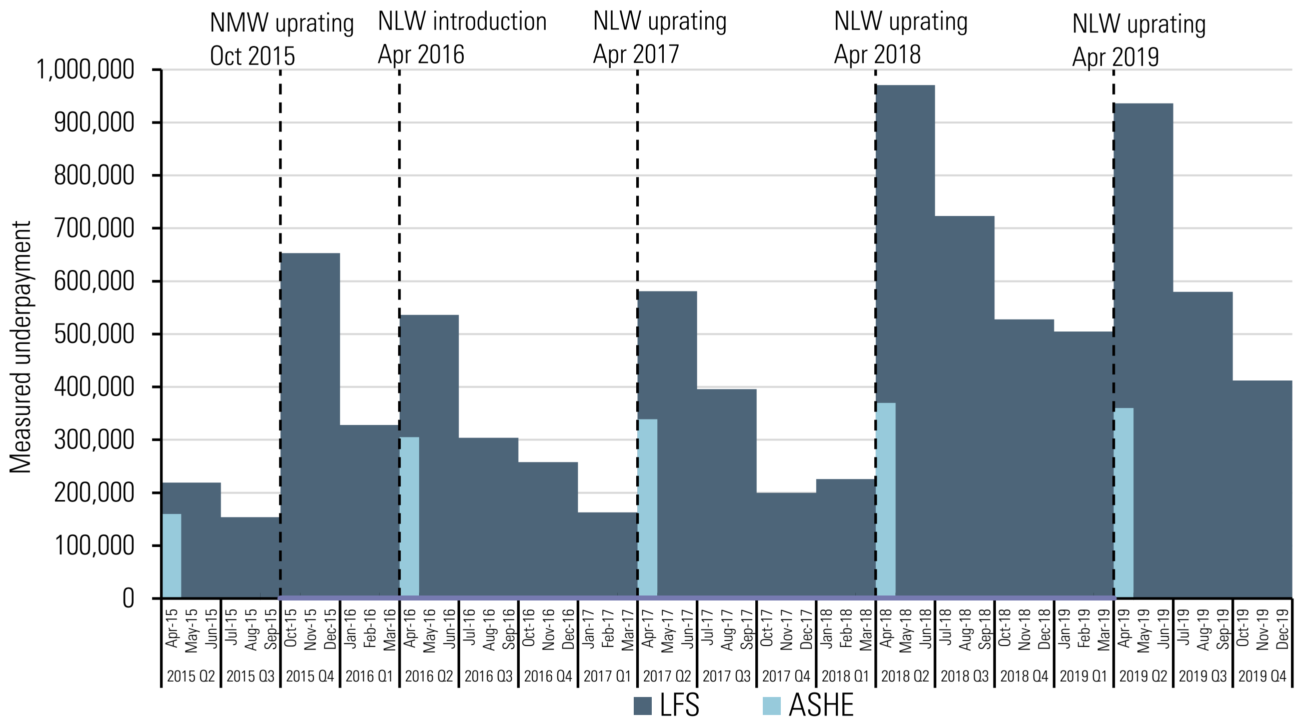



Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2015-2019.
Note: Excludes flagged legitimate underpayment.

## Labour Force Survey

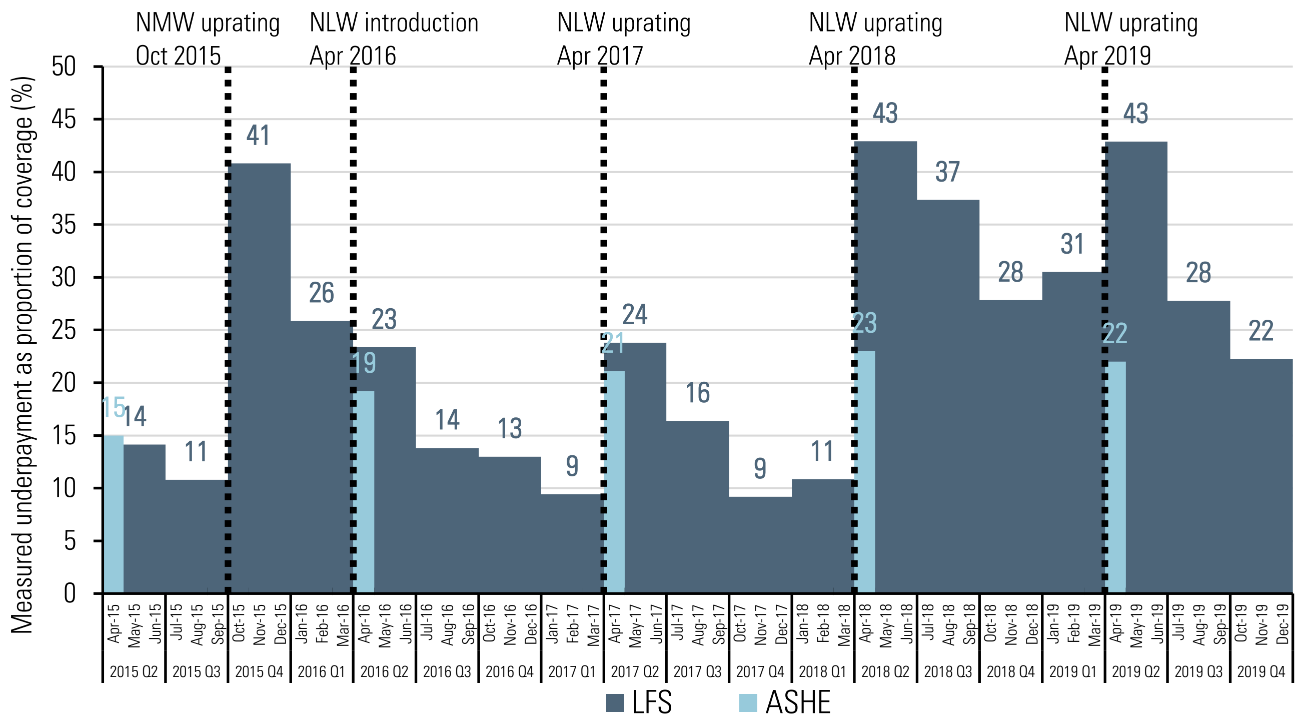
**1.12** Figure 1.2 and Figure 1.3 show quarterly levels of NLW underpayment measured in the LFS. Underpayment in the LFS follows a steady pattern: a sharp spike in the second quarter in response to the April uprating, followed by a gradual decline in subsequent quarters. Last year we noted that the April 2018 spike was larger than in any previous year, and although measured underpayment declined over the course of the year, its level in Q4 2018 was still greater than any preceding fourth quarter and comparable with previous years' peaks. Measured underpayment in the second quarter of 2019 was slightly lower than a year earlier (936,000 versus 971,000), but still higher than any previous year, but the falls in the third and fourth quarters were steeper than a year earlier, dropping to around 410,000 by the end of 2019.

## Figure 1.2: LFS underpayment - totals, UK, 2015-2019




Source: LPC estimates using ASHE and LFS:
Notes:
a) Annual Survey of Hours and Earnings, 2010 methodology, low pay weights, UK, 2015-19
b) Labour Force Survey, income weights, quarterly, not seasonally adjusted, UK, 2015Q2 - 2019Q4

## Figure 1.3: LFS underpayment – share of coverage, UK, 2015-2019

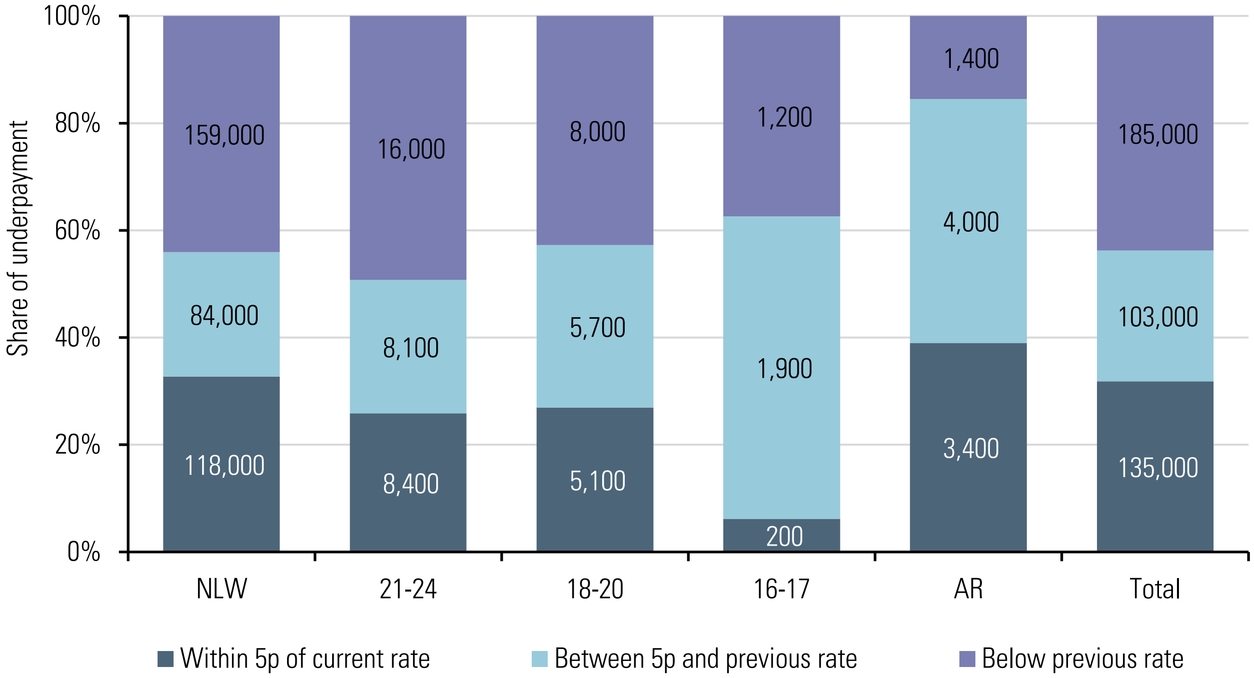



Source: LPC estimates using ASHE and LFS:
Notes:
a) Annual Survey of Hours and Earnings, 2010 methodology, low pay weights, UK, 2015-19
b) Labour Force Survey, income weights, quarterly, not seasonally adjusted, UK, 2015Q2 - 2019Q4

## Margins of underpayment

1.13 Looking at the margins of underpayment can help give a sense of its nature – whether the cases we see represent employers responding too slowly to the introduction of a new rate, making marginal calculation errors or instead disregarding minimum wage requirements completely. The margins found in ASHE vary greatly. Figure 1.4 divides underpayment for each rate into three categories: workers paid within 5 pence of the newly introduced rate, workers paid in between the newly introduced rate and the previous rate, and workers paid under the previous rate. For the NLW, 118,000 NLW workers (and 135,000 workers in total) were underpaid by a margin of 5 pence or less, but the largest proportion of measured underpayment (159,000 workers) were paid less than the previous year's rate. We go on to look in the next section at the characteristics of these workers underpaid by the widest margins.

### Figure 1.4: Margins of NLW underpayment, ASHE, UK, 2019




Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.
Note: Excludes flagged legitimate underpayment.

# Groups affected by underpayment

## Underpayment by sector

1.14 Table 1.2 shows the levels of underpayment recorded in ASHE broken down by occupation. As in previous years, the largest numbers of underpaid workers are found in the three largest low-paying sectors – retail, cleaning and maintenance, and hospitality. Of these, underpayment is highest as a proportion of coverage for hospitality workers, where nearly one in five low-paid workers are underpaid. In total, a third of underpaid workers are in non low-paying occupations. The sector with the highest rate of underpayment is once again childcare, where nearly half the low-paid workers in the sector are recorded as underpaid. We have heard extensive evidence in recent years about the impacts of ongoing funding restrictions in this sector, but this does not itself explain the anomalous levels of underpayment.

