

**EMPLOYMENT RELATIONS  
RESEARCH SERIES (ERRS)  
NO. 121**

Research into employers'  
attitudes and behaviour towards  
compliance with UK National  
Minimum Wage (NMW)  
legislation

OCTOBER 2011

EMPLOYMENT RELATIONS RESEARCH SERIES NO.121

# Research into employers' attitudes and behaviour towards compliance with UK National Minimum Wage (NMW) legislation

By

Shilpa Patel

# About Labour Market Analysis & Minimum Wage

Labour Market Analysis & Minimum Wage is a multi-disciplinary team of economists, social researchers and statisticians based in the Employment Relations Directorate of the Department for Business, Innovation & Skills (BIS).

Our role is to provide the evidence base for good policy making in employment relations, labour market and equality and discrimination at work. We do this through:

- Conducting periodic benchmark surveys
- Commissioning external research reports
- Conducting in-house research and analysis
- Assessing the regulatory impact of new employment laws
- Monitoring and evaluating the impact of Government policies

We publicly disseminate the results of this research through the BIS Employment Relations Research Series and other publications. For further details of the team's work, including PDF versions of all our publications, please see our web pages at:

<http://www.bis.gov.uk/policies/employment-matters/research>

## About this publication

The project manager for this report was Shilpa Patel, BIS Labour Market Analysis & Minimum Wage Team.

Published in October 2011 by the Department for Business, Innovation & Skills (BIS). © Crown Copyright 2011

URN 11/1335 ISBN 978-0-85605-768-7

Electronic copies of this and all other reports in our Employment Relations Research Series can be downloaded from the BIS website. (We have discontinued publishing printed copies). A complete list of our research series can be found at the back of this report.

Please contact us at [labourmarket.analysis@bis.gsi.gov.uk](mailto:labourmarket.analysis@bis.gsi.gov.uk) if you would like to receive regular email updates on our research, new publications and forthcoming events.

Labour Market Analysis & Minimum Wage Team  
Department for Business, Innovation & Skills  
Level 3, Abbey 2  
1 Victoria Street, London SW1H 0ET

# Foreword

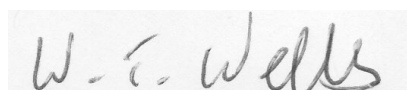
The Department for Business, Innovation and Skills (BIS) leads work to build a dynamic and competitive UK economy by creating the conditions for business success, promoting innovation, enterprise and science and giving everyone the skills and opportunities to succeed. To achieve this, we will foster world-class universities and promote an open global economy.

Within the Department the Labour Market Analysis & Minimum Wage team provides the evidence and information that underpins policy making and delivery in the Employment Relations Directorate. This involves an extensive programme of analysis, research and evaluation on areas including domestic and European employment legislation; labour market flexibility and diversity; employment and industrial relations; and monitoring developments in ACAS and other organisations in the employment relations area.

<http://www.bis.gov.uk/policies/employment-matters/research>

We hope that you find this research of interest. Electronic copies of this and all other reports in our Employment Relations Research Series can be downloaded from the BIS website. (We have discontinued publishing printed copies). A complete list of our research series can be found at the back of this report.

Please contact us at [labourmarket.analysis@bis.gsi.gov.uk](mailto:labourmarket.analysis@bis.gsi.gov.uk) if you would like to receive regular email updates on our research, new publications and forthcoming events.

A handwritten signature in black ink that reads "W. E. Wells". The signature is written in a cursive style and is positioned above the printed name.

Bill Wells

Deputy Director, Labour Market Analysis & Minimum Wage

Department for Business, Innovation and Skills

# Acknowledgements

Ipsos MORI would like to thank the BIS and HMRC staff for their guidance and help throughout the study, notably Shilpa Patel, Stella Yarrow, Debbi Jackson and Sophie Daniel from BIS's Labour Market Analysis and Minimum Wage team and Nicola Smith and Dave Baker from HMRC's National Minimum Wage Team. Sincere thanks also go to all of the UK employers who took time to answer our questions and the NMW officers who provided valuable insight into the whole NMW inspection process.

# Contents

Executive summary .....	1
Background .....	1
Aims and objectives .....	2
Headline Findings .....	2
Attitudes and behaviours towards the principles of the National Minimum Wage .....	2
Assessing and tolerating risk.....	2
Behaviour against HMRC typologies of businesses .....	3
Awareness of official Government information about the NMW .....	4
How employers access information regarding the NMW .....	5
Effectiveness and impact of communication channels on compliance .....	5
Awareness and attitudes to the enforcement regime.....	6
Differences in the views of compliant and non-compliant employers .....	6
Views on the nature and effectiveness of penalties and arrears .....	7
Employer attitudes to compliance visits and interventions.....	8
Conclusions and recommendations .....	10
About the author(s) .....	10
1. Introduction .....	16
1.1 Research background .....	16
1.2 Research objectives.....	16
1.3 Methodology.....	17
1.3.1 Sampling.....	18
1.3.2 Recruitment .....	20
1.3.3 Analysing and interpreting the findings .....	21
1.3.4 Employer segmentation.....	21
2. Attitudes and behaviours towards principles of NMW .....	23
2.1 Overall attitudes towards the National Minimum Wage .....	23
2.1.1 The National Minimum Wage in principle.....	23
2.2 Assessing and tolerating risk .....	24

2.2.1 Behaviour in response to the introduction of the National Minimum Wage .....	24
2.2.2 Risks of non-compliance and business planning .....	27
2.2.3 A regional National Minimum Wage? .....	28
2.3 Employers' incentives towards more compliant behaviour .....	28
2.4 Behaviour against a prior HMRC typology .....	29
2.4.1 Errors due to wage payment period .....	31
2.4.2 Error due to deductions from worker or payments to employers .....	33
2.4.3 Error due to changing age or eligibility .....	35
2.4.4 The role of record keeping .....	36
2.5 Employers' awareness of official Government information about the National Minimum Wage .....	36
2.6 How and where employers access information regarding the NMW .....	38
2.7 The effectiveness of communication channels on compliance .....	40
2.8 The impact of communication activities on compliance .....	41
2.9 Effective messages to encourage compliance .....	41
2.10 Chapter Summary .....	42
Attitudes and behaviours towards the principles of the National Minimum Wage .....	42
Assessing and tolerating risk .....	43
Behaviour against HMRC typologies of businesses .....	44
Awareness of official Government information about the NMW .....	44
How employers access information regarding the NMW .....	45
Effectiveness and impact of communication channels on compliance .....	45
3. Awareness and attitudes towards the NMW enforcement regime .....	47
3.1 New policy measures as a deterrence to non-compliance .....	48
3.1.1 Awareness of enforcement activity .....	48
3.2 Differences in views between compliant and non-compliant employers .....	49
3.3 Views on penalties and arrears .....	51
3.3.1 Employers' views on arrears and penalties .....	51
3.3.2 What is a fair penalty? .....	52
3.3.3 Knowledge of other enforcement activity .....	54

3.3.4 Tailoring sanctions to fit the situation .....	54
3.3.5 What is an effective penalty? .....	55
3.4 Summary .....	56
Differences in the views of compliant and non-compliant employers .....	57
Views on the nature and effectiveness of penalties and arrears .....	57
4. Employer attitudes to compliance visits and interventions .....	59
4.1 Intentional versus unintentional compliance .....	59
4.2 The inspection process .....	60
4.2.1 Activity resulting in contact with HMRC by the worker .....	61
4.2.2 Announcing the visit .....	63
4.2.3 Preparing for an inspection .....	64
4.2.4 Case officer views of the Inspection process .....	65
4.3 Employers' views of inspection process and the role of the case officer.....	66
4.3.1 Receiving the NMW officer .....	66
4.3.2 The interview phase .....	67
4.3.3 The record review phase.....	67
4.4 Employers' changing behaviour after a visit .....	68
4.5 Receiving feedback after the visit .....	70
4.6 The balance of evidence in the resolution of the inspection .....	71
4.7 NMW Officers' views on Intentional non-compliance and scheme administration .....	72
4.8 Summary .....	74
5. The employer journey: conclusions and recommendations.....	77
5.1 The ideal inspection process .....	77
5.2 Employer segmentation .....	78
5.3 Conclusions and recommendations.....	81
References .....	81
Appendices .....	87



# Tables and Figures

Figure 1: Comparison of annual increase in NMW with the Retail Price Index (RPI) .....	24
Figure 2: HMRC's U&A Segmentation of SMEs .....	30
Figure 3: Trigger points for difficulties within the inspection journey .....	61
Figure 4: The ideal inspection process .....	78
Figure 5: Adapting the U&A SME tax compliance segmentation model .....	79
Figure 6: Overall effect of administration on compliance .....	80

# Executive summary

## Background

The findings from this research are based on qualitative research with Small and Medium Enterprises (SMEs) in the UK whose workforce is covered by national minimum wage (NMW) legislation. Typically, the sectors involved pay low wages and salaries form a large part of business expenditure. This means this report covers a relatively small proportion of the overall business population in the UK.

Two employer sample frames were used for the research. Firstly, an achieved sample of 30 employers who had been inspected in relation to the NMW between July and October 2010 was drawn from HMRC records. This sample was purposive and over-sampled employers working in several low wage industries, including the following sectors: hospitality; retail and personal services such as hairdressing and social care. Other sectors were also included in the sample frame for the research. The sample was further sub-divided into employers who owed arrears of the NMW on inspection, for which further enforcement action was taken, and those whose inspection revealed the employer to be compliant with NMW law.

Secondly, a target of 10 interviews was achieved with employers who had not been inspected by HMRC and who employed workers who were paid the NMW. The purpose of this sample was to consider the counterfactual, especially in relation to awareness of NMW legislation and associated enforcement activity. It is a key finding of this research that no discernable difference in views were discovered for this group.

The sample of non-compliant inspected employers included only those who consented to be interviewed, which may mean that the response from the employers that took part may be biased. Analysis of this group's responses suggests that these employers were a subset of the overall non-compliant population. As a consequence, the results presented here recognise that the story presented of non-compliance with the NMW is partial. Of the range of all inspected businesses, the report represents only the views of employers who, according to their own testimonies, were found to be compliant or non-compliant with NMW legislation through error. As the stories of the latter were consistent throughout interviews, there were no obvious reasons found in the interviews for believing employers were not being truthful. The views of employers who were known to deliberately pay below the NMW are therefore not presented in this study.

A group comprising NMW officers was also interviewed as part of this research: seven interviews were completed with NMW officers working for HM Revenue and Customs (HMRC) who are responsible for NMW enforcement and inspections. As well as providing a valuable platform from which to assess and

compare the views of employers, NMW officers were also able to describe some of the activities of the deliberately non-compliant.

## **Aims and objectives**

This study had three important overall aims, which form the main chapters of the report:

- To gauge the range of attitudes that influence employers' behaviour towards compliance with the NMW, which will help to inform the implementation of the NMW Compliance Strategy;
- To assess awareness and attitudes towards the NMW enforcement regime and measure its impact on employer behaviour; and
- To assess employer attitudes to NMW compliance visits and other HMRC interventions.

Under these three headings, a number of further research questions were originally posed and, through the process of developing the research materials, adapted to form the basis of the discussion guides. In Chapters 2 and 3, the report text follows the overall research questions outlined below. In Chapter 4, the flow of the data provided is better suited to match the chronology of the inspection process.

## **Headline Findings**

### ***Attitudes and behaviours towards the principles of the National Minimum Wage***

Nearly all employers taking part in this research, regardless of whether they had been inspected or not, agreed with the broad principle of the NMW. The legislation was perceived to promote fairness for workers and helped set a benchmark from which to establish pay levels for all workers.

However, several employers did highlight that the above-inflation increase in NMW levels over the past 10 years had introduced some financial pressures on their businesses. This included an upward pressure on the wage bill overall as skilled workers wanted differentiation between their salary and that of workers earning NMW.

All of the non-compliant employers taking part in this research said their non-compliance was a result of error rather than being deliberate and in most cases errors were made because of a misunderstanding of a specific detail of the legislation.

### ***Assessing and tolerating risk***

The key component to risk for the non-compliant employers was their lack of awareness of specific elements of NMW legislation. In most cases, employers

could not assess or identify risk because they thought they were compliant: it was only through the inspection process that they became aware they were not following the rules correctly. Employers who had not had an inspection were equally unaware of the specifics of the legislation and some were not aware that an inspection to check for compliance with the NMW could be performed by HMRC.

Several employers who were found to be non-compliant reacted to the inspection in ways which were not necessarily to the advantage of the employer or their workers. They did this in order to minimise the risk of future non-compliance. Examples included a reduction in flexible working hours to make it easier to monitor workers' time at work and stopping staff going on business trips because they had to be paid for their time outside of work. Furthermore, timesheets were also introduced by several employers as a way to improve their monitoring of NMW pay and to provide a paper trail for any future inspection.

In order to minimise the risk of future non-compliance, a few employers also said they paid slightly over the NMW in order to cover them for any minor mistakes they may make. A number of other employers (compliant and non-compliant) also said they paid a little higher than NMW for altruistic reasons or to help with their local reputation. The findings suggest that some employers are happy to pay a little over the minimum as a result of low confidence in their administrative skills or to help manage worker relations.

The business planning cycle also represented a potential risk for some employers. Some said they needed communication on the October rate change earlier in the year in order to plan for price setting. As wage costs can represent a significant proportion of the overhead for low wage businesses, any large increase in the NMW could represent a business risk to those employers. Our analysis shows the issue here is actually one of communication. Employers are notified of changes to NMW rates in April, so the issue is more about whether businesses hear about the change rather than its actual timing.

### ***Behaviour against HMRC typologies of businesses***

As noted above, the employers taking part in this research are a subset of the total non-compliant population. Applying an earlier model on tax compliance by HMRC<sup>1</sup>, the types of non-compliant businesses that took part in this study would appear to be those which were “unaware” that they were non-compliant, or were “willing, but needed help” to be compliant.

This is not to say that other segments do not exist, in particular, intentionally non-compliant employers are unlikely to take part in research. It is likely other attitudinal and behavioural descriptions of non-compliant employers exist.

The errors of the “unaware” and “willing but need help” segments were due to specific problems relating to: a) the method of paying workers; b) problems

---

<sup>1</sup> HMRC's Usage and Attitudes Quantitative Segmentation of SMEs (Internal)

arising from making deductions and payments; and c) changes in eligibility for the NMW, e.g. the rules relating to apprentices.

a) Employers can face difficulties calculating hourly pay for workers who are not paid on a by-the-hour basis, but instead receive a salary or payment for a specific product or service. For employers, the key issue for them was having no record of the actual hours worked by a worker so they did not know whether or not the worker had been paid the right amount. It should be noted that one of the themes running through the advice offered to inspected employers by HMRC is to keep time sheets where workers are being paid at or close to NMW rates.

b) In these cases, employers did not know how to apply rules for deductions from pay for items such as uniforms, materials, expenses or accommodation. They made an error by wrongly deducting from the worker's wage.

c) Birthdays also caught out some employers, even those that were aware that NMW rates are dictated by the age of the worker, with individuals qualifying for the main rate at age 21 where they are not an apprentice and where no exemption applies. The issue tended to be administrative, whereby the employer failed to connect a worker's birthday with an increase in the amount they should be paid. The rules for apprentices were also a cause of error, especially in cases of older apprentices (21 or older) as workers who are 19 or older are entitled to the main NMW rate after completing the first year of their apprenticeship.

### ***Awareness of official Government information about the NMW***

The key Government information sources cited by employers across all sub-groups (including those who were not-inspected) were websites, notably Business Link, the HMRC website and directgov. During the interview, stimulus materials for other information sources were used<sup>2</sup> which nearly all employers did not recognise. Similarly, employers were unaware of the Pay and Work Rights Helpline.

However, Government information was important to employers because it was perceived as trustworthy and authoritative. The key issue with using Government information was not its inherent value, but that it was not always accessible. The consensus of opinion was that the signposting of information from Government channels could be improved to better highlight to the user the specific issue of interest to them. Employers tended to use an information source that they knew, for example, trade press publications or their accountant in order to obtain information about employment rights. There was some evidence to

---

<sup>2</sup> HMRC's "Employer Bulletin" and HM Government's "An employer's guide to government enforced employment rights".

suggest that familiarity was an important factor in selecting an information source.

### ***How employers access information regarding the NMW***

Across the board, employers wanted to be able to reach specific information quickly, which is why many cited communications from trade bodies. Trade body messages ticked several boxes for employers regardless of whether or not they had been inspected; it was specific to their sector, highlighted issues common to the employer and used language that was relevant to employers operating in the sector.

Many of the SMEs interviewed did not have a dedicated HR or payroll function and some lacked administrative skills. Several therefore devolved responsibility for the legislative aspects of compliance to agents or accountants. They therefore expected the agents to make them aware of information that might be important to the running of their business.

### ***Effectiveness and impact of communication channels on compliance***

Many non-compliant employers were unaware they had a problem until the inspection. Prior to the visit, unaware employers were unlikely to react to messages directed specifically at the non-compliant because they would not class themselves as such.

Whilst Government information was perceived as trustworthy, some employers would seek information on specific aspects of NMW legislation from formal or informal networks which they trusted. Nevertheless, if this information turned out to be false, it led the employer to incorrectly administer NMW in their business.

Given the value some employers placed in trade or occupational body communications, these would appear to be good vehicles for alerting employers to common misconceptions or errors in NMW administration within sectors. However, the researchers note that it would be difficult and undesirable for Government to 'police' all of the different sources of information to check for accuracy and completeness. This represents a challenge for BIS. In the case of the apprentice rate of the NMW, a couple of employers relied on information from training providers which proved to be incorrect. This means that information used by BIS to inform trade and occupational bodies should be clear enough for the message to be passed on without ambiguity.

A number of employers felt either the business start up period or the time when workers were recruited into an expanding business were the best times to alert employers of NMW rules. A starter pack was mooted to be sent on receipt of a certificate of incorporation, or when registering PAYE for the first time. Based on earlier comments, this pack would need to be carefully signposted and made relevant to the industrial sector concerned. It should be noted that HMRC already provide employers with information on a range of tax matters and sign post employers to information on the NMW when businesses first register for tax. It would, therefore, appear that work may be needed to encourage employers to

focus on the links to information on the NMW, particularly those aspects which are the most relevant to their business or trade sector.

### *Effective messages to encourage compliance*

A number of different messages designed to encourage compliance were tested on all the employers taking part in the study. Most employers, whether inspected or not, felt the effectiveness of the message depended on the audience. Messages that highlighted the sanctions of non-compliance were not thought to be effective for those who were unaware they were making errors because those employers would not think the message was relevant to them.

Several compliant employers felt that messages should not be targeted at workers. They felt that workers would struggle with some of the complexities and that employers should be better able to understand compliance messages. This is at odds with the findings from non-compliant employers who typically did not understand the complexities.

### ***Awareness and attitudes to the enforcement regime***

Overall, employers were not aware that inspections to check compliance with NMW legislation could take place until they were informed of a planned visit. Those who had been inspected were surprised that such visits occurred. This view was confirmed by some employers who had not been inspected who were also surprised by this intervention. Employers that had been inspected thought that the main trigger for an inspection was a complaint made by a worker, sometimes because this is what they had been told by a NMW officer, or because they suspected that an inspection had been triggered after a dispute with, in most cases, a former worker.

Awareness of the different enforcement actions that HMRC could take was also low. Employers that were found to be non-compliant tended to be more aware through experience, but even these individuals only had an awareness of the fines and penalties that were levied for their misdemeanours. Hardly any interviewees had faced the more severe enforcement options such as criminal proceedings, and, none of the other employers interviewed knew about these enforcement options.

### ***Differences in the views of compliant and non-compliant employers***

The overall lack of awareness of enforcement measures explains why differences in the attitudes of the two groups of inspected employers was minimal. No major differences existed between them in relation to their views on NMW enforcement measures. The only minor difference was that non-compliant employers had knowledge of the financial penalties for non-compliance. This is unsurprising given that they would have been required to repay any arrears of the NMW to their workers and a penalty to the Secretary of State. The non-compliant group were able to describe that the arrears due to a worker were paid based on the current rate of NMW, that the penalty was 50% of the total arrears

and the halving of the penalty if arrears were paid within 14 days. Compliant employers were either less sure or totally unaware of this detail.

The views of non-inspected employers typically matched those of compliant employers: awareness was low of enforcement measures. In addition, this group were also unaware of the inspection process as a whole.

### ***Views on the nature and effectiveness of penalties and arrears***

The employers who expressed views on penalties and arrears accepted that a mechanism was needed to ensure workers were not out of pocket. All non-compliant employers said that they were quick to repay arrears of wages to staff who still worked for them in order to maintain good relations. They were less concerned about a swift resolution in a dispute with a worker who had left their employment, especially if they left in acrimonious circumstances.

There was some disagreement as to whether arrears should be paid at the current rate in order to compensate workers who had had to wait for arrears of wages, especially for ex-workers. However, many felt that it was the worker who had lost out and that this aspect of the legislation was fair.

There was also a divergence of opinion in relation to the financial penalty that is payable to the Secretary of State. Whilst a number of employers felt that this 'fine' was necessary to act as a disincentive for those who seek to purposefully break the law, others felt that it was unfair to financially penalise employers who had made genuine mistakes. And in the several cases of very small arrears being paid by employers (£100 or less), the penalty was felt to be excessive in relation to the arrears. It should be noted that the minimum penalty is £100, reduced to £50 for prompt settlement.

Some non-compliant employers suggested that the intervention process would benefit if NMW officers had discretionary powers to levy penalties when they felt they were justified, or to waive them in cases of genuine error. However, it was recognised that it may be difficult for NMW officers to make a judgement between deliberate evasion and genuine error.

In order for penalties to be effective, some scaling is required as per the current mechanism. However, several employers felt that the maximum penalty of £5,000 was not a disincentive for large employers, especially if they could make some significant savings or gain other cash flow advantages by not paying or delaying payment of the NMW.

NMW Officers felt that powers to require employers to keep prescribed records of hours worked by their workers would help them in their role. One of the key issues they faced when presenting a case for prosecution was ensuring that they have obtained sufficient documentary evidence of wrong-doing to go to court. Where employers had not kept comprehensive records of working hours NMW officers spend significant time investigating to form a view of whether NMW had been paid. Where an employer has not kept adequate records they can find it difficult to represent their view to NMW officers or tribunals. In turn, several employers said that a truly effective penalty is one that can be enforced; if



employers think they can get away with something, they are more likely to break the rules.

Naming employers who flout NMW law and information on the most severe legal sanctions, for example prosecution, were thought to be good messages for those who were intentionally non-compliant as long as they were backed up with proven successful action against wilfully non-compliant employers. Overall, naming employers who flout NMW law was seen to be a good idea for targeting the deliberately non-compliant as it showed that NMW legislation was taken seriously by Government and could result in severe consequences. Arguments were presented by employers for using this in national campaigns for larger employers. Whilst naming may be effective at a local level, several employers questioned whether it would be practical for Government to communicate at this level i.e. through local press or community structures.

### ***Employer attitudes to compliance visits and interventions***

A general principle expressed by employers in the non-compliant sample was that the outcome of an inspection should differ depending on its findings. Those who made inadvertent errors said the inspection should be used to correct behaviour, for example, it should be used to educate employers rather than penalise them. In contrast, for employers who were seeking to intentionally avoid the rules, the result of an inspection should be punitive. Many of the employers taking part in this research found the inspection beneficial as it outlined errors they were making which they could then correct. Similarly, many of the employers in the compliant sample were happy to have their systems “validated” by an external, official source.

#### ***Instigating the visit***

Most employers believed that a visit was arranged as a response to a complaint from a worker or ex-worker. NMW officers taking part in the study agreed that this was the most common way in which the inspection process was begun although it should be noted that there is more emphasis being placed on HMRC's risk assessment process for the purposes of identifying cases for inspection. Many employers had issues with inspections generated by complaints. They thought the process was problematic because they felt the worker or ex worker's views carried more weight with NMW officers than their own. Employers did not perceive that the purpose of the visit was to collect evidence to verify or refute a worker's claims. Without realising that it already happens, several employers also suggested that risk-assessment would be a more efficient way for HMRC to instigate inspections.

All of the NMW officers said that they attempted to contact employers they were going to inspect on the phone before sending written notification of a visit. Whilst not all employers received a call first, those that did said it helped alleviate some of their concerns about the process. Over the phone, the officer was able to reassure the employer about what the inspection would entail as necessary,

although this information is limited in order to maintain a complainant's anonymity.

### *Preparing for the visit*

One of the benefits of NMW officers making a call before the visit was to tell the employer what preparation (if any) they needed to make. Without the prior call, employers did not always know what or how to prepare. This led a couple of employers to do a great deal of unnecessary work prior to the visit, which contrasted sharply with some employers who did very little.

One factor which affected the amount of preparation undertaken was the administrative skills of the employer. For those who kept poor records and had inadequate filing systems, getting their records in order for inspection in preparation for the visit was a large task. Whilst sloppy administration is not the fault of the inspection process, an unclear understanding of the records that will be necessary prior to the visit led a few employers to overestimate the records that they needed to produce for the visit, potentially causing more work than necessary for the employer.

### *Employers' views on NMW officers*

In the main, inspected employers were complimentary about the demeanour and professionalism of NMW officers. A range of adjectives were used to describe officers including courteous, helpful and friendly and these positive testimonials included those who had been found to be non-compliant. The value of such an approach from the perspective of the employer was that it helped the officer to communicate what changes were necessary in business practices to ensure future compliance.

However, a few non-compliant employers were more negative towards NMW officers. In some cases, this may have been due to the need for the officer to be guarded in order to protect a worker's anonymity; employers discussed the interview held at the start of a visit and did not understand why some questions were asked. This led the employer to think the officer was interrogating them. In a couple of other cases, employers felt that the NMW officer was looking for something wrong in their books because the initial line of inquiry had proved fruitless.

### *The visit and reactions to it*

The real value of the visit to most employers was the educative elements. Most non-compliant employers felt they learnt how to rectify the errors they had made and the compliant employers welcomed the external check of their record keeping. In addition, most of the employers taking part in the research felt that visits illustrated that Government took the legislation seriously and showed that they were trying to find those who purposefully broke the rules.

Employers suggested one improvement that could be made was to follow up after the visit with a more detailed explanation of the errors made and how they could be rectified. The current content of the “notice of underpayment”<sup>3</sup> lists the amount due but is not accompanied by documentation working out or illustrating how HMRC arrived at their calculation of arrears. In some cases it may be beneficial to provide more detail, perhaps an example calculation sent in advance of the notice to illustrate how HMRC have arrived at the figures.

Following on from this comment, many non-compliant employers were generally concerned about the balance of evidence used by HMRC especially when complaints were made by ex-workers. They correctly felt it was weighted in favour of the worker and they appreciated the onus of proof was on them as the employer, but felt if they could not present evidence to prove the worker was wrong, then they had to pay arrears and a penalty regardless. This point lies at the crux of non-compliant employers overall perceptions of the system and is especially critical in creating the perceptions of employers who have an acrimonious dispute with ex-workers. Although it is not in fact the case, employers felt that disgruntled ex-workers could make unsubstantiated complaints against them and there could sometimes be nothing the employer could do to disprove their accusations.

As a consequence of the visit, employers were open to the idea of changing their behaviour to become compliant with the law, although there was concern expressed about extra administrative burden, especially in relation to the introduction of timesheets. There were also a few other reactions which were unintended consequences of the policy and its enforcement regime. For example, one employer decided to stop offering apprenticeships in their workplace after receiving a notice of underpayment from HMRC for a relatively large amount of arrears and a financial penalty, instead opting to employ staff who were already qualified.

## **Conclusions and recommendations**

### **Key findings**

The key finding to note is that employers who participated in the study who had been found to be non-compliant with NMW legislation were non-compliant due to error rather than deliberate evasion. In most cases, errors were made because of a misunderstanding in a specific detail of the legislation.

In particular, some employers struggled to interpret how the hourly rate applied to staff on salaries or who were paid for outputs, such as on a fair piece work basis. Errors also arose from incorrect interpretations relating to deductions made from pay and differential pay rates for those aged 20 or less.

---

<sup>3</sup> Which is served on non-compliant employers post inspections and requires them to repay arrears of wages to their workers and a penalty to the Secretary of State

Employers were also largely unaware of the NMW enforcement regime which represents a lost opportunity to achieve voluntary compliance (through education and deterrents).

### *Attitudes that influence employers' behaviour towards compliance with the NMW*

The employers taking part in this research were broadly supportive of the aims of NMW policy. All of the employers in the sample who were non-compliant considered that they had made errors in the way they administered the NMW. Arrears arose due to either a general misunderstanding of the legislation or employers not being aware or misunderstanding some of the rules.

**Recommendation:** A clear need was identified to raise employers' awareness of NMW legislation to ensure that they understand that it applies to them and, therefore, make efforts to check they are compliant. As non-compliant employers who participated in the study wrongly assumed that they were compliant with NMW law until the point of inspection, it is reasonable to assume that many other employers are equally misguided.

**Recommendation:** Worked examples should be used in correspondence to explain how to apply NMW rules in particular circumstances. Where possible, these examples should be specific to the employer and use the language of their industrial sector.