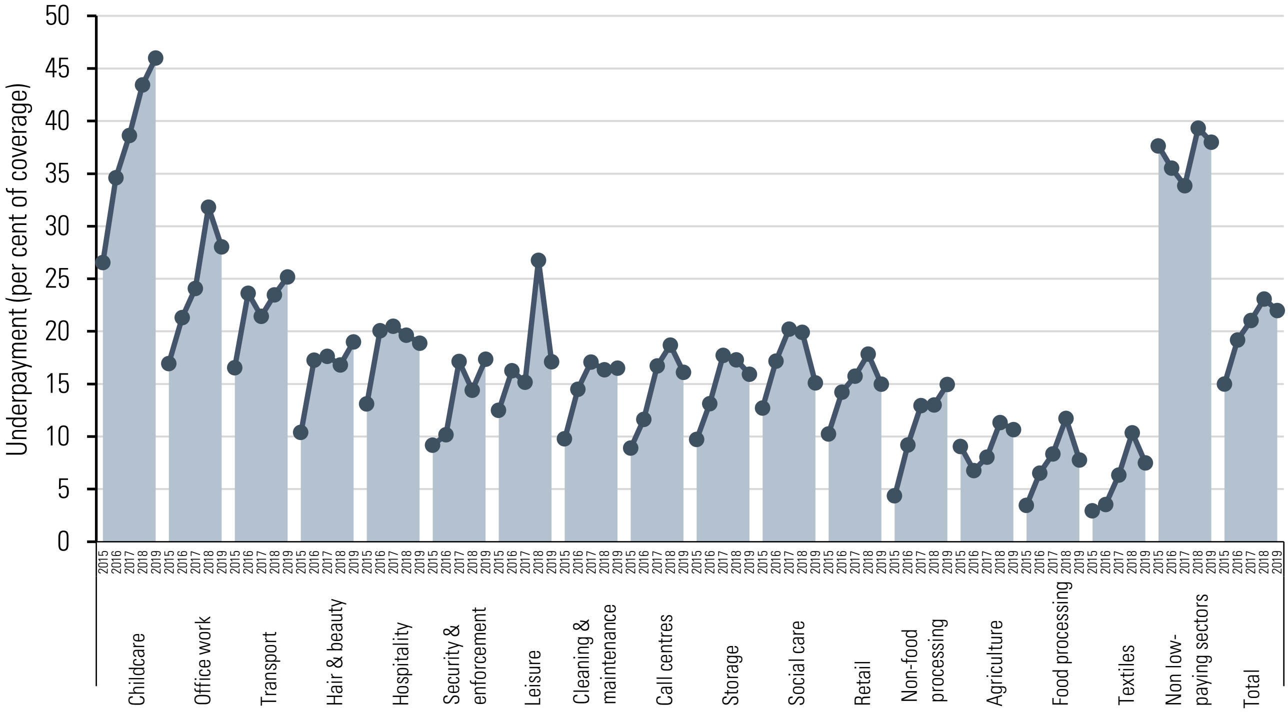
Table 1.2: NLW underpayment by occupation in ASHE, UK, 2019

| Occupation | Coverage | Proportion of total coverage | Underpayment | Proportion of total underpayment | Underpayment as proportion of coverage |
|---|---|---|---|---|---|
| | Numbers | Per cent | Numbers | Per cent | Per cent |
| Childcare | 49,000 | 3.0 | 23,000 | 6.3 | 46.0 |
| Office work | 53,000 | 3.2 | 15,000 | 4.1 | 28.1 |
| Transport | 66,000 | 4.0 | 17,000 | 4.6 | 25.2 |
| Hair & beauty | 25,000 | 1.5 | 5,000 | 1.3 | 19.0 |
| Hospitality | 234,000 | 14.3 | 44,000 | 12.3 | 18.9 |
| Security & enforcement | 19,000 | 1.1 | 3,000 | 0.9 | 17.4 |
| Leisure | 21,000 | 1.3 | 4,000 | 1.0 | 17.1 |
| Cleaning & maintenance | 247,000 | 15.1 | 41,000 | 11.3 | 16.5 |
| Call centres | 6,000 | 0.4 | 1,000 | 0.3 | 16.1 |
| Storage | 71,000 | 4.3 | 11,000 | 3.1 | 15.9 |
| Social care | 101,000 | 6.2 | 15,000 | 4.3 | 15.1 |
| Retail | 285,000 | 17.4 | 43,000 | 11.8 | 15.0 |
| Non-food processing | 49,000 | 3.0 | 7,000 | 2.0 | 15.0 |
| Agriculture | 17,000 | 1.0 | 2,000 | 0.5 | 10.7 |
| Food processing | 57,000 | 3.5 | 4,000 | 1.2 | 7.8 |
| Textiles | 10,000 | 0.6 | 1,000 | 0.2 | 7.5 |
| Low-paying occupations | 1,309,000 | 79.9 | 235,000 | 65.3 | 18.0 |
| Non low-paying occupations | 329,000 | 20.1 | 125,000 | 34.7 | 38.0 |
| Total | 1,639,000 | 100.0 | 360,000 | 100.0 | 22.0 |

Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.

**1.15** Figure 1.5 shows how rates of underpayment have changed in different occupations over the past five years, emphasising the rapid and sustained year-on-year growth of underpayment in childcare. For most occupations, the initial jump between 2015 and 2016 has since flattened to some extent. The most notable fall in 2019 was in retail, which, because of the large numbers of low-paid workers employed, contributed most to the overall fall in underpaid workers, although underpayment fell in a number of other sectors as well.

## Figure 1.5: NLW underpayment by occupation, UK, 2015-2019




Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.

**1.16** Table 1.3 shows how underpaid workers in a selection of low-paying occupations are distributed between the different 'groups' of underpayment identified earlier. Across all low-paying occupations, just over a third of underpaid NLW workers earned less than the previous year's rate, but this was notably higher in childcare (46 per cent), hospitality (43 per cent) and social care (40 per cent). For non-low paying occupations, the clear majority of underpayment (63 per cent) involves workers paid less than the previous year's rate, suggesting a very different mode of underpayment in these occupations.

### Table 1.3: Scale of NLW underpayment by occupation, UK, 2019

| Occupation | Below previous NLW | | Between 5p and previous NLW | | Within 5p of NLW | | Total |
|---|---|---|---|---|---|---|---|
| | Numbers | Per cent | Numbers | Per cent | Numbers | Per cent | Numbers |
| Hospitality | 19,000 | 43 | 10,000 | 23 | 15,000 | 33 | 44,000 |
| Retail | 15,000 | 35 | 10,000 | 23 | 18,000 | 42 | 43,000 |
| Cleaning and maintenance | 14,000 | 35 | 14,000 | 34 | 13,000 | 32 | 41,000 |
| Childcare | 10,000 | 46 | 7,000 | 29 | 6,000 | 25 | 23,000 |
| Transport | 4,000 | 23 | 4,000 | 24 | 9,000 | 53 | 17,000 |
| Social care | 6,000 | 40 | 5,000 | 33 | 4,000 | 28 | 15,000 |
| Office work | 4,000 | 26 | 2,000 | 17 | 9,000 | 58 | 15,000 |
| Storage | 3,000 | 24 | 2,000 | 22 | 6,000 | 54 | 11,000 |
| Low-paying occupations | 80,000 | 34 | 63,000 | 27 | 92,000 | 39 | 235,000 |
| Non low-paying occupations | 78,000 | 63 | 21,000 | 17 | 26,000 | 21 | 125,000 |
| **Total** | **159,000** | **44** | **84,000** | **23** | **118,000** | **33** | **360,000** |

Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.
Note: Only includes low-paying occupations with total underpayment greater than 10,000.

## Underpayment by worker and employer characteristic

1.17 Using ASHE data, we can look at the characteristics of underpaid NLW workers, and whether certain groups are at greater or lesser risk of being underpaid. Table 1.4 sets out a breakdown by worker characteristic, showing that the pattern of underpayment follows the pattern of low pay more generally. There is little difference between age groups when it comes to the likelihood of underpayment, and although women are slightly more likely to be underpaid, the gap is not a large one. The most significant 'risk factor' is whether a worker works full or part-time. Three in five NLW workers are part-time and while overall there are slightly more underpaid part-time workers, full-time workers are more likely to be underpaid.

1.18 This may be linked to the high levels of underpayment among salaried workers. Table 1.5 sets out a similar breakdown by employment characteristic. Most underpayment takes place in private sector employers, although there is a higher proportion of coverage among the relatively small number of low-paid public sector workers. When we look at the size of workplace, there seems to be a slightly greater likelihood of underpayment for workers in the smallest, micro-scale firms. The most notable finding is that despite comprising just one fifth of all NLW workers, nearly half of total underpayment is made up of salaried workers, with more than half of low-paid salaried workers underpaid.

### Table 1.4: NLW underpayment by worker characteristic, UK, 2019

| Characteristic | Coverage | Proportion of all workers covered | Underpayment | Proportion of total underpayment | Underpayment as proportion of coverage |
|---|---|---|---|---|---|
| | Numbers | Per cent | Numbers | Per cent | Per cent |
| Female | 1,046,000 | 63.9 | 234,000 | 65.0 | 22.4 |
| Male | 592,000 | 36.1 | 126,000 | 35.0 | 21.3 |
| Part-time | 991,000 | 60.5 | 187,000 | 51.8 | 18.8 |
| Full-time | 648,000 | 39.5 | 174,000 | 48.2 | 26.8 |
| 25-29 | 242,000 | 14.8 | 51,000 | 14.1 | 21.0 |
| 30-39 | 412,000 | 25.1 | 88,000 | 24.5 | 21.5 |
| 40-49 | 380,000 | 23.2 | 81,000 | 22.5 | 21.3 |
| 50-59 | 383,000 | 23.4 | 87,000 | 24.2 | 22.8 |
| 60-64 | 138,000 | 8.4 | 31,000 | 8.6 | 22.4 |
| 65+ | 85,000 | 5.2 | 22,000 | 6.1 | 25.9 |
| Total | 1,639,000 | 100.0 | 360,000 | 100.0 | 22.0 |

Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.

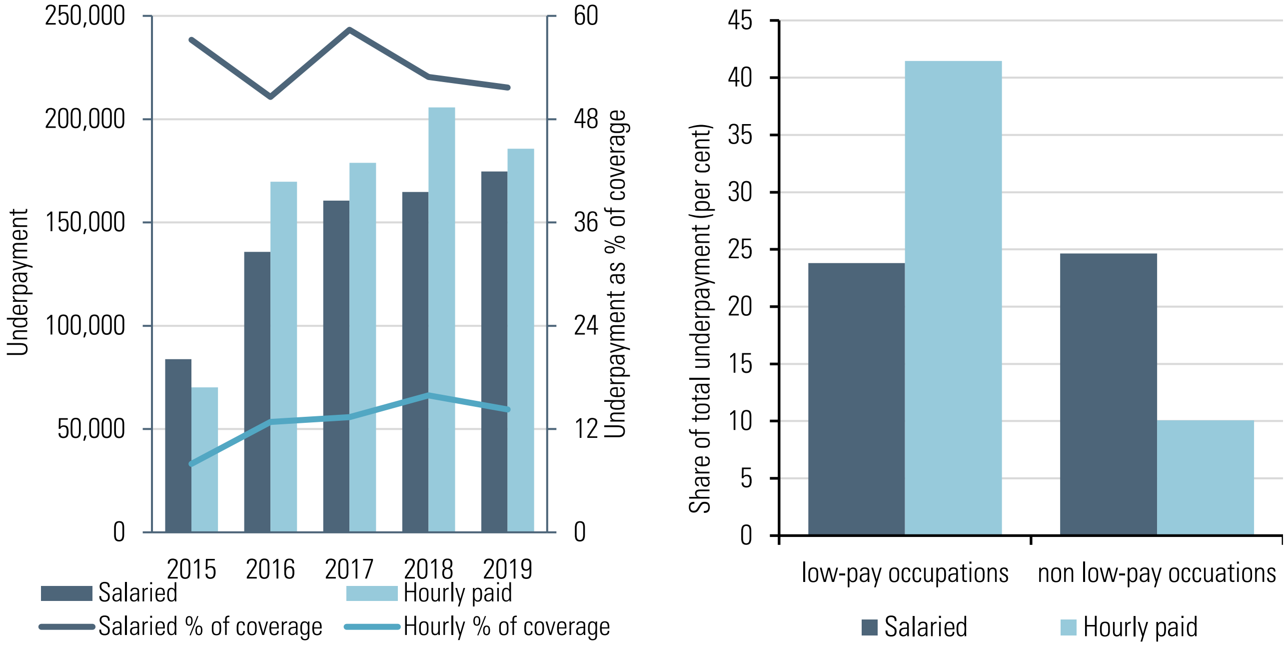
### Table 1.5: NLW Underpayment by employment characteristic, UK, 2019

| Characteristic | Coverage | Proportion of total coverage | Underpayment | Proportion of total underpayment | Underpayment as proportion of coverage |
|---|---|---|---|---|---|
| | Numbers | Per cent | Numbers | Per cent | Per cent |
| Public | 65,000 | 4.0 | 41,000 | 11.3 | 62.5 |
| Private | 1,472,000 | 89.8 | 288,000 | 79.9 | 19.6 |
| Voluntary | 102,000 | 6.2 | 32,000 | 8.8 | 31.3 |
| Permanent | 1,466,000 | 89.5 | 330,000 | 91.7 | 22.5 |
| Temporary | 161,000 | 9.8 | 27,000 | 7.6 | 17.0 |
| In job more than a year | 1,209,000 | 73.8 | 292,000 | 81.0 | 24.1 |
| In job less than a year | 430,000 | 26.2 | 69,000 | 19.0 | 16.0 |
| Have one job | 1,493,000 | 91.1 | 326,000 | 90.6 | 21.9 |
| More than one job | 146,000 | 8.9 | 34,000 | 9.4 | 23.3 |
| Salaried | 338,000 | 20.6 | 175,000 | 48.5 | 51.7 |
| Hourly paid | 1,301,000 | 79.4 | 186,000 | 51.5 | 14.3 |
| Micro | 327,000 | 20.0 | 86,000 | 24.0 | 26.4 |
| Other small | 314,000 | 19.2 | 60,000 | 16.7 | 19.1 |
| Medium | 240,000 | 14.6 | 46,000 | 12.8 | 19.2 |
| Large | 390,000 | 23.8 | 81,000 | 22.5 | 20.8 |
| Very large | 300,000 | 18.3 | 46,000 | 12.7 | 15.3 |

Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.
Note: Firm size analysis excludes public sector workers.

1.19 The high proportion of salaried workers who are underpaid is not a new development, as Figure 1.6 shows. The numbers of underpaid salaried workers are divided almost evenly between low-paying and non-low paying occupations. These findings around salaried workers may reflect a couple of factors: on the one hand, the greater likelihood of calculation error than with an hourly rate; on the other, a tendency for these individuals to work additional, unpaid hours. If calculation errors were a major factor leading to underpayment, we might expect to see significant numbers paid around but not at the NLW rate, as employers 'miss' the minimum wage in their calculations.

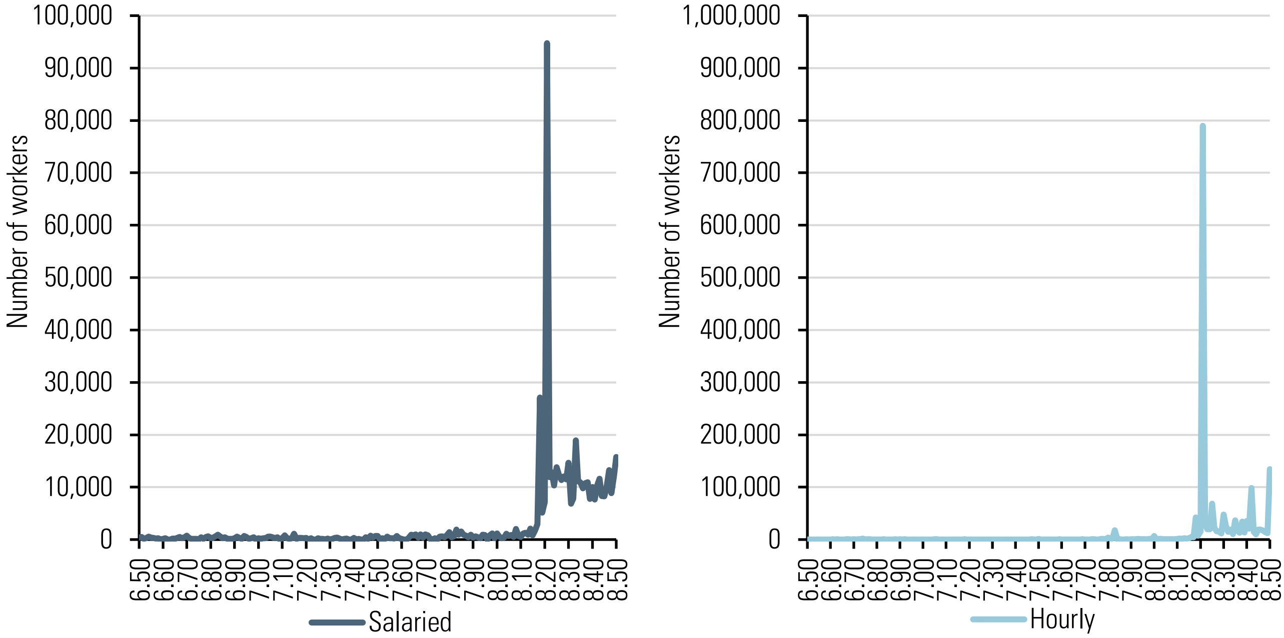
Figure 1.6: Underpayment of salaried workers, UK, 2019




Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.

1.20 When we look at the wage distributions for salaried workers in Figure 1.7, we see a large spike at the NLW, mirroring the distribution for their hourly-paid counterparts. There is a smaller spike of around 27,000 workers (or 15 per cent of salaried workers that are underpaid) who receive £8.18 per hour, which may reflect a miscalculation of pay - potentially representing a salary of around £17,000 for a 40 hour week. But overall, the distribution looks very similar in shape to that for hourly paid workers and does not suggest that pay miscalculation is the main contributing cause to the underpayment of salaried workers.

Figure 1.7: Pay distribution: salaried versus hourly-paid workers, UK, 2019




Source: LPC estimates using ASHE 2010 methodology, standard weights, low pay flag, UK, 2019.

**1.21** Table 1.6 and Table 1.7 look at margins of underpayment by the same worker and employer characteristics set out above. Women are more likely to be underpaid by a wide margin than men; and nearly half of full-time NLW workers were paid less than the previous year's rate. When looking at employment characteristic, we see that the underpayment of salaried workers tends to involve wider rather than narrower margins, with nearly six in ten of those workers paid less than the previous year's NLW.

Table 1.6: Scale of NLW underpayment by worker characteristic, UK, 2019

| Characteristic | Below previous NLW | | Between 5p and previous NLW | | Within 5p of NLW | | Total |
|---|---|---|---|---|---|---|---|
| | Numbers | Per cent | Numbers | Per cent | Numbers | Per cent | Numbers |
| Female | 107,000 | 45.5 | 55,000 | 23.4 | 73,000 | 31.2 | 234,000 |
| Male | 52,000 | 41.4 | 29,000 | 23.0 | 45,000 | 35.6 | 126,000 |
| Part-time | 73,000 | 39.0 | 53,000 | 28.3 | 61,000 | 32.7 | 187,000 |
| Full-time | 86,000 | 49.4 | 31,000 | 17.8 | 57,000 | 32.8 | 174,000 |
| 25-29 | 21,000 | 40.7 | 10,000 | 19.6 | 20,000 | 39.8 | 51,000 |
| 30-39 | 39,000 | 44.5 | 21,000 | 24.1 | 28,000 | 31.4 | 88,000 |
| 40-49 | 38,000 | 47.2 | 17,000 | 21.3 | 26,000 | 31.5 | 81,000 |
| 50-59 | 38,000 | 43.7 | 21,000 | 24.4 | 28,000 | 31.9 | 87,000 |
| 60-64 | 13,000 | 41.0 | 7,000 | 22.7 | 11,000 | 36.3 | 31,000 |
| 65+ | 10,000 | 44.5 | 7,000 | 31.4 | 5,000 | 24.0 | 22,000 |

Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.

## Table 1.7: Scale of NLW underpayment by employment characteristic, UK, 2019

| Characteristic | Below previous NLW | | Between 5p and previous NLW | | Within 5p of NLW | | Total |
|---|---|---|---|---|---|---|---|
| | Numbers | Per cent | Numbers | Per cent | Numbers | Per cent | Numbers |
| Public | 27,000 | 66.9 | 10,000 | 24.9 | 3,000 | 8.2 | 41,000 |
| Private | 118,000 | 41.0 | 67,000 | 23.1 | 103,000 | 35.9 | 288,000 |
| Voluntary | 14,000 | 42.7 | 7,000 | 22.1 | 11,000 | 35.2 | 32,000 |
| Permanent | 145,000 | 44.0 | 73,000 | 22.0 | 112,000 | 34.0 | 330,000 |
| Temporary | 12,000 | 42.9 | 10,000 | 38.0 | 5,000 | 19.1 | 27,000 |
| In job more than a year | 139,000 | 47.7 | 62,000 | 21.2 | 91,000 | 31.1 | 292,000 |
| In job for less than a year | 19,000 | 28.4 | 22,000 | 31.9 | 27,000 | 39.7 | 69,000 |
| Have one job | 143,000 | 43.7 | 73,000 | 22.4 | 111,000 | 33.9 | 326,000 |
| More than one job | 16,000 | 47.8 | 11,000 | 30.9 | 7,000 | 21.2 | 34,000 |
| Salaried | 103,000 | 58.7 | 28,000 | 16.0 | 44,000 | 25.3 | 175,000 |
| Hourly paid | 56,000 | 30.3 | 56,000 | 30.0 | 74,000 | 39.7 | 186,000 |
| Micro | 41,000 | 47.3 | 20,000 | 23.4 | 25,000 | 29.3 | 86,000 |
| Other small | 20,000 | 33.5 | 15,000 | 25.7 | 24,000 | 40.8 | 60,000 |
| Medium | 16,000 | 33.6 | 11,000 | 23.9 | 20,000 | 42.4 | 46,000 |
| Large | 29,000 | 36.3 | 18,000 | 22.3 | 34,000 | 41.4 | 81,000 |
| Very large | 26,000 | 55.7 | 9,000 | 19.1 | 12,000 | 25.2 | 46,000 |

Source: LPC estimates using ASHE 2010 methodology, low pay weights, low pay flag, UK, 2019.
Note: Firm size analysis excludes public sector workers.

# Chapter 2

# The policy response to non-compliance

**Key findings**

Effective communications are essential for a functioning enforcement system. The Government has made some progress in building the profile of the enforcement system. We are pleased it has accepted recommendations we made last year, and wait to see what actions will follow.

HMRC identified more underpayment for more workers in 2018/19 than ever before and there are signs of better targeting of enforcement. But the headline figures are driven by a relatively small number of cases, and tell us a limited amount about how HMRC are weighing different activities.

The logical next step in improving enforcement is to develop measures for the cost-effectiveness of different activities. To achieve this, HMRC will need to evaluate the data it collects and the way it classifies cases.

## Communications and information

2.1 Workers need to know their rights. Employers need to know their responsibilities. Both groups need to know where and how they can report non-compliance, and they need to have confidence in the enforcement system to believe it is worthwhile to do so. Getting its communications right is therefore fundamental to the Government's enforcement efforts. In the first part of this chapter, we survey the main features of the Government's promotional and informational work to support compliance.

### Communications to workers

2.2 Workers' complaints are the source of the majority of HMRC's enforcement caseload, and, judged by the 'strike rate' of success in closing cases with arrears, are the most effective way of identifying underpayment. For this reason, helping workers understand if they are underpaid and know what to do about it is fundamental to enforcement.

2.3 Last year, we made three recommendations relating to the Government's communications to workers. We first recommended continued strong investment in this, then made two recommendations related to the complaints process. We urged the Government to work with trade unions to consider how to build confidence in the process. We also recommended that communications should specifically seek to build confidence in the third-party complaints process; we had too often heard about individuals or groups being discouraged from raising complaints on others' behalf, because of restrictions on sharing information. We noted that the volume of complaints and enquiries received by HMRC looked small next to statistical estimates of the scale of underpayment. In its evidence to us (Department for Business, Energy and Industrial Strategy 2020), the Government accepted these recommendations. We welcome this and look forward to seeing their actions in this area.

**2.4** In 2018/19, the volume of worker complaints about underpayment actually fell. Various things drive the number of complaints, and this fall does not necessarily imply any communications failure. The Government told us that a major factor in the 2018/19 fall was due to the legal position on sleep-in shifts being clarified, with a corresponding fall in calls from workers in the social care sector. It is also true that, in some respects, the quality or relevance of complaints might be just as important a yardstick as the number. But it does indicate the challenge in building the enforcement system's profile among vulnerable workers and encouraging more complaints.

**2.5** There are two routes for workers to report underpayment: by phoning Acas, who raise a case with HMRC on the worker's behalf, or by contacting HMRC directly online. In 2018/19, complaint numbers by each route fell. For Acas, the total volume of calls received fell by just over 3 per cent (to over 730,000), but the reduction in calls related to the minimum wage, and related specifically to underpayment, were sharper. The former fell by almost a quarter (to 7,736), the latter by around a third (to 2,939). Despite this, referrals from Acas to HMRC were more stable; 1,895 compared with 1,980 a year earlier. Although calls related to the minimum wage were falling, a higher proportion of those calls were being passed onto HMRC's enforcement teams (24 per cent versus 19 per cent in 2017/18).

**2.6** The HMRC online complaints form was introduced in 2016, and can be used to report suspected underpayment either directly by workers or by third parties. Use of the form fell slightly in 2018/19, to 3,800 from 4,200 contacts the previous year. BEIS and HMRC told us that they had made refinements to the online form, aimed at increasing the quality of the enquiries they received.

**2.7** We cannot know for certain what is behind this fall in complaint numbers, whether (as BEIS suggests) it is due to elements of the law being clarified, increased awareness levels or other factors. In its surveys of workers, BEIS has consistently found that high levels of eligible workers are aware of the minimum wage – 90 per cent in 2019 – but awareness of the minimum wage does not necessarily mean awareness of or confidence in the enforcement system. This also points to around 10 per cent of the workforce being unaware of the minimum wage – a greater level than our estimates of underpaid workers. Our own conversations with groups of workers are inconclusive on this point: while some are unafraid of asserting their rights, others are less confident and, particularly in some sectors, seem used to a certain level of non-compliance or malpractice as a given in working life. One barrier, which we discuss further in Chapter 3, is the difficulty workers may face in accessing and understanding their own pay records.

**2.8** The Government runs annual communications campaigns alongside the uprating each April, aimed at building workers' understanding of common forms of underpayment and the appropriate action to take. Spending on these campaigns grew strongly when the National Living Wage (NLW) was first introduced, but has fallen in recent years – £1.1m in 2019, compared with £1.48m in 2018. The level of direct spend, though, probably matters less than how well such campaigns are targeted and how far they are picked up in other media sources. The Government also sends messages to workers directly, via the large-scale SMS campaigns which HMRC runs as part of its Promote work. For example, in 2018/19 around 1.4 million text messages were sent to workers thought to be at risk of underpayment. There are positive signs that the Government is learning lessons around targeting these campaigns; it is clearly difficult to assess the impact of campaigns on this scale and directed towards such a large population, but it is vital to try to do so. Workers' awareness of their rights and willingness to complain is to a large extent the oil in the wheels of the enforcement system.