A key component of non-compliance is inadequate record keeping. Employers are required to keep NMW records by law and where their records fell short of the legal requirement, HMRC found it difficult to satisfy themselves that the NMW had been paid and employers were unable to demonstrate that they were compliant. Disagreements between HMRC and the employer on whether arrears were due, and the level of any arrears, was the main cause of tension between employers and NMW inspectors.

**Recommendation:** SME's would benefit from receiving templates and examples of best practice to help them design their own record-keeping procedures – although BIS and HMRC note that this may be difficult to do in practice given the diverse range of businesses that HMRC inspect; a 'one size fits all' approach may not be suitable. Employers who participated in the study thought it would be particularly valuable to receive written advice post-inspection which was tailored to their particular circumstances, e.g. the type of business and sector that they operate in and the type of work being performed by their workers (i.e. hourly rates, salaried, piece work, etc). This advice would help them with their future record-keeping.

## *Awareness and attitudes towards the NMW enforcement regime and its impact on employer behaviour*

Overall, awareness of the NMW enforcement regime and the repercussions for those found to be non-compliant was low until an inspection took place.

Typically, employers assumed that some sort of action could be taken against them if they failed to pay the NMW, but awareness of the mechanics of the enforcement process, e.g. how they were selected for inspection and what happened if they were found to be non-compliant was low.

**Recommendation:** The value of effective communication regarding employers' obligations, what they need to do to get things right, and what happens if they get things wrong (unintentionally or otherwise) cannot be underestimated. Employers who want to comply need to know where to go for help and advice and employers who might be tempted to break the rules need to be aware of the sanctions that they may face.

Except for Business Link, awareness of other Government sources of information was low. Business Link is the Government's preferred channel for communicating with employers and it is helpful for employers to have information on a range of issues in one place. Whilst there is a wealth of information on the NMW in the public domain (via Business Link) employers did not always make use of this for a number of reasons. These included an incorrect assumption by the employer that they were paying the NMW or that particular rules or sanctions did not apply to them. Employers who were unaware of their errors were unlikely to look for information explaining how to administer the NMW correctly. Employers who did know about or use Business Link also struggled to find relevant Government information on the site. Consideration should be given to how best to prompt employers to check that they are compliant with NMW legislation.

**Recommendation:** Government messages regarding NMW were viewed as being trustworthy and accurate, which illustrates they add an inherent value to employers. However, employers also looked to and valued other sources for information, e.g. employers in the same trade or sector, trade associations and employer representative groups and occupation support agencies. In particular, trade and professional bodies tailor information to the trade or sector that they represent or oversee and use language which is familiar to their members. These channels are already used by Government to provide information to employers, however as the information is delivered by an intermediary, Government has less control of the overall message and how it is delivered.

Tapping in to a variety of communications channels is critical to maximising the impact of communications messages. Whilst it is helpful to have guidance on the NMW in one place, the Government should continue to make use of trusted third parties to ensure that employers are aware of that guidance.

**Recommendation:** Based on responses from employers, trade or occupational bodies would seem a good conduit for providing information on the NMW, ideally they should carry links to employer facing guidance on the NMW, such as that currently provided on Business Link.

The effectiveness of compliance messages depends on the audience. For those who are unintentionally non-compliant, the best messages were those which educated and informed. Employers who participated in the study stated they would like to be signposted to common issues. Conversely, they felt punitive or coercive compliance messages should be reserved for those who are intentionally non-compliant (although it was recognised stern messages were important for all to show Government takes the legislation seriously). The Government should tailor messages on NMW compliance behaviours to the intended audience.

**Recommendation:** Employers recognised that feedback from the NMW officer during the visit was valuable because they were able to rectify the mistakes that they had been making. However, the formal feedback on the "Notice of Underpayment" form was limited to just the amount due. Employers would find it helpful to have more detailed feedback on why they were non-compliant with NMW legislation and on how their processes could be improved to avoid them making the same mistakes in the future.

NMW investigations and enforcement actions are document based. Compliance officers, therefore, encounter difficulties with enforcing NMW legislation when employers failed to keep and preserve the adequate NMW records (as required by law). It is difficult to prescribe the records that employers should keep in detail. No two businesses are the same and records which are helpful in terms of ensuring and demonstrating compliance in some business, e.g. time sheets, are irrelevant to other businesses and any requirement to keep timesheets to prove compliance would be an unnecessary burden on many businesses. General/high level messages on record keeping requirements aimed at employers in high risk sectors may be beneficial.

**Recommendation:** Many employers were unaware that keeping sufficient records includes being able to demonstrate both the hours worked for NMW purposes as well as payments to workers. Communication particularly targeted at low paying sectors should be developed to address this issue.

#### *Employer attitudes to NMW compliance visits and other HMRC interventions*

The inspection was valuable to employers. Those found to be compliant were happy to receive an "audit" of their processes which validated their practices and where the employer's systems or procedures were deficient in some respect, most of the non-compliant employers valued the educative element of the inspection and were happy to have errors that they had made drawn to their attention.

**Recommendation:** Employers value contact with a professional and knowledgeable inspector. Providing even a small amount of time in the process in which the inspector can suggest ways in which an employers NMW administration could be improved should be a standard part of the intervention.

Employers thought that inspections were usually triggered by a complaint from a worker. They felt that more risk-assessment should take place to try to pinpoint wrongdoing rather than rely on the testimony of workers to instigate an inspection.

**Recommendation:** Further communications work on the success of risk assessment activity carried out by HMRC would help employers understand that complaints form just part of the compliance activity undertaken in relation to the NMW.

Employers that received prior notification of an inspection were typically happier with the whole process, especially in cases where the NMW officer was able to explain the process to them.

**Recommendation:** Calling employers prior to a visit allows questions to be raised with the visiting officer and, in many cases, allays concerns about the intervention. Prior contact should be regarded as good practice in cases where no serious wrong-doing is suspected. (HMRC and BIS consider that there are occasions when an element of surprise in the form of unannounced visits plays an important role in detecting and deterring non-compliance).

In the main, the conduct of NMW officers during a visit was well-received by employers. They were typically viewed as being professional, knowledgeable and helpful. In only a few cases was the opposite cited. In these instances, however, employers felt that officers acted in a secretive way, forensically looking for information which would prove the employer was non-compliant. These interviews typically involved situations in which a worker had left their employer's business under acrimonious circumstances. This perception arose due to the nature of the intervention. In order to protect a complainant's anonymity, NMW officers need to hold some details back during an inspection. In these cases, employers were concerned about the "balance" of evidence. They misunderstood that the onus of proof was on them to illustrate they were compliant with the legislations. While NMW officers are required to conduct impartial investigations, employers felt that an equal weight was not always applied to their views and those of ex-workers.

**Recommendation:** Some form of top-level communications could be provided to employers to educate them on the whole intervention and enforcement process. This could take the form of a small leaflet or web-page describing the whole process in general terms.

## **About the author(s)**

Suzanne is a Research Director at Ipsos MORI and heads its Employment, Welfare and Skills research team. With over ten years of qualitative research experience, Suzanne has directed numerous studies for Government on issues such as low pay, non-compliance and informal working.

John Higton is an Associate Director at Ipsos MORI who has authored several qualitative reports on compliance issues for HMRC. He has also directed other research for BIS on Apprentice National Minimum Wage pay rates.

Anne Charlton is a Senior Research Executive at Ipsos MORI who has authored several reports on compliance issues for HMRC. She has also worked on other research for BIS.



# 1. Introduction

## 1.1 Research background

The National Minimum Wage Act 1998 (the 1998 Act) introduced a statutory right to be paid a certain amount of remuneration for work performed. In essence the NMW is a 'wage floor' which applies to qualifying workers. Almost all workers in the UK are entitled to the National Minimum Wage (NMW).

The Department for Business, Innovation and Skills (BIS) is responsible for NMW policy, including the policy on compliance and enforcement, and HM Revenue and Customs (HMRC) enforce the NMW on behalf of BIS under a Service Level Agreement.

The NMW protects those on low incomes and incentivises work. In order to meet this aim, it is necessary for all employers to comply with legislation and as a result, a range of deterrents and incentives are in place to encourage adherence with NMW law. This now includes an enforcement regime (under the Employment Act 2008) which provides for automatic financial penalties for non-compliance and requires employers who have failed to pay the NMW to repay arrears of the NMW to workers based on current rates<sup>4</sup>. This compensates workers who have had to wait for pay which they are legally entitled to.

This report presents the findings of a qualitative research study conducted by Ipsos MORI on behalf of BIS. The study aimed to provide insights into the drivers that influence employers' behaviour and their ability and willingness to comply with NMW legislation. The research findings will be used to inform BIS' policy going forward and the implementation of the NMW Compliance Strategy; in particular BIS' priorities for NMW enforcement. Consequently, the report includes analysis which considers the attitudes and behaviours of employers and discussions about changing non-compliant behaviour.

## 1.2 Research objectives

The main research objectives of the study were:

- To gauge the range of attitudes that influence employers' behaviour towards compliance with the NMW, which will help to inform the implementation of the NMW Compliance Strategy;
- To assess awareness and attitudes towards the NMW enforcement regime and measure its impact on employer behaviour; and

---

<sup>4</sup> Where the current rate is higher than the rate in force at the time of underpayment

- To assess employer attitudes to NMW compliance visits and other HMRC interventions.

### 1.3 Methodology

A qualitative methodology was used in this study to gain an in-depth understanding of NMW officers' and employers' views on compliance. In-depth interviews with employers took place across the UK (in England, Scotland, Wales and Northern Ireland) between 24 January and 22 March 2011. Where possible interviewers spoke to interviewees face-to-face, but in two cases interviews were conducted over the telephone. All face-to-face interviews with employers were conducted in their place of work. Interviews with NMW officers were conducted over the telephone. Officers were included in the research as they provide important contextual information in which to ground the views of workers. In addition, interviews with NMW officers helped to provide information on businesses which seek to purposefully avoid paying the NMW. Such businesses rarely take part in research as they wish their activities to remain unknown.

The fieldwork was split into two phases. An initial pilot stage was used to test the interview guides with NMW officers and employers. As no major changes were made to the research materials, these interviews were included in the overall research findings.

The second phase comprised the main fieldwork for which loose quotas were set by a range of criteria (as outlined below). Overall, the aim was to provide an equal mix of compliant<sup>5</sup> and non-compliant employers, as well as 10 interviews with employers who had not been inspected by HMRC. A recruitment questionnaire was developed to fill these purposive quotas, alongside others based on region and trade sector. A copy of the recruitment questionnaire is in Appendix C. However, some flexibility was provided to recruiters to account for the unknown elements of the sample profile. For example, it was found that the flag<sup>6</sup> denoting whether or not an employer was "compliant" was not always correct in the eyes of the employer because, for example, they disputed their arrears. It is a common occurrence in using client samples that management information is viewed subjectively by potential interviewees. Coupled with different refusal rates by selection criteria such as region and past compliance and several cancelled interviews, target quotas were not always achieved. With respect to the third objective of this research - to assess employer attitudes to NMW compliance visits and other HMRC interventions - this worked in the favour of the research as non-compliant employers typically had more to say about the whole inspection process.

---

<sup>5</sup> Employers who had not been required to repay arrears of the NMW to their workers following an inspection by HMRC.

<sup>6</sup> In this case, the flag denoting non-compliance indicated that the employer owed arrears at the date of the inspection, not that they were always non-compliant.

Employers who were not inspected were drawn from a commercial database of employers purchased from Dun & Bradstreet for the purpose. Low wage sectors were selected which mirrored those of the HMRC sample and a random selection of SME's was drawn. A slightly different recruitment guide was then used to recruit these employers (Appendix D).

Interviewees comprised 7 HMRC NMW officers (including 2 pilot interviews), and 42 employers from the following groups (including 2 pilot interviews):

- 12 interviews (including the 2 pilots) with employers who had received a NMW inspection from HMRC and were found to be compliant (i.e. they were not required to repay arrears of the NMW to workers);
- 20 interviews with employers who had received an inspection and were found to be non-compliant; and
- 10 interviews with employers whose businesses had not been inspected by HMRC.

Two separate discussion guides were used in the interviews; one for the NMW officers and one for the employers (see Appendices A and B). Two separate routes within the employer discussion guides were designed to interview employers who had been inspected and those who had not. Stimulus materials were also used in the interview comprising two examples of HMRC communications about NMW<sup>7</sup>, <sup>8</sup>, a summary list of enforcement measures, and a compliance messages show card. Interviews lasted for approximately one hour and were recorded for transcription purposes.

The discussion guides were initially structured around the research objectives and revised during the pilot stage which involved two interviews each with NMW officers and employers. Interviews with NMW officers took place towards the end of the employer fieldwork, in order for employers' experiences to be considered when drafting the discussion guide for NMW officer interviews element of the research.

### **1.3.1 Sampling**

Ipsos MORI were provided with a sample for NMW officers and employers by BIS. The employers' sample was constructed from records of inspected employers held by HMRC from various local offices in the UK. Small and Medium Enterprise (SME) employers from specific trade sectors which are known to employ high numbers of workers earning the NMW were selected. For each

---

<sup>7</sup> 'An employer's guide to government enforced employment rights': <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/e/10-1167-employers-guide-government-enforced-employment-rights>

<sup>8</sup> 'Employer bulletin': <http://www.hmrc.gov.uk/paye/employer-bulletin/bulletin36.pdf>

employer, the following information was provided (in addition to basic contact details) and minimum quotas were set on each of these areas:

- Outcome of inspection - i.e. compliant or non-compliant, based initially on a flag within the HMRC data and confirmed within the recruitment interview;
- Trade sector; and,
- Geographical region.

For all employers that received a NMW inspection from HMRC (irrespective of the outcome of that inspection), the sample was drawn from cases closed by HMRC between September and November 2010. It was not feasible to recruit based on attitudes towards compliance as previous research on tax compliance with HMRC shows that a very few people who intentionally evade their obligations are willing to take part in research into what drives their behaviour<sup>9</sup>. The following table provides a breakdown of the employer interviews in relation to the inspected and non-inspected employer quotas listed above.

A list of all of the NMW officers working in February 2011 was provided by HMRC. The sample comprised 85 names and Ipsos MORI contacted a random sample of seven directly to ask the NMW officers in question if they would be willing to participate in the study. All of the NMW officers contacted agreed to participate.

Table 1: Sample composition

	Inspected	Not inspected
Compliance behaviour	Interviews achieved	
Inspected and compliant	12	-
Inspected and non-compliant	20	-
	Inspected	Not inspected
Trade sector	Interviews achieved	
Hospitality	6	2
Retail and personal services (retail, clothing & footwear, hairdressing and social care)	7	3
Other services	8	3

<sup>9</sup> For more information on this group see Ram, M *et al* (2004) 'Informal Employment, Small firms and the National Minimum Wage' <http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ4.pdf> and <http://www.lowpay.gov.uk/lowpay/research/pdf/t0Z96GK3.pdf>

Others (market service, production/construction, public service and security/cleaning)	11	2
Geographical region	Interviews achieved	
London and the South East	6	3
North West and Merseyside	3	3
East Midlands/East of England	12	3
Others	11	1

Source: Ipsos MORI

### **1.3.2 Recruitment**

In advance of the main recruitment stage, all employers who had been inspected were sent an 'opt out letter' providing information about the research and details of how to opt out of research if they wished to do so. The target audience were typically managing directors or owners of micro-businesses, or a Payroll or HR representative in medium sized firms. Letters were branded with Ipsos MORI, BIS and HMRC logos and included the full contact details for key members of the Ipsos MORI project team so that any questions could be answered.

Ipsos MORI in-house recruiters began calling employers a week after opt out letters had been sent to the sample (from 19th January), in order to determine their eligibility and willingness to take part in the research. A screening questionnaire was used at recruitment to ensure the right employers took part and minimum quotas were met. To encourage participation, interviews were conducted at a time and place most convenient to employers (i.e. their place of work or by telephone if necessary) and incentives of £40 per interview were offered as compensation for employers' time. A few employers chose to donate the incentive to charity or to a worker's pool of money for events. To maximise retention, employers were also contacted a day in advance of their interview as a reminder to take part.

In all, recruiters tried to contact 156 employers. Of these, 76 (49%) were unobtainable, either because the phone number no longer worked or because no answer was received. Thirty employers (20%) refused to take part, 9 were ineligible at the screener and 9 made an appointment which was subsequently cancelled.

Of 19 interviewed who are listed as non-compliant on HMRC data, just four had arrears over £2,000 and ten had arrears of less than £500. One employer also said that they were still in legal dispute with HMRC over their alleged non-compliance. The four remaining employers had arrears between £500 and £2,000. Overall, participating non-compliant employers had a relatively low level of arrears. Based on HMRC data, the average arrears of the interviewed sample was £2,502 compared to an average of £3,421 for all of the sample received.

NMW officers were recruited by telephone using the sample list provided by HMRC. No cash incentives for participating in the research were offered or paid.

### **1.3.3 Analysing and interpreting the findings**

It is important to note that although qualitative research provides more detailed insights into experiences, the views obtained are not statistically representative of all NMW officers or employers. Throughout the report, use is made of verbatim comments from the interviewees. Where this is the case, it is important to remember that the views expressed do not always represent the views of NMW officers and employers as a whole.

The report has been structured around the three main research objectives which were set by BIS and HMRC at the start of this project. This is intended to enable links to be made between the objectives of the research and actions which BIS and HMRC may wish to implement. In practice, the objectives all have some connection to one another, so some internal referencing is provided to help move between sections.

A thematic database was developed that was structured by firmographic<sup>10</sup> variables (i.e. those used in the quotas such as trade sector and business size) to help draw out links in the data, case studies and examples of best practice.

The database was interrogated according to four key questions:

- What did employers say? What is the key information which has been collected?;
- What does the data mean? – How does this relate to the research objectives?;
- What does it all mean? – How do these findings fit together into a ‘bigger picture’?; and,
- What does it mean for BIS and HMRC? – What are the implications and recommendations?

The outcome of this analysis is reported in the following sections.

### **1.3.4 Employer segmentation**

A prior segmentation model was developed for HMRC which describes SME Usage and Attitudes towards tax compliance. The model identified several different types of employers and this segmentation has been used as a framework for grouping the employers taking part in this research. There are several factors to consider in the segmentation developed for this research. Firstly, this study is qualitative, not quantitative. By their nature, quantitative

---

<sup>10</sup> Factual elements that describe the business such as the number of worker, turnover, business sector, time since incorporation, etc. Basically the demographics of a business or organisation.

segmentations create mutually exclusive groups; members belong to only one segment. The purpose of the prior segmentation in conjunction with this report's qualitative findings was to develop a deeper understanding of the different categories from the prior segmentation which are relevant to this study.

The audience also needed to be clearly defined. In this instance, the segmentation has been augmented based on a sub-set of employers: SMEs whose business model relies on low pay workers. Logically, employers whose workforce comprises mostly of low paid workers have more to lose or gain (depending on their viewpoint) from being compliant. Businesses operating in low pay sectors typically work on narrow margins and their wage bill represents a large proportion of total outlay. As outlined in the Low Pay Commission's 2010 report on the NMW, low pay sectors are typically service industries such as retail, hospitality, hairdressing and cleaning<sup>11</sup>. It was on this basis that sector quotas for interviewees were set for this study. The issues covered in this report are, therefore, of less importance to businesses that predominantly employ a highly skilled and/or professional workforce and have only a small proportion of their workforce earning the NMW.

There is also a selection bias in the sample. The views of employers who were known to be intentionally non-compliant were not captured, although interviews with NMW officers and some employers have highlighted some of the mechanisms that are used to evade NMW legislation by this group. This means that the behaviours and attitudes of employers who purposefully evade are based on secondary, anecdotal evidence and not directly from these employers. The findings therefore only represent those who say they breached legislation by error. In a couple of cases, interviewers made observations which led them to suspect some purposeful wrongdoing; however there was no evidence presented in the interview that provided any actual evidence.

---

<sup>11</sup> Low Pay Commission (2010) *National Minimum Wage Report*. Accessed 18/03/2011, [http://www.lowpay.gov.uk/lowpay/report/pdf/LPC\\_Report\\_2010.PDF](http://www.lowpay.gov.uk/lowpay/report/pdf/LPC_Report_2010.PDF).

# 2. Attitudes and behaviours towards principles of NMW

In this section, we cover the first objective of the research: to gauge the range of attitudes that influence employers' behaviour towards compliance with the NMW, which will help to inform the implementation of the NMW Compliance Strategy; We start by looking at the overall attitudes expressed by the interviewees towards the principles of the NMW, which provides valuable context to subsequent specific discussion on attitudes and behaviours towards enforcement activities and actions provided in Chapters 3 and 4. In this section, the views of employers who were and were not inspected are included, although it is important to state the knowledge of compliance activity from employers who had not been inspected was very limited. We also note that there were no differences of opinion overall between inspected and uninspected employers. However, note that there is significant crossover between this objective and the one covered in Chapter 4. For ease of reading, a brief summary of behaviours in relation to compliance activity is provided at the end of this chapter.

## 2.1 Overall attitudes towards the National Minimum Wage

### 2.1.1 *The National Minimum Wage in principle*

Although the policy is now well-enshrined in UK legislation, the level of support for a NMW is of contextual importance to this research as how employers feel about it in principle may help shape their behaviours and responses to it. Nearly all of the research interviewees agreed with the principle of a NMW. The policy was seen as promoting fairness for workers and was believed to set a benchmark from which to establish workers' pay.

"You should make yourself aware of what it is. And everybody should be treated the same. So, regardless of what the circumstances are, if they are not paying it they should be fined same as the next one."

Employer in Social services sector, East Midlands/East of England, Compliant

However, awareness of some of the specific elements of the legislation was low. Awareness of NMW policy is covered in detail in Chapter 3. However it is relevant to the general discussion on attitudes and behaviours towards policy to

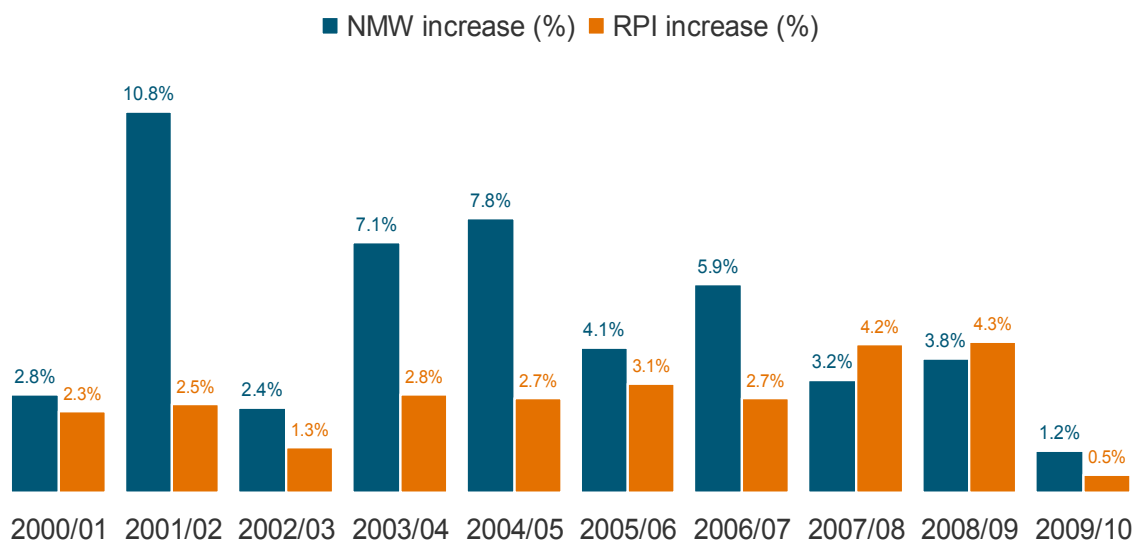


note that there was a higher awareness of legislation amongst inspected employers. The inspection process provided the opportunity for some businesses to learn where they had made errors and develop a better appreciation of the legislation.

## 2.2 Assessing and tolerating risk

### 2.2.1 Behaviour in response to the introduction of the National Minimum Wage

Some interviewees reported that it took some time for pay levels to settle down after the introduction of the NMW in 1999. They spoke of how one of the consequences of introducing a minimum wage was to 'squeeze' the relative financial benefit enjoyed by skilled workers; a process which is thought by some employers to continue to this day. This is because the gap between the lowest paid and skilled workers in some instances is now smaller.



Sources: Low Pay Commission, National Minimum Wage Report 2010; RPI as reported on Towers Watson website

**Figure 1: Comparison of annual increase in NMW with the Retail Price Index (RPI)**

As shown in Figure 1, increases in the NMW soon after its inception were well above RPI inflation up to 2007/08 and the average increase over the ten years shown is just under 5%. Over the same period, overall workers' pay has not increased at the same rate (an average of 3.6% between October 2000 to September 2010)<sup>12</sup>.

<sup>12</sup> Derived from ONS Average Earnings Index. Download at <http://www.statistics.gov.uk/StatBase/tsdataset.asp?vlnk=392&More=Y>

Overall, the introduction of the NMW and the subsequent effect on increasing wages for the low paid led to some financial pressures on businesses that pay at or close to NMW rates. As a consequence, there was a potential risk of non-compliance by employers who were reacting to wage demands across their workforce and not just from those directly affected by the National Minimum Wage. Some interviewees noted what one described as a 'concertina' effect; low pay rising at a greater rate than skilled pay which narrowed the pay differential between skilled and unskilled staff. In some cases, this led to a reported change in employment and working practices. For example, one interviewee said that the increase in basic pay removed some of the incentive for commission-based sales staff. The compliant employer felt they were put at an economic disadvantage to non-compliant employers who could persuade their staff to work outside of the law<sup>13</sup>.

For others, the NMW put an upward pressure on the business's whole salary bill as skilled workers would demand 'more than the minimum'. They would want recognition that their post was beyond a NMW role which suggests a potential stigma amongst workers about being paid the NMW.

"It was quite a bottom up pressure for us. Our admin staff are the lowest paid in the company, plus we had some trainee draughtsmen at the time and for a while there was this continual pressure to create clear blue water between the ones at the bottom and the ones who've got skills and the others and there's all this pressure pushing upwards all the time. We've created more of a gap now and we're not perceiving the pressure quite as much."

Other services, East, not inspected

Employers also mentioned several other consequences of NMW increases following the general principle that an increase in wages has to be accounted for somewhere in the business. To ensure compliance with the NMW, some employers stopped doing a range of different activities. This was not necessarily of advantage to the employer or their workers. Some examples included stopping apprentices going on business trips and limiting flexible working practices for staff because they would have to introduce more bureaucracy to record flexible working hours. For interviewees that wanted to be compliant and were concerned about the consequences of non-compliance, they minimised the risk of non-compliance by strictly managing working practices. Several employers said that that they introduced time sheets for all staff, including those fulfilling piece-work<sup>14</sup> or receiving a salary. On a few occasions, employers also said that NMW officers had recommended the introduction of time sheets as a way of providing evidence towards adherence to the NMW.

---

<sup>13</sup> Some of the mechanisms allegedly used by intentionally non-compliant employers are discussed in section 4.3.8.

<sup>14</sup> Some workers are paid a 'fair piece rate' for each piece produced or each task completed. Special rules are used to determine what amounts to a 'fair piece rate' for the work performed. The rules take account of the time that it would take an average worker performing the same duties in the same business.

"What [the NMW Officer] said to me is that [the worker] has to fill in a timesheet, but how can she fill in a timesheet if she's not hourly paid? [The worker said] "I've just given up working for [name of company] and I got my annual salary and in that I had to work overtime". And they [the worker's advisors] said you probably earned a lot more than she did ... [The enforcement officers] said if I go to a tribunal I'd be asked "Where are her timesheets?" but I don't understand that."

Hospitality, East, inspected, non-compliant

In short, interviewees making the comments above said that the NMW can have the effect of increasing administrative burden as employers often feel they need to introduce systems to ensure compliance, regardless of whether those mechanisms were actually required by NMW legislation. There were consequences for employers and workers:

- Seasonal staff formerly paid salaries which averaged over the year were instead paid for hours worked. For workers, this meant that actual income varied each month instead of remaining constant. For employers, this increased bureaucracy as they had to monitor costs differently (i.e. introduce timesheets to ensure that workers were paid at least the NMW for each hour worked or check variable PAYE payments on a monthly basis). Workers needed to therefore account for periods in which little or no pay would be received.
- Some interviewees said NMW acted as a disincentive to taking on part-time staff because of the amount of administration involved. However, it was interesting to note that this was countered by employers with large numbers of part-time staff who felt increased administration was not an issue for them. This may be explained by noting that businesses employing a large proportion of part-time staff would be more used to the administration required and have the systems in place to manage such a workforce. The issue therefore seems to be one of the perceptions of employers with mostly or solely full-time staff.

Many interviewees felt the NMW was set too low and some of this group reported that they paid a little over the NMW wage for altruistic purposes. Several also managed risks, saying they gave themselves a bit of leeway to cover themselves against administrative error. Managing risks is covered in section 2.2.2 below. Employers who wanted to run a 'good business' were also found to pay over the NMW as they felt it helped them be part of the community and helped with their local reputation. One interviewee who had not had an inspection talked about 'her ladies' on the factory floor who all knew one another and drafted in family members to help out during busy times. The close connection led to the employer wanting to do right by her workforce.

Many employers, regardless of whether they had been inspected or not, also held the view that the NMW is 'the law' and should therefore be followed. This illustrates the place NMW occupies in the psyche of many interviewees; it is part of business practice and a policy that should be adopted.

### **2.2.2 Risks of non-compliance and business planning**

Some businesses used the annual cycle of NMW increases in their own planning cycle. For those offering services to the public (day nurseries are a good example), the NMW plays an important part in setting prices. For example, one nursery noted that wages comprise 60% of total costs and a high proportion of staff were paid on or close to the NMW. This means that they wanted an early indication as to how much the NMW would increase in the forthcoming year so they could plan accordingly for the increase in their wage bill. Continuing with the nursery in this example, prices are typically bound by the cycle of the academic year. Planning for a price increase may start as early as six months in advance of September and any price change is communicated to parents before then, maybe as early as July. In this case, the nursery said it was out of synch with the NMW planning cycle and any change in NMW introduced in October which falls outside of a planned estimate can have a significant effect on a business, especially where wages form a high proportion of overall costs. The specific issue for this nursery was they did not know where to get official information on planned increases in the NMW. The point about awareness is important as, in principle, this business should have had ample time to plan as, for example, the 2011 increase was advertised in national media on April 7th of this year<sup>15</sup>.

"If you're budget setting in March/April there's very little information about what might happen in October, so you have to make a number of assumptions based on past increases, of what the possible rise might be."

Social services, North East, non-compliant

This potential impact of this uncertainty is illustrated in Figure 1 (page 18), which shows that annual NMW wage increases were well in excess of inflation until 2007/08. In cases like 2006/07, where the increase in NMW was double that of RPI inflation, a couple of interviewees reported their business faced significant financial pressure because of the large increase in salaries they paid to their staff. The potential risk is that compliance with the NMW could be perceived by the employer as less important if the profitability of a business is affected, especially in an economic environment where business credit is hard to source. Employers could be tempted to defer or circumvent NMW legislation in order to maintain profitability or avoid insolvency. Several studies on compliance issues for HMRC<sup>16</sup> show that employers can treat tax compliance as a low priority issue when a business is in temporary financial difficulty. Their justification is often that

---

<sup>15</sup> <http://www.bbc.co.uk/news/business-13000171>

<sup>16</sup> Three examples include: Hall, S, Higton, J and Vishwanathan, N (2009), Customer perceptions of tax compliance checks, HMRC; Hall, S and Higton, J (2008), Late Payment of Tax: Sanctions and Motivations, HMRC; Hall, S, Pettigrew, N (2007) Business' Perceptions of Regulations, Cabinet Office

the Government would get no taxes if the business ceased trading, so if delaying payment leads to business survival, this protects Government tax revenue in the long term. Although interviewees in this research often stated that ensuring workers are paid is very important to them, a similar argument could be used in relation to paying the NMW but this was not spontaneously mentioned in the course of fieldwork by interviewees.

Assessing risk was considered to be easier for those who, through inspection, were found to be non-compliant. In cases of administrative error, the inspections were often thought to be very helpful in terms of offering support and advice on administering the NMW and providing reassurance to the inspected employers that in other respects they were applying the correct treatment in cases of compliance and non-compliance. It was accepted that 'genuine' businesses would learn from the mistakes they had made as a result of the inspection process which increased awareness of NMW legislation and compliance measures.

Based on interviews with NMW officers (as no interviews were completed with employers who said they purposefully broke the rules), employers who were intentionally non-compliant were likely to have a better initial understanding of the legislation; this was a prerequisite for developing a method of avoiding paying the NMW. As such, employers fitting this profile are likely to have a good appreciation of the risks they face in both hiding their wrong-doing from HMRC and the likelihood of them getting caught.

### **2.2.3 A regional National Minimum Wage?**

There was some support for a regional NMW, especially within London (from employers inside and outside the capital). Several London interviewees mentioned that the NMW was not a living wage given prices in the city, and therefore many employers we spoke to in the capital paid above the NMW. Indeed, some interviewees questioned whether a London business paying NMW would get suitable staff. In analysis, these qualitative findings suggest that wage competition in London dictates workers may typically receive more than NMW, implying there is no need for the Government to introduce regional rates. However, there will be other factors to consider such as the volume of migrant labour and regional migration in and out of the capital which would also have an effect on wages. A full analysis of this issue is outside the scope of this study.

## **2.3 Employers' incentives towards more compliant behaviour**

There is a clear connection between the general attitudes and behaviours towards compliance expressed in this section, and the attitudes towards inspection activity discussed in detail in Chapter 4. Inspected employers used their experiences of the process to develop their attitudes and modify their compliance behaviour and employers said that their non-compliance was due to error. The value of the inspection for them was to highlight where they lacked knowledge of the legislation. They could then make changes to their business operations to either ensure future compliance, or, in some cases, change working practices. In a couple of cases involving apprentices this led to the employer stopping this form of training within their workplace.

In the case of employers who had not been inspected, their knowledge of actual compliance activity was very limited. They knew that some enforcement action could happen and spoke in a general way about fines and penalties, however they had little knowledge of the specifics.

## 2.4 Behaviour against a prior HMRC typology

The purpose of this section is to look at how the errors described thus far match previously recognised behaviours. HMRC has already conducted segmentation exercises with employers to assess compliance with tax legislation and these models are useful in considering how responses to this research fit into a wider segmentation of employers. The model used is the HMRC's Usage and Attitudes (U&A) quantitative study with SMEs, which identified a number of segments based on attitudes to compliance, as outlined in the diagram overleaf. This segmentation uses a flow chart to assign an employer into a behaviour category. It begins with "awareness" and provides an immediate group who are unaware of tax legislation. The model develops by looking at different elements of the tax compliance journey such as whether evasion is perceived as acceptable, the ability of businesses to do their administration, measurements of risk aversion and issues with cash flow to decide in which category a business should be placed.

This model recognises that tax non-compliance encompasses a broad range of employer behaviours, and that some non-compliant activity is intentional and some unintentional. In the case of the NMW, some of the same behaviours have been recognised in this research. Both awareness and, as a consequence, unintentional non-compliance have been shown as the main causes of error thus far because of the selection bias of those choosing to take part in the survey. This is not to say that other behaviours recognised in the U&A model do not exist in relation to the NMW, but that those behaviours did not surface in this research.

Prior research undertaken by Ipsos MORI for HMRC<sup>17</sup> and the National Audit Office (NAO)<sup>18</sup> used free find methods (in which recruiters go into a community to identify respondents through networking) to recruit those who purposefully avoided the payment of taxes. Whilst this method of recruitment succeeded in recruiting a sub-set of employers who were breaking the law and had been caught, it still failed to recruit employers who were deliberately evading the law but had not been caught. Interviewees recruited for these tax research projects were predominantly unintentionally non-compliant and this was the case for the non-compliant employers agreeing to take part in this study.

Findings from this study show that that the majority of interviewed non-compliant employers fell into the unintentionally non-compliant category which follow broadly similar findings from several reports for the Low Pay Commission

---

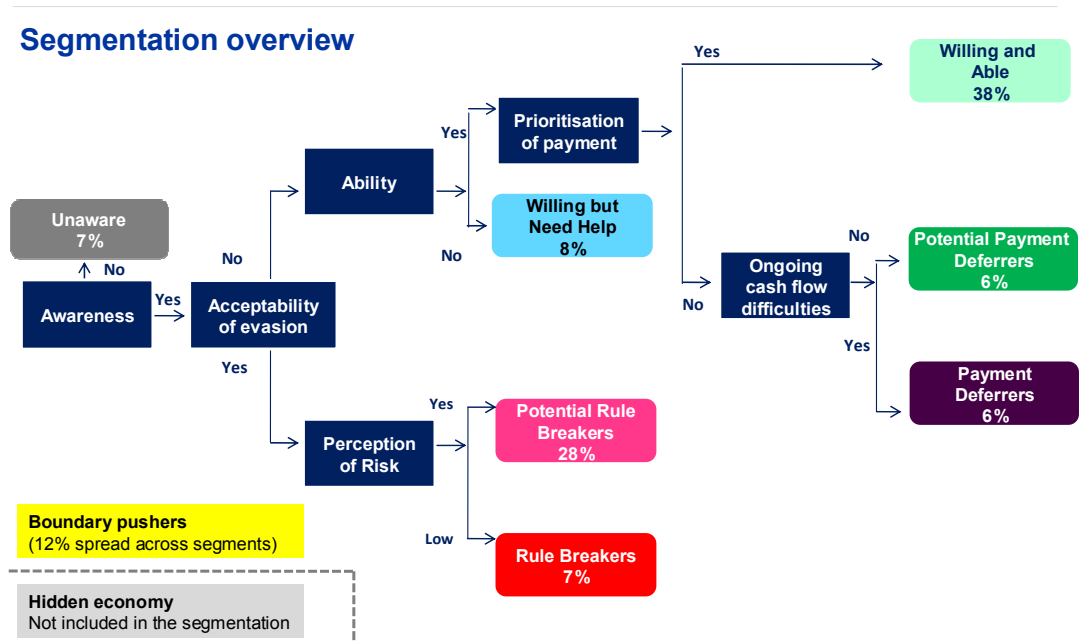
<sup>17</sup> Hall, S and Higton, J (2008), Late Payment of Tax: Sanctions and Motivations, HMRC, <http://www.hmrc.gov.uk/research/report-63.pdf>

<sup>18</sup> NAO (2008), Tackling the Hidden Economy, [http://www.nao.org.uk/publications/0708/tackling\\_the\\_hidden\\_economy.aspx](http://www.nao.org.uk/publications/0708/tackling_the_hidden_economy.aspx)

(LPC)<sup>19 20 21</sup>. Ipsos MORI researchers are trained to look for inconsistencies in the responses given by interviewees and the discussion guide was carefully designed to draw out opinions and views on non-compliance from interviewees. Based on observations such as body language, interviewers did suspect some wrongdoing in a couple of cases, however there is no oral evidence to back up their feel for the interview.

This suggests that employers were typically were being truthful as presenting themselves as unintentionally non-compliant, or that they had a genuine misunderstanding of the rules that had led to their non-compliance.

Most of the views they expressed would place interviewees into the "unaware", "willing but need help" and "willing and able" categories of the U&A SME segmentation and our analysis of errors made by employers leading to non-compliance is provided next.



**Figure 2: HMRC's U&A Segmentation of SMEs**

<sup>19</sup> LPC (2004), Enforcing The Minimum Wage: The Experience of Workers and Employers <http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ3.pdf>, p23

<sup>20</sup> LPC (2007), Awareness of the Minimum Wage in the Hairdressing Industry, <http://www.lowpay.gov.uk/lowpay/research/pdf/t0Z96GK6.pdf>, p31

<sup>21</sup> BIS (2010), Evaluation of the Vulnerable Worker Pilots: Year 2 report, <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-775-evaluation-vulnerable-workers>, p50

Based on evidence collected in interviews<sup>22</sup> with employers who were non-compliant with the NMW in the current research, the main causes of error leading to non-compliance with the NMW described by employers can be grouped as:

- those arising from the method of payment;
- those arising from deductions and payments; and,
- changes in the eligibility rules affecting the age and training of a worker.

Note that ignorance of the legislation (awareness) and poor administrative practices (ability) were the underlying causes of all of these sources of error expressed by employers. We cover each of these in turn below.

#### **2.4.1 Errors due to wage payment period**

This error can apply to workers who are paid on a basis other than a set amount for each hour worked. For example they may receive an annual salary or be performing output work. Output work is where the worker is entitled to be paid per hour or to be paid a 'fair piece rate' for each item produced or task performed. The root of the employer's error lies in the hourly definition of the NMW and the administration required to calculate compliance when workers are not paid on a per hour basis. It is best explained through an example:

In the case of workers performing salaried hours work for NMW purposes and those working unmeasured work, employers can make errors when workers work additional hours, especially in the case of workers who work on or close to the current NMW rate of £5.93 per hour (at the time of interview, rising to £6.08 from 1 October 2011). For example, a worker performing salaried hours work is paid an annual salary of £10,792.60 for 1,820 hours per year. The salary is paid monthly in 12 equal payments – but the worker generally works a few extra hours each month resulting in them working all of their 1,820 contracted hours before the end of the year. Once the worker exceeds their contracted hours the employer is required to check that he or she is paid at least NMW rates for all the hours worked in the year, including the additional hours. The employer needs to ensure they keep an account of the hours actually worked – not just the hours that the employer is paying salary for.

---

<sup>22</sup> HMRC provided some management data on the reasons given during the inspection for those interviewed. Each individual could have more than one reason listed for their non-compliance. Of those who were flagged as non-compliant in the HMRC management information, the reason listed for ten of them is in a catch-all category called "below NMW". More specific flags were provided for others: Three were listed as an issue with deductions; two were caught out by the rate rise and one each for birthdays and accommodation. Two others were listed under an "other" category and four non-compliant interviewees had no flag recorded at all. As there was no flag on the data for method of payment, direct comparison with management information data was not possible.



### *Cause of error*

Several non-compliant interviewees were unaware there were special rules for workers undertaking salaried hours work for NMW purposes and many did not use timesheets to record the hours of salaried staff. The employers assumed that any overtime was part of the salary contract and did not recognise that extra hours above the worker's basic annual hours came with an entitlement to payment. The lack of a timesheet put them at a disadvantage when a worker made a claim.

Employers also said they could be *reported* as non-compliant by workers performing output work, especially where workers take different times to fulfil the same overall contract and are paid on an hourly basis. A worker is entitled to be paid a 'fair piece rate' or at least the NMW for each hour worked. Special rules apply to the calculation of 'fair piece rates' but in essence the minimum amount that an employer can pay per item produced or task performed is calculated by reference to the time it would take an average worker to produce the item or perform the task, not the amount of time actually taken by the individual worker as some employers mistakenly believe. The cleaning industry is a good example when a contract is agreed on a per-premises basis. One employer felt that the rules for piece rates were problematic for their industry:

"It destroyed that type of working [output/piece working] really, because they've got to be paid the National Minimum Wage regardless of their performance in the role ... there's very little that we have performance related bonuses on."

Market services, East, inspected, non-compliant

Another interviewee took a different view when he described his franchise's approach to house cleaning, and stated it was up to a cleaner to complete the job as quickly as possible to the satisfaction of the client and the franchise brand. As long as the client was happy with the service provided, he was not concerned with how long it took the worker to fulfil the contract. As an example, the franchise charge for a weekly house clean is £35. Of this, 7% goes to the franchise, 15% to the business manager and profit, 13% towards ongoing costs and 60% to the cleaner. In this case, a worker contracted on a per hour basis receives £21 for the job at a 'fair piece rate'<sup>23</sup>. If they complete the clean in two hours, then the worker could calculate their rate as £10.50 per hour. In the case of a worker taking four hours, the worker could calculate their rate would be £5.25 per hour, which would be well under the NMW if they were paid on a per hour basis. In reality, this employer said they did not keep on slower staff on fair piece rates for two reasons. Firstly, the franchise business model meant that fewer contracts could be completed in a day which affected profitability. Secondly, although they had clear rules in place, it could lead to a challenge from

---

<sup>23</sup> Where the employer has a set of guideline prices based on the average rate it takes for a task to be completed. As described on the Directgov website:

[http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG\\_175097](http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_175097)

a worker of being paid under the NMW rate. Whilst their piece-rate contracts were correct (as evidenced by a successful inspection), it was time-consuming to have to respond to an inspection.

#### *Cause of error*

In the case of the franchise used in the example above, the inspection found the employer to be compliant with NMW legislation. This particular employer suggested one of the benefits of running a franchise operation is that the franchise owner created all of the necessary documentation and administrative tools to ensure that the franchise operator was NMW compliant. In the case of other employers, paying on a per hour basis and underestimating the amount of time required to fulfil a contract was a potential causes of error because they did not have a clear understanding of how to interpret the salary or piece work legislation. Many were unaware of the distinction until they were found to be non-compliant by HMRC.

#### **2.4.2 Error due to deductions from worker or payments to employers**

A number of interviewees found to be non-compliant after an inspection had made errors in the treatment of deductions made from workers' wages for materials or services used by the worker, eg uniforms and tools which the worker was required to pay for or contribute to and travel to work schemes, or other expenses and/or in relation to charges for employer provided accommodation. The error is caused through either a misapplication of the rules, or ignorance as to what can or cannot be included in the calculation of NMW pay. With the exception of deductions from pay for accommodation (for which special rules apply) almost all deductions from pay reduces the amount of pay that counts for NMW purposes. The general premise is that workers should be free to spend their pay as they choose (and not be forced to buy something by their employer). So if, for example, £30 is deducted from a worker's pay for purchasing hair products the amount of pay that counts for NMW purposes is reduced by the £30 deducted. But if the worker purchased the same hair products for £30 from his employer after receiving his pay, the amount of pay that counts for NMW purposes is not reduced by the £30 payment the worker provided to the employer.

The only benefit in kind that can count towards NMW pay is living accommodation. Where an employer (broadly defined) provides accommodation free of charge to their worker, a notional amount, known as the accommodation offset, can count towards NMW pay. Where an employer charges more than the accommodation offset for accommodation the excess over and above the offset reduces NMW pay. Where the employer charges an amount equal to or less than the offset there is no effect on NMW pay.

Interestingly, one of the employers in the sample confused the rules on deductions with the rules on the repayment of a loan which has been made by the employer to the worker (which does not reduce NMW pay).

"There's all these nitty gritty little things. If I lent them the money to buy their tools and I deduct it off their wages every week, That means I'm paying beneath [the NMW]. But if I give them a personal loan that they pay back whenever they want to pay it back then they're not getting below the Minimum Wage."

Personal services, Northern Ireland, non-compliant

The purchase of tools required in connection with the employment will always reduce NMW pay regardless of whether the purchase was via a deduction by the employer or a payment from the worker.

### *Cause of error*

Interviewees correctly felt that the burden of demonstrating that they paid the NMW, including providing details of deductions from a worker's pay, fell on them, not the worker (i.e. a worker does not have to prove s/he is owed the NMW, the onus is on the employer to demonstrate that they have paid at least NMW rates). Several instances were found in which, from the employer's perspective, very minor deductions (tens of pounds) were made for which no paper evidence was held to show what the deduction was for. Employers appeared to be unaware that even where they keep evidence there are very few instances where they can make deductions from a worker's pay and not reduce the amount of pay that counts towards NMW pay. In these instances, employers were happy to repay the arrears of NMW due to the worker. However, some felt that a penalty was excessive. For example, one employer said they had made two unverified deductions of £15. They felt the £100 fine<sup>24</sup> they received was disproportionate. In some cases, these errors were not actually related to the worker or former worker who had made the complaint to HMRC. The effect of this on employer/worker relationships is discussed under the heading the balance of evidence (section 4.6).

"For someone like me ... for such a small offence if you like, there should be a limit, you can be named and shamed if it's a large amount."

Retail and personal services, Other region, Non-compliant

More serious errors could be made with charges for employer provided accommodation. Several NMW officers said the rules governing accommodation were often poorly understood by employers and that is an area with strong potential for intentional non-compliance (see section 4.7). NMW officers felt that employers could perceive the offer of accommodation as a great benefit to the worker as they did not have to find somewhere to live for themselves. However, NMW officers said when the rules governing charges for accommodation were not applied correctly, the potential bill for arrears and penalties could lead to a business to experience financial difficulties. In corroboration, one employer said they were undergoing a long dispute with HMRC in relation to accommodation for

---

<sup>24</sup> The financial penalty for failing to pay the NMW is reduced by 50% for prompt (i.e. within 14 days) settlement. The minimum penalty is therefore £50.

site workers which would lead to their business model being unworkable if it was found arrears of NMW were due.

### **2.4.3 Error due to changing age or eligibility**

There are four NMW rates. The main rate applies to workers aged 21 and above and there is a separate rate for apprentices under 19 or over 19 and in the first year of their apprenticeship. As the NMW differs for younger workers<sup>25</sup> (aged 20 or below), errors can be made where an employer fails to move a worker to the correct rate for their age band on the worker's birthday or where the workers status changes (i.e. when they cease to be an apprentice). Typically, the reported errors were said to be minor and were often caused by employers' payroll systems not registering a birthday. NMW officers indicated that this was a very common area where mistakes are made and largely due to genuine error, especially for birthdays falling in September through to November which is around the date at which the NMW rate changes.

#### *Cause of error*

In the cases covered in this research, the error was administrative. Non-compliance resulted from a failure to increase pay following a birthday. Interviews with compliance staff highlight that this typically results in small arrears, but is a very common area of unintentional non-compliance.

Another factor in this category covers apprentices. From 1 October 2010, apprentices under the age of 19 or over the age of 19 but in the first year of their apprenticeship are entitled to £2.50 an hour (prior to 1 October 2011, workers who met this criteria were exempt from the NMW). This means that apprentices over the age of 19 must be paid the NMW rate applicable to their age band on completing the first year of their apprenticeship. Many employers did not realise this was the case and, as a consequence, ended up paying too little to older apprentices in the second and subsequent years of their apprenticeship.

#### *Cause of error*

Employers to which apprenticeships are relevant who participated in the research generally did not understand the rules as they apply to apprentices. It is worth noting that some employers may opt not to offer apprenticeships to older workers given that, for example, an apprentice aged 21 or more moving from the first to the second year of their apprenticeship will see their wages more than double from £2.50 per hour to £5.93<sup>26</sup>. This represents a significant increase for the employer, especially in industries that operate low profit margins.

---

<sup>25</sup> The rate for 18 to 20 year olds was £4.92 per hour at the time of interview. For 16 to 17 year olds, it was £3.64 per hour:  
<http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1073858787&r.l2=1084822773&r.l3=1081657912&r.s=tl&topicId=1081658503>

<sup>26</sup> Figures quoted are the current NMW rates at the time of interview.

#### **2.4.4 The role of record keeping**

One issue that links these errors is record-keeping. Employers are required to keep NMW records by law but there is no requirement for these records to follow a particular format or for detailed records that directly match hours worked to amount paid to be kept<sup>27</sup>. Some employers clearly face difficulties keeping the right records. NMW officers find this frustrating as piecing together information from miscellaneous records can be time consuming and difficult, particularly where the records in question are incomplete. NMW officers felt that it would be helpful if employers were required by law to keep detailed time records because the legislation requires employers to pay their workers at least the NMW for each hour that they work. HMRC's own guidance states that the minimum records that have to be kept by an employer on are the worker's personal details, how much they are paid, any deductions made and records of expenses and benefits; there is no stipulation that time records have to be kept<sup>28</sup>. NMW officers considered that it would be helpful if the legislation was more specific as they could then issue a notice or warning for keeping payroll and timesheet records up-to-date which would make it easier to ensure that employers remained compliant following HMRC's intervention.

#### **2.5 Employers' awareness of official Government information about the National Minimum Wage**

Overall, awareness of official Government information sources excluding Business Link was very low. However, this does not mean the sources discussed below are not used. For example, none of the employers taking part in this research, compliant or otherwise, said they had used Business Link's NMW calculator or taken part in NMW outreach events which HMRC have run. Yet management information will exist to show these tools are used by employers. In addition, this study found that general awareness of Business Link as a potential (as opposed to used) source of information was good, which indicates that signposting to relevant information was the core problem for employers.

In the course of the interview, interviewees were asked about a range of different information sources and provided with stimulus material on current and past communication materials (see below). A couple of interviewees mentioned they recognised the HMRC Employer Bulletin and one recognised the employer's guide to Government enforced employment rights. All employers that were interviewed were unaware of the Pay and Work Rights helpline, which is a confidential helpline for workers and employers that provides help and advice on Government-enforced employment rights<sup>29</sup>. In the case of unintentionally non-

---

<sup>27</sup> This is deliberately silent on what records need to be kept as what amounts to adequate NMW records will vary from one business to another.

<sup>28</sup> As described in HMRC's guidance called "Thinking of Employing Someone?": <http://www.hmrc.gov.uk/employers/employing-someone.pdf>

<sup>29</sup> [http://www.direct.gov.uk/en/DI1/Directories/DG\\_177940](http://www.direct.gov.uk/en/DI1/Directories/DG_177940)

compliant employers, all were unaware they were doing anything wrong, as highlighted in the preceding discussion on sources of error. Hence this group were unlikely to call the helpline without a communication message designed specifically to alert employers that they may be in error without knowing.

It should be noted that in May 2010 the Chancellor of the Exchequer set out new plans to reduce Government expenditure and achieve net savings. As part of this plan the Government implemented a 'freeze' on all new Government advertising and marketing spend. As a result, the paid communication budgets for elements of NMW and the Pay and Work Rights Helpline communications and marketing activity have been significantly reduced. However, it should be noted that HMRC data<sup>30</sup> shows usage of the Pay and Work Rights Helpline has increased from 11% in February 2010 to 16% in May 2011. Consequently BIS are largely reliant on free or low cost communications.



These findings are interesting because employers placed great value in Government information because it was viewed as being a trustworthy source.

"I'd expect to see messages from the Government. I'd definitely trust the Government, that's what they're there to do. They're always going to be right ... I'd prefer to go to somewhere official rather than a general agency. It would need to be a reliable source."

Hospitality, Wales, inspected, non-compliant

The few employers that used Government information sources cited web sources such as the HMRC site, Business Link and direct.gov. When discussing the

---

<sup>30</sup> Management information figures from the Directgov and Business Link websites.

positive aspects of HMRC's website, employers typically stated that it was clear to navigate and easy to use, but did not make reference to specific content.

As context, figures showing the number of visits to the NMW sub theme section of the Business Link and direct.gov website show that direct.gov is visited more often than Business Link for NMW queries. Directgov received 1,591,830 visits compared to the 98,428 visits to the Business Link NMW pages in the period April 2009-March 2010. More recent figures were not available at the time of writing.

Information from Government was felt to be authoritative and, above all, correct. And as discussed next, many of the interactive tools developed by Government (such as the NMW calculator) are designed for the way employers like to access information.

## **2.6 How and where employers access information regarding the NMW**

One of the key requirements for employers with regards to information is the ability to find what they want quickly. In the stimulus material tested, interviewees tended to flick through the pages during an interview, looking at headings and trying to find detail that was relevant to them. Employers said it would be helpful if they could easily locate information which is relevant to them which necessitates clear signposting to ensure they do not miss anything that could affect their business.

This lack of time to keep up-to-date with guidance was a key reason why employers said they were unfamiliar with NMW legislation. Employers generally admitted that they spent little time reading through the guidance produced by Government but instead referred to various sources of help and advice as and when they needed it. This point underlines the value employers place in good signposting. The issue employers raised was finding relevant information in Government communications which answered a specific question they had at a given time. When employers used Government advice, they tended to have a favoured source that they would keep going back to, of which Business Link or direct.gov were often cited, although these sources were often conflated for employers, being seen in general as 'Government sites'. This indicates that guidance needs to be short and easily readable, with clear signposting as to which sections may be relevant for particular employers. It also suggests that employers get familiar with specific sources of information, learning the signposting of a given source which makes it easy for them to navigate.

However, as discussed in a previous report for the LPC<sup>31</sup>, the lack of specific information is often cited as a reason for failure to comply with the National Minimum Wage, even in some cases where the worker had raised the issue with their employer and thus prompted them to increase their awareness. This

---

<sup>31</sup> LPC (2004), Enforcing The Minimum Wage: The Experience of Workers and Employers <http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ3.pdf>, p23



research also mirrors the findings of the LPC as several respondents were keen to receive sector specific communications highlighting the impact on their own industry.

Employers also cited communications from trade bodies, which were used because they used the language of the sector they represented. They were targeted towards the issues relevant to the employer. When asked to compare the strengths of these different sources of information, employers struggled as they tended to stick with the source that they were familiar and comfortable with.

When asked what the most useful information to receive would be, most employers mentioned that earlier communications on changing payment rates for NMW would be well received. The hourly rate was an aspect of NMW that employers were on the whole well-versed in, with most being able to quote the 21 and over rate of £5.93 per hour (at the time of interview) if not those for the younger age groups. There was also high awareness of the rate change period, with nearly all employers, even those who paid above the NMW rate, knowing that the last increase was in October. However, they felt they did not always get this information early enough (as discussed with the business planning cycle in section 2.2.2).

Although payment rates do not emerge as a common source of non-compliance error amongst the employers taking part in this research, it was a common source of error identified by NMW officers. Employer error was more likely to emerge from the elements of the legislation about which they were unaware, e.g. the rules on deductions and accommodation. There was an assumption among many employers that the rate was all they need to know about NMW, and that there was no depth to the legislation further to that.

Many SMEs did not have a dedicated HR or payroll function. Furthermore, new or small employers were generally lacking in experience on the administrative side of the business and thus found it hard to catch up on legislation from a standing start. A HMRC 'starter guide'<sup>32</sup> was suggested for those employers thinking of taking on workers for the first time.

Interviewees whose role was not solely administrative such as managing directors or individuals responsible for a range of senior functions, had significantly less time to spend on NMW administration. Administrative burden was often seen as something which distracted from the main purpose of the business or the focus of their particular job role. This therefore impacted on their willingness to spend time keeping up-to-date with legislation, much of which they do not see as being directly relevant to them.