## Communications to employers

**2.9** In the report we published last year on non-compliance and enforcement, we noted the frequent complaints we had heard from businesses about the complexity of some NMW-related regulations and the inaccessibility of clear, tailored guidance to employers. We recommended that the Government invest time in getting the guidance to employers right – ensuring everything was in place so that employers felt fully informed and able to comply with minimum wage rules. The Director of Labour Market Enforcement (DLME), too, has consistently made such recommendations. We have continued to hear this same feedback from employers over the last year; too many businesses are not confident they understand the regulations, and in many cases resent what they see as complex or unintuitive regulations which they feel are there to trip them up. In such cases, it is worth remembering that the purpose of the rules is to protect workers. Nevertheless, it is a problem if the perceived inaccessibility of the rules undermines employers' confidence in the enforcement regime more generally.

**2.10** We are pleased, then, that in its evidence to us the Government accepted the recommendation we made last year. Since the beginning of 2020, it has announced changes to the definition of salaried workers, an issue which still frequently crops up in our discussions with employers. BEIS and HMRC also told us that they have carried out a review of NMW guidance for employers, and will be publishing updated versions of this over the coming months. We look forward to seeing this updated guidance, and to hearing how far it meets employers' needs.

**2.11** The Government has made progress in recent years in developing direct and targeted communications to employers. HMRC presented evidence to us earlier in the year on their programme of 'Promote' work, which encompasses a range of activities; large-scale email campaigns focusing on prominent issues or common errors; other large letter-writing campaigns which are focused on single sectors; more targeted efforts, contacting individual employers judged at risk of underpaying their staff; the provision of webinars and e-learning activities. The number of employers contacted by some of this work is large – up to 125,000 employers by an e-mail campaign, for example. As with workers, the key challenge lies in trying to assess the impact of such efforts, and in refining the approach to targeting. The Government seems to understand the importance of the quality and targeting of communications as well as the quantity. The main objective for its work ahead should be to develop the tools to evaluate and compare different interventions, and to further target its work.

**2.12** Another of our recommendations to the Government in last year's report was to resume the naming of employers found to have underpaid their workers. BEIS has accepted this recommendation, with the resumption of such rounds announced in February; at the time of announcement, the next round was due to take place within three months. This follows a long period of silence from the Government and a review of the naming process which led to two changes to the scheme. From now on, the threshold for naming, based on the total arrears found owing to workers, will be raised from £100 to £500. And the announcements will be accompanied by additional contextual information and an educational bulletin. Ideally, this information should give some sense of the reasons for underpayment. These naming rounds are an important opportunity to raise the profile of minimum wage enforcement and deter underpayment; their resumption is welcome, but the long pause in the scheme has been regrettable. By our calculations, this change would have excluded around a third of named employers if applied to previous rounds. The change seems to be based on the judgement that the previous threshold was disproportionate, but it will be important to ensure the new threshold does not undermine the effectiveness of naming rounds as a deterrent measure. **We therefore recommend that the Government monitors the effects of the increased threshold.**

# The enforcement challenge

**2.13** The central challenge HMRC faces in enforcing the National Minimum Wage (NMW) is to prioritise activity across a large and diverse labour market. Underpayment is not a single phenomenon; it can take very different forms, with widely varying margins, and the behaviour of underpaying employers runs from negligent to malicious. It also overlaps with other labour market abuses, from non-payment of holiday pay to serious exploitation. The data we looked at in Chapter 1 gives us a sense of measured underpayment, but tells us nothing about the unmeasured parts of the labour market and the people who work in them. Ideally the enforcement system should match the size of the problem, but it is likely the size of the problem is to a large extent hidden. In this section, we look at the available information on HMRC's enforcement work. We also consider the limitations of the data, and discuss ways in which this can be improved.

**2.14** Since 2016, the scale of HMRC's enforcement activities has increased significantly. Annual funding for HMRC's minimum wage enforcement has risen from £9.2m and around 180 enforcement staff in 2014/15 to £26.3m and over 420 staff in 2018/19. For 2019/20, the budget stands at £27.4m, with around 450 operational staff – nearly a 200 per cent increase in budget and a 150 per cent increase in staff over a five-year period. This ongoing expansion is without doubt positive for enforcement but the challenges of scale and prioritisation remain.

**2.15** In its evidence to us, HMRC told us its enforcement staff are mainly concentrated in core operational teams which deal with around 83 per cent of the total caseload and focus on small and medium-sized businesses. Alongside these, four teams work on serious non-compliance, which represents around 10 per cent of the total caseload; and five 'specialist enforcement' teams deal with large and complex businesses. The work of this final group makes up around 7 per cent of the caseload.

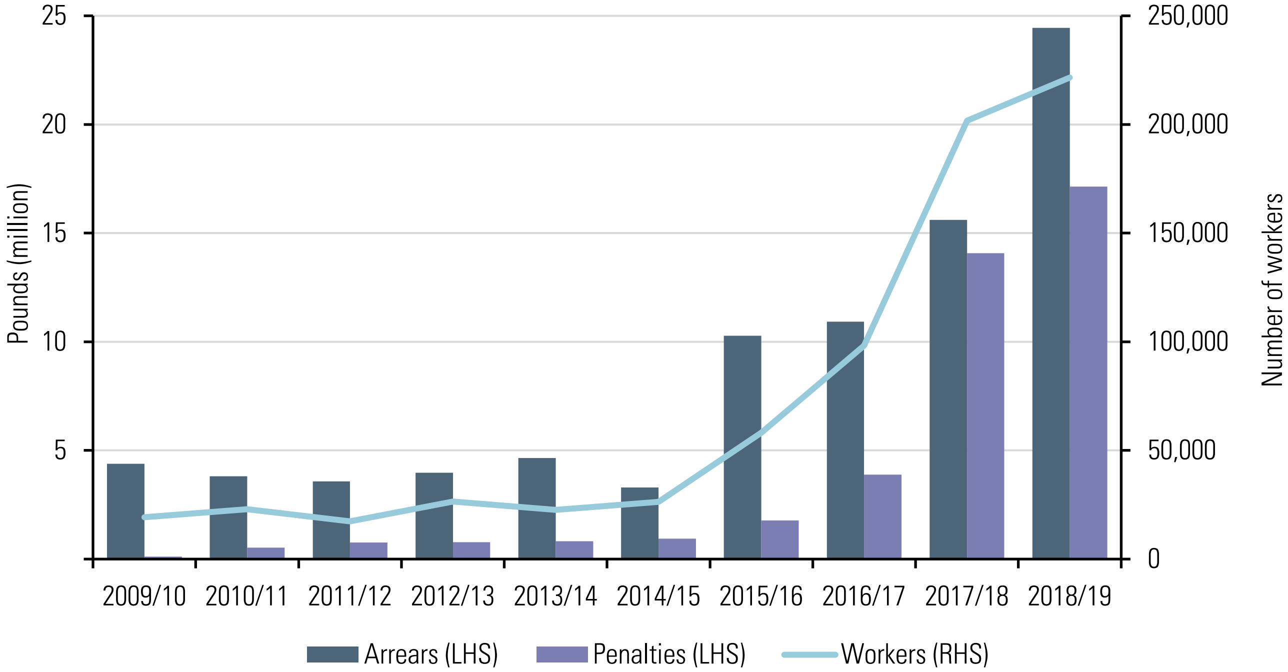
## Measuring HMRC's activity

### Headline measures

**2.16** HMRC's evidence on its enforcement work is collated by financial year, although the numbers may be misleading as cases may span year-end boundaries. The most recent data available cover 2018/19. The most striking figures are the annual totals for the number of workers identified as underpaid, the value of arrears repaid to those workers by employers and the value of the penalties levied on those employers found to have underpaid. Below this we can look at the number of cases which HMRC opened and closed during the year and we have some data on the composition of those cases: whether they were part of HMRC's targeted activity or were driven by complaints; the mix of larger and smaller cases; and how they fell across sectors.

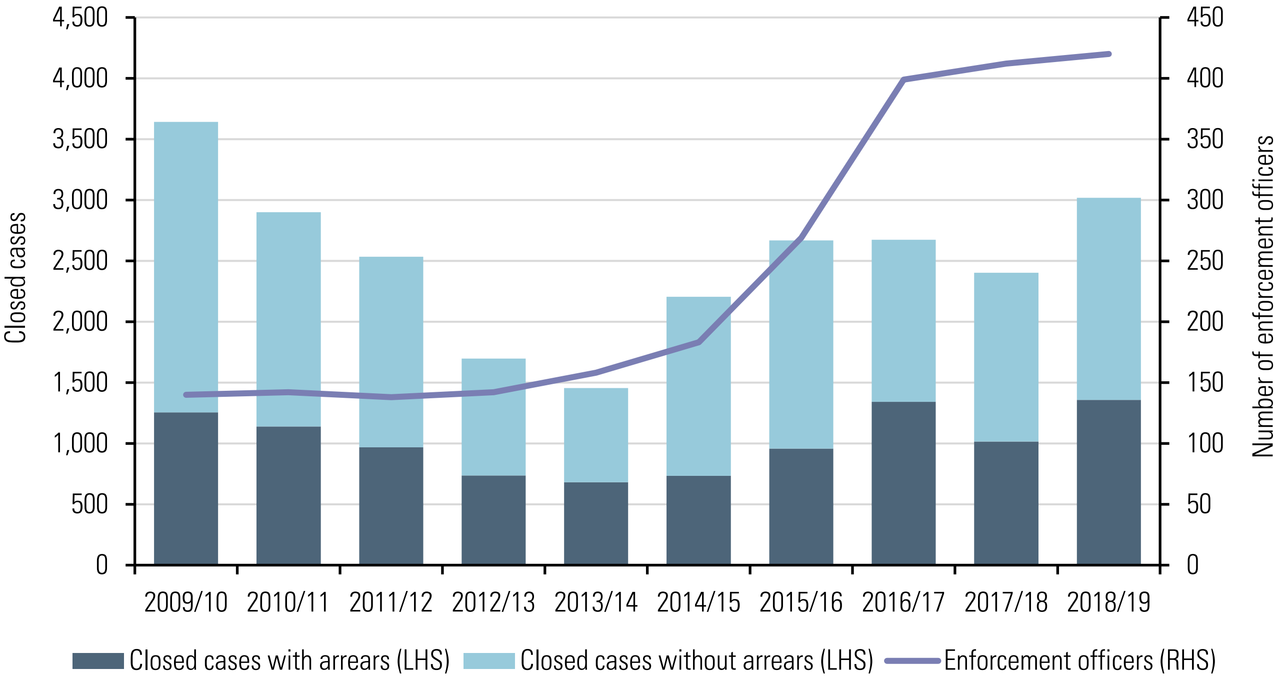
**2.17** As Figure 2.1 shows, the headline enforcement figures for 2018/19 continued the upward trajectory of recent years. The cases which HMRC closed in this period led to over 220,000 workers being repaid £24.4 million in arrears. In addition, HMRC imposed over £17 million in penalties on non-compliant employers. Around a quarter of the arrears identified by HMRC (£6.1 million, affecting around 24,000 workers) were found via the social care compliance scheme, an initiative encouraging voluntary declarations of non-compliance from employers in the care sector.

## Figure 2.1: HMRC headline enforcement figures, 2009/10 – 2018/19




Source: LPC analysis using data from 'National Minimum Wage and National Living Wage: Government evidence on compliance and enforcement 2018/19'.

## Figure 2.2: HMRC caseload, 2009/10 – 2018/19




Source: LPC analysis using data from 'National Minimum Wage and National Living Wage: Government evidence on compliance and enforcement 2018/19'.

**2.18** Figure 2.2 shows, over a ten year period, the number of cases closed by HMRC which resulted in arrears being repaid to workers alongside the growth in staff working on minimum wage enforcement. Over the last six years, the numbers of cases closed annually has approximately doubled, although over a longer period, the trend looks quite different, with the 2018/19 caseload falling short of the totals reached in 2009/10. This emphasises that the number of enforcement officers alone does not drive the caseload – the way they are deployed is just as important.