---

<sup>32</sup> Whilst it is acknowledged that this information is available, employers themselves were either not aware or not accessing this information. As discussed, proactively seeking information tends to be something done in response to a specific question, rather than in order to gain a grounding in the legislation. HMRC do provide some general guidance to employers:  
<http://www.hmrc.gov.uk/employers/employing-someone.pdf>



## 2.7 The effectiveness of communication channels on compliance

What is clear from the findings presented above is that the tools exist to help employers, but those taking part in this research are either not aware of these tools or are not using them for other reasons. The evidence suggests there are several reasons for this. The primary one is that many employers do not realise they are non-compliant until they are inspected. As a consequence, this group are unlikely to proactively look for information to solve an issue that they do not know exists. In these cases, the evidence suggests communications that describe common "hidden" errors might be an effective way to encourage employers to challenge the assumption they follow NMW legislation correctly.

Another reason why communications may not be as effective as they could be is potential misinformation or poor signposting from less trustworthy sources. The value placed on the use of Government websites by employers is that the data could be trusted, which was not the case for other websites. Employers would resort to measures such as Google if they were not aware of official channels of information, which appeared to be the default option for searching for information. For these employers, the quality of the information derived from non-information channels was variable because the sites found would depend on the search terms used in Google and the subsequent websites providing information. Barrett (2011) suggested that a "one-stop shop" for information and guidance on employment issues would be of use to employers<sup>33</sup>.

One interviewee from a nursery said that they had asked a learning provider about the apprenticeship rate and had been given the wrong information. This led them to be non-compliant and to wonder whether learning providers should be contacted to ensure they give out the right information on apprenticeships.

Employers also felt that targeted communications were very important, and valued communications with trade bodies. Most employers also mentioned relying on trade bodies or agents for any updates to legislation, and seeking out information from Government websites when wanting to query a particular issue. As trade bodies presented information directly related to an industrial sector, or a job role (e.g. HR bodies such as CIPD) employers felt it was particularly relevant to them. Further targeted messages about common sector compliance errors<sup>34</sup> delivered through trade bodies may therefore be an effective way of raising awareness of aspects of the legislation. There are, however, clear difficulties that BIS and HMRC face in ensuring that guidance/information is correct and up-to-date where this provided via a third party and where BIS/HMRC have no control over the messages that are put out.

---

<sup>33</sup> Barrett, C (2011) Insured Advice Pilots: Evaluation. BIS, July 2011. <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/I/11-1080-insured-advice-pilots-evaluation>

<sup>34</sup> Such as those produced by BIS in the past through consultation with trade bodies on tips and service charges, nurseries, hairdressers, hotel and leisure and the television and film sector.

Errors reported by employers in relation to changes in the NMW rate were typically small and, in the main, manageable for a business. Detail on possible error due to deductions is of more potential value to an employer because if they are getting that wrong, the consequences are more severe.

## **2.8 The impact of communication activities on compliance**

Many employers felt the best time for making an impact with information was when starting up a business, or when taking on workers for the first time. A 'starter pack' that presented the information you need to know about being an employer was suggested, either on receipt of a certificate of incorporation or on application should you be new to the role of employer, perhaps when registering for PAYE for the first time. It was felt that, at this time, employers would be open to receiving new information which would ensure they implemented processes correctly from the start rather than being in a position of having to adapt or change long-standing practices which they erroneously believe to be working.

## **2.9 Effective messages to encourage compliance**

The following messages were tested with employers as part of the interview. Employers were asked which of the following would be the most effective in encouraging compliance, and which would be the least effective:

- Legal arguments to encourage compliance;
- Messages that express the negative consequences to workers of not complying;
- Naming employers who have been found to be deliberately paying below the national minimum wage ( a new part of the enforcement regime for 2011);
- A message that employers will have to pay a big penalty if they don't comply;
- Ethical and moral arguments that encourage compliance;
- Messages that express how compliance benefits employers;
- Media articles that portray compliant employers in a positive light; and,
- A message that employers are very likely to get caught if they don't comply.

Most interviewees said that the efficacy of messages depended largely on the employer receiving them. Broadly speaking a need was identified to design communication messages separately for those employers who are non-compliant through error and those who are intentionally non-compliant. Both compliant and non-compliant interviewees felt that messages highlighting the legal implications of non-compliance and naming employers were effective for the intentionally non-compliant. However, they did not think these messages applied to them as they were insistent that they did not intend to deliberately contravene the legislation. Interviewees thought that those who are non-compliant intentionally need to be

targeted with messages emphasising the severity of the offence and the likelihood of being caught. They felt that those in error needed messages raising awareness of commonly made errors. The need to separately target those intentionally and non-intentionally non-compliant with NMW policy is also suggested in previous BIS research evaluating pilot schemes for vulnerable workers<sup>35</sup>.

Due to this, there was no overall consensus on which messages would be the most effective, although the reasons given for selecting effective and non-effective messages were often similar, suggesting that the compliance messages needed to think about the individual audiences they are designed to target. Similar findings in relation to tailored communications for different audiences were found in other BIS research (Barrett, 2011)<sup>36</sup>. This means messages of punitive action for the deliberately non-compliant and advisory messages for the unintentional/unaware groups.

Interviewees also said that communications would be better targeted at employers rather than workers. Their rationale was that HMRC collects data from employers and so is better placed to distribute information to employers rather than to workers. It was also considered that communications to workers could be misleading as they felt that workers weren't in a position to understand some of the complexities and detail. Interviewees said that the legislation can be complex, and not just based on the hourly rate of the worker, and thought that there is no obligation on the worker to understand the full remit of the legislation. It was felt that communications aimed at workers could, therefore, lead to an increase in workers erroneously reporting underpayments which, in turn, could lead to the inspection process being less efficient.

Targeting the worker was also felt to be curative, rather than trying to prevent the underpayment in the first place. It was seen to be the role of HMRC and BIS to encourage compliance by targeting businesses with effective messaging prior to non-compliance occurring.

## 2.10 Chapter Summary

### ***Attitudes and behaviours towards the principles of the National Minimum Wage***

Nearly all employers taking part in this research, regardless of whether they had been inspected or not, agreed with the broad principle of the NMW. The legislation was perceived to promote fairness for workers and helped set a benchmark from which to establish pay levels for all workers.

---

<sup>35</sup> BIS (2010), Evaluation of the Vulnerable Worker Pilots: Year 2 report, <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-775-evaluation-vulnerable-workers>, p51

<sup>36</sup> Barrett, C (2011) Insured Advice Pilots: Evaluation. BIS, July 2011. <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/11-1080-insured-advice-pilots-evaluation>

However, several employers did highlight that the above-inflation increase in NMW levels over the past 10 years had introduced some financial pressures on their businesses. This included an upward pressure on the wage bill overall as skilled workers wanted differentiation between their salary and that of workers earning NMW.

All of the non-compliant employers taking part in this research said their non-compliance was a result of error rather than being deliberate and in most cases, errors were made because of a misunderstanding in a specific detail of the legislation.

### ***Assessing and tolerating risk***

The key component to risk for the non-compliant employers was their lack of awareness of specific elements of NMW legislation. In most cases, employers could not assess or identify risk because they thought they were compliant: it was only through the inspection process that they became aware they were not following the rules correctly. Employers who had not had an inspection were equally unaware of the specifics of the legislation and some were not aware that an inspection to check for compliance with the NMW could be performed by HMRC.

Several employers who were found to be non-compliant reacted to the inspection in ways which were not necessarily to the advantage of the employers or their workers. They did this in order to minimise the risk of future non-compliance. Examples included a reduction in flexible working hours to make it easier to monitor workers' time at work and stopping staff going on business trips because they had to be paid for their time outside of work. Furthermore, timesheets were also introduced by several employers as a way to improve their monitoring of NMW pay and to provide a paper trail for any future inspection.

In order to minimise the risk of future non-compliance, a few employers also said they paid slightly over the NMW in order to cover them for any minor mistakes they may make. A number of other employers (compliant and non-compliant) also said they paid a little higher than NMW for altruistic reasons or to help with their local reputation. The findings suggest that some employers are happy to pay a little over the minimum as a result of low confidence in their administrative skills or to help manage worker relations.

The business planning cycle also represented a potential risk for some employers. Some said they needed communication on the October rate change earlier in the year in order to plan for price setting. As wage costs can represent a significant proportion of the overhead for low wage businesses, any large increase in the NMW could represent a business risk to those employers. Through analysis, the issue here is actually one of communication. Employers are notified of changes to NMW rates in April, so the issue is more about whether businesses hear about the change rather than its actual timing.

## ***Behaviour against HMRC typologies of businesses***

As noted above, the employers taking part in this research are a subset of the total non-compliant population. Applying an earlier model on tax compliance by HMRC<sup>37</sup>, the types of non-compliant businesses that took part in this study would appear to be those which were “unaware” that they were non-compliant, or were “willing, but needed help” to be compliant.

This is not to say that other segments do not exist, especially for intentionally non-compliant employers who are unlikely to take part in research. It is likely other attitudinal and behavioural descriptions of non-compliant employers exist.

The errors of the “unaware” and “willing but need help” segments were due to specific problems relating to: a) the method of paying workers; b) problems arising from making deductions and payments; and c) changes in eligibility for the NMW, e.g. the rules relating to apprentices.

a) Employers can face difficulties calculating hourly pay for workers who are not paid on a by-the-hour basis, but instead receive a salary or payment for a specific product or service. For employers, the key issue for them was having no record of the actual hours worked by a worker so they did not know whether or not the worker had been paid the right amount. It should be noted that one of the themes running through the advice offered to inspected employers by HMRC is to keep time sheets where workers are being paid at or close to NMW rates.

b) In these cases, employers did not know how to apply rules for deductions from pay for items such as uniforms, materials, expenses or accommodation. They made an error by wrongly deducting from the worker’s wage.

c) Birthdays also caught out some employers, even those that were aware that NMW rates are dictated by the age of the worker, with individuals qualifying for the main rate at age 21 where they are not an apprentice and where no exemption applies. The issue tended to be administrative, whereby the employer failed to connect a worker’s birthday with an increase in the amount they should be paid. The rules for apprentices were also a cause of error, especially in cases of older apprentices (21 or older) where the applicable NMW rate increases significantly after their first year of their apprenticeship.

## ***Awareness of official Government information about the NMW***

The key Government information sources cited by employers across all sub-groups (including those who were not-inspected) were websites, notably Business Link, the HMRC website and directgov. During the interview, stimulus

---

<sup>37</sup> HMRC’s Usage and Attitudes Quantitative Segmentation of SMEs (Internal)

materials for other information sources were used<sup>38</sup> which nearly all employers did not recognise. Similarly, employers were unaware of the Pay and Work Rights Helpline.

However, Government information was important to employers because it was perceived as trustworthy and authoritative. The key issue with using Government information was not its inherent value, but that it was not always accessible. The consensus of opinion was that the signposting of information from Government channels could be improved to better highlight to the user the specific issue of interest to them. Employers tended to use an information source that they knew, for example, trade press publications or their accountant in order to obtain information about employment rights. There was some evidence to suggest that familiarity was an important factor in selecting an information source.

### ***How employers access information regarding the NMW***

Across the board, employers wanted to be able to reach specific information quickly, which is why many cited communications from trade bodies. Trade body messages ticked several boxes for employers regardless of whether or not they had been inspected; it was specific to their sector, highlighted issues common to the employer and used language that was relevant to employers operating in the sector.

Many of the SMEs interviewed did not have a dedicated HR or payroll function and some lacked administrative skills. Several therefore devolved responsibility for the legislative aspects of compliance to agents or accountants. They therefore expected the agents to make them aware of information that might be important to the running of their business.

### ***Effectiveness and impact of communication channels on compliance***

Many non-compliant employers were unaware they had a problem until the inspection. Prior to the visit, unaware employers were unlikely to react to messages directed specifically at the non-compliant because they would not class themselves as such.

Whilst Government information was perceived as trustworthy, some employers would seek information on specific aspects of NMW legislation from formal or informal networks which they trusted. Nevertheless, if this information turned out to be false, it led the employer to incorrectly administer NMW in their business.

Given the value some employers placed in trade or occupational body communications, these would appear to be good vehicles for alerting employers to common misconceptions or errors in NMW administration within sectors. However, the researchers note that it would be difficult and undesirable for Government to 'police' all of the different sources of information to check for

---

<sup>38</sup> HMRC's "Employer Bulletin" and HM Government's "An employer's guide to government enforced employment rights".

accuracy and completeness. This represents a challenge for BIS. In the case of the apprentice rate of the NMW, a couple of employers relied on information from training providers which proved to be incorrect. This means that information used by BIS to inform trade and occupational bodies should be clear enough for the message to be passed on without ambiguity.

A number of employers felt either the business start up period or the time when workers were recruited into an expanding business were the best times to alert employers of NMW rules. A starter pack was mooted to be sent on receipt of a certificate of incorporation, or when registering PAYE for the first time. Based on earlier comments, this pack would need to be carefully signposted and made relevant to the industrial sector concerned. It should be noted that HMRC already provide employers with information on a range of tax matters and sign post employers to information on the NMW when businesses first register for tax. It would, therefore, appear that work may need to encourage employers to focus on the links to information on the NMW, particularly those aspects which are the most relevant to their business or trade sector.

#### *Effective messages to encourage compliance*

A number of different messages designed to encourage compliance were tested on all the employers taking part in the study. Most employers, whether inspected or not, felt the effectiveness of the message depended on the audience. Messages that highlighted the sanctions of non-compliance were not thought to be effective for those who were unaware they were making errors because those employers would not think the message was relevant to them.

Several compliant employers felt that messages should not be targeted at workers. They felt that workers would struggle with some of the complexities and that employers should be better able to understand compliance messages. This is at odds with the findings from non-compliant employers who typically did not understand the complexities.

# 3. Awareness and attitudes towards the NMW enforcement regime

Following on from the discussion on communication activities, this section addresses the second overall objective: to assess awareness and attitudes towards a new NMW enforcement regime; in particular the automatic penalty and the requirement to repay arrears of the NMW based on current rates. We first consider the awareness of both inspected and non-inspected employers of the enforcement regime. We then discuss what both employers and NMW officers see to be fair and effective enforcement measures.

From 6 April 2009, employers who fail to pay the NMW are required to pay arrears of wages to their workers based on current rates<sup>39</sup> and a financial penalty to the Secretary of State. The financial penalty is 0.5 x the amount of arrears owed to the worker at the date HMRC start their investigation. The minimum penalty is £100 and the maximum penalty is £5,000. So, for example, if the arrears were £4,000 the penalty would be £2,000. If the arrears were £25,000, the penalty would be £5,000. Employers receive a 50% discount if they pay the outstanding arrears to their workers/former workers and the penalty within 14 days of receipt of HMRC's Notice of Underpayment<sup>40</sup>. Employers who pay promptly would therefore be required to repay a minimum penalty of £50 and a maximum penalty of £2,500. Using the above examples the employers would be required to repay £1,000 and £2,500 respectively.

---

<sup>39</sup> Where these are higher than the rate that applied at the time of the underpayment. NMW rate have increased year on year since the NMW was introduced but if the current rate was ever lower than the rate that applied at the time of underpayment, the arrears would have to be repaid at 'historic rates'.

<sup>40</sup> This is a formal notice requiring the employer to repay arrears to the worker and the financial penalty to the Secretary of State. It sets out various information required by statute, including details of how the arrears and penalty are calculated.



## 3.1 New policy measures as a deterrence to non-compliance

### 3.1.1 Awareness of enforcement activity

Awareness of enforcement regime was generally quite low and, unlike in relation to VAT or PAYE, only the employers in the 'inspected group' realised NMW compliance inspections took place. This echoes findings from the LPC's previous work: *Enforcing the Minimum Wage*<sup>41</sup> where 38 out of 43 participants said they had not expected to be visited by an inspector<sup>42</sup>. Even those who had experienced a NMW inspection expressed surprise that compliance checks occurred. This could simply be because NMW does not yet have the same length of policy history as VAT or PAYE, and awareness of inspections has not yet reached that critical mass, with enough businesses having been inspected to raise general awareness of the possibility of one happening.

This lack of awareness was seen to be a problem in how effectively HMRC is able to enforce the policy. There was a feeling, particularly amongst those who had not experienced an inspection that employers perceived that the risk of getting caught was low and that some employers may therefore be tempted to underpay their workers and take this risk.

"I think there are a lot of people who get away without paying the National Minimum Wage because it's not policed enough, and I think that's the key thing. It should be very clear that you will not get away with it if you try and pay people less than that."

Other services, South East, Not inspected

Although awareness of enforcement activity was low, employers correctly identified that worker complaints were a key trigger for an inspection. NMW officers who were interviewed (7 in total) all said complaints were treated as a priority over risk assessed visits<sup>43</sup>, or special projects in which particular sectors or types of employer were targeted. Whilst this could lead to positive inspection results, i.e. having a worker on board and being able to pinpoint company practices, concerns were raised by officers as to whether this ignored the most vulnerable workers; those who do not feel able to make a complaint. It should be noted that that whilst complaints currently take priority over risk assessed cases, the profile of NMW inspections is changing with greater emphasis being placed on cases which are generated through HMRC's risk assessment process. This process does not rely on workers/former workers coming forward and makes use of a variety of information sources to identify the employers who are the most 'at

---

<sup>41</sup> LPC (2004), *Enforcing The Minimum Wage: The Experience of Workers and Employers* <http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ3.pdf>, p23

<sup>42</sup> *Ibid.* p.25

<sup>43</sup> The split between complaint v. risk assessed/intelligence generated cases is approximately 60:40 in favour of complaints, although this is changing with HMRC implementing new ways of working and putting more emphasis on proactive (intelligence based) enforcement.

risk' of underpaying their workers and the workers who are the most 'at risk' of being underpaid.

As may be expected from the level of awareness of compliance inspections, particularly amongst employers who have not been subject to a NMW inspection, detailed awareness of the automatic penalty for non-compliance was also low. Most employers were aware, or assumed, that any penalty imposed would involve some sort of fine, but even among those who had been inspected the details of how this would be calculated were unclear to many. A few employers whose arrears were small understood that the penalty they received was the minimum (£100 or £50 if paid within 14 days). Awareness that penalty halved on early payment was also high for those who were found to be non-compliant.

"Well you can get fined. I can't quote you the figures but I know it's a percentage of what has been underpaid ... if you pay within a certain time, you only pay half the fine."

Retail and personal services, Other region, Non-compliant

The general lack of awareness is unsurprising given that, whilst the enforcement regime was publicised in the period leading up to its introduction in April 2009, recent communications with employers have focussed on changes to the NMW regime, eg changes in NMW rates and the new rate for apprentices that came in on 1 October 2010.

Beyond the penalty most employers were unsure as to what further actions could be taken by HMRC, with almost no awareness of the civil and criminal enforcement actions that are available. Again, the fact that nearly all of the non-compliant employers had not reached this point of the intervention process helps explain their lack of awareness. There was a general acceptance, however, that there would be further measures that could be taken for repeat offenders, or for those who did not pay their fine. Beyond the initial fine, most employers were content to remain ignorant of possible enforcement actions, as the employers interviewed for this research were either compliant, or perceived themselves to be accidentally non-compliant. Consequently, they did not associate themselves with the enforcement regime and did not think it was relevant to them prior to HMRC's inspection.

### **3.2 Differences in views between compliant and non-compliant employers**

Before moving on to discuss the difference between the views of compliant and non-compliant employers it should be noted that the distinction is based on whether an employer owed arrears to their workers/former workers at the date of HMRC's inspection. The fact that an employer was 'compliant' on this occasion does not mean that they are always compliant with NMW law, they may simply have 'self corrected' prior to HMRC's involvement. Similarly, whilst employers in the 'non-compliant' category owed arrears of the NMW to their workers/former workers on inspection, they have been compliant (or believed themselves to be compliant) prior to inspection. The research also sought views from employers

who had not been through HMRC's inspection process. As the employers had not been inspected by HMRC, it was not possible to gauge whether these employers were compliant. This and the final point made in the previous paragraph may explain why there was no major difference found in awareness of most elements of the new enforcement regime between compliant and non-compliant employers.

Overall, nearly all of employers in the non-compliant sample who were interviewed felt their non-compliance was minor (although workers and HMRC may have had a different view). And in nearly all cases, employers also felt the error had also been rectified and a resolution to their case had been achieved. This is likely to be the case as HMRC data shows the vast majority of employers who are found to be non-compliant on inspection, comply with the Notice of Underpayment issued by HMRC and rectify the breach. Around 40% of employers do this within 14 days to take advantage of the discount on the financial penalty. This means that the vast majority of employers who are investigated by HMRC are not subject to civil recovery proceedings for the arrears owed to their workers/former workers. Also BIS and HMRC operate a policy selective and exemplary criminal investigations to bolster their overall enforcement strategy. "Selective" means that HMRC will investigate only the most serious cases; "exemplary" means that HMRC will investigate cases across the whole range of available offences and in a range of trade sectors. The intended effect is to encourage and improve voluntary compliance with the provisions of NMW legislation across the business community as a whole.

Criminal sanctions are therefore reserved for the most serious cases where an employer is a) suspected of committing a criminal offence in connection with the NMW and b) meets the published criteria for the selection of cases for prosecution<sup>44</sup>.

Given that the employers interviewed for this research considered themselves to be inadvertently non-compliant it is hardly surprising that they do not relate to the

---

<sup>44</sup> See BIS' policy statement on Enforcement, Prosecution and Naming. The National Minimum Wage Act 1998 makes provision for criminal proceedings to be brought for offences under section 31 of that Act. The offences cover a range of possible non-compliant behaviour, summarised below:

- Employer refuses or wilfully neglects to pay NMW
- Person fails to keep or preserve NMW records
- Person knowingly causes or allows false entry in NMW records
- Person produces or furnishes false NMW records or information
- Person delays or obstructs NMW compliance officer
- Person refuses or neglects to answer any questions, furnish information or produce documents when required to do so

criminal sanctions that are available or that most had no experiences of the more severe enforcement activity.

The lack of awareness of enforcement activity related to a lack of understanding about the legislation as a whole. Most employers stated that they found the NMW easy to implement, they had viewed it as just a case of making sure that workers were paid at a rate of at least £5.93 per hour (the current over 21 NMW rate at the time of interview) or the appropriate rate for those under 21. There was limited familiarity with the more complex parts of the legislation, particularly those involving apprenticeships and deductions. The errors caused by these parts of the legislation, and the perceived 'grey areas' surrounding these aspects of the legislation were discussed in detail in Section 2.4 of this report.

Some employers, even many of those who had been found to be non-compliant through error, acknowledged that ignorance was no defence in terms of penalties for underpaying NMW. However there were many who felt that they had interpreted the legislation to the best of their ability and could not understand why what they were doing was not considered compliant.

Employers, particularly those SMEs who had a background in a trade or profession rather than in management or HR, tended to review NMW legislation and guidance as and when they thought they needed to. Because employers who participated in this research assumed that they were compliant and because of the generally low awareness of the detailed rules that may apply to them, employers would, therefore, not necessarily consider NMW legislation when making changes to working practices. This is particularly the case for deductions from wages for expenses incurred by a worker in connection with the employment i.e. uniforms or equipment where employers assumed they could make deductions rather than check to see if they could. These errors illustrate the importance of educating employers about parts of legislation of which they are unaware.

### **3.3 Views on penalties and arrears**

#### **3.3.1 Employers' views on arrears and penalties**

Overall, the rules on paying arrears quickly<sup>45</sup> were accepted as fair by all the employers who participated in this study, including those who had not been inspected. Many described themselves as being mortified at having been found to have underpaid, and were keen to repay the arrears to workers at the earliest possible opportunity in order to maintain good worker relations.

---

<sup>45</sup> Employers are required to repay arrears of the NMW based on current rates where these are higher than the rate that applied at the time of underpayment. HMRC can take civil enforcement proceedings to recover arrears of wages on behalf of workers, but such proceedings apply to a relatively small number of employers as the vast majority of employers repay arrears of the NMW within the time period specified in the Notice of Underpayment issued by HMRC.

"They've been underpaid a certain amount for a certain length of time and then when it went up they should just pay back what is owed to [the worker] for the period of time at the old rate."

Retail, North West, Non-compliant

There was less of a consensus as to whether arrears should be paid based on the current rate of NMW (as required by law) or at the rate in force at the time that the underpayment occurred. Some employers were quite angry about this aspect of the legislation, feeling that the worker should not 'profit' from the repayment of arrears. This group of employers were unaware or unsympathetic to the suggestion that workers who are owed arrears of the NMW should be compensated for having to wait for those arrears.

However there were equally a group of employers who were happy to pay arrears based on the current rate, feeling that it was the worker who had lost out up until the point of repayment. Employers were not on the whole well-versed in this aspect of the legislation: even those employers who have recently been required to repay arrears of the NMW were not all aware of this requirement<sup>46</sup>. The reduction in half the size of the penalty for paying arrears and the penalty within a fortnight of receiving the Notice of Underpayment was also generally considered fair, as employers and NMW officers felt that making sure the affected workers were reimbursed was the most crucial outcome from the process.

Although the penalty reduction goes some way to being able to ensure prompt repayment of arrears, NMW officers felt that it would be helpful to have other inducements for prompt settlement. The issue is that once the 14 day period has elapsed there is no incentive to repay workers quickly (unless a rate rise is imminent) and a small number of employers take advantage of this by delaying repayment until the last possible minute (i.e. until they are threatened with civil recovery proceedings) or even lodge erroneous appeals to buy more time for payment (occasionally settling on the day that the appeal is due to be heard by the Employment Tribunal). It was felt that an incrementally rising penalty the longer repayment takes for employers would allow NMW officers to exert more influence in encouraging employers to pay back workers as promptly as they can.

### **3.3.2 What is a fair penalty?**

There was an assumption among employers that non-compliance would result in a fine, and this was deemed to be fair and indeed necessary by most in order to act as a deterrent to those thinking about deliberately avoiding paying the NMW. Furthermore, the reduction in the penalty for those who paid the arrears and penalty within two weeks of receiving their Notice of Underpayment was felt to be

---

<sup>46</sup> The requirement to repay arrears of the NMW only applies to cases where HMRC are involved and uncover arrears of the NMW. If an employer 'self-corrects' prior to HMRC starting an investigation they may repay the arrears at historic rates if they chose to do so.

a positive acknowledgement of an employer's willingness to co-operate with the system.

However, this was by no means the consensus. Indeed, there were some who disagreed with a penalty being in place at all. These employers suggested that, in cases of error, the penalty itself seemed excessive on top of repaying arrears of the NMW. These views were generally held by those who had been found to be non-compliant through what they considered to be 'a small error'. This led them to feel the penalty was excessive

There was also some concern as to what happened to the money collected as financial penalties. Some interviewees felt that a financial penalty was unjustified which led to some wondering if HMRC were 'picking the low hanging fruit' and generating income through employers who have made genuine mistakes rather than targeting those who are deliberately fraudulent in their wage payments<sup>47</sup>. The scheme to name employers who flout NMW law could go some way to reassuring employers that there is effective enforcement against those employers who are deliberately non-compliant.

The financial penalties, where does that money go to<sup>48</sup>, if it's not going to the claimant? I can understand that it's in place to try and prevent people from recurring, but actually where is it going to?

Social services, East Midlands/East of England, Compliant

The level of the financial penalty levied also received mixed reactions. Most of the non-compliant employers taking part in the research stated that they had received small penalties as they had made minimal underpayments (underpayments less than £100)<sup>49</sup>. Whilst it was felt to be fair that penalties should be proportionate to the level of arrears in question, some employers felt that making the penalty in proportion to the size of the company may be more effective still. To illustrate, smaller companies felt disproportionately punished for genuine errors whereas they felt that the penalty for larger companies would not even be a noticeable amount given their suspected greater profit margins which would mean such penalties could be more easily absorbed. In this case, basing the penalty on the annual turnover was considered by some employers to be more appropriate than on the amount of arrears outstanding at the date HMRC start their investigation. It is also important that employers understand that the penalty is levied on the business not the individual who was responsible for the error that caused the underpayment to occur. One business reported an attempt

---

<sup>47</sup> There is a similar basis for arguments against speed cameras from the political right. See Daily mail for an example: <http://www.dailymail.co.uk/debate/article-1345371/Speeding-fines-Speed-cameras-ARE-just-police-money-spinner.html>

<sup>48</sup> The penalty is payable to BIS who then pay it into the Government's Consolidated Fund

<sup>49</sup> HMRC data provided to Ipsos MORI for sampling showed 42% of cases had arrears under £500 and 15% were under £100

to make the person in charge of payroll pay for the penalty personally as the non-compliance had been due to a payroll error. The author notes, however, that whilst the legislation is not intended to punish individual workers, there is nothing to prevent an employer from entering into contracts with individuals which impose penalties for poor performance - which could cover mistakes such as NMW errors.

### **3.3.3 Knowledge of other enforcement activity**

Employers taking part in this research had very little knowledge of civil and criminal enforcement procedures because they felt they were irrelevant to them. This is perhaps unsurprising given that civil recovery proceedings are only taken where an employer fails to comply with a Notice of Underpayment and criminal sanctions are reserved for the most serious cases. Employers correctly thought that such action would, for example, be taken against those who were deliberately non-compliant on a large scale or for those who were recurrent offenders.

As may be expected due to its recent introduction, only a couple of interviewees had heard of the introduction of the scheme to name employers who flout NMW law. The scheme was launched in press notices issued by BIS in October 2010 and January 2011 as intended to raise the profile of NMW enforcement as well as provide a deterrent to employers who might otherwise be tempted to operate outside the law. However, many interviewees did express an opinion on the effectiveness of the new naming scheme. Some thought naming would be a more effective penalty for larger businesses, theorising that they would be more susceptible to damage to their name and reputation, both with consumers and as an employer. However, several smaller employers countered this view noting the potential damage to their reputation, especially where their market was local. Employers also noted a practical issue which would limit the effectiveness of naming for smaller employers: they are under the impression that it is more difficult to use local media to name employers compared to the national media because of the relatively high cost of communicating through numerous local media sources. The author notes that this is not necessarily the case as BIS intends to target local as well as national media channels owing to the local interest factor.

"I think the naming and shaming [would be effective]. You just wouldn't want it. It's not good for business, so it's not something you'd want."

Social services, East Midlands/East of England, Compliant

### **3.3.4 Tailoring sanctions to fit the situation**

Despite the overall recognition of the importance of levying a penalty on non-compliant businesses there were split opinions as to whether sanctions should be tailored at the discretion of the enforcement officer to fit particular situations. Those who were compliant, whether they had experienced an inspection or not, were more likely to feel that NMW was easy to administer and that there should be no excuse for those who were non-compliant. Those who had had to pay

penalties, however, were more likely to feel that any sanctions should be tailored to fit the circumstances.

As discussed above, there was little objection to paying back the arrears in any circumstances from the non-compliant. In cases where a genuine error was proven, it was felt that some degree of discretion should be made available to the NMW officer in terms of whether or not a financial penalty was levied on the employer. Some employers also felt that showing willing and co-operating during the course of the inspection should allow the officer discretion in terms of the penalty required.

"I think if someone's made a genuine error and they do something within 14 days to correct that error then it is a genuine error ... once they've done it once then if they don't learn from that then yes you do have to pay the fine."

Other services, London, not inspected

It was accepted, however, that policing the difference between genuine error and deliberate underpayment would be extremely difficult for NMW officers. Although some NMW officers felt that they would appreciate the ability to use their judgement more when calculating penalties, it is clear to all that this could leave decisions open to a greater level of challenge from the employer and potential inconsistencies between cases.

### ***3.3.5 What is an effective penalty?***

Penalties were felt to be effective to an extent. Those who were non-compliant through error felt that a penalty was a fair reminder that they had been operating outside of the law and that they acted as an incentive for them to ensure that this did not occur again in the future. This principle was even true in some cases where the penalty was considered by the employer to have had a disproportionate effect on the business.

Employers were asked about the effectiveness of the levels of the penalty imposed. Both non-compliant and compliant businesses felt that the maximum penalty of £5,000 would not necessarily act as an effective deterrent or sanction for larger businesses, or for those who stand to gain a significant saving on the wage bill by deliberate non-compliance.

"It's not very much, the maximum £5,000, for us £5,000 would be enormous, but if somebody's got 6,000 or 7,000 workers then it's not that much of a deterrent."

Other services, South East, Not inspected

For those who were non-compliant by error, the inspection process itself, perhaps along with a 'warning form' to make sure that any non-compliant processes are resolved was considered by some employers as effective as a deterrent against future non-compliance. Several employers said they were nervous about an inspection and would like to avoid them in the future.



Effective penalties, however, were only seen as one side of effectively enforcing compliance. Employers also mentioned that in order for a penalty to be a truly effective deterrent, non-compliant businesses had to believe that there was a strong possibility that they would be caught. Given the low awareness of compliance checks, and the perception that these usually take place as a result of worker complaints, employers did not feel that those who are deliberately non-compliant would feel at risk of facing a compliance visit. This was thought to be particularly true of those businesses that employed vulnerable workers such as migrants, who, it was believed, would be less likely to complain that they were not being paid the NMW because they would be in a vulnerable position without work. This was especially the case if their employer was from the same cultural background as the migrant because the cultural employment norms of their home country could be brought to the workplace. This meant that working practices from the home country which are illegal in the UK would be seen as normal by the migrant worker.

Those who worked in industries where industry-related spot check visits were commonplace (for example nurseries are spot-checked by Ofsted) felt such activity might improve compliance. In their experience, businesses in these sorts of sectors were more aware of the possibility of inspection and therefore more aware of the legislation to which they needed to comply.

HMRC carry out targeted enforcement, either alone or with other enforcement bodies, typically such campaigns have been carried out in lowing paying sectors where the risk of employers not paying the NMW is greater. A recent addition to HMRC's toolkit is their Dynamic Response Team which conducted a number of 'blitz' inspections in 2010/11. This involved teams of NMW officers visiting a number of employers in specific geographic locations. For example, in Leicester 20 businesses were visited in one day. All these visits were unannounced. This 'blitz' approach raised the profile of NMW enforcement to employers operating in the vicinity and the aim of the 'blitz' was to signal to employers operating in that sector or region that abuses of the NMW would not be tolerated. HMRC plan to expand on this work.

From information provided by interviewees it would appear that none of them have been 'targeted' in this way. Given that 'spot checks' are seen as an important factor in deterring employers who would otherwise be tempted to operate outside of the law, such campaigns should be publicised with a view to raising the profile of NMW enforcement.

"I think spot checks. If we think about Ofsted, they keep us on our toes. At the end of the day, we don't know when they're going to knock on our door."

Social services, Other, Non-compliant

### 3.4 Summary

Overall, employers were not aware that inspections to check compliance with NMW legislation could take place until they were informed of a planned visit.

Those who had been inspected were surprised that such visits occurred. This view was confirmed by some employers who had not been inspected who were also surprised by this intervention. Employers that had been inspected thought that the main trigger for an inspection was a complaint made by a worker, sometimes because this is what they had been told by a NMW officer, or because they suspected that an inspection had been triggered after a dispute with, in most cases, a former worker.

Awareness of the different enforcement actions that HMRC could take was also low. Employers that were found to be non-compliant tended to be more aware through experience, but even these individuals only had an awareness of the fines and penalties that were levied for their misdemeanours. Hardly any interviewees had faced the more severe enforcement options such as criminal proceedings and, as a result, no other employers knew about these enforcement options.

### ***Differences in the views of compliant and non-compliant employers***

The overall lack of awareness of enforcement measures explains why differences in the attitudes of the two groups of inspected employers was minimal. No major differences existed between them in relation to their views on NMW enforcement measures. The only minor difference was that non-compliant employers had knowledge of the financial penalties for non-compliance. This is unsurprising given that they would have been required to repay any arrears of the NMW to their workers and a penalty to the Secretary of State. The non-compliant group were able to describe the arrears due to a worker were paid based on the current rate of NMW, that the penalty was 50% of the total arrears and the penalty was halved if arrears were paid within 14 days. Compliant employers were either less sure or totally unaware of this detail.

The views of non-inspected employers typically matched those of compliant employers: awareness was low of enforcement measures. In addition, this group were also unaware of the inspection process as a whole.

### ***Views on the nature and effectiveness of penalties and arrears***

The employers who expressed views on penalties and arrears accepted that a mechanism was needed to ensure workers were not out of pocket. All non-compliant employers said that they were quick to repay arrears of wages to staff who still worked for them in order to maintain good relations. They were less concerned about a swift resolution in a dispute with a worker who had left their employment, especially if they left in acrimonious circumstances.

There was some disagreement as to whether arrears should be paid at the current rate in order to compensate workers who had had to wait for arrears of wages, especially for ex-workers. However, many felt that it was the worker who had lost out and that this aspect of the legislation was fair.

There was also a divergence of opinion in relation to the financial penalty that is payable to the Secretary of State. Whilst a number of employers felt that this 'fine' was necessary to act as a disincentive for those who seek to purposefully

break the law, others felt that it was unfair to financially penalise employers who had made genuine mistakes. And in the several cases of very small arrears being paid by employers (£100 or less), the penalty was felt to be excessive in relation to the arrears. It should be noted that the minimum penalty is £100, reduced to £50 for prompt settlement.

Some non-compliant employers suggested that the intervention process would benefit if NMW officers had discretionary powers to levy penalties when they felt they were justified, or to waive them in cases of genuine error. However, it was recognised that it may be difficult for NMW officers to make a judgement between deliberate evasion and genuine error.

In order for penalties to be effective, some scaling is required as per the current mechanism. However, several employers felt that the maximum penalty of £5,000 was not a disincentive for large employers, especially if they could make some significant savings or gain other cash flow advantages by not paying or delaying payment of the NMW.

NMW Officers felt that powers to require employers to keep prescribed records of hours worked by their workers would help them in their role. One of the key issues they faced when presenting a case for prosecution was ensuring that they have obtained sufficient documentary evidence of wrong-doing to go to court. Where employers had not kept comprehensive records of working hours NMW officers spend significant time investigating to form a view of whether NMW had been paid. Where an employer has not kept adequate records they can find it difficult to represent their view to NMW officers or tribunals. In turn, several employers said that a truly effective penalty is one that can be enforced; if employers think they can get away with something, they are more likely to break the rules.

Naming employers who flout NMW law and information on the most severe legal sanctions, for example prosecution, were thought to be good messages for those who were intentionally non-compliant as long as they were backed up with proven successful action against wilfully non-compliant employers. Overall, naming employers who flout NMW law was seen to be a good idea for targeting the deliberately non-compliant as it showed that NMW legislation was taken seriously by Government and could result in severe consequences. Arguments were presented by employers for using this in national campaigns for larger employers. Whilst naming may be effective at a local level, several employers questioned whether it would be practical for to communicate at this level i.e. through local press or community structures.

# 4. Employer attitudes to compliance visits and interventions

The final research objective was to assess employer attitudes to compliance visits and other forms of intervention undertaken by HMRC. A range of different activities were discussed with interviewees. Only employers who had been inspected were asked about the inspection process in detail.

## 4.1 Intentional versus unintentional compliance

As a way of introduction to describing the inspection process, it is important to consider the underlying themes of the research presented thus far. The effectiveness of HMRC and BIS activity were dependent on two things: what the activity was trying to achieve and the specific audience targeted. All interviewees in the non-compliant sample stated that they were unintentionally non-compliant. Whilst researchers did not take such statements at face value, the stories and responses provided by employers were largely consistent with this view. Their testimonies were rarely contradictory and stories did not change throughout the interview, even on the few occasions that interviewers suspected the interviewee was holding something back. In addition, inspected employers were able to articulate why they had been non-compliant. In cases where employers had interpreted the rules incorrectly, their explanation of why the error occurred was consistent throughout the interview, which suggests that the employers in the non-compliant sample did not deliberately evade the law. Of course, this does not mean employers were definitely telling the truth, but, with a couple of exceptions, interviewers did feel most workers were relating a version of events that the employer believed to be true.

Given that non-compliant employers asserted that they did not intend to break the law it is hardly surprising that interviewees thought that the purpose of any compliance action taken against employers who make inadvertent errors should be corrective rather than punitive: in particular a number of the employers who were interviewed thought that unintentional errors should not attract an automatic penalty<sup>50</sup>. For many, the value gained from the inspection process was to show

---

<sup>50</sup> The financial penalty levied by HMRC is based on the amount of arrears outstanding, not the conduct of the employer.

where errors had been made and how they could be avoided in the future so as to prevent the employer from being non-compliant in the future. However, interviewees felt that activity targeted at businesses which purposefully broke the rules should have a stronger punitive element.

"If I'm doing something wrong, I want to learn from it."

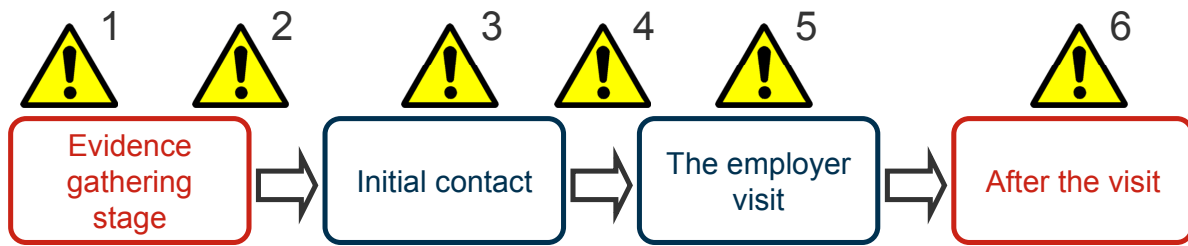
Social care, London, inspected, non-compliant

This distinction led interviewees to conclude that enforcement actions should be different for those found to be in error compared to those purposefully flouting the rules. In the case of unintentional non-compliance, an educative element to the enforcement activity was valuable. This allowed a business to change its practices to avoid such an error in the future. Conversely, it was thought that some of the stronger activity tested in the course of this research outlined in Chapter 3 (criminal action, naming and penalties) should be reserved for intentionally non-compliant employers. This partially agrees with BIS' published policy on enforcement, prosecution and naming which makes clear that employers will only be named if they meet published criteria which amount to 'flouting the law' and that prosecutions are reserved for the most serious cases. However, at present, penalties are applied automatically when a notice of underpayment is issued and do not take account of whether the non-compliance was deliberate.

Employers noted that in practice it might be difficult for HMRC to gauge whether an employer had made a genuine mistake, was negligent or was intentionally breaking the law. Several interviewees felt that repeated errors were a potential measure that HMRC could use to gauge deliberate non-compliance.

## **4.2 The inspection process**

In order to discuss interviewees' reactions to the inspection process, each stage of the activity has been considered in turn. Figure 3 (overleaf) outlines the inspection journey, as described by NMW officers. Within that journey, there are several places marked where difficulties can arise as identified by NMW officers and employers, which are explained in greater detail in this section. We conclude this section with our interpretation of the ideal journey as envisaged by interviewees.



1. Complaints from workers are the trigger for around 60% of the investigations. In cases where a worker has left their job, it was found that complaints could lead to some conflict between the (former) employer and the worker. No instances were found where conflict arose between employers and current workers.
2. Unintentional errors were typically made by the employer. Problems usually related to a lack of knowledge of legislation and/or poor administration.
3. Initial contacts made solely by letter meant employers received no guidance concerning the visit from officers. A phone call from the NMW officer ahead of the compliance visit could help with this, as well as providing an officer with an initial summary of the employer's side of the story. However, the need to maintain anonymity for workers that requested it could result in such communication raising more issues, such as how the employer was chosen for the inspection.
4. Continued communication before a visit also helped some employers feel more comfortable, especially in cases where the officer was able to reassure or outline the materials that would be required for the inspection.
5. Whilst the purpose of the visit is to check compliance, employers appreciated any guidance or suggestions NMW officers provided on how to administer the NMW. The visit provided a perfect opportunity to educate employers, especially those that were unaware they had made an error.
6. In many cases, employers felt that the follow-up after a visit was not helpful. Most of those that were non-compliant remember receiving the Notice of Underpayment, however this letter lacked any explanation as to *how* the error was made and merely listed the arrears and penalties due.

**Figure 3: Trigger points for difficulties within the inspection journey**

#### **4.2.1 Activity resulting in contact with HMRC by the worker**

In nearly all cases, interviewees believed that an inspection was instigated due to a query or complaint from a worker. Indeed, during the research NMW officers confirmed that the majority of investigations arise from workers contacting

HMRC<sup>51</sup>. In cases where the relationship with a worker had deteriorated, interviewees were expecting to be contacted at some point, usually because the worker in question typically said that was the action they would be taking. This reflects similar findings in previous research for the LPC<sup>52</sup>. This had an impact on the employers attitude to the inspection process; interviewees who disputed a worker's claim, or felt the claim was made out of spite tended to be those who were most critical of the inspection process as a whole.

The primary source of concern for interviewees who were critical of the process was that they felt that the enquiry was balanced in the worker's favour. Under NMW legislation, the onus is on the employer to demonstrate that there are no arrears of the NMW, not on the worker/former worker to show that there are. This problem was particularly acute in situations where critical interviewees said evidence to prove a worker's claim did not exist. Interviews with NMW officers highlighted that unless there was an obvious reason why it would not be appropriate to carry out an inspection visit, e.g. it was clear that the complainant had misunderstood the NMW rules and was not owed arrears of the NMW (described as a very rare occurrence), a visit would always be made to an employer as this was the method used to verify a claim and understand the employer's side of the story. HMRC are developing new methods of working, including replacing compliance visits with telephone enquiries and letters in suitable cases.

This causes an issue because the employer perceives that the onus of providing evidence is solely on them. Employers do not know that the enforcement officer and the clerical staff they work with have already undertaken a large amount of research prior to the visit and therefore have some contextual evidence and past employer data to work with.

Overall, the focus on the employer to provide evidence poses a problem for those that do not keep adequate payroll or timesheet records because the evidence does not exist to prove or disprove a claim against them. This is one of the key areas in which NMW officers try to educate employers. We discuss the issues around the balance of evidence later in section 4.6.

Several employers spontaneously talked about risk-assessment by HMRC as part of the inspection process as a replacement for, or addition to, complaints or queries made by workers. These employers (who were mostly found to be compliant or had made very small errors) felt that risk assessment was an important process to help HMRC to spend its time more effectively. They recognised that HMRC has finite resources and that visits must represent a large time outlay for the inspection team.

---

<sup>51</sup> Currently 60% of investigations undertaken by HMRC arise from a complaint made by a worker or former worker, with the remaining 40% arising from other sources of intelligence.

<sup>52</sup> LPC (2004), Enforcing The Minimum Wage: The Experience of Workers and Employers <http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ3.pdf>, p25-6

HMRC have moved towards a more risk based approach to their investigations and are employing new ways of working to enable NMW officers to target employers who are the most 'at risk' of not paying the NMW and workers who are the most 'at risk' of being underpaid. This approach is being introduced across HMRC's NMW team but some teams have little experience of the new process because they work in areas where there are large volumes of complaints from workers. This is likely to have prompted some of the NMW officers who were interviewed to say that whilst risk assessment does happen, it is used when few worker complaints are received in a given region. One officer said that during the last two years, he had not completed a single risk-assessed case because the volume of work from complaints was too high. Some enforcement officers considered that the enforcement officer workload represents a barrier to diversifying inspection methods whilst the need to follow-up every complaint remains. However, it should be noted that a significant proportion (40%) of all NMW investigations currently result from risk assessment. Given that some NMW officers deal solely with complaints this suggests that other NMW officers largely deal with risk assessed cases or have a more balanced portfolio of work.

#### **4.2.2 Announcing the visit**

Employers usually recalled receiving a letter and gave a range of differing reactions to it. Some shrugged off the letter, feeling they had nothing to worry about because they felt they were compliant with NMW legislation, which did not always prove to be the case.

"We had a letter to say we're coming to inspect your employment records. There was very little information in there. It didn't say they'd had a phone call from anyone or anything."

Hospitality, Wales, inspected, non-compliant

Others were expecting to receive something, especially in cases where the relationship with a worker had deteriorated. In a few of these cases, employers referred to the letter as being a result of malice on behalf of the worker making the claim. The balance of evidence between worker and employer as discussed in section 4.6 caused an issue here.

All NMW officers said that they preferred to make a telephone call prior to sending through a confirmation letter, which is not a practice that was mentioned universally by employers. There were several benefits stated to using a telephone call as an initial communication. From the officers' perspective, it allowed them to softly introduce the process and explain the activities of the inspection. It also provided an opportunity for employers to ask questions, which was welcomed by some. Overall, the key benefit to the process was to lessen the shock expressed by employers who reported receiving a letter 'out of the blue'. For employers who strive to be compliant, prior telephone contact represented a professional approach to the whole process.

However, several NMW officers mentioned that they had to be purposefully vague during a call prior to an interview with a view to protecting the identity of the complainant. Workers that make a complaint relating to the NMW can do so



anonymously if they wish. Where this is the case, the enforcement officer cannot reveal the reason for the compliance visit, so they used a general explanation to describe the purpose of the visit. Similarly, in visits resulting from a risk assessment, the officer is unable to explain why the employer has been chosen as this could a) undermine HMRC's risk profiling regime and b) alert employers who were not told that they had been selected through risk assessment to the fact that a worker or former worker (who may have asked to remain anonymous) had complained. In these cases, a call ahead of the inspection visit could potentially raise more questions than it answered

Phoning first did not necessarily lessen the trepidation that some employers felt towards the inspection. As we have found in prior tax compliance research<sup>53</sup>, employers facing an inspection with no prior experience of being inspected can be fearful of the process. Although many interviewees said that they were confident that they were compliant, the fact that an official was coming to check up on them did make some worry (although a prior telephone conversation with the NMW officer typically did alleviate some of their concerns).

#### **4.2.3 Preparing for an inspection**

The amount employers prepared for an inspection varied, especially when officers were unable to provide much specific detail as to the inspection's trigger. An employer's preparation for the inspection was dependent on numerous things: if they were concerned over the visit; whether a relationship with a worker had soured; the quality of their record keeping; whether they employed an agent; and past experiences of HMRC inspections (including both tax and NMW inspections) were several factors which were mentioned during interviews.

In instances where NMW officers had to be vague about the reasons for the visit, some employers stated that their preparations could take a long time, particularly if they were concerned about meeting HMRC officials, kept poor records, or both. Because they were unsure about what the NMW officer would be looking for, employers felt they had to ensure everything that might be necessary to review would be available. In fact, HMRC expect this kind of preparation from employers ahead of every inspection visit and employers are informed of these expectations in correspondence issued prior to the visit. Employers reported that these preparations could involve a lot of work collecting records together, especially if internal filing systems were not well organised. In the case of those with agents, the actual work was minimal as they asked the agent to manage this part of the process on their behalf. However, there could be a cost to the employer for the agent's time. Furthermore, NMW officers also suggested that some employers would be so concerned about the inspection that they would go to great lengths to present data so as to help prove they were (or at least tried to be) compliant. For instance, one NMW officer recalled receiving a phone call from a worried business asking if their whole computerised payroll database should be printed off for the inspection. This helps indicate that whilst a fact

---

<sup>53</sup> Hall, S, Higon, J and Vishwanathan, N (2009), Customer perceptions of tax compliance checks, HMRC: <http://www.hmrc.gov.uk/research/cust-percep-tcc.pdf>

sheet is sent with the inspection notice letter, the facility for employers to be able to contact an NMW officer prior to the visit is valuable to ensure the employer spends an appropriate amount of time on preparation for the visit.

It can be concluded that one of the key drivers of attitude and behaviour in preparation was whether employers believed they were compliant with NMW legislation. In many cases, interviewees thought they were compliant and so they did not consider an outcome where they were non-compliant. This is important because it further helps us segment employers. Considering the business population as a whole, there exists a group of employers who are unaware that they are non-compliant, or lacked the ability to correctly administer the NMW. This correlates with HMRC's Usage & Attitudes SME segmentation (presented on page 25). In the case of this research and based on employers' responses, all of those found to be non-compliant were part of these groups. The attitudes shown when preparing for an inspection were symptomatic of these groups as they thought they were in the right and, in some cases, welcomed the prospect of an inspection which would confirm their records were correct.

#### **4.2.4 Case officer views of the Inspection process**

In order to understand the context of employers' reactions to the inspection, it is first worth outlining what should happen during a visit, as described by NMW officers. It is telling that one officer said the first thing to do was arrive on time. Generally, the initial couple of minutes of an inspection can set the tone for the whole visit. The findings here mirror those from prior tax officer research<sup>54</sup> in that the attitude of the NMW officer (as perceived by the employer) goes a long way in helping the process go as smoothly as possible. Several of the NMW officers spontaneously talked about an educative, helpful approach to inspections. From the off, they approached the process from the perspective of assisting the employer to improve their administrative processes, except in cases where they strongly suspected intentional non-compliance. This process can begin at the preparation stage with an initial telephone call.

NMW officers then described the visit in two parts. The first is an 'interview' phase, in which a standard set of questions are used to understand the employment practices adopted by the employer. For example, the enforcement officer may ask about when workers arrive at work, what the employer thinks counts as work, any deductions they make from wages, etc. Several officers adapted their questions depending on the business or sector in which they operated. To illustrate, one NMW officer explained that many of the working practices in a garage are different to those in retail, so it was not necessary to ask all of the suggested questions on the list of questions they were given as part of their compliance visit 'tool kit'.

The second part is a review of the pay roll and other worker records. In the case of medium to large employers, NMW officers would take a sample of records to

---

<sup>54</sup> Hall, S, Higon, J and Vishwanathan, N (2009), Customer perceptions of tax compliance checks, HMRC: <http://www.hmrc.gov.uk/research/cust-percep-tcc.pdf>

check, including, in the case of investigations triggered by a complaint from a worker or former worker, those relating to a worker who had made a complaint or query. For small employers, all records would be checked. The findings of the initial interview, and the research carried out by the enforcement officer and their clerical staff, would help the officer target the records they wished to review and suggest likely sources of error. This part of the visit may result in a request to copy selected records which HMRC have the power to do, but in the vast majority of cases, employers were happy to cooperate and provide copies of documentation.

### **4.3 Employers' views of inspection process and the role of the case officer**

The majority of employers described the inspection process during the research and it is a good scaffold from which to build a picture of interviewees' observations on a visit. It should be stressed that that the majority of those taking part in the research, even those who were found to be non-compliant, were happy with the visit, as was also found in previous research conducted for the LPC<sup>55</sup>. In the main, NMW officers were found to be courteous, professional, helpful and friendly. The purpose of the following section is to highlight possible improvements by indicating where employers thought things did not go as well as they could.

"It's been a really good lesson. [HMRC should] have more ladies like her, because she was lovely and she was approachable. And that's what I liked, the fact that even though she was from the tax office, which is like quite daunting, she was quite approachable ... For someone that's not trained as an accountant, I actually feel a bit more confident about talking about, to other people about tax and money, and things like that."

Social care, London, inspected, non-compliant

#### **4.3.1 Receiving the NMW officer**

In the majority of cases, the initial attitude of the visiting NMW officer was described as professional, knowledgeable and approachable. Several employers did note the enforcement officer could be guarded, not always answering questions<sup>56</sup>. From an enforcement officer perspective, the reason for this behaviour would be to protect the anonymity of a worker who wished to remain unknown. However, a few interviewees, all of whom were found to be non-compliant, were unhappy with the demeanour of an enforcement officer in such instances. In these cases, phrases such as 'unfriendly', 'heavy-handed' and

---

<sup>55</sup> LPC (2004), Enforcing The Minimum Wage: The Experience of Workers and Employers <http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ3.pdf>, p28

<sup>56</sup> HMRC are subject to strict confidentiality rules and are anxious to protect the identity of complainants. In risk assessed cases HMRC are unable to divulge details of why employers have been selected for a 'risk assessed visit' for fear of undermining their intelligence gathering process.

'lacking business sense' were used. It is not possible to distinguish if their non-compliance is the cause for these expressed opinions. In several cases, NMW officers found errors in worker records other than those who had made a complaint. In a few instances, the employer felt that the enforcement officer was 'looking as hard as they could to find something wrong'.

It is worth noting that NMW officers aim to recover arrears of wages for all workers who are owed money by the business that is being inspected, not just the complainant. This is because some workers are reluctant to come forward, particularly if they are in a vulnerable position. This is something that HMRC could usefully explain to employers as in most cases, the critical opinions held about a NMW officer related to an issue with the relationship between employer and NMW officer which employers said began at the start of the inspection, perhaps from an initial phone call.

#### ***4.3.2 The interview phase***

Employers did not always understand why they were being asked certain questions, a finding that was confirmed by NMW officers. The explanation for this is the request some workers make for anonymity although, in cases where the relationship between an employer and worker has broken down, interviewees knew why they were being inspected. NMW officers try to pinpoint the records they will need to review at the next stage, whereas employers thought some questions were unnecessary to ask as part of the inspection. In effect, the officer sought information to make the visit more effective and efficient whilst the employer believed the officer was trying to catch them out or snoop.

Another manifestation of this issue is in cases where no problem is found with the worker making the complaint, but the employer is found to be non-compliant with another worker. In these cases, employers retrospectively thought about the questions the officer was asking and wondered how those questions applied to the actual error found. No link is made by the employer between the initial investigation of the NMW officer and the subsequent sampling of their records in the next phase. This is a deliberate tactic that some NMW officers use as it would be difficult to respect a complainants request to remain anonymous and maintain the integrity of HMRC's risk assessment process if it was obvious what or who led to the investigation from the records that the NMW officer asked to see.

#### ***4.3.3 The record review phase***

Interviewees were broadly happy to allow NMW officers to review their records without any further input from them. Similarly, they were happy to help provide any photocopies of records requested by an officer. In several cases, NMW officers were also keen to explain what they were looking for and, importantly, when they found a potential error, they would elaborate on what they had found and how the employer could avoid repeating the mistake in the future.

This educative element of the record review was of great value to employers, especially those that had wrongly assumed they were compliant with legislation. For employers who generally understood the NMW, the advice provided added to their store of knowledge. This echoes findings in an earlier LPC report which

found that the inspections can be developmental, rather than simply a regulatory function<sup>57</sup>. This was also the case for those who were found to be compliant but had an administrative practice which did not clearly record all of the information required by officers. The example of this which caused some difficulties for employers was the use of timesheets.

"We do all do timesheets now, even I do timesheets. That's as a result of the inspection."