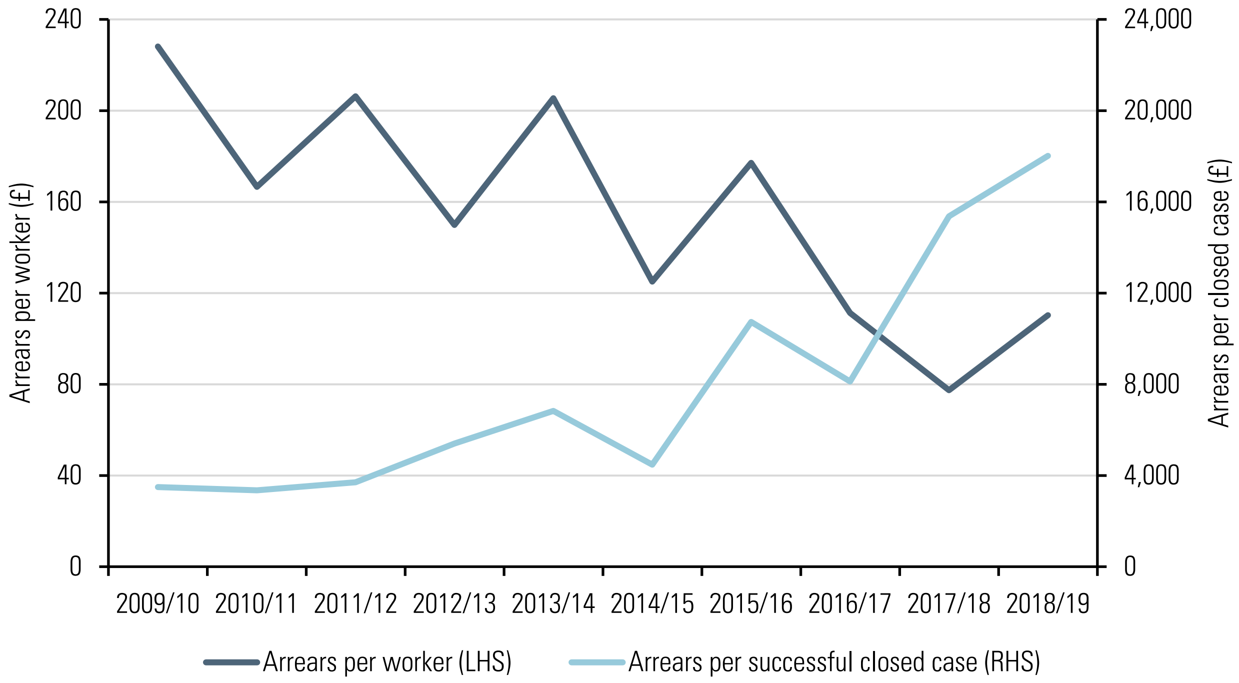
## The average profile of enforcement cases

**2.19** In addition to looking at overall numbers, we can look at the typical profile of HMRC's cases – the average amount of arrears and number of workers per 'successful' closed case (i.e. those which concluded with arrears), as well as the average value of the arrears repaid per worker. In last year's non-compliance report, we noted that while average arrears per case were rising, average arrears per worker were in decline. Figure 2.3 shows this trend softened in the 2018/19 data but is still in evidence over the longer period. As the Government noted in its evidence, these overall averages can be misleading because they mask differences between and even within cases: in ten high-yielding investigations over the last two years, in which average arrears per worker were £70, the highest arrears owed to a single worker ranged from £358 to £27,268. (Department for Business, Energy and Industrial Strategy 2020).

**2.20** We can nevertheless read from these numbers a shift in the composition of HMRC's caseload: the cases they are closing are increasingly large in scale, but capture smaller levels of underpayment per worker. This is not necessarily a bad thing: smaller average arrears could be a sign that the enforcement body is intervening earlier in cases, for example. But it could equally signal that enforcement is identifying and intervening in a different kind of underpayment – shifting from cases involving serious, flagrant abuses to ones where underpayment is more marginal. Both kinds of cases involve illegal underpayment, and both are legitimate targets for enforcement. The balance of such cases and the allocation of resources between them is a key strategic choice – but not one on which we can make a full judgement, on the basis of these figures.

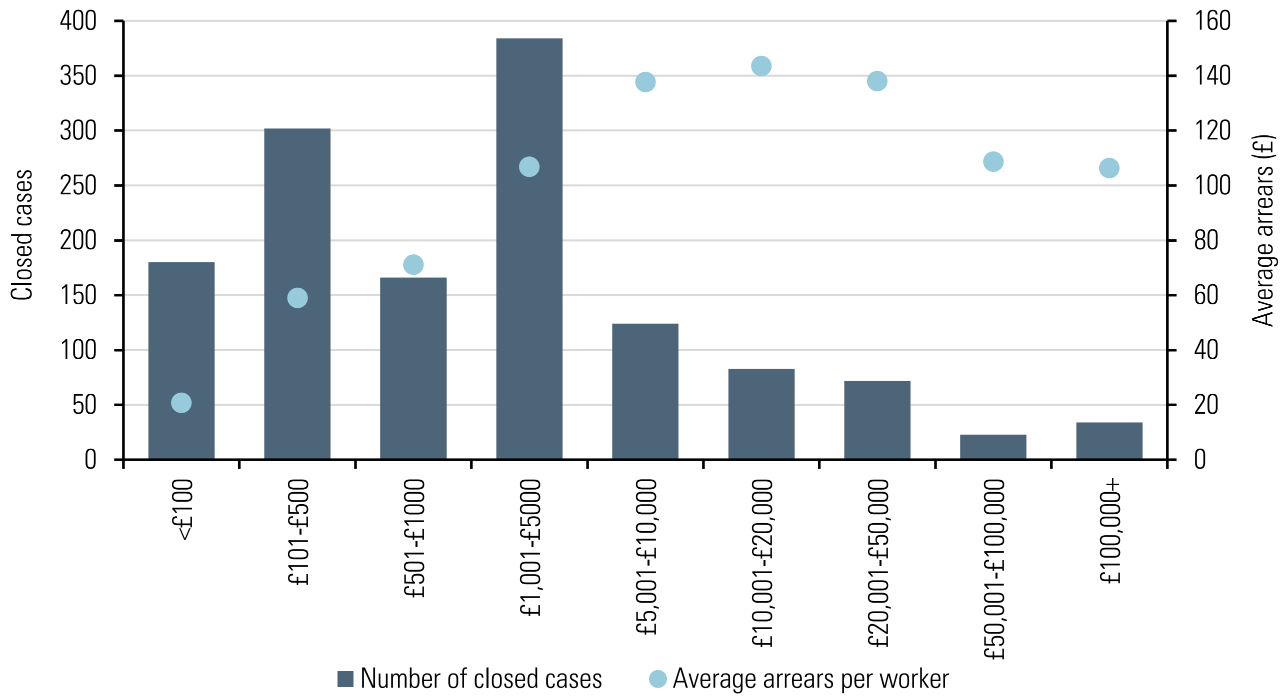
**2.21** Because the overall average figures are influenced by a relatively small number of very high value cases, it can be useful to look at case data banded by arrears. Figure 2.4 shows the total numbers of cases closed by HMRC, arranged into bands based on total arrears per case. On top of this is plotted the average identified arrears per worker. Although the bands themselves are somewhat arbitrary, they could be roughly arranged into three groups. At the lower end of the scale, we can see that around three-quarters of all cases 'successfully' closed led to total arrears of less than £5,000. The average arrears per worker in these cases are relatively low, rising gradually for higher value cases. In the most common band, where arrears were between £1,001 and £5,000, the average arrears per worker were just over £106, with an average of 22 workers involved in each case. The next group consists of what we could call 'medium-large' cases, between £5,001 and £50,000 in arrears, accounting for around a fifth of total cases. The average value of arrears per worker across these bands is relatively stable, between £137 and £143, with the difference coming from the number of workers involved in each case. Above these are the largest-scale cases, where the average arrears per worker fall (£108 and £106 respectively) but the average number of workers involved in cases increases dramatically. In the £50,001-£100,000 band, there were on average 660 workers per case. In the highest band, there were 4,813 workers per case. The difference in numbers suggests also how different it must be to work these cases. HMRC have told us that, rather than representing 'low-hanging fruit', these large and complex cases take more time and resource to bring to completion.

## Figure 2.3: Overall average arrears per worker and arrears per case successfully closed by HMRC, 2009/10-2018/19




Source: LPC analysis using data from 'National Minimum Wage and National Living Wage: Government evidence on compliance and enforcement 2018/19'.

## Figure 2.4: HMRC case numbers by banded arrears, 2018/19




Source: LPC analysis using data from 'National Minimum Wage and National Living Wage: Government evidence on compliance and enforcement 2018/19'.

## Complaint-led versus targeted enforcement

**2.22** One useful distinction when looking at HMRC's caseload is between 'complaint-led' cases which come to HMRC via public enquiries and 'targeted' cases which they identify themselves. HMRC is committed to investigating every complaint and to contacting complainants within five days; it is complaints which drive its caseload and dictate how resources are used in the first instance. An individual case with roots in a single complaint can evolve into something broader; HMRC investigates not only the instance of underpayment reported, but looks more widely across an organisation's structure for other potential cases of non-compliance. Again, this means that a very wide range of cases are captured under both the 'complaint-led' and 'targeted' headings, with the lengths of investigations and the profile of organisations investigated varying significantly.

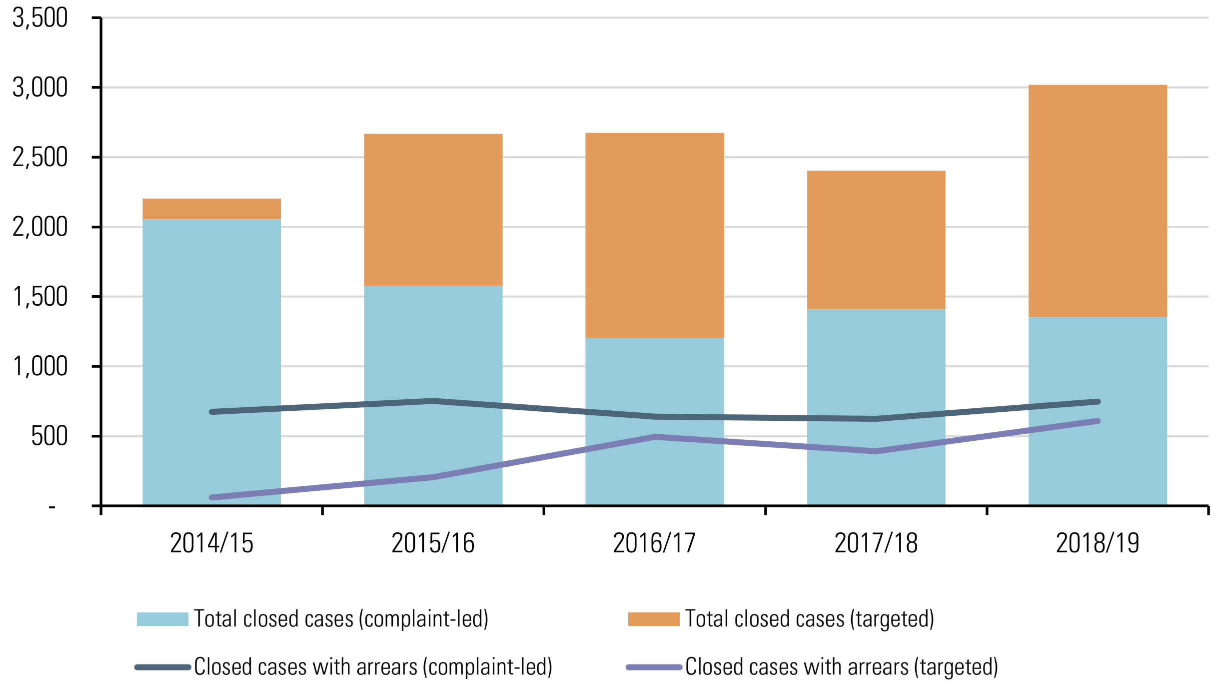
**2.23** HMRC makes decisions over where to target enforcement activity in a number of ways. In part, they are set by joint working and intelligence sharing between different enforcement bodies and agencies (this is mainly true for the work of the teams focused on serious non-compliance). They are also in part directed by evolving policy priorities, set both by the Government and the DLME, who each year recommends a number of priority sectors. And decisions are informed by HMRC's own risk model, developed over recent years using the department's Real Time Information (RTI) data, with over 300 million records of individuals' pay information, which is then supplemented by data from several other sources to assess the risk of underpayment for employers.

**2.24** We met with HMRC staff in June 2019, who presented their risk model to us, and outlined how it informs enforcement activity. The model's outputs inform the profile of employers to be targeted. HMRC plans projects around this, typically beginning with research, intelligence gathering and then the identification of specific employers to target. Cases are monitored on an ongoing basis, but HMRC told us there was not yet enough long-term data to properly evaluate the model. While the model has limitations, it is clear that HMRC is developing sophisticated methods of using the extensive data available to it to assess risk. The next step is for HMRC to make use of the intelligence and data it generates itself, learning from the outcomes of HMRC's enforcement cases and feeding them back into the model.

**2.25** As Figure 2.5 shows, the number of targeted cases has grown considerably since 2014/15, while complaint-led cases have been more or less stable. The balance between the two has not changed much in the last three years. While the numbers of 'successful' complaint-led cases have been stable in recent years, those of 'successful' targeted cases have risen considerably over the period. It is not clear whether HMRC's overall capacity has risen – but (albeit from a low base) it looks like its ability to effectively target and take action against underpayment is improving, as it develops its use of the risk model and coordination with other agencies.