Hospitality, East, inspected, non-compliant

Interviewees often said they had been advised to keep timesheets, even for staff who were salaried or completed piece work. This was the only real way evidence could be kept on the actual time worked, from which compliance could be proven. However, from an employer's perspective, this could represent a significant administrative burden for them and their workers. Several employers misunderstood the rules for salaried staff and hence did not see a reason to keep timesheets prior to an inspection (see errors due to method of payment, section 2.4.1). An ancillary issue was one of trust: some employers felt that asking workers to keep a record of their time might make them think they were checking up on them. However, one enforcement officer pointed out that trust works well until an employer/worker relationship breaks down, so having the evidence in place before that event is important.

#### **4.4 Employers' changing behaviour after a visit**

The actions taken by employers after a compliance visit varied depending on several factors. In cases where a NMW officer had provided information and advice to avoid future errors, even to compliant employers, the recommendations would be assessed by the employer and changes to working practices potentially made. The changes reported by employers included creating contracts of employment for workers, increased monitoring of other administrative data to ensure compliance, changing employment practices and the introduction of timesheets. Each of these is considered in turn below.

##### *Introducing and clarifying employment contracts*

In this instance, a NMW officer described an employer who had not provided an employment contract which clearly listed the working hours for a worker. The situation was also made less clear as the worker in question also received accommodation. This led to a lack of clarity as to when the worker was at work and when he was not. The issue was the vague nature of their hours of work which was not described by a job description. A clear employment contract, introduced after the inspection, enabled a better understanding between the parties of when the worker was supposed to be working

---

<sup>57</sup> LPC (2004), Enforcing The Minimum Wage: The Experience of Workers and Employers <http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ3.pdf>, p52

### *Closer monitoring of changes in NMW and other administrative data*

This covered several activities, including keeping abreast of updates to changes in the NMW, maintaining closer contact with an agent and monitoring documentation that workers complete to ensure it is not falsified. In the latter case, the employer said the worker provided 'evidence' to HMRC which indicated they had worked time which they had not. This evidence was in the form of falsified records which indicated the worker had made deliveries which had never been made. The employer said the worker involved had been caught in the past conducting the same fraud against another employer, however they had no evidence to prove they had been defrauded in the same way. In this case, even though the officer was sympathetic towards the employer, the employer was required to pay arrears to the worker and a penalty fine.

### *Changing training methods and pay*

One employer's reaction to being required to repay arrears of the NMW to a worker and a penalty for non-compliance with an apprentice was to decide to discontinue this method of training in their organisation (a children's nursery). Instead, they now only employ staff who are already qualified. In this instance, an agency had provided a trainee who they said was unqualified. The employer had therefore employed the individual on an apprentice training contract and used the relevant Apprentice rate<sup>58</sup> for their first year<sup>59</sup>. The employer did not check qualifications with the new member of staff who was subsequently found to be qualified. As such the worker was not eligible for the apprenticeship scheme and therefore was being underpaid as she was entitled to the full rate under the NMW. As shown from the quote below, other employers struggled also with the apprenticeship rate of the NMW. A further response from the employer quoted below was to begin to pay slightly above the NMW to all their workers to ensure they did not get caught again. Several other employers also said they paid over the NMW rate to help them be compliant, as well as for altruistic reasons.

"I started her at 19 and then she turned 20. So she'd done a year with me and I would think I've got another year not having to pay the Minimum Wage at the higher rate because she was [still under 21]. But she got this massive jump in pay and the shop literally couldn't afford it."

Hospitality, Northern Ireland, Non-compliant

### *Common themes in behaviour after an inspection*

In the examples above, employers perceived that they were doing one of two things: increasing administration for themselves or decreasing their options for employing staff. In the case of increasing administration, this further added to the various burdens described by employers. Some interviewees were keen to

---

<sup>58</sup> Currently set at £2.60 per hour

<sup>59</sup> Apprentices aged under 19 or aged over 19 but in the first year of their apprenticeship are entitled to the apprenticeship rate (at the time of interview £2.50). Apprentices aged over 19 in the second and subsequent years of their apprenticeship are entitled to the NMW that applies to their age band.

develop systems which ensured future compliance and some were resentful about having to increase the amount of administration in order to ensure compliance. Note these two reactions to administration were not mutually exclusive. It is debatable if this burden is fair to the employers that employ staff working for the NMW because the legislation only affects employers with low wage workers and is not relevant to all UK businesses. On one hand, low pay sector businesses have a legal obligation to ensure they are compliant with legislation and from that perspective increased administration is fair to the worker to ensure they are paid the right amount. Interviewees in this research wanted to be compliant and so they tended to take this burden on. On the other hand, compliance with all legal requirements (tax, legislation, and NMW) can be perceived to represent a problem to employers. For example, one interview was conducted with a sole trader who was seeking to employ somebody paying them the NMW. One of his chief concerns was to try and understand the extent to which the help provided by the new worker would be outweighed by additional administrative burden of being compliant with all worker legislation. And as is indicated above, some employers reacted to an increased administrative burden by stopping training activity or reconsidering whether to employ a new worker.

For others, the perceived burden of employing someone was too great or the perceived value gained too little. By limiting the pool of potential recruits, employers were restricting the options of potential workers which may mean they are neither getting the right person for their job nor training new staff to improve their business as a whole. This was a problem in two separate cases for employers employing apprentices, which is a key policy area for the coalition Government who are looking to have 200,000 people starting an apprenticeship each year<sup>60</sup>. Several Government research projects looking at the issue of apprentice pay have been commissioned in the past few months which may provide some quantitative evidence on this issue towards the end of 2011.

#### **4.5 Receiving feedback after the visit**

Employers felt that communications after the inspection could be improved. This is particularly important given that the major ancillary benefit of a compliance visit was the reassurance and/or direction that NMW officers can provide to employers. Some felt better knowing that their processes had been 'officially' validated as compliant, or that they had been given guidance to ensure their future compliance. One employer suggested that as a follow up to an inspection, a list of actions for improved compliance would be a helpful addition to the Notice of Underpayment. Although the NMW officers were helpful with the support and advice they offer at the inspections, this was a lot to take in at the time, and a summary following the investigation would provide reassurance to some employers. HMRC and BIS suggest that fact sheets which outline the details of the type of error found in the inspection could be included in any post-inspection correspondence to an employer.

---

<sup>60</sup> BIS (2010) *Skills for Sustainable Growth*. Accessed 22/03/2011: <http://www.bis.gov.uk/assets/biscore/further-education-skills/docs/s/10-1273-skills-for-sustainable-growth-strategy-summary.pdf>

The issue for interviewees who were found to be non-compliant is that the Notice of Underpayment does not provide any solutions to resolve errors in the future (see Appendix E). In instances where NMW officers see their role as educative, detailed administrative solutions were often provided during the inspection, but these were not present in subsequent written correspondence. However, as providing feedback is not a necessary part of the inspection, the provision of this advice and guidance is not assured in every case. As feedback is not systematic, the perceived value of the inspection process to the employer varied.

"You're piled with loads of information on what you're not doing, what you're doing and what you need to change, but then there're no actions. We got a letter from them saying this is what you need to pay, but there wasn't a letter saying right, actions for improvement or actions to improve practically."

Hospitality, North West, Non-compliant

#### **4.6 The balance of evidence in the resolution of the inspection**

One of the key findings to emerge from employer interviews relates to their perceptions of the evidence used to 'prove' non-compliance. We have qualified 'prove' on purpose because employers said they were often unconvinced that their non-compliance could be demonstrated through the records they provided. In many cases, they felt it was the lack of documentation relating to the hours worked which could be linked to pay that suggested non-compliance. This was especially relevant for employers who have disputes with ex-workers rather than current staff members.

Employers were unaware that HMRC use a variety of information sources to build up a picture on which they make a judgement. Such information could include statements made by workers/former workers and third parties and documents provided by others, such as bank statements and copy pay slips.

The balance of evidence lies at the crux of non-compliant employers' perceptions of the system and views were particularly strong for those in which the relationship with a worker had broken down. Several employers felt the legislation was being used by a typically ex-worker in a malicious or vengeful way. One employer gave the example of a former worker who was using the system to allegedly defraud an employer. Although this is an extreme example, several other instances were described by interviewees where a worker had, in their view, made false claims. In some instances, the employer was proven correct during the inspection because they had the relevant documentation. However, in several other cases, employers felt that non-compliance could not be proven either way and that HMRC sided with the worker.

It is clear from the interviews with employers who were found to be non-compliant with NMW legislation that employers want to ensure their workers are paid fairly if they are still employed by the business. Where errors concerning current workers were made, these were typically 'minor' errors (from the employer perspective) and current workers were typically paid their arrears within the 14 day period in which the penalty is halved. However, the issue is less clear



cut in the case of workers who leave an organisation, then make a claim. Employers feel it is fair for their side of the story to be given equal weight to that of the former worker and, in instances where they feel this does not happen, they can end up feeling victimised by HMRC. Such feelings can be exacerbated by NMW officers who do not provide guidance to employers, or explain the workings of the system. As mentioned in section 4.2.1 NMW law does reverse the burden of proof. This means that the onus is on the employer to demonstrate that no arrears of the NMW are owed, not on the worker to show that they are.

Employers also do not always understand their obligations towards record-keeping which is a common theme to emerge from other compliance research<sup>61</sup>. The legislation states it is the employer's responsibility to pay the NMW and to be able to demonstrate they do. As such, it is not the responsibility of the worker to supply a record or administer the records, although they can be clearly asked by the employer to record the hours they work. The legislation itself therefore places the burden of providing evidence on the employer. A misunderstanding of the principle on the employer's part could further lead to some frustration in the inspection process.

#### **4.7 NMW Officers' views on Intentional non-compliance and scheme administration**

Several NMW officers and employers gave specific examples of methods they said were used by other employers to avoid paying NMW. We have recorded several examples here because they illustrate how the inspection process can fail and where enforcement measures may need to be tightened or reconsidered.

##### *Collusion*

A couple of NMW officers described situations in which the employer and worker colluded for mutual gain. The worker would officially work 16 hours a week, which went through the books of the employer. However, they would also pay the worker cash in hand for further work at less than NMW to make up a full time week. Because the worker 'worked' 16 hours a week, they were then able to claim benefits such as tax credits. This was mutually beneficial to the worker because they 'earned' more through a combination of wages and tax credits received and for the employer because they were not paying Tax and NIC on the element of the workers wage which were paid in cash and which did not go through the employers books.

From the perspective of the employer, the risks involved were minimal because they were shared between them and the worker. In cases like this, the worker would gain nothing from making a complaint to HMRC because they would ultimately lose out. The move towards a more risk based approach to investigations and initiatives such as HMRC's Dynamic Response Team's 'blitz' approach to employers in high risk sectors may go some way towards

---

<sup>61</sup> Hall, S and Higton, J (2008), Late Payment of Tax: Sanctions and Motivations, HMRC: <http://www.hmrc.gov.uk/research/report-63.pdf>

addressing this issue providing that employers are made aware that they could be investigated for reasons other than a complaint and conclude it is not worth risking flouting the law.

### *Non-communication*

NMW officers said that some businesses simply ignored any attempts by HMRC to arrange a visit. They would not respond to any phone calls and ignored letters. When a date for the inspection was sent to the employer, they would phone to leave a message the day before to say nobody would be available to take part.

### *Criminal proceedings*

A couple of NMW officers also cited the very low number of criminal prosecutions regarding non-compliance and the low number of cases that were internally agreed to be taken forward for criminal prosecution. Subsequent to interviews, discussion with HMRC highlighted that the majority of employers who fail to pay the NMW will not commit an offence under the National Minimum Wage Act (as noted in section 3.2). There is also a cost/benefit decision for BIS when it comes to criminal proceedings. The issue from the perspective of these two NMW officers was it made it difficult to bring cases with evasive employers to a conclusion because they felt they could only escalate so far.

NMW officers felt there was an issue around the burden of proof and the need to demonstrate evidence of wrong doing. In cases where employers do not keep adequate records, NMW officers said it can be difficult to gather information and put a case together for criminal investigation. Some felt that this could be improved by them having the authority to tell the employer what time sheet records they should keep to ensure they were compliant with NMW. Undertaking an unannounced visit earlier in the process for those that delay an inspection was seen as one response to this issue.

### *Use of migrant workers*

Employers using migrant workers can rely on the worker's lack of knowledge of UK minimum wage legislation in order to make deductions and pay below NMW. Examples provided during NMW officer and employer interviews included deductions made for accommodation. Migrants are particularly susceptible to this because they need somewhere to live when they arrive in the country. The employer can present accommodation as an altruistic act to the potential worker.

"He [another employer] brings several people over from his country, puts them up in a house, they go and work for him, he pays them officially with a payslip showing the NMW and then for one room he'll charge them £450 a month. This doesn't show on the payslip. People are doing it and if people don't say something they'll continue doing it."

Security/cleaning, Other, Compliant

When the employer and the migrant worker are of the same nationality, the employer may transplant the cultural norms of their home country into the UK. It may, for example, be common practice in the employer and workers home country to provide accommodation in lieu of wages. Whether this behaviour is 'intentional' is open to interpretation as it is easy to argue a foreign national setting up a business in the UK should be abreast of UK law. However, it is also the case that they may genuinely assume that the rules from their home country are the same in the UK.

As with collusion, the migrant worker may be unaware of NMW legislation and hence unlikely to make a complaint.

## 4.8 Summary

A general principle expressed by employers in the non-compliant sample was that the outcome of an inspection should differ depending on its findings. Those who made inadvertent errors said the inspection should be used to correct behaviour, for example, it should be used to educate employers rather than penalise them. In contrast, for employers who were seeking to intentionally avoid the rules, the result of an inspection should be punitive. Many of the employers taking part in this research found the inspection beneficial as it outlined errors they were making which they could then correct. Similarly, many of the employers in the compliant sample were happy to have their systems "validated" by an external, official source.

### *Instigating the visit*

Most employers believed that a visit was arranged as a response to a complaint from a worker or ex-worker. NMW officers taking part in the study agreed that this was the most common way in which the inspection process was begun although it should be noted that there is more emphasis being placed on HMRC's risk assessment process for the purposes of identifying cases for inspection. Many employers had issues with inspections generated by complaints. They thought the process was problematic because they felt the worker or ex worker's views carried more weight with NMW officers than their own. Employers did not perceive that the purpose of the visit was to collect evidence to verify or refute a worker's claims. Without realising that it already happens, several employers also suggested that risk-assessment would be a more efficient way for HMRC to instigate inspections.

All of the NMW officers said that they attempted to contact employers they were going to inspect on the phone before sending written notification of a visit. Whilst not all employers received a call first, those that did said it helped alleviate some of their concerns about the process. Over the phone, the officer was able to reassure the employer about what the inspection would entail as necessary, although this information is limited in order to maintain a complainant's anonymity.

### *Preparing for the visit*

One of the benefits of NMW officers making a call before the visit was to tell the employer what preparation (if any) they needed to make. Without the prior call, employers did not always know what or how to prepare. This led a couple of employers to do a great deal of unnecessary work prior to the visit, which contrasted sharply with some employers who did very little.

One factor which affected the amount of preparation undertaken was the administrative skills of the employer. For those who kept poor records and had inadequate filing systems, getting their records in order for inspection in preparation for the visit was a large task. Whilst sloppy administration is not the fault of the inspection process, an unclear understanding of the records that will be necessary prior to the visit led a few employers to overestimate the records that they needed to produce for the visit, potentially causing more work than necessary for the employer.

### *Employers' views on NMW officers*

In the main, inspected employers were complimentary about the demeanour and professionalism of NMW officers. A range of adjectives were used to describe officers including courteous, helpful and friendly and these positive testimonials included those who had been found to be non-compliant. The value of such an approach from the perspective of the employer was that it helped the officer to communicate what changes were necessary in business practices to ensure future compliance.

However, a few non-compliant employers were more negative towards NMW officers. In some cases, this may have been due to the need for the officer to be guarded in order to protect a worker's anonymity; employers discussed the interview held at the start of a visit and did not understand why some questions were asked. This led the employer to think the officer was interrogating them. In a couple of other cases, employers felt that the NMW officer was looking for something wrong in their books because the initial line of inquiry had proved fruitless.

### *The visit and reactions to it*

The real value of the visit to most employers was the educative elements. Most non-compliant employers felt they learnt how to rectify the errors they had made and the compliant employers welcomed the external check of their record keeping. In addition, most of the employers taking part in the research felt that visits illustrated that Government took the legislation seriously and showed that they were trying to find those who purposefully broke the rules.

Employers suggested one improvement that could be made was to follow up after the visit with a more detailed explanation of the errors made and how they could be rectified. The current content of the "notice of underpayment"<sup>62</sup> lists the

---

<sup>62</sup> Which is served on non-compliant employers post inspections and requires them to repay arrears of wages to their workers and a penalty to the Secretary of State

amount due but is not accompanied by documentation working out or illustrating how HMRC arrived at their calculation of arrears. In some cases it may be beneficial to provide more detail, perhaps an example calculation sent in advance of the notice to illustrate how HMRC have arrived at the figures.

Following on from this comment, many non-compliant employers were generally concerned about the balance of evidence used by HMRC. They correctly felt it was weighted in favour of the worker and they appreciated the onus of proof was on them as the employer, but felt if they could not present evidence to prove the worker was wrong, then they had to pay arrears and a penalty regardless. This point lies at the crux of non-compliant employers overall perceptions of the system and is especially critical in creating the perceptions of employers who have an acrimonious dispute with ex-workers. Although it is not in fact the case, employers felt that disgruntled ex-workers could make unsubstantiated complaints against them and there could sometimes be nothing the employer could do to disprove their accusations.

As a consequence of the visit, employers were open to the idea of changing their behaviour to become compliant with the law, although there was concern expressed about extra administrative burden, especially in relation to the introduction of timesheets. There were also a few other reactions which were unintended consequences of the policy and its enforcement regime. For example, one employer decided to stop offering apprenticeships in their workplace after receiving a notice of underpayment from HMRC for a relatively large amount of arrears and a financial penalty, instead opting to employ staff who were already qualified.

# 5. The employer journey: conclusions and recommendations

The final chapter looks at the ideal employer journey based on the research findings. We then consider a segmentation of NMW customers, drawing together conclusions from the research as a whole. The report concludes with recommendations for compliance and enforcement moving forwards.

## 5.1 The ideal inspection process

Based on the testimonies of the employers and NMW case officers taking part in this study (especially Chapter 4), a diagram of the ideal inspection is illustrated in Figure 4. The ideal inspection relies heavily on good quality information provided by all parties and several instances of communication between the enforcement officer and the employer. In this scenario, a quick resolution is possible because the evidence trail is clear, which makes the work of the officer easier and allows the employer to be given an explanation of any error, as well as advice as to how that error can be avoided in the future.

From an employer perspective, the ideal journey includes two phases which are not currently an official part of the inspection. The first is an indication that an inspection has been instigated. This is subtly different from receiving a letter and will come in the form of a phone call from the officer. Many of the NMW officers we spoke to did make a call prior to sending the letter, however, this was not a universal experience for employers. This leads to the conclusion that either a call is not always made, or that the employer is not available to take the call if it is made.

The second is perhaps more problematic: employers wanted to see evidence that illustrated their non-compliance. As noted in the previous chapter, evidence collected by officers during the investigation was sometimes circumstantial rather than being based on records and data. Importantly, some employers disputed the evidence provided and, on several occasions, felt vindicated when the inspection found them compliant. The real issue arose when the evidence was not conclusive. Employers felt that officers sided with the worker or former worker and from the employer's perspective, this was unfair.

## Ideal inspection process

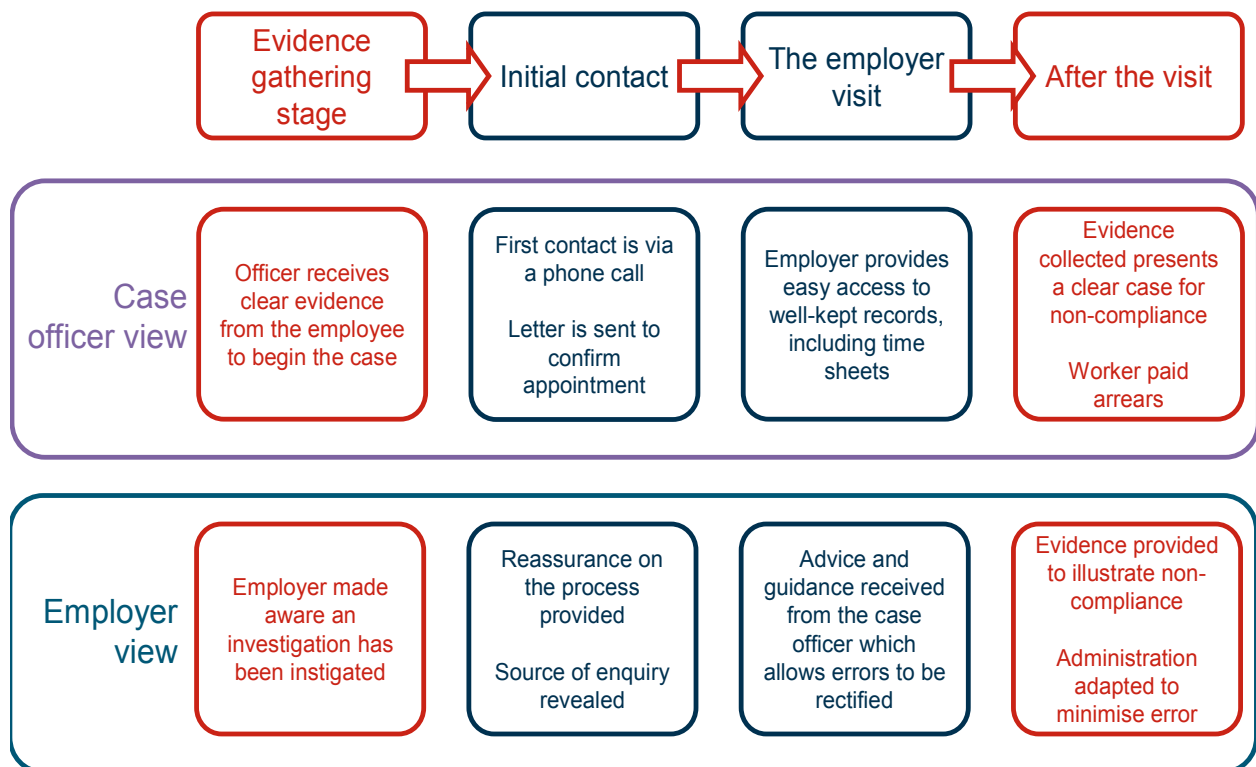


Figure 4: The ideal inspection process

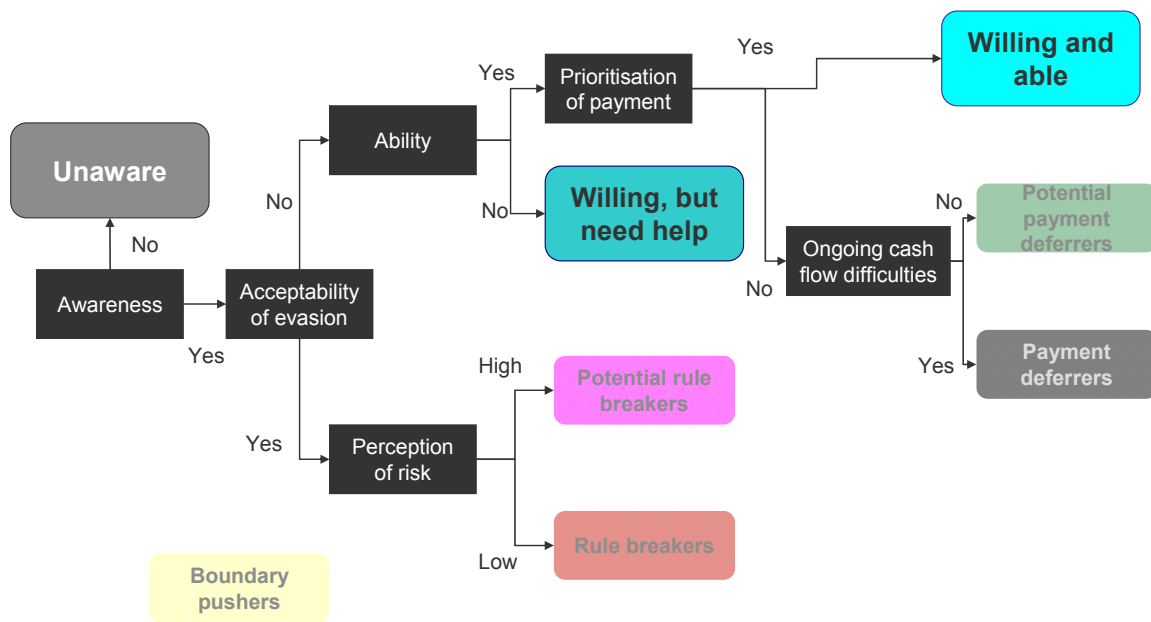
### 5.2 Employer segmentation

As explained in section 2.4, the U&A segmentation model for SMEs in relation to tax compliance was used as a template to identify similar segments of interviewees taking part in this research. This model has been reproduced below to highlight comparable employer segments found in the course of this research. Three main comparable segments were prevalent. Based on their testimonies, non-compliant employers were grouped in either the "unaware" or "willing, but need help" categories.

The third group, the "unaware" were unintentionally non-compliant. They would generally lack knowledge of some specific element of the NMW legislation, although they may lack knowledge of the legislation overall. Typically, they would not be in dispute with an ex-worker.

The "willing, but need help" also said they were unintentionally non-compliant and were more likely to have some general awareness of NMW legislation than the unaware. They tried to administer NMW to the best of their ability or would recognise their failings and ask an agent to help them in their NMW affairs. They would need specific advice to help them be compliant and would welcome the suggestions of a NMW officer to improve their administration.

The "willing and able" group were those willing to challenge NMW officers if they felt they were in the right. Several interviews were completed with employers who were adamant they were following the rules correctly. Their administrative skills were good and their confidence in managing their business high. They had a better than average understanding of NMW legislation. Based on their responses at interview, most of the compliant employers taking part in this research were part of this group.



**Figure 5: Adapting the U&A SME tax compliance segmentation model**

Of the five other segments listed in the U&A model, "rule breakers", "potential rule breakers" and "boundary pushers" were identified by NMW officers but were not identified in the employer interviews. The collusion described in section 4.7 is a clear example of rule breaking and is arguably different from rule breaking undertaken by employers in relation to tax because it requires the tacit agreement of workers. A failure to communicate with NMW officials could be a function of boundary pushing or potential rule breakers testing the water prior to taking the non-compliant route. The use of migrant workers by employers from the same cultural background is interesting in that it could be a genuine cultural error to not pay minimum wage or make deductions for items such as accommodation. However, it is also a clear way to break the rules to the benefit of the employer.

The main section of the U&E segmentation that does not seem to apply to SME NMW non-compliance is payment deferral as a response to cash flow difficulties. It would seem impractical for an employer to defer payment of wages to staff as the risk of being reported would be very great indeed. Based on the evidence provided by employers and NMW officers, there appears to be nothing the employer would gain by not paying staff unless the deferral was over a very short space of time (a couple of days).



Administration is a key element of the segments described above, especially as it is the principal differentiator between the "willing, but need help" and "willing and able" groups. As such, quality of and confidence with administration act as overall drivers of compliance and their relationship to employers' compliance behaviour is described in the figure below. No direct evidence was collected from intentionally non-compliant employers. The text included in the red boxes (labelled Intentional in the figure below) is therefore provided based on analysis of indirect evidence (the views of other employers and case officers). The model is intended to help policy makers think about the relationship between administrative practice and compliance.

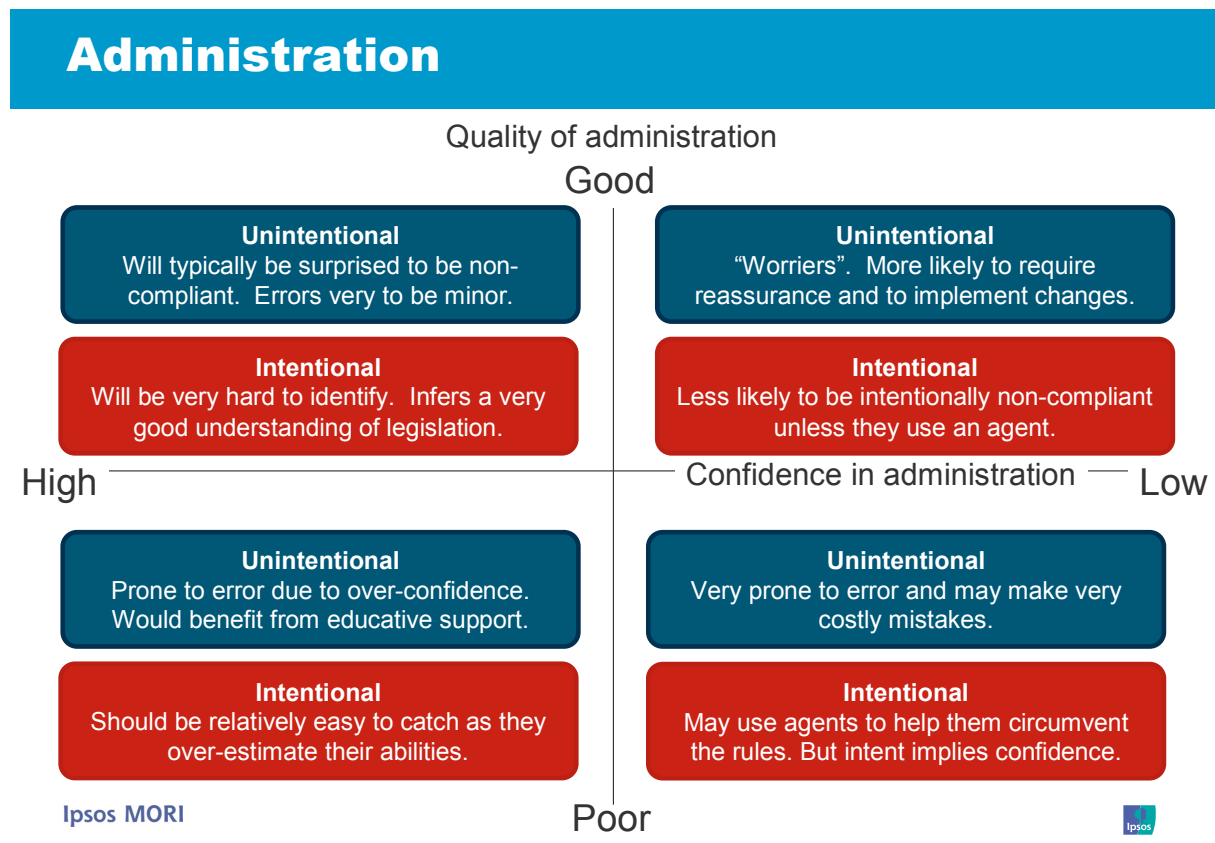


Figure 6: Overall effect of administration on compliance

### 5.3 Conclusions and recommendations

The key finding to note is that employers who participated in the study who had been found to be non-compliant with NMW legislation were non-compliant due to error rather than deliberate evasion. In most cases, errors were made because of a misunderstanding in a specific detail of the legislation.

In particular, some employers struggled to interpret how the hourly rate applied to staff on salaries or who were paid for outputs, such as on a fair piece work basis. Errors also arose from incorrect interpretations relating to deductions made from pay and differential pay rates for those aged 20 or less.

Employers were also largely unaware of the NMW enforcement regime which represents a lost opportunity to achieve voluntary compliance (through education and deterrents).

#### *Attitudes that influence employers' behaviour towards compliance with the NMW*

The employers taking part in this research were broadly supportive of the aims of NMW policy. All of the employers in the sample who were non-compliant considered that they had made errors in the way they administered the NMW. Arrears arose due to either a general misunderstanding of the legislation or employers not being aware or misunderstanding some of the rules.

**Recommendation:** A clear need was identified to raise employers' awareness of NMW legislation to ensure that they understand that it applies to them and, therefore, make efforts to check they are compliant. As non-compliant employers who participated in the study wrongly assumed that they were compliant with NMW law until the point of inspection, it is reasonable to assume that many other employers are equally misguided.

**Recommendation:** Worked examples should be used in correspondence to explain how to apply NMW rules in particular circumstances. Where possible, these examples should be specific to the employer and use the language of their industrial sector.

A key component of non-compliance is inadequate record keeping. Employers are required to keep NMW records by law and where their records fell short of the legal requirement, HMRC found it difficult to satisfy themselves that the NMW had been paid and employers were unable to demonstrate that they were compliant. Disagreements between HMRC and the employer on whether arrears

were due, and the level of any arrears, was the main cause of tension between employers and NMW inspectors.

**Recommendation:** SME's would benefit from receiving templates and examples of best practice to help them design their own record-keeping procedures – although BIS and HMRC note that this may be difficult to do in practice given the diverse range of businesses that HMRC inspect; a 'one size fits all' approach may not be suitable. Employers who participated in the study thought it would be particularly valuable to receive written advice post-inspection which was tailored to their particular circumstances, e.g. the type of business and sector that they operate in and the type of work being performed by their workers (i.e. hourly rates, salaried, piece work, etc). This advice would help them with their future record-keeping.

#### *Awareness and attitudes towards the NMW enforcement regime and its impact on employer behaviour*

Overall, awareness of the NMW enforcement regime and the repercussions for those found to be non-compliant was low until an inspection took place. Typically, employers assumed that some sort of action could be taken against them if they failed to pay the NMW, but awareness of the mechanics of the enforcement process, e.g. how they were selected for inspection and what happened if they were found to be non-compliant was low.

**Recommendation:** The value of effective communication regarding employers' obligations, what they need to do to get things right, and what happens if they get things wrong (unintentionally or otherwise) cannot be underestimated. Employers who want to comply need to know where to go for help and advice and employers who might be tempted to break the rules need to be aware of the sanctions that they may face.

Except for Business Link, awareness of other Government sources of information was low. Business Link is the Government's preferred channel for communicating with employers and it is helpful for employers to have information on a range of issues in one place. Whilst there is a wealth of information on the NMW in the public domain (via Business Link) employers did not always make use of this for a number of reasons. These included an incorrect assumption by the employer that they were paying the NMW or that particular rules or sanctions did not apply to them. Employers who were unaware of their errors were unlikely to look for information explaining how to administer the NMW correctly. Employers who did know about or use Business Link also struggled to find relevant Government information on the site. Consideration should be given to how best to prompt employers to check that they are compliant with NMW legislation.

**Recommendation:** Government messages regarding NMW were viewed as being trustworthy and accurate, which illustrates they add an inherent value to employers. However, employers also looked to and valued other sources for

information, e.g. employers in the same trade or sector, trade associations and employer representative groups and occupation support agencies. In particular, trade and professional bodies tailor information to the trade or sector that they represent or oversee and use language which is familiar to their members. These channels are already used by Government to provide information to employers, however as the information is delivered by an intermediary, Government has less control of the overall message and how it is delivered.

Tapping in to a variety of communications channels is critical to maximising the impact of communications messages. Whilst it is helpful to have guidance on the NMW in one place, the Government should continue to make use of trusted third parties to ensure that employers are aware of that guidance.

**Recommendation:** Based on responses from employers, trade or occupational bodies would seem a good conduit for providing information on the NMW, ideally they should carry links to employer facing guidance on the NMW, such as that currently provided on Business Link.

The effectiveness of compliance messages depends on the audience. For those who are unintentionally non-compliant, the best messages were those which educated and informed. Employers who participated in the study stated they would like to be signposted to common issues. Conversely, they felt punitive or coercive compliance messages should be reserved for those who are intentionally non-compliant (although it was recognised stern messages were important for all to show Government takes the legislation seriously). The Government should tailor messages on NMW compliance behaviours to the intended audience.

**Recommendation:** Employers recognised that feedback from the NMW officer during the visit was valuable because they were able to rectify the mistakes that they had been making. However, the formal feedback on the "Notice of Underpayment" form was limited to just the amount due. Employers would find it helpful to have more detailed feedback on why they were non-compliant with NMW legislation and on how their processes could be improved to avoid them making the same mistakes in the future.

NMW investigations and enforcement actions are document based. Compliance officers, therefore, encounter difficulties with enforcing NMW legislation when employers failed to keep and preserve the adequate NMW records (as required by law). It is difficult to prescribe the records that employers should keep in detail. No two businesses are the same and records which are helpful in terms of ensuring and demonstrating compliance in some business, e.g. time sheets, are irrelevant to other businesses and any requirement to keep timesheets to prove compliance would be an unnecessary burden on many businesses. General/high level messages on record keeping requirements aimed at employers in high risk sectors may be beneficial.

**Recommendation:** Many employers were unaware that keeping sufficient records includes being able to demonstrate both the hours worked for NMW purposes as well as payments to workers. Communication particularly targeted at low paying sectors should be developed to address this issue.

*Employer attitudes to NMW compliance visits and other HMRC interventions*

The inspection was valuable to employers. Those found to be compliant were happy to receive an "audit" of their processes which validated their practices and where the employer's systems or procedures were deficient in some respect, most of the non-compliant employers valued the educative element of the inspection and were happy to have errors that they had made drawn to their attention.

**Recommendation:** Employers value contact with a professional and knowledgeable inspector. Providing even a small amount of time in the process in which the inspector can suggest ways in which an employers NMW administration could be improved should be a standard part of the intervention.

Employers thought that inspections were usually triggered by a complaint from a worker. They felt that more risk-assessment should take place to try to pinpoint wrongdoing rather than rely on the testimony of workers to instigate an inspection.

**Recommendation:** Further communications work on the success of risk assessment activity carried out by HMRC would help employers understand that complaints form just part of the compliance activity undertaken in relation to the NMW.

Employers that received prior notification of an inspection were typically happier with the whole process, especially in cases where the NMW officer was able to explain the process to them.

**Recommendation:** Calling employers prior to a visit allows questions to be raised with the visiting officer and, in many cases, allays concerns about the intervention. Prior contact should be regarded as good practice in cases where no serious wrong-doing is suspected. (HMRC and BIS consider that there are occasions when an element of surprise in the form of unannounced visits plays an important role in detecting and deterring non-compliance).

In the main, the conduct of NMW officers during a visit was well-received by employers. They were typically viewed as being professional, knowledgeable and helpful. In only a few cases was the opposite cited. In these instances, however, employers felt that officers acted in a secretive way, forensically looking for information which would prove the employer was non-compliant. These interviews typically involved situations in which a worker had left their employer's

business under acrimonious circumstances. This perception arose due to the nature of the intervention. In order to protect a complainant's anonymity, NMW officers need to hold some details back during an inspection. In these cases, employers were concerned about the "balance" of evidence. They misunderstood that the onus of proof was on them to illustrate they were compliant with the legislations. While NMW officers are required to conduct impartial investigations, employers felt that an equal weight was not always applied to their views and those of ex-workers.

**Recommendation:** Some form of top-level communications could be provided to employers to educate them on the whole intervention and enforcement process. This could take the form of a small leaflet or web-page describing the whole process in general terms.

# References

- BIS (2010) Skills for Sustainable Growth. Accessed 22/03/2011:  
<http://www.bis.gov.uk/assets/biscore/further-education-skills/docs/s/10-1273-skills-for-sustainable-growth-strategy-summary.pdf>
- Hall, S and Higon, J (2008), Late Payment of Tax: Sanctions and Motivations, HMRC: <http://www.hmrc.gov.uk/research/report-63.pdf>
- Hall, S, Higon, J and Vishwanathan, N (2009), Customer perceptions of tax compliance checks, HMRC: <http://www.hmrc.gov.uk/research/cust-percep-tcc.pdf>
- Hall, S, Pettigrew, N (2007) Business' Perceptions of Regulations, Cabinet Office
- Low Pay Commission (2010) National Minimum Wage Report. Accessed 18/03/2011, [http://www.lowpay.gov.uk/lowpay/report/pdf/LPC\\_Report\\_2010.PDF](http://www.lowpay.gov.uk/lowpay/report/pdf/LPC_Report_2010.PDF)
- NAO (2008), Tackling the Hidden Economy,  
[http://www.nao.org.uk/publications/0708/tackling\\_the\\_hidden\\_economy.aspx](http://www.nao.org.uk/publications/0708/tackling_the_hidden_economy.aspx)

# Appendices

A-E



# **Appendix A – Employer Discussion Guide**

**BIS – National Minimum Wage Compliance Research  
Employer Discussion Guide – FINAL (26/01/2011)****Objectives:**

The Government is committed to increasing support for lower and middle income earners and improving the rewards to work. We support the National Minimum Wage (NMW) because of the protection it gives low income workers and the incentives to work it provides. The NMW helps business by ensuring that competition is based on the quality of goods and services provided and not on low prices based on low rates of pay. The Department for Business, Innovation and Skills (BIS) is responsible for NMW policy, including the policy on compliance and enforcement. HM Revenue and Customs (HMRC) enforce the NMW on behalf of BIS.<sup>1</sup> Maintaining a range of deterrents and incentives to encourage compliance is therefore important to ensure no business confers unfair advantage through breaking the rules. With this in mind, this study has three important overall aims:

1. To gauge the range of attitudes that influence employers' behaviour towards compliance with the NMW, which will help to inform the NMW Compliance Strategy;
2. To assess awareness and attitudes towards a new NMW enforcement regime: in particular the automatic penalty and the requirement to repay arrears of the NMW at current rates, and measure its impact on employer behaviour; and
3. To assess employer attitudes to activity, including compliance officer visits, conducted by HMRC in relation to NMW (note this research is not concerned with HMRC's wider tax role).

The research project also aims to understand employers' attitudes to the minimum wage.

---

<sup>1</sup> BIS Policy Statement on Enforcement, Prosecution and Naming – Jan 2011

### Outline of the research programme:

- 30 in-depth interviews with employers who have experienced an enquiry by NMW compliance officers based on agreed quotas
- 10 in depth interviews with employers who have not experienced an enquiry by NMW compliance officers.
- Throughout Great Britain as per agreed location quotas, in January to February 2011
- Each interview/depth to last up to an hour. Timings are likely to be greater for those who have experience of an NMW intervention
- The guide is structured thematically matching the research objectives

Notes	Guide Sections	Guide Timings
<b>1. Introductions and background</b>	Sets the scene, reassures participants about the interview, confidentiality.	5 mins
<b>2. Perceptions and knowledge of the National Minimum Wage (NMW)</b>	Explores employers' views on and knowledge of NMW rules. Also gauges from where employers get information on the NMW and how this influences their attitudes and behaviours in relation to compliance.	5 mins
<b>3. Enforcement activities</b>	Collecting views towards and knowledge of different enforcement activities, including new elements to the enforcement regime, along with the factors that drive these. We will also use this section to look at what activities employers think would be effective in improving compliance.	20 mins
<b>4. Attitudes towards enquiries and other interventions</b>	Here we ask about their thoughts on different compliance activities (either experienced on theoretical) and discuss what is fair and effective. We also ask how the process could be improved.	Up to 15 mins
<b>5. Conclusion and thanks</b>	A summary of the conversation and key recommendations.	10 mins

### Using this guide

We use several conventions to explain to you how this guide will be used. These are described below:

Timings	Questions and Prompts	Notes
5 mins	<p><u>Underlined</u> = <b>Title</b>: This provides a heading for a sub-section</p> <p><b>Bold</b> = <b>Question or read out statement</b>: Questions that will be asked to the group if relevant. Not all questions are asked during fieldwork based on the moderator's view of progress</p> <ul style="list-style-type: none"> <li>▪ <b>Bullet</b> = prompt: Prompts are not questions – they are there to provide guidance to the moderator if required.</li> </ul>	
How long	Typically, the researcher will ask questions and use the	This area is used to

it takes	prompts to guide where necessary. NB: Not all questions or prompts will necessarily be used in an interview	summarise what we are discussing and is for your information only
----------	---	---

Timings	Key Questions	Notes
5 mins	<p><b><u>Welcome and introduction</u></b></p> <ul style="list-style-type: none"> <li>• Thank participant for taking part</li> <li>• Introduce self, Ipsos MORI</li> <li>• Describe who has commissioned the research – Department for Business Innovation and Skills (BIS) and the role of HM Revenue and Customs (HMRC) in the compliance process</li> <li>• Emphasise that we will be talking about the National Minimum Wage (NMW) and how legislation is enforced by HMRC officer. Confidentiality: reassure all responses anonymous and that information about individuals will not be passed on to anyone – including BIS and HMRC.</li> <li>• Role of Ipsos MORI – independent research organisation (i.e. independent of BIS, HMRC), gather all opinions: all opinions valid</li> <li>• Get permission to digitally record – transcribe for quotes, no detailed attribution</li> </ul> <p><b>The Department of Business Innovation and Skills (BIS) is responsible for NMW policy, including the setting of the National Minimum Wage (NMW) rate. The purpose of this research is to help BIS understand the views of employers towards the NMW compliance: in particular what drives employers’ behaviour. BIS will use this information to inform the NMW Compliance Strategy.</b></p> <p><b><u>Work background</u></b></p> <p><b>Can you briefly tell me about your job and your business?</b></p> <p>Probe on their role in relation to the National Minimum Wage. Also find out how long they have been in business for, what they like about it, what they dislike?</p> <p>State that you understand that an inspector from HMRC visited them in relation to the National Minimum Wage.</p> <p>MODERATOR NOTE: Make a (mental) note of the way they react when you mention the inspection. What is their body language like? Do they look away, look annoyed, seem unconcerned, etc. Make a judgement you can test and change during the interview</p>	<p><b>Welcome:</b> orientates participant, gets them prepared to take part in the interview.</p> <p>Outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).</p> <p><b>Introductory text</b></p> <p>MODERATOR NOTE – Do not use acronyms. Say “National Minimum Wage”, not NMW. Say Department of Business Innovation and Skills, not BIS, etc.</p> <p>DO NOT mention anything regarding the new automatic penalty regime until after section 3 – views on enforcement activities.</p>

		Introduction to get the interviewee talking about their job and industry
5 mins	<p><b><u>Perceptions and knowledge of the National Minimum Wage</u></b></p> <p><b>In your own words, what would you say is the purpose of the NMW? And how do you feel about it – what are the positives and negatives?</b></p> <ul style="list-style-type: none"> <li>• How does the NMW affect them as an employer?</li> <li>• How does the NMW affect their workers?</li> </ul> <p><b>How easy or difficult is it to administer the NMW? Can you tell me a bit more about why you say this? Can you give me some examples</b></p> <ul style="list-style-type: none"> <li>• What is it that your business has to do to comply with NMW legislation?</li> <li>• Broadly, how could BIS make it easier to comply with NWM legislation? <b>MODERATOR NOTE: Make this brief – the guide will return to this later. The point is to get the employer to begin to think about the issues</b></li> </ul> <p><b>Where do you or would you go for information about the NMW?</b></p> <ul style="list-style-type: none"> <li>• <b>DO NOT INITIALLY PROMPT.</b> Allow enough time for the participant to answer</li> <li>• Possible sources include: on-line guidance (Direct.gov and Business Link – including the on-line NMW calculator); Pay and Work Rights Helpline; trade sector publications, your accountant, your solicitor, direct contact from HMRC (i.e. a compliance intervention); HMRC’s Employer Bulletin, direct mail, broadcast media, newspapers, etc Probe on each of these, if not mentioned spontaneously.</li> <li>• <b>MODERATOR: Use these tools prior to any fieldwork – be familiar with them.</b></li> </ul> <p><b>(If any of these sources were used) How helpful or unhelpful were these sources of information?</b></p> <ul style="list-style-type: none"> <li>• What was helpful about the sources of information?</li> <li>• How could they be improved? What else did you still need to know and why?</li> </ul>	<p>To gain some initial views of the NWM. MODERATOR NOTE: Get an idea about the overall views on the policy i.e. is it seen as a burden, a necessary evil or do they really support it?</p> <p>To understand from where employers get their information and the comparative value of that information.</p> <p>NMW calculator is here:  <a href="http://www.direct.gov.uk/en/Empl">http://www.direct.gov.uk/en/Empl</a></p>

	<ul style="list-style-type: none"> <li>• Where would you look for this type of information? Why do you say this?</li> </ul> <p><b>Which particular aspects of the NMW do you think are particularly important to provide advice on?</b></p> <ul style="list-style-type: none"> <li>• Why do you say this?</li> </ul> <p><b>Do you think that the NMW is an easy thing to avoid paying?</b></p> <ul style="list-style-type: none"> <li>• Why do you say this? Can you think of any examples you have heard of in which NMW was avoided? IF NO – what do you think the triggers might be for a business not paying the NMW?</li> <li>• What benefits do you think employers gain by not paying the NMW?</li> <li>• What is your view on the balance of risk between being compliant with NMW legislation and avoiding paying the NMW?</li> </ul>	<a href="#">oyment/Employees/TheNationalMinimumWage/DG_10037277</a>
20 minutes	<p><b><u>Views on enforcement activity</u></b></p> <p><b>If an employer is not complying with NMW rules, eg not paying the correct NMW rate, what actions do you think BIS and/or HMRC can take against that employer?</b></p> <ul style="list-style-type: none"> <li>• <b>DO NOT PROMPT INITIALLY.</b> If participant gives an answer ask them where they got this information from, and their overall attitudes towards this</li> <li>• Allow enough time for the participant to answer? Then ROTATE the following prompts</li> <li>• Do you know of any financial penalties or fines? In what circumstances do you think they could face a fine or penalty? If yes, what is the level of fines that employers might face?</li> <li>• What, if any, legal action do you think could be taken against the employer? In what circumstances?</li> <li>• Do you know what happens if a complaint is made against an employer suspected of not paying the NMW?</li> </ul> <p><b>All employers suspected of being non-compliant can be investigated by HMRC and those found not be compliant can face fines and court action. This sheet (<b>SHOW ENFORCEMENT ACTION SUMMARY SHEET, see Appendix 2</b>) summarises the actions that can be taken against employers.</b></p> <ul style="list-style-type: none"> <li>• FOR EACH, ask:</li> <li>• Do you think it is fair on employers to pay a penalty? Are some more fair than others? Why is that the</li> </ul>	<p>This section covers the participant's views on the NMW enforcement activities and whether they see them as fair and effective.</p>

	<p>case?</p> <ul style="list-style-type: none"> <li>• How <b>effective</b> is each of these penalties in encouraging compliance? Are some more <b>effective</b> than others? Why is that the case?</li> </ul> <p><b>Are there any other enforcement actions that you think would be effective in ensuring businesses are compliant with NMW legislation?</b></p> <ul style="list-style-type: none"> <li>• Have they experience or heard about any other types of enforcement action?</li> <li>• What is it about these activities that would encourage an employer to pay the NMW?</li> <li>• What else would work?</li> </ul> <p><b>How should enforcement action be applied? Should all non-compliant businesses face the same sanctions or should sanctions change depending on mitigating circumstances?</b></p> <ul style="list-style-type: none"> <li>• What different circumstances should affect enforcement activity?</li> <li>• By what criteria should harder sanctions be applied? Why do you say this?</li> </ul> <p><b>Does your business have any internal checks in place to ensure you are compliant with NMW legislation? If so, what checks do you have?</b></p> <p>Did anybody help them design those checks (agent, BIS/HMRC, other business, employer body, personal contacts)? If so, who helped and what assistance did they provide? How useful was this help? Why do you say this?</p> <p>What information sources did they use to help them design their checks? How useful was this information? What else would it have been helpful for you to know? What difference would this have made?</p> <p><b>Can you recall any recent advertising or communications regarding the NMW?</b></p> <ul style="list-style-type: none"> <li>• <b>DO NOT PROMPT</b>. Allow participant time to respond</li> </ul> <p><b>USE COMMUNICATION EXAMPLE SHOWCARDS (Appendices 3 and 4). Do you recall seeing any of these communications materials?</b></p> <ul style="list-style-type: none"> <li>• <b>FOR THOSE RECALLED</b>: When did you see these communications? Where did you see them? What was the key message in this? What did you think of this message?</li> <li>• How effective or ineffective are these messages? Can you explain why?</li> <li>• Did the message make you more likely to comply with NMW rules? Irrespective of answer ask 'Why?'</li> </ul>	<p>Specific question relating to whether businesses think about being compliant.</p>
--	--	--



	<p><b>To summarise our conversation in this section, what sort of messages do you think would be effective in encouraging employers to comply with NMW legislation?</b></p> <ul style="list-style-type: none"> <li>• Prompt on carrot versus stick, what would deter them from breaking NMW rules? What would incentivise them to comply with NMW rules?</li> </ul> <p><b>SHOW COMPLIANCE MESSAGE SHEET (See Appendix 1). Take a minute to consider the different messages on this sheet of paper? Which two messages are the <u>most</u> effective in encouraging employers to comply with NMW rules?</b></p> <ul style="list-style-type: none"> <li>• Why do you say this?</li> </ul> <p><b>Which two messages are the <u>least</u> effective in encouraging employers to comply with NMW rules?</b></p> <ul style="list-style-type: none"> <li>• Why do you say this?</li> </ul> <p><b>Are there any organisations or people who you would particularly listen to regarding compliance with the National Minimum Wage?</b></p> <ul style="list-style-type: none"> <li>• <b>DO NOT INITIALLY PROMPT.</b> Allow participant time to respond</li> <li>• Examples could include: HMRC, Business Link, other employers, sector employer groups, tax agents, financial advisors, etc?</li> <li>• What is it about these organisations or individuals that makes them worthwhile to listen to?</li> </ul>	
Up to 15 minutes	<p><b><u>Attitudes towards visits and inspections</u></b></p> <p><b>QUESTIONS FOR THOSE WHO HAVE BEEN SUBJECT TO AN ENQUIRY (From screener questionnaire)</b></p> <p><b>In your own words, can you briefly describe what it was like to be subject to an NMW enquiry?</b></p> <ul style="list-style-type: none"> <li>• A brief idea of how it made them feel, when it took place and the impact on their business.</li> </ul> <p><b><u>Before the visit</u></b></p> <p><b>How were you first notified that you would be visited?</b></p> <ul style="list-style-type: none"> <li>• What method of communication; letter, phone, via agent, etc. How did you feel about this? Why do you say this?</li> </ul>	<p>The key elements of this section are the interaction between the compliance officers and the employer. In particular, the level of detail the employer had about what was happening and why they were chosen. What employers learn from the process is covered here and in the closing section</p> <p>Good summary of the process on the business link website:</p>

- What communication methods work best for you in preparing for activities like compliance officer visits?
- How much notice were you given? How did you feel about this – was it enough time?

**When you first heard you were subject to an enquiry, what did you expect the process to be like?**

MODERATOR NOTE – Make a note of their answer to compare with the reality of the visit later.

- What words or phrases would the participant use to describe their feelings?
- What level of paperwork and administration did they expect from the enquiry?
- What sort of activities did they think they would have to do as part of the enquiry?
- Did they have an understanding of why they were being investigated?

**Do you know why you were subject to an enquiry?**

- Was *anything* said? Can you describe how HMRC approached telling you about this?
- What are your own views on why you were selected? Probe on how this influenced their attitudes towards the inspection.

MODERATOR NOTE: Looking here for whether their views tally with HMRC's. Probe on what they think about this and sensitively challenge them – Compare with what they said earlier

**What actions did you take to plan for the inspection visit?**

- What materials did you have to collect? How easy was this to do? Why do you say this? How long did it take you?
- Did anyone tell you what you needed to do to prepare?
- Who did you speak to about preparing for the visit? (Prompt if necessary with case officer, HMRC officer, agent, accountant, etc). Why did you speak to them?

**How did you feel about the preparation you needed to do?**

MODERATOR NOTE: We're aiming to pick up on their perceptions of **administrative burden** – keep neutral about it in the first instance in order to measure spontaneous reaction

- Was it easy or difficult to prepare – Can you explain why?
- How did you prepare around your day-to-day work? (Probe on whether they had to shift other work or if they could delegate)

<http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1074403472&type=RESOURCES>

- (If they have an agent) What role did your agent/accountant play in the process? What role did you play? How did you find this balance?
- Did you get any support from HMRC or BIS? What kind of support did you get? How did you feel about this?

**On the day of the visit**

**What would you say was the hardest thing about the visit? And what was the easiest?**

- MODERATOR NOTE: Get the employer to explain their answer and to suggest how that problem could be alleviated. Conversely, ask them to describe what made the highlighted section of the process easy.
- **What questions, if any, did you raise during the visit?**
- Why did you raise these questions?

**And how did the HMRC staff respond to your questions? (did they answer your questions effectively?)**

MODERATOR NOTE: What words do they use to describe staff? Do they call them compliance officers, inspectors, administrators, something else, etc

- How would you describe the attitude of HMRC staff? Why do you think they acted this way? What did they do well? Less well?
- How would you rate the professionalism and consideration of HMRC staff?
- Do have experience of other staff at HMRC (i.e. telephone operatives, tax advisors)? Does your experience of these staff differ to those who visited you?
- Are there other actions you feel HMRC staff could have taken during the visit? What difference would this have made?

**What sort of support and guidance, if any, did you receive during the visit?**

MODERATOR NOTE: Meaning whether HMRC helped by giving practical advice, illustrative examples, talking through errors, providing/signposting information, etc

- How helpful was this advice? Why do you say that?
- Is there any other advice or support that could be provided? How would this help you?

**After the Visit**

**How did HMRC inform you about the outcome of the visit?**

- How did they describe what they found to you? What did you think about this? Did you have any questions, or anything you weren't sure of?
- How did they describe this to you – what channels were used? What did you think about this?
- When did you get this information? How did you feel about this – was it soon enough after the visit?
- MODERATOR: How do they define the end point?

**MODERATOR NOTE: Only ask this after the question above if they were found to be non-compliant AND do not mention “Notice of Underpayment” or a “Penalty Notice”.**

**Did you receive a Notice of Underpayment or a Penalty Notice after the visit. SHOW EXAMPLE FORMS?**

- What did you do after receiving this form?

**MODERATOR NOTE: Ask the participant to have a look at the forms**

**What are your views on the language of the form? [only relevant to employers who have received a notice of underpayment. Think what we need to know is did they understand what they were being required to do and why]**

- (Prompt words or phrases if needed – is it... Understandable; Clear; Effective; Call to action; Persuasive; Detailed; Informative?
- Did you understand what the form was asking you to do?
- Did you know why you were being asked what you were being asked to do?