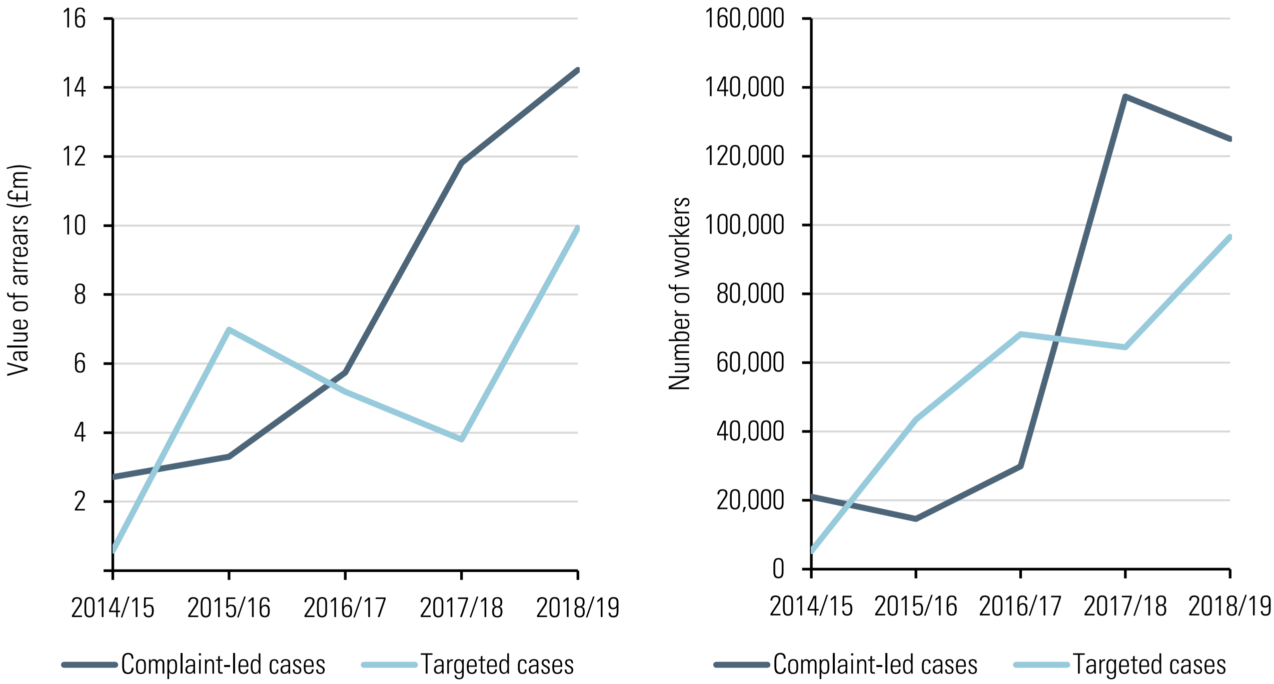
**2.26** As Figure 2.6 shows, complaint-led cases are still more 'productive' for HMRC than targeted ones: they generate more arrears and identify more underpaid workers. They also lead to a higher 'strike rate' of successful cases (in 2018/19, 55 per cent versus 37 per cent). Overall, these numbers have climbed for targeted cases over the period in question, but somewhat erratically; it remains mainly complaint-led cases which have driven increases in headline enforcement figures over the period. The improvement in the overall strike rate in 2018/19 was down to success in finding arrears in a greater proportion of complaint-led cases.

### Figure 2.5: Cases closed by HMRC, targeted versus complaint-led, 2014/15-2018/19




Source: LPC analysis using data from 'National Minimum Wage and National Living Wage: Government evidence on compliance and enforcement 2018/19'.

### Figure 2.6: Arrears and workers from complaint-led and targeted cases, 2014/15-2018/19



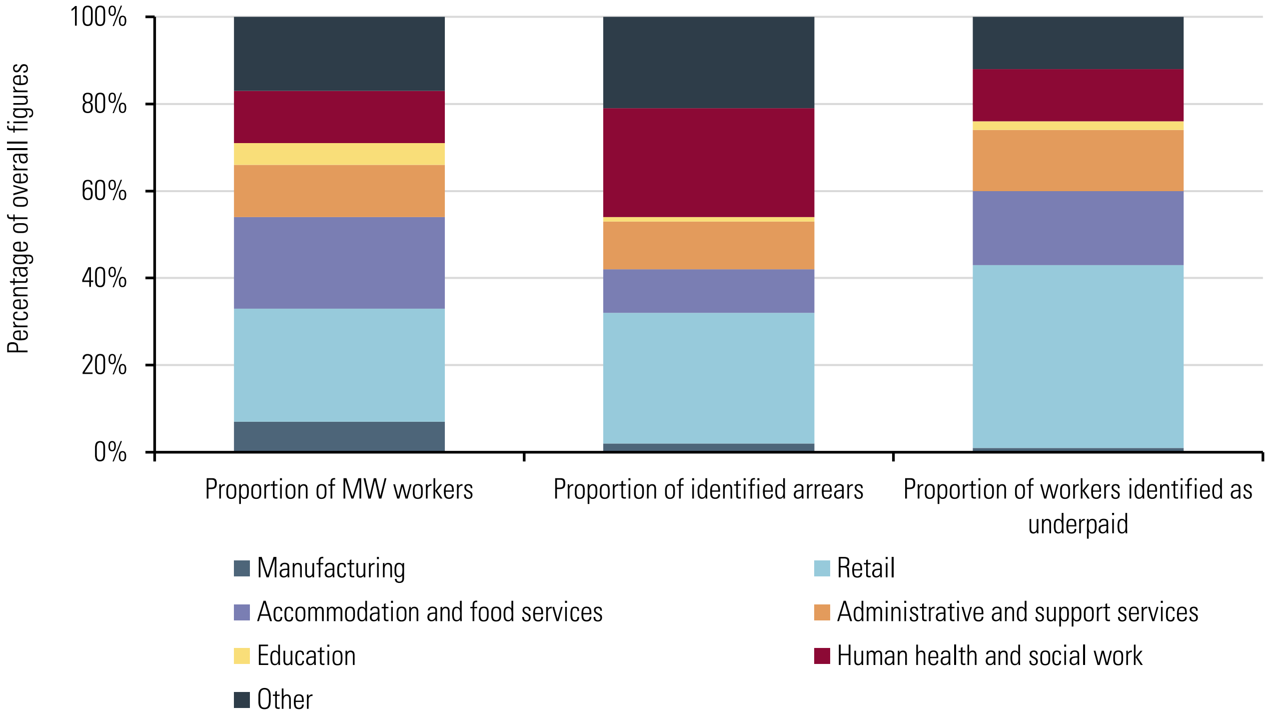

Source: LPC analysis using data from 'National Minimum Wage and National Living Wage: Government evidence on compliance and enforcement 2018/19'.

## Sectoral analysis

**2.27** The Government provide a breakdown of HMRC's activity by sector, using the Standard Industrial Classification (SIC) codes produced by the Office of National Statistics. Although the categories are broad, this allows for some analysis of how HMRC's activity affects different sectors. Figure 2.7 below compares the largest low-paying sectors by number of minimum wage workers with the proportion of workers and arrears identified by HMRC. The most prominent sector here is retail, which accounts for just over a quarter of minimum wage jobs but 30 per cent of the arrears identified and 42 per cent of underpaid workers identified. Accommodation and food services, which includes the hospitality industry, makes up just over a fifth of the low-paid workforce, but only 10 per cent of arrears and 17 per cent of underpaid workers. Human health and social work, which includes the social care sector, has 12 per cent of all low-paid workers; it also makes up 12 per cent of the workers HMRC identified, but 25 per cent of identified arrears. This indicates a higher-than-average sum of arrears per worker in this sector, presumably driven in part by the social care compliance scheme.

**2.28** There are a number of factors which may drive HMRC's activity towards different sectors; for instance, the number of complaints received from workers. This analysis does not necessarily show that HMRC is targeting a given sector, but it reinforces the point that the cases grouped together in headline measures can have quite separate profiles – and presumably present quite a different challenge to HMRC.

### Figure 2.7: Sectoral analysis of HMRC activity, 2018/19




Source: LPC analysis using data from 'National Minimum Wage and National Living Wage: Government evidence on compliance and enforcement 2018/19'.

## Evaluating the enforcement system

**2.29** The measures we have looked at so far show some of the ways we can measure HMRC's activity, but also give a sense of the data's limitations. Headline figures are driven by a small number of cases, and using average measures to judge the profile of an 'average' case only gives a crude sense of the differences between the separate parts of HMRC's workload. This makes it hard to truly evaluate the enforcement system – to understand how far HMRC is working 'better', as opposed to working 'more', or working 'differently'. On the surface, we can read the annual increases in arrears, penalties and underpaid workers as meaning the system is working 'better' and achieving better outcomes for workers. But, in the context of the number of staff working on enforcement increasing, they could also be read as the system just doing 'more'. Or, given the numbers of cases closed have not increased at the same rate as the staff working on them, we might read as simply showing HMRC doing something 'different' – shifting focus to a different kind of larger-scale case.

**2.30** In reality, there are probably elements of all three things at work – but we do not have the information available to get under the surface and evaluate the different parts of HMRC's caseload. Our own discussions with HMRC make it clear it is working intelligently to meet its responsibilities and target its resources. But it remains difficult to properly compare the different kinds of intervention which HMRC is able to undertake: how effective, for example, is its Promote work compared with its strands of targeted enforcement? What is the right balance of resource between serious non-compliance cases and large and complex cases? It is unlikely that HMRC can afford to ignore any of these areas and the main driver of its work will continue to be the requirement to meet mandatory responsibilities. These are difficult questions about the relative merits of activities which, although the Government may have a view internally, it is hard to scrutinise from the outside.

**2.31** This matters all the more because of the Government's ambition to increase the NLW to two-thirds of median earnings by 2024. Coverage rose sharply when the NLW was first introduced in 2016 but, against expectations, has been more or less flat since 2017. This means the scale of the enforcement challenge has been steady for the past few years. But, in the context of continuing ambitious increases, we cannot rely on this being the case indefinitely, and the range of sectors where workers earn the minimum wage is likely to expand beyond the traditional low-paying ones. We should expect the scale of HMRC's enforcement workload to increase, and questions about prioritisation will become more acute.

**2.32** Because of this, we think there is a case for BEIS and HMRC to build on the intelligent work they have done in recent years to prioritise cases and target resources. **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.** These data would go beyond just measures of workers, arrears and penalties. Ultimately, the aim should be to develop a 'typology' of the different kinds of non-compliance which HMRC investigations identify, and which aids comparison between different parts of the caseload.

2.33 While we do not have a comprehensive list of suggestions, one place to start might be in evaluating the length of time over which underpayment takes place – information which is already recorded and has been published as part of previous naming rounds. Using metrics based only on total arrears could lead us to 'undervalue' interventions by HMRC which take place early in the course of underpayment. The amount of arrears repaid in such cases may not be large, but the future underpayment avoided via early action could be significant. It could also be useful to track the average duration of underpayment to understand how this varies across different activities and different cases.

2.34 Although not directly related to cost-effectiveness, it would also be useful for HMRC to track how much of its caseload relates to the informal versus the formal economy. The main data source for estimating non-compliance, the Annual Survey of Hours and Earnings (ASHE) is based on a sample of 1 per cent of the PAYE system, and does not capture the informal economy. Knowing how many of the cases HMRC processes involve the formal, PAYE-based economy versus informal working would help place the estimates we get from ASHE in context and move us closer to understanding the scale of the problem across the economy.

# Chapter 3

# Areas for policy focus

## Key findings

Sectors where the Government is the primary source of funding are among those where the effects of non-compliance are most evident. Government must take responsibility for adequately funding these sectors to mitigate the risk of workers being underpaid.

Surveys continue to show very high levels of underpayment of apprentices, and there is strong evidence for non-payment of training hours as a driving factor for this. The Government should consider ways to address this, including by retooling its communications and enforcement efforts to focus on this specific risk.

Despite recent changes to regulations, we hear consistently about the problems workers face in accessing their pay information. The Government should keep these regulations under review, and consider whether HMRC has the necessary powers to ensure employers have to keep adequate records and make them available to workers.

3.1 In this chapter, we bring together some of the key areas where we have heard evidence on underpayment and non-compliance in the past year, focusing on two key areas in particular: the Apprentice Rate and the problem of ensuring workers have access to adequate pay information.

3.2 There are a host of sector-specific compliance challenges which we hear about in our consultation, but which we do not explore in depth here – partly because the weight of evidence is lacking. There are specific issues in most low-paying sectors which HMRC must address, and we have already discussed the problems it faces in dividing resource between sectors. We will touch in brief on some issues, as an example of the divergent challenges in different sectors.

3.3 In previous reports we have highlighted the range of problems which can affect workers in the social care sector, and later in this chapter we touch on issues specific to the sector around access to pay information. But these are far from the only complaints we hear from workers in this sector, all of which to some extent reflect the ongoing stress created by the funding squeeze for local authorities and social care providers. The Covid-19 outbreak has only brought the importance of these workers into sharper focus. To an increasing extent, childcare workers, too, are feeling the effects of frozen rates of Government funding. For several years now, childcare has shown the highest levels of underpayment of any sector and, as shown in Chapter 1, these have continued to rise this year. We have made recommendations at various points in the past that the Government must adequately fund social care. Repeating a point made in our report last year on the future of the NLW (Low Pay Commission 2019), **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**. If it fails to do this, we will continue to hear about an increasing toll of underpayment for workers in both these sectors.

3.4 A separate, very different sector where we heard consistent evidence of underpayment is in the entertainment sector. Equity presented us with evidence of widespread unpaid work among actors and other entertainment professionals, including by publicly-funded groups. Unpaid jobs are routinely advertised, with the opportunity to build profile expected to be sufficient reward for performers, and we heard that nearly half of members surveyed by Equity had worked for no pay in the last 12 months. The enforcement challenge and the role of HMRC in this case is clearly distinct; the main ask by Equity is for sector-specific guidance which can help work against the prevailing expectation that workers will be un- or underpaid. We support this ask, as we support other requests for tailored, sector-specific guidance; within resource constraints, the enforcement system should aspire to communicate clearly and directly with the different sectors it covers.

## Underpayment of apprentices

3.5 It has long been apparent that apprentices are more likely to be underpaid than other groups of workers, despite a lower minimum wage for this group. This has been a consistent feature both of data collected from employers in the Annual Survey of Hours and Earnings (ASHE) and reported by apprentices themselves in the biennial Apprenticeship Pay Survey (APS), although the extent of underpayment in the latter survey is an order of magnitude greater than the former. In the latest ASHE data (see Table 1.1), we estimate that just under 9,000 apprentices are underpaid, or around 27 per cent of those covered by the rate. In our 2019 Report, we looked in detail at the results of the 2018/19 APS, finding that on Level 2 or 3 courses nearly one apprentice in five was underpaid. This would mean that an apprentice was around ten times more likely to be underpaid than the average worker. And this finding is not a one-off – this level of underpayment is consistent with previous versions of the survey in 2014 and 2016. The size and persistence of this difference demands explanation, and our hypothesis is that a large part of this underpayment is due to widespread non-payment of apprentices' training hours.

**The Apprentice Rate – a reminder**

The Apprentice Rate was introduced in 2010, before which apprentices under the age of 19 or in their first year if aged 19 and over were outside the National Minimum Wage (NMW) framework – although, in England, Learning and Skills Council contracts set a de facto weekly minimum.

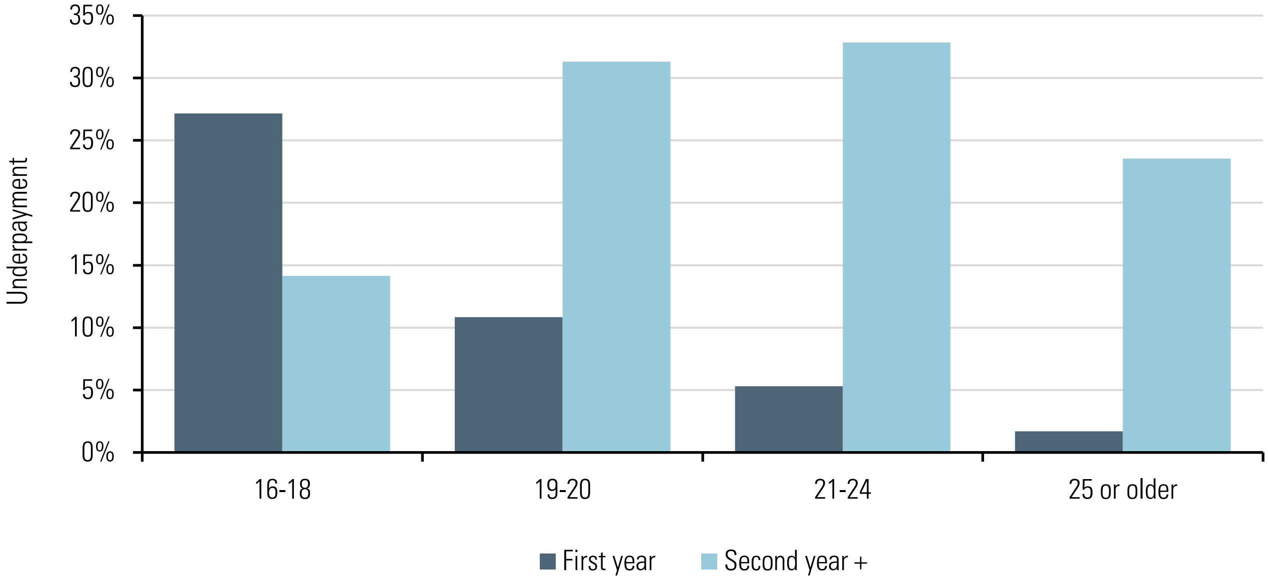
For apprentices aged under 19, the Apprentice Rate applies for the duration of their course. For apprentices aged 19 and over, the rate applies for the first year of their course only. After this, they are entitled to the NMW rate for their age group.

Like any other NMW rate, the Apprentice Rate is a wage floor. Notwithstanding the high level of non-compliance, the majority of eligible apprentices are paid above the rate, and indeed many are paid above the NMW rate for their age group.

The current Apprentice Rate, from 1 April 2020, is £4.15 per hour. At the time of the 2019 ASHE, it was £3.90 per hour, and at the time of the 2018/19 APS, £3.70 per hour. The basic rationale for a lower minimum wage for apprentices is to account for the employer's investment in the apprentice's training and development. Sub-minima rates for apprentices – or exemptions from minimum wage systems – are a relatively common feature internationally.

**3.6** There is a clear, consistent pattern to the underpayment of apprentices, and it is not only the case that they are underpaid against the Apprentice Rate itself. As Figure 3.1 shows, underpayment is particularly high for two broad groups: first, for 16-18 year old apprentices in the first year of their course; second, for apprentices aged 19 or over in the second year of their course. Of the former group, more than a quarter were paid less than the Apprentice Rate; among the latter, more than 30 per cent of 19-20 and 21-24 year olds were paid less than their respective NMW age rates, while just under a quarter of apprentices aged 25 and older were paid less than the National Living Wage (NLW).

### Figure 3.1: Underpayment of apprentices, APS, GB, 2018




Source: LPC estimates using APS, GB, 2018.

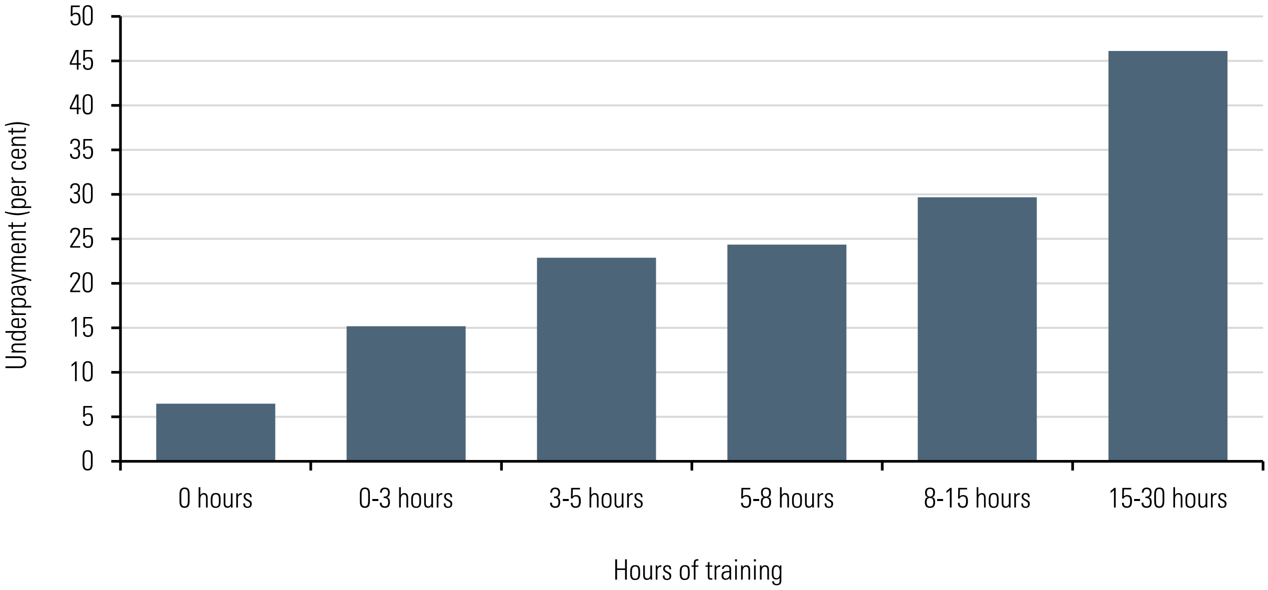
## The link between underpayment and training hours

**3.7** These underpayment figures are based on a calculation of the apprentice's hourly pay, which draws on three elements: the amount they are paid in a given week; the number of hours they spent working that week; and the number of hours they spent in training, both in and outside the workplace. As with any other worker, it is a requirement that employers pay apprentices for their training time. The crucial difference is that apprentices generally spend more of their time in such activity: as per guidance from the Department for Education, in England 20 per cent of apprentices' time should be spent in off-the-job training (Department for Education 2019), and there is also an expectation of training away from the workplace in Scotland, Wales and Northern Ireland. The weekly pay figure is then divided by the sum of the hours of work and training, to produce an hourly rate. This is the number on which our estimates of underpayment are based.

**3.8** The APS has another source of information on apprentices' hourly pay rates: a question simply asking those whose payslips show an hourly rate what that rate is; underpayment according to this measure is significantly lower than when looking at the derived hourly rate. There tends to be a difference between stated and derived hourly pay across the pay distribution; this is more common at the lower end of the distribution, but is not restricted to apprentices whose pay is non-compliant. This suggests that the underpayment APS is finding is not simply a matter of employers paying the wrong rate, but rather of paying the right rate but for too few hours, and that this practice is widespread.

3.9 Another question in APS asks apprentices the average number of hours of training they receive each week, within a given band. As Figure 3.2 shows, apprentices who have a higher average number of training hours are more likely to be underpaid. We interpret this as supporting our hypothesis that there is a link between training hours and underpayment.

Figure 3.2: Underpayment by average weekly hours of training, APS, GB, 2018




Source: LPC estimates using APS, GB, 2018.

## Other potential explanations

3.10 This does not rule out the possibility that apprentices could be underpaid for other reasons, and there are several other factors which may play a part. Although individually these factors are very likely to contribute to the overall problem, we do not think any of them are sufficient by themselves to explain the persistent high levels of underpayment recorded.

### Failure to increase pay at the end of the first year

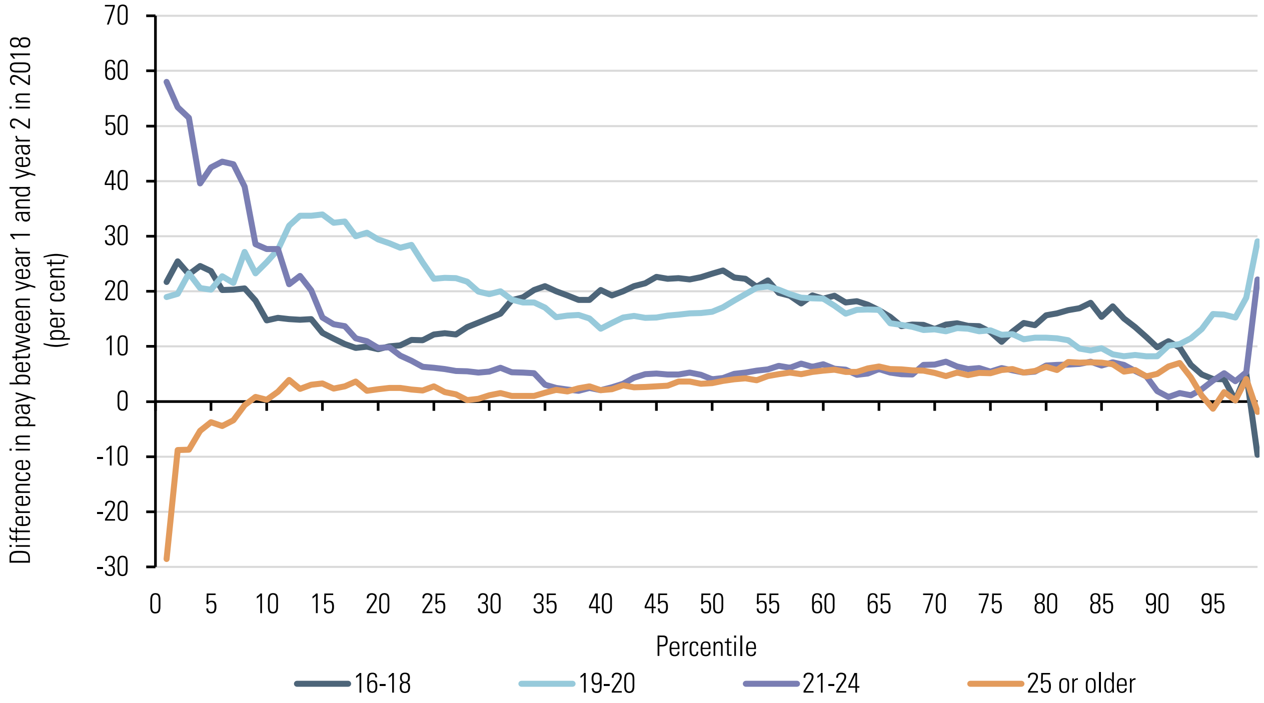
3.11 If, for apprentices aged 19 and over, an employer fails to take account of the required NMW uplift at the end of the first year of an apprenticeship, then the apprentice's pay could be non-compliant. HMRC have told us that this is often a factor in cases where they have found underpaid apprentices. The year two increase in the minimum wage is clearly linked to higher underpayment among second-year apprentices – the groups subject to the uplift have the highest levels of underpayment. The key question is whether this is a better explanation for overall levels of non-compliance than non-payment of training hours; we do not think so for two main reasons.

3.12 Firstly, this cannot explain the high levels of underpayment observed among 16-18 year olds, for whom the minimum wage remains the same after they have completed a year of their course. Employers are paying significant proportions of this group less than the Apprentice Rate in both years of the apprenticeship: 27 per cent in the first year, and 14 per cent in the second year. This underpayment cannot be a consequence of employers not accounting for minimum wage increases – there must be something else going on.

**3.13** The second reason is that apprentices' pay tends to increase in their second year, suggesting employers are aware of the need to increase pay. Looking across pay distributions for different age groups, Figure 3.3 shows the average differences in apprentice pay between the first and second years. Apprentices in their second year earn more than those in their first year, and those increases are larger at the bottom of the distribution, among apprentices more likely to be paid at or near the minimum. It is not the case that employers start off paying these apprentices at or near the minimum rate, then leave them stuck there at the end of their first year. The pattern for apprentices aged 25 and over is different, for reasons which are not fully clear but may be related to the composition of different levels of apprenticeship among that age group.

**3.14** Overall, it does not appear that employers use the Apprentice Rate as a reference in setting older apprentices' pay. Figure 3.4 shows pay distributions for different age groups. The spikes around the Apprentice Rate are small for apprentices aged 21 or older. For 19-20 year olds, where the Apprentice Rate is more clearly a factor for employers, there is a clear jump in pay between the first and second years and a clear decline in the proportion of apprentices paid at the minimum. For groups aged 21 and over, coverage of the rate is low but usage (paying apprentices between the Apprentice Rate and the age-appropriate NMW rate) is higher. This suggests that employers are failing to increase pay for older apprentices – but it is also consistent with other factors suppressing apprentices' real rates of pay in both years of the apprenticeship, with the lower minimum wage in the first year masking this effect.

## Figure 3.3: Difference in pay distribution between first and second year apprentices, APS, GB, 2018



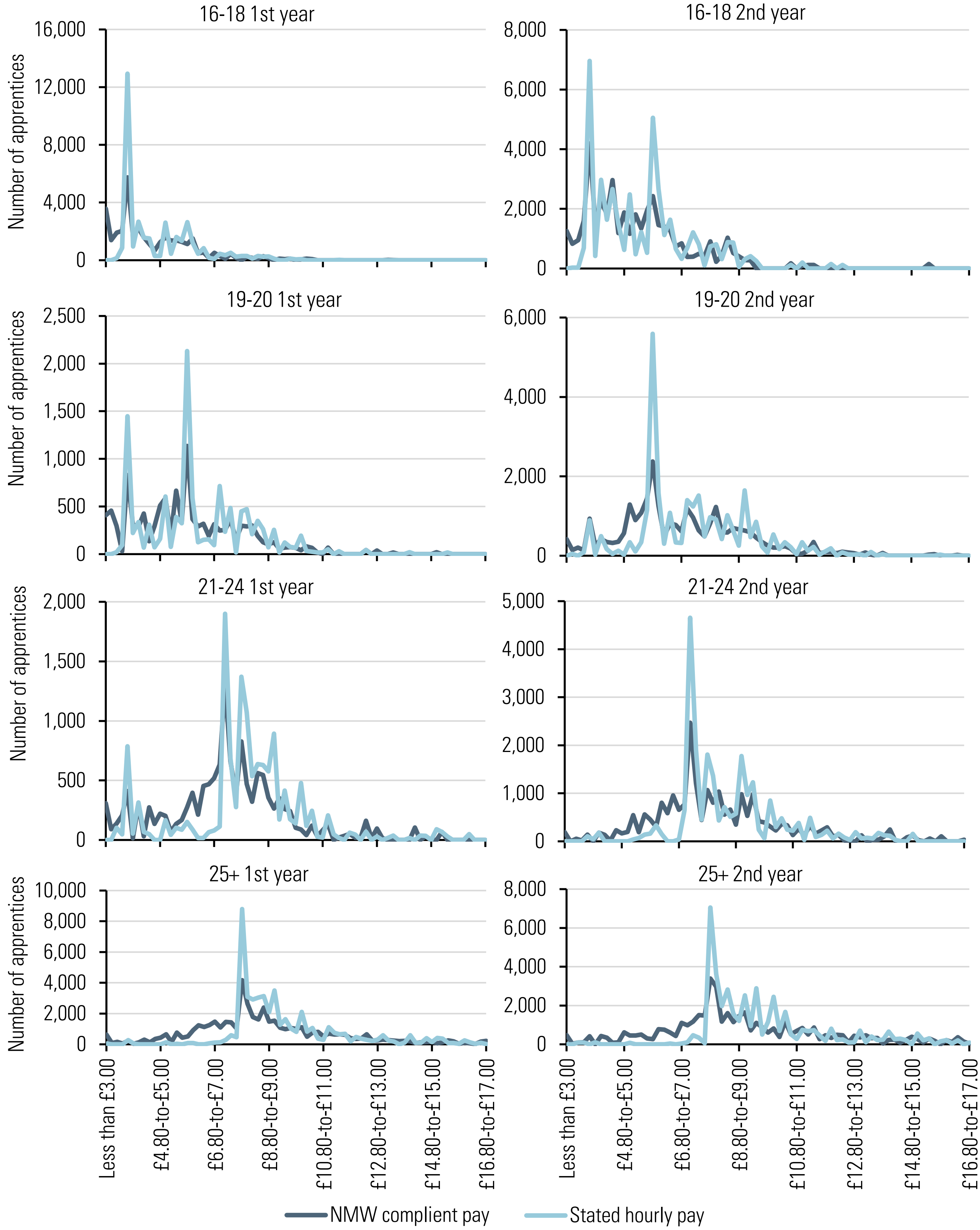

Source: LPC analysis of APS, GB, 2018.

## Complexity and awareness

**3.15** In connection with the arguments above, we often hear from stakeholders that the Apprentice Rate is more complex than other NMW rates, although not everyone means and understands the same thing by complexity. In some cases, employers have in mind specific features of the Apprentice Rate: for example, the pay uplift after a year, or the differential treatment of apprentices by age. These features require employers to know more about their apprentices than they otherwise would for non-apprentice workers. In other cases, employers may simply see the existence of a separate Apprentice Rate in itself as an unwelcome complication of the overall NMW framework. The second of these examples is unlikely to lead to non-compliance (employers can simply ignore the Apprentice Rate and pay their apprentices the appropriate NMW age rate). But the first type of complexity does not fully explain underpayment either. It may account for employers failing to raise pay at the end of the first year; if they do not understand the rules, they are more likely to misapply them. But as an overarching explanation of non-compliance, it suffers the same shortcomings as those set out above – mainly, that it does not address underpayment of those apprentices aged under 19.

**3.16** An alternative explanation is that employers, rather than confused by the rules, are unaware of them. There is some evidence that employers are uninformed about the Apprentice Rate and the rules surrounding it; a survey by the Learning and Work Institute (Learning and Work Institute 2017) found significant proportions of apprentice employers unaware of the change in the minimum wage after the first year (24 per cent of those surveyed), of the requirement for at least 20 per cent off-the-job training (32 per cent) and of the requirement to pay for off-the-job training (23 per cent). In our 2015 Report, we noted that, five years after its introduction, there had been no sustained communications campaign to explain the Apprentice Rate to employers.

**Figure 3.4: Comparison of pay distributions for calculated hourly pay versus stated hourly pay, GB, 2018**




Source: LPC estimates using APS, GB, 2018.

**3.17** Attributing high levels of underpayment to complexity suggests the problem of underpayment is intrinsic to the structure of the Apprentice Rate itself. Attributing them to a lack of awareness suggests instead that the problem is with information and enforcement. We cannot discount other factors, but in the end it remains our view that non-payment of training hours is a better explanation of non-compliance than confusion over the rate structure. Because the non-payment of training hours is not linked to any feature of the rate's structure, the solutions it suggests are not structural changes to address perceived complexity, but measures involving communications and enforcement activity.

## Policy recommendations

**3.18** We encourage the Government to make it a priority to reduce the level of underpayment of apprentices. The high levels currently recorded both undermine the minimum wage and are harmful for the apprenticeship system.

**3.19** **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**. In their Promote work, HMRC has already made efforts to communicate directly with the first group, sharing information about the rate and the uprating at the end of the first year. While we are not aware of any specific efforts to reach apprentice employers as a specific group, this should be achievable using DfE data and cross-Government working, as well as appropriate sectoral targeting using the pattern of risk which emerges from APS. While in part this may involve an expansion of work already ongoing, the problem of non-payment of training hours has not been part of the communications to date, much less at the centre of these efforts. We feel the evidence merits this specific approach.

**3.20** It is not clear how far apprentice underpayment is currently being identified and addressed by the enforcement system. In an HMRC sample of previous apprentice-related cases, the most frequent cause of underpayment was a failure to increase pay after a year, with a variety of other factors making up the rest of the caseload, many not specific to apprentices. We need to better understand the mismatch between the APS data and HMRC's findings, including how many apprentices are being identified as underpaid in the course of enforcement. To this end, **we recommend HMRC review the way they record apprentice underpayment, and publish the numbers of apprentices they identify as underpaid**. Without this, it will remain hard to understand how the enforcement regime interacts with the apprenticeship system.

**3.21** In its evidence to us, HMRC have said they believe their investigations of an employer would identify non-payment of an apprentice's training hours. To do this with confidence, they would need to have records of the hours an apprentice has spent in training, which are likely to be provided by the employer. If an employer is simply not logging these hours, it is hard to see how HMRC would become aware of them and therefore identify the underpayment. **We recommend that HMRC review their approach to investigations involving apprentices, to understand whether these investigations would identify non-payment of training hours**.

**3.22** We appreciate that the underpayment of apprentices needs to be placed in perspective; next to the total number of minimum wage workers, there are relatively few apprentices. But the data suggest that underpayment for this group is chronic. Our recommendations focus on ensuring that the approach to enforcing the minimum wage for apprentices takes account of the main risk suggested by the data and starts to tackle this.

# Access to pay information

3.23 We have already looked at the Government's efforts to raise workers' awareness of the enforcement system and the ways they can report underpayment. But the accessibility and intelligibility of pay information are just as important in making a complaint and successfully taking action against non-compliant employers. A consistent theme in the evidence we heard last year was that for many workers, across a range of industries, it is still too difficult to access and understand this pay information and build cases against their employer.

3.24 The regulations around record-keeping and the minimum wage have grown more stringent in recent years. Since November 2017, HMRC inspectors have the power to take action against employers for record-keeping offences even when these are not combined with another offense. And in April 2019, a legal requirement came into force for employers to provide payslips to all workers, and to show hours on payslips where these vary by time worked. This responded to a 2016 LPC recommendation that the Government consider introducing a requirement that payslips of hourly-paid staff clearly state the hours they are being paid for. The key aim of the rules in this area should be to simplify and clarify the information available to workers – the more complex this is, the less likely they are to challenge underpayment.

3.25 Although it is too early to fully judge the effect of this second change, the evidence we heard suggests, at the very least, a need to better promote the new requirement, and make sure both employers and workers understand their rights in this area. It is also worth considering the efficacy of the first change and whether HMRC has the right means to ensure employers are identified and make available adequate records.

3.26 We have heard consistently from stakeholders about a number of distinct problems with the new payslip regulation. Firstly, it is not clear how well the new regulations have been promoted since their introduction, and there is a risk that employers, particularly smaller ones, are not aware of the requirements on them. A further problem we have heard about is that in some cases employers have only made records available digitally; many of their workers may not have the physical means or the digital literacy needed to access these. Although this may be within the letter of the law, it obviously presents barriers to workers understanding their pay information and building a case if they are underpaid. In addition, we have heard other examples where digital records were only made available to workers for a short period, with resistance to their requesting records further back.

3.27 A further problem, specific to social care, is that employers are not required to separate out travel time, and can therefore potentially mask underpayment. For homecare workers, travel time is usually a significant element of their working time, and the pressure to get from one appointment to another is one of the main ways in which non-compliance can arise. Regulations which do not take this into account are likely to be less useful to this group of workers. And this is likely to affect other workers with more complex pay arrangements, beyond just the homecare sector.

3.28 One recourse workers have against employers who do not keep adequate records or make them available is via employment tribunals. But here the onus is on the worker to maintain their own records of working time, and the remedy may only be a declaration by the tribunal that the employer has not provided the required information. For many workers, this will represent a high bar to action, for an uncertain reward. For this reason, it is important that HMRC has sufficient powers to compel employers to keep and provide adequate records. On this question, we share the concerns set out by the Director of Labour Market Enforcement in his 2019/20 strategy, that there are barriers within the regulations which prevent HMRC officers from enforcing record-keeping offences. The regulations which specify employers' record-keeping requirements are vague and difficult for enforcement officers to take action against. We therefore join the DLME in **recommending that the Government reviews the regulations on records to be kept by an employer, and to set out the minimum requirements needed to keep sufficient records.**

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