**What actions did you have to take as a direct consequence of the visit or any follow up activity?**

- How do you feel about the actions you had to take? Did you think they were fair? Easy to implement? Why do you say this?
- What support and guidance did you receive to help you respond to the actions of a visit? How did you feel about this?
- And what support and guidance would you like to have received? What difference would this have made

	<p><b>Can you describe any feedback you received from HMRC about the visit?</b></p> <ul style="list-style-type: none"> <li>• How useful do you think this information will be for the future?</li> <li>• MODERATOR NOTE: If no feedback was received, would the interviewee like to get some? If so, what would be useful?</li> </ul> <p><b>MODERATOR NOTE: Only ask this after the question above if they were found to be non-compliant.</b></p> <p><b>Did you receive a penalty as a result of the inspection? Would you mind telling me roughly how much?</b> MODERATOR NOTE: Don't push, the value provides context and is not essential to know.</p> <ul style="list-style-type: none"> <li>• What did you do think about this penalty? Do you think it is in proportion with the underpayment?</li> <li>• Is it an effective penalty? Will it act as a deterrent?</li> </ul> <p><b>Did the visit and resulting penalty have any effect on relations with your employees?</b></p> <ul style="list-style-type: none"> <li>• How were relations effected? How are those relations now</li> </ul> <p><b>How did the experience of the visit compare to the expectations you had when you were first informed a visit was going to take place?</b></p> <ul style="list-style-type: none"> <li>• Use the responses they gave earlier – what are the main points of comparison?</li> <li>• What elements were as they thought they were going to be?</li> <li>• What was different or surprising or (un)helpful?</li> </ul>	
Up to 5 minutes	<p><b><u>Attitudes towards enquiries including visits</u></b></p> <p><b>QUESTIONS FOR THOSE WHO HAVE NOT BEEN VISITED (From screener questionnaire)</b></p> <p><b>In your own words, what do you think would happen during a NMW compliance enquiry?</b></p> <ul style="list-style-type: none"> <li>• How would HMRC go about informing the employer of their enquiry? PROBE on channels of communication, timeliness.</li> </ul>	<p>A shorter section for those who have not been visited which takes a more theoretical view of the process.</p> <p>Good summary of the process on the business link website:  <a href="http://www.businesslink.gov.uk/bdotg/action/detail?itemId=10744">http://www.businesslink.gov.uk/bdotg/action/detail?itemId=10744</a></p>

	<ul style="list-style-type: none"> <li>• What activities would be carried out during the enquiry?</li> </ul> <p><b>Why do you think employers are subject to an enquiry?</b></p> <ul style="list-style-type: none"> <li>• Can any employer be inspected? Why do you say this?</li> <li>• What criteria should define who should be inspected? And how are those criteria measured? Why do you say this?</li> </ul> <p><b>Moderator to give a brief explanation of what happens during an enquiry.</b></p> <p>What do you think of this? Is there anything surprising? Why do you say this?</p>	<a href="#">03472&amp;type=RESOURCES</a>
10 mins	<p><b><u>Improving the NMW compliance process and conclusions</u></b></p> <p><b>Finally, I'd like to think about what we've discussed and how employers' compliance with NMW might be improved.</b></p> <p><b>Thinking about our conversation from your perspective, what changes could be made to the current methods used to administer NMW to help employers comply with their obligations?</b></p> <ul style="list-style-type: none"> <li>• What does the employer think the most important elements of compliance are – getting the right information to employers, ensuring strong enforcement for wrong-doers, helping businesses with their administration, etc?</li> <li>• CHALLENGE based on earlier responses given – check for consistency</li> </ul> <p><b>MODERATOR – USE THESE IF THEY ARE MENTIONED AS AN ISSUE:</b></p> <p><b>What, if any, other changes do you think could be made to...</b></p> <ol style="list-style-type: none"> <li>1. ...the way NMW is administered?</li> <li>2. ...targeting businesses that purposefully pay less than the minimum wage?</li> <li>3. ...providing support and guidance to employers? <ul style="list-style-type: none"> <li>• On all, probe on what they mean in their response</li> </ul> </li> </ol>	<p>Gauging opinions on how the compliance can be more effective for BIS and HMRC</p>

	<p><b>Is there anything that BIS or HMRC could do to make meeting your obligations in relation to the NMW easier for you?</b></p> <ul style="list-style-type: none"> <li>• MODERATOR NOTE: Probe on administrative burden, attitude of BIS or HMRC staff on helplines or through visits, change in the way information is provided?</li> </ul> <p><b>FOR THOSE SUBJECT TO AN ENQUIRY. How, if at all, has your behaviour towards NMW changed as a result of the inspection?</b></p> <ul style="list-style-type: none"> <li>• What, if anything, did you learn from the experience?</li> <li>• Can you describe any changes you might have made to the way to manage NMW since the intervention?</li> <li>• Can you describe how your experiences with the intervention have made you feel about NMW and/or HMRC?</li> <li>• Are you more aware of NMW issues and how they apply to you business as a result of the enquiry? Can you provide examples of how your awareness has improved?</li> </ul> <p><b><u>Conclusion and Thanks</u></b></p> <p><b>Of all the things we have discussed today, what do you think is the key message for me to take back to BIS?</b></p> <ul style="list-style-type: none"> <li>• Is there anything else you think is relevant and wish to discuss?</li> <li>• Thank participants; explain the next steps (e.g. what BIS will do with the findings).</li> </ul> <p>THANK AND CLOSE. Reassure about confidentiality</p>	<p>Key messages, Draws interview to a close</p>
--	--	---

Appendix 1: Compliance Messages Showcard

<p>Legal arguments to encourage compliance<sup>1</sup></p>	<p>Messages that express the negative consequences to <b>workers</b> of not complying</p>	<p>“Naming and shaming” employers who have been found to be deliberately paying below the National Minimum Wage</p>	<p>A message that employers will have to pay a big fine if they don’t comply.</p>	<p>Messages that express how compliance benefits <b>workers</b></p>
<p>Ethical and moral arguments that encourage compliance<sup>2</sup></p>	<p>Messages that express how compliance benefits <b>employers</b></p>	<p>Media articles that portray compliant employers in a positive light<sup>3</sup></p>	<p>A message that employers are very likely to get caught if they don’t comply</p>	



### NOTES

The purpose of this exercise is to help the participant to think about the issues we wish to discuss. Their responses to some of the prompts will be subjective and they may take different meanings from the phrases used above. The notes below help explain what is meant by the terms used. Use only as prompts if asked by the participant.

- <sup>1</sup> Messages which highlight what the law says employers should do in order to be compliant with the NMW
- <sup>2</sup> Messages which emphasise the moral obligations that employers have to treat employees fairly and that use the principles that underpin the reason behind the NMW (see objective on the front of this guide)
- <sup>3</sup> This is opposite of the naming and shaming message which uses journalistic case studies to portray a positive view of compliant employers

## Appendix 2: Summary of Enforcement Measures

### HMRC Investigations:

1. Your employment records given to inspectors on demand
2. Inspectors can take records away from your premises (with and without your permission)
3. Although normally by appointment, inspectors can undertake unannounced visits to your premises.

### Financial penalties:

1. Your workers are paid arrears at the current rate of the National Minimum Wage, regardless of when they were underpaid
2. The penalty is calculated at 50% of the arrears, up to a maximum of £5,000
3. If arrears paid to workers within 14 days, the fine is halved

### HMRC Civil Enforcement

1. HMRC will issue a “Notice of Underpayment” if it is found that workers have been paid less than the National Minimum Wage
2. HMRC can pursue payment on behalf of the underpaid worker (s) through the civil courts or in the employment tribunal if the employer does not pay

### HMRC Criminal Enforcement

1. Criminal proceedings can be brought against an employer for offences under the NMW Act. As a consequence:
  1. Employers may face unlimited fines
  2. Directors can be disqualified from the role due to a being found guilty of a criminal offence

### Naming and shaming:

1. Employers found to have deliberately underpaid workers can have their names published in a press release from BIS

## Appendix 3 & 4

Use printed materials supplied by HMRC

## **Appendix B – NMW Case Officer Discussion Guide**

## BIS – National Minimum Wage Compliance Research Officer Discussion Guide – Final (28/01/2011)

### Objectives:

The Government is committed to increasing support for lower and middle income earners and improving the rewards to work. We support the National Minimum Wage (NMW) because of the protection it gives low income workers and the incentives to work it provides. The NMW helps business by ensuring that competition is based on the quality of goods and services provided and not on low prices based on low rates of pay. The Department for Business, Innovation and Skills (BIS) is responsible for NMW policy, including the policy on compliance and enforcement. HM Revenue and Customs (HMRC) enforce the NMW on behalf of BIS.<sup>2</sup> Maintaining a range of deterrents and incentives to encourage compliance is therefore important to ensure no business confers unfair advantage through breaking the rules. With this in mind, this study has three important overall aims:

4. To gauge the range of attitudes that influence employers' behaviour towards compliance with the NMW, which will help to inform the NMW Compliance Strategy;
5. To assess awareness and attitudes towards a new NMW enforcement regime: in particular the automatic penalty and the requirement to repay arrears of the NMW at current rates, and measure its impact on employer behaviour; and
6. To assess employer attitudes to activity, including compliance officer visits, conducted by HMRC in relation to NMW (note this research is not concerned with HMRC's wider tax role).

The research project also aims to understand employers' attitudes to the minimum wage.

### Outline of the research programme:

- 5 in-depth interviews (plus two pilot interviews)
- Over the telephone during late January, then late February
- Each interview/depth to last around 45 minutes and an hour
- The guide is structured thematically around the core objectives above

### Outline of the research programme:

- 5 in-depth interviews (plus two pilot interviews)
- Over the telephone during late January, then late February
- Each interview/depth to last around 45 minutes and an hour
- The guide is structured thematically around the core objectives above

---

<sup>2</sup> BIS Policy Statement on Enforcement, Prosecution and Naming – Jan 2011

Notes	Guide Sections	Guide Timings
<b>1. Introductions and background</b>	Sets the scene, reassures participants about the interview, confidentiality: in particular neither BIS nor HMRC will see individual responses or know which compliance officers took part in the research.	5 mins
<b>2. Deciding to intervene</b>	Explores Compliance Officers' views on how businesses are chosen for an investigation and how they think this could be improved.	5 mins
<b>3. Preparing for a visit</b>	Officers' views on how employers themselves prepare for a visit by a compliance officer and what assistance (if any) officers provide.	5 mins
<b>4. Experiences of the enforcement/compliance process</b>	How officers perceive the process – what works and what doesn't. How much experiences of dealing with employers do they have and what have they learnt from this. Also explores the methods employers use to avoid paying the NMW, and common errors made which leads to non compliance.	15 mins
<b>5. Enforcing the National Minimum Wage</b>	Compliance officers' views on the enforcement regime and tools in their armoury to ensure compliance.	10 mins
<b>6. Changing the process</b>	To draw ideas from officers as to how the process could be improved. Is there other activity from elsewhere in HMRC that could be applied to NMW compliance?	5 mins
<b>5. Conclusion and thanks</b>	A summary of the conversation and key recommendations	5 mins

**Using this guide**

We use several conventions to explain to you how this guide will be used. These are described below:

Timings	Questions and Prompts	Notes
5 mins	<p><u>Underlined = Title:</u> This provides a heading for a sub-section</p> <p><b>Bold = Question or read out statement:</b> Questions that will be asked to the group if relevant. Not all questions are asked during fieldwork based on the moderator's view of progress</p> <ul style="list-style-type: none"> <li>▪ <b>Bullet = prompt:</b> Prompts are not questions – they are there to provide guidance to the moderator if required.</li> </ul>	
How long it takes	Typically, the researcher will ask questions and use the prompts to guide where necessary. NB: Not all questions or prompts will necessarily be used in an interview	This area is used to summarise what we are discussing and is for your information only

Timings	Key Questions	Notes
5 mins	<p><b><u>Welcome and introduction</u></b></p> <ul style="list-style-type: none"> <li>• Thank participant for taking part</li> <li>• Introduce self, Ipsos MORI</li> <li>• Explain that BIS has commissioned the research and outline what the research hopes to achieve</li> <li>• Emphasise that we will be talking about the National Minimum Wage (NMW) and how legislation is enforced by HMRC officers. Confidentiality: reassure all responses anonymous and that information about individuals will not be passed on to anyone and that BIS and HMRC will not be told which compliance officers participated in the research.</li> <li>• Role of Ipsos MORI – independent research organisation (i.e. independent of BIS, HMRC), gather all opinions: all opinions valid</li> <li>• Get permission to digitally record – transcribe for quotes, no detailed attribution</li> </ul> <p><b>The purpose of this research is to help BIS understand the views of employers towards the NMW and the way in which the policy is enforced by BIS and HMRC. Your views are important in this because it allows us to place the opinions of employers in context – what you tell us will provide a valuable check against the things that employers say. We will also be able to gather a different perspective on how enquiries are carried out and this will help us understand how the process could be improved for all parties involved.</b></p> <p><b>Our interview is therefore contextual and we hope to draw on your experiences working with employers to help qualify some of the detail we get from employer interviews. You opinion is as interesting to us as your experiences because it will be informed and help us as researchers better understand the detail we get from employers. The interview is not a test, but an honest exchange of what you think about employers’ experiences with the NMW</b></p>	<p><b>Welcome:</b> orientates participant, gets them prepared to take part in the interview.</p> <p>Outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).</p>

	<p><b><u>Work Background</u></b></p> <p><b>Can you briefly tell me about your work at HMRC?</b></p> <p>Probe on their role, how long they have been doing that role, what other (HMRC) jobs they've had. Ask what they enjoy and dislike about the role.</p> <ul style="list-style-type: none"> <li>• What other areas of HMRC or other business have you worked in or have you just worked in NMW?</li> <li>• If yes – how did the roles differ, especially if you worked in a tax compliance area?</li> </ul> <p><b>In your experience, what opinion do employers typically hold about the National Minimum Wage? [Do we mean the NMW or NMW compliance? We are interested in employers' perceptions of the compliance process not whether there should or should not be a NMW – but appreciate that this may be an ice breaker]</b></p> <ul style="list-style-type: none"> <li>• Are they broadly supportive or negative? Why do they think that?</li> <li>• How does this compare if you know, to views on their tax obligations?</li> </ul>	<p>Introduction to get the interviewee talking about their role and to gauge how they think about their interactions with employers.</p>
5 mins	<p><b><u>Deciding to Intervene</u></b></p> <p><b>For my benefit, can you start by describing the process whereby an employer is identified for an NMW investigation?</b></p> <ul style="list-style-type: none"> <li>• When does the case officer first become involved in the process? Who allocates the case? What information are they given at the start of the process? How do they feel about this? Could this information be improved? How? Is this the right time for them to get involved?</li> <li>• Are you aware of the process before the case comes to you? What do you think of this? [They should have a broad overview of the process and be able to comment on whether it works well or not from their perspective]</li> </ul> <p>After the case is allocated to you.</p> <ul style="list-style-type: none"> <li>• Are any types of information or sources of intelligence more important than others? Why?</li> <li>• Are there any other sources of information you think should be taken account of? Why do you say this?</li> </ul>	<p>Explains the way that case officers <i>think</i> employers are chosen and is also an easy lead into the interview for them?</p> <p>Also helps understand if compliance officers can explain what they do and why they do it – later actions may be dictated by what they think their job is (i.e. “collector” versus “teacher”)</p>



5 mins	<p><b><u>Preparing for an enquiry</u></b></p> <p><b>Can you describe what you do to prepare for an enquiry?</b></p> <ul style="list-style-type: none"> <li>• Ask the officer to go through the different stages. What work is necessary from them?</li> <li>• Do they find it easy or difficult to prepare? Why do they say that?</li> </ul> <p><b>How, if at all, do you let employers know they are subject to an enquiry?</b></p> <ul style="list-style-type: none"> <li>• Written, telephone call, email? When and why do you use one method over another – how much flexibility do you have in the communication you use? Who is responsible for the initial communication? <b>MODERATOR NOTE:</b> [may be admin clerk rather than compliance officer who sets up the initial appointment]</li> <li>• What communication methods do you think work best? Why do you say this? And what method works least effectively? Why do you say this?</li> <li>• What support, if any, do you give to the employer prior to a visit? What difference does this make?</li> <li>• What factors do you consider about the employer before you make your first contact with them? Do you tailor your approach depending on the circumstances of the employer?</li> </ul> <p><b>Are there any circumstances where it would be more appropriate not to give the employer notice of a visit?</b></p> <ul style="list-style-type: none"> <li>• What are these circumstances? Why is this? Do you have any personal experience of unannounced visits? What are the pros and cons of unannounced visits?</li> </ul> <p><b>What is said to employers about why they are subject to an enquiry?</b></p> <ul style="list-style-type: none"> <li>• Is <i>anything</i> said? Why do you say this?</li> <li>• What information do you draw on to do this?</li> <li>• What do you think your role is in informing the employer of the investigation? How do you find this role? Does it</li> </ul>	<p>This section looks at how compliance officers prepare themselves and employers for a visit.</p> <p>The compliance officer role is professional and in our past experience of interviewing HMRC, we have found some variation in the approaches taken to visits as case officers have some flexibility in how they manage their approach.</p> <p>Provides a compliance officer view on the administrative burden faced by employers</p>

vary depending on the type of employer? If so, how?

**What are the benefits of informing an employer in advance of a visit rather than conducting an unannounced visit?**

- Do you think the employers are notified of a visit at the best stage in the process? What is the best way to tell them? Why is that?

• **MODERATOR NOTE:** Are the benefits officers talk about for *them*, or for the *employer*?

**In your experience, what do employers say about how easy or hard it is to prepare for an inspection?**

- What difficulties do employers face? What is it specifically about those issues that causes difficulty?
- How do employers suggest those difficulties can be circumvented?

**Can you describe the data and information that employers need to prepare in advance of an inspection? Or on the day of the visit?**

- Does the information required vary between employers? If so, what causes this variation?
- Is there any information that employers typically have trouble providing? Why do they say that information is hard to provide?

**Does the employer always have the right information/documents to hand if you give them advance notice of the visit?**

- If not why not? If they do is it essential to have/secure this information on the day of the visit or do employers typically provide requested information/documents at follow meetings or by post?

**How long do employers typically have between being informed they are to be inspected and the day of the visit?**

- Do employers usually think this is enough time?
- What burden, if any, do you think the inspection places on employers? How could this be kept to a minimum?

<p>15 minutes</p>	<p><b><u>Experiences of the investigation process</u></b></p> <p><b>What are the most common reasons for non compliance in your opinion? Why do you think this is? Can you describe how an investigation for this type of non compliance would proceed?</b></p> <p>MODERATOR NOTE: IF OFFICERS DO NOT MENTION THE ISSUES BELOW, PICK TWO OF THE FOLLOWING SCENARIOS TO USE AS CASE STUDIES. ROTATE ACROSS INTERVIEWS. IF OFFICER HAS NO EXPERIENCE OF SCENARIO, USE DIFFERENT SCENARIO.</p> <p><b>Can you describe what would typically happen in an inspection involving:</b></p> <ul style="list-style-type: none"> <li>• <b>Problems with accommodation, travel, uniforms or other deductions?</b></li> <li>• <b>Problems with employees having moved across age bands?</b></li> <li>• <b>The employer having no knowledge of the legislation surrounding the NMW?</b></li> <li>• <b>Suspicion that more employees are working for a company than have been declared?</b></li> <li>• <b>Employees being paid lower wages in a ‘cash in hand’ situation where no records are kept?</b></li> <li>• <b>Employers not maintaining the correct records?</b></li> <li>• <b>Suspicion that the employee/complainant may have doctored the relevant records in some way?</b></li> </ul> <p><b>What would make for a particularly ‘good’ inspection? And what would make for a particularly ‘bad’ inspection?</b></p> <ul style="list-style-type: none"> <li>• <b>MODERATOR NOTE: This question is broad on purpose – get the Officer to define what they mean by good and bad. This will help us understand what they think a successful enquiry is.</b></li> </ul> <p><b>What level of knowledge about the NMW is typical amongst employers?</b></p> <ul style="list-style-type: none"> <li>• <b>Are they well informed of legislation, on not well informed? Are there any types of employers who know more about the NMW (i.e. small businesses, or those from specific sectors, or businesses that have been established a</b></li> </ul>	<p>Compliance officers can provide a more rounded view of the investigation process based on their experiences of dealing with many employers.</p> <p>This is useful for us to better understand the process of administering the NMW. If we understand the way employers try to get around the system, it helps us to analyse what employers say with a more critical eye.</p>
-------------------	--	---

long time)?

**What are the common inadvertent errors that employers who are trying to be compliant make?**

- What does the officer think causes these errors?
- What solutions exist to help employers avoid these errors?

**In your experience, what are the main reasons for non-compliance amongst employers?**

- Are there any common factors that determine whether an employer will be complaint or non-complaint?

**What do you think are the main differences between a complaint and non-complaint employer?**

- What would you consider to be a high risk employer for NMW purposes? Are there any common traits i.e. size of the sector, type of sector?
- Have you identified any particular patterns amongst different types of employers and their approach to compliance? If so, what are they?

**And can you describe the methods that non-compliant employers use to try to purposefully avoid paying the NMW?**

- Which methods are particularly common?

**Similarly, what are the best ways to help those who inadvertently make errors to be compliant with NMW?**

- Why does the officer think these methods work best?
- Are you aware of the different approaches used across HMRC and if so, do you think these would work in NMW?

**Which methods do you think are the most effective in forcing those who purposefully avoid paying NMW to be compliant?**

- What is it about those methods that works?

**What sort of questions do employers raise during the course of an investigation?**

	<ul style="list-style-type: none"> <li>• What are the key concerns of employers?</li> <li>• In the case officer's experience, why do you think these concerns arise?</li> <li>• Are employers sometimes represented by a solicitor or an accountant at the visit? How does this help or hinder the enquiry?</li> </ul> <p><b>How do you respond to queries raised by employers during an inspection?</b></p> <ul style="list-style-type: none"> <li>• Why do case officers answer in this way? Are they directed, or is it something that they have learned through experience?</li> <li>• What type of response do you think works best? What experiences is this response based on?</li> </ul> <p><b>What sort of support and guidance do you provide during the course of an investigation (prior to a visit, during the visit and post visit)?</b></p> <ul style="list-style-type: none"> <li>• What sort of things do you mostly help employers with? How does this vary with the different sectors and employers? What difference does this make?</li> <li>• And how do you help? (Practical advice, illustrative examples, talking through errors, providing/signposting information, etc)</li> <li>• Whose role is it to provide advice and guidance?</li> <li>• Who is best-placed to provide support of this nature?</li> </ul> <p><b>What words would you use to describe the relationship between the employer and the compliance officer?</b></p> <ul style="list-style-type: none"> <li>• Why do they choose these words? What experiences have case officers had to make them think like this?</li> <li>• How do NMW compliance officers think this relationship affect employers' perceptions of HMRC as a whole?</li> </ul>	
10 mins	<p><b><u>Enforcing the National Minimum Wage</u></b></p> <p><b>What are your views on the powers HMRC has to enforce the NMW?</b></p>	Here we explore what actually happens during an investigation – according to compliance

<ul style="list-style-type: none"> <li>• Are they too strong or too weak? Ask them to explain why.</li> <li>• What changes would they make to their powers if they could? Why is this attractive to them? What difference would each of these changes make? Why do you say this?</li> </ul> <p><b>Is the scheme easy or hard to enforce? Why is that?</b></p> <ul style="list-style-type: none"> <li>• <b>MODERATOR NOTE:</b> May link to the discussion above, but try to nuance the specifics of what makes it easy/hard</li> </ul> <p><b>I'd like to go into some of the specifics of enforcement activity and gauge your views on how effective and how fair your current suite of powers are.</b></p> <p><b>MODERATOR:</b> If the officer has already talked in detail about any of the below, just cover things they have yet to discuss (i.e. they may not spontaneously discuss fairness).</p> <p><b>ROTATE</b> the order of these. Use the <b>ENFORCEMENT ACTION SUMMARY SHEET (see Appendix)</b> for a summary of each action if necessary (they should really know about them).</p> <ul style="list-style-type: none"> <li>• FOR EACH, ask:</li> <li>• How <b>fair</b> is each of these penalties? Are some more <b>fair</b> than others? Why is that the case?</li> <li>• How <b>effective</b> is each of these penalties in encouraging compliance? Are some more <b>effective</b> than others? Why is that the case?</li> </ul> <p><b>Are employers aware of the automatic penalty and the requirement to repay arrears at current rates or is this news to them?</b></p> <ul style="list-style-type: none"> <li>• How do they react to this?</li> <li>• Do you think that employers who have had to pay an automatic penalty will be more or less inclined to comply with NMW law going forward? Why do you say this?</li> <li>• How aware do you think employers are of your general powers, eg the power to remove documents for copying?</li> </ul>	<p>officers.</p> <p>We also probe here about the relationship between officers and employers, which will allow us to understand how officers think the relationship should work.</p>
---	--

	<p>And how should they be communicated to about them? what difference would this make do you think?</p> <p><b>Are there any other enforcement actions that you think would be effective in ensuring businesses are compliant with NMW legislation?</b></p> <ul style="list-style-type: none"> <li>• Is there anything that could be taken from other areas of tax compliance?</li> <li>• What is it about these activities that would be effective?</li> </ul> <p><b>How should enforcement action be applied? Should all non-compliant employers face the same sanctions or should sanctions change depending on mitigating circumstances?</b></p> <ul style="list-style-type: none"> <li>• What different circumstances should affect enforcement activity?</li> <li>• By what criteria should harder (or easier) sanctions be applied? Why do you say this?</li> <li>• Who would decide whether mitigating circumstances applied? How difficult would this be in practice?</li> </ul> <p><b>How would employers view it if some were let off the automatic penalty and others were required to pay?</b></p> <ul style="list-style-type: none"> <li>• <b>PROMPT IF NECESSARY:</b> For example, would it lead to an increase in complaints?</li> </ul> <p><b>What internal checks should employers use to ensure they are compliant with NMW legislation?</b></p> <ul style="list-style-type: none"> <li>• What agencies could help employers design these checks?</li> <li>• Do you discuss options with employers during an inspection? Do you do so for all employers? What criteria do you use to choose which employers to engage?</li> <li>• What information sources do you direct them to?</li> <li>• Do you record the advice you gave? In what format? What do you do with this?</li> </ul>	
5 mins	<p><b><u>Changing the Enforcement and Compliance Process</u></b></p> <p><b>Finally, I'd like to think about the process as we have described it and review the thoughts we had about how investigations and the process might be improved.</b></p>	Drawing on expert opinion, how can the investigations and the process work more

	<p><b>Thinking about our conversation from your perspective, what changes could be made to make investigations more effective?</b></p> <ul style="list-style-type: none"> <li>• <b>MODERATOR NOTE – IF ASKED WHAT “EFFECTIVE” MEANS, ASK THE COMPLIANCE OFFICER TO DEFINE IT.</b> What does a compliance officer think an effective investigation/enquiry means - does it mean ensuring workers receive their arrears, does it mean a good outcome for HMRC or the employer?</li> </ul> <p><b>What other changes do you think could be made to...</b></p> <ol style="list-style-type: none"> <li>4. ...reduce the administrative burden of an investigation on the employer?</li> <li>5. ...ensure the right employers are targeted to undergo an investigation?</li> <li>6. ...improve the proportion of employers who comply with the NMW?</li> <li>7. ...provide support and guidance to employers who want to get it right?</li> </ol>	effectively
5 mins	<p><b><u>Conclusion and Thanks</u></b></p> <p><b>Of all the things we have discussed today, what do you think is the key message for me to take back about the inspection process?</b></p> <ul style="list-style-type: none"> <li>• Is there anything else you think is relevant and wish to discuss?</li> <li>• Thank participants; explain the next steps (e.g. what BIS/HMRC will do with the findings).</li> <li>• THANK AND CLOSE. Reassure about confidentiality</li> </ul>	Key messages, Draws interview to a close.



### HMRC Investigations:

1. Your employment records given to inspectors on demand
2. Inspectors can take records away from your premises (with and without your permission)
3. Although normally by appointment, inspectors can undertake unannounced visits to your premises.

### Financial penalties:

1. Your workers are paid arrears at the current rate of the National Minimum Wage, regardless of when they were underpaid
2. The penalty is calculated at 50% of the arrears, up to a maximum of £5,000
3. If arrears paid to workers within 14 days, the fine is halved

### HMRC Civil Enforcement

1. HMRC will issue a “Notice of Underpayment” if it is found that workers have been paid less than the National Minimum Wage
2. HMRC can pursue payment on behalf of the underpaid worker (s) through the civil courts or in the employment tribunal if the employer does not pay

### HMRC Criminal Enforcement

1. Criminal proceedings can be brought against an employer for offences under the NMW Act. As a consequence:
  - a. Employers may face unlimited fines
  - b. Directors can be disqualified from the role due to a being found guilty of a criminal offence

### Naming and shaming:

1. Employers found to have deliberately underpaid workers can have their names published in a press release from BIS

## Appendix C – Inspected Recruitment Questionnaire

# Recruitment Questionnaire

## Ipsos MORI

Employer Perceptions of NMW Compliance	<b>RESPONDENT RECRUITED FOR:</b>
Interviews – Employers who have experienced an NMW compliance intervention	RESPONDENT NO:

**Specification - This questionnaire recruits 30 employers for face-to-face depth interviews. All of these should be taken from the sample files. Quotas are detailed below.**

**Recruit 45**  
**Recruitment Dates:** 17<sup>th</sup> Jan – 28<sup>th</sup> February 2011  
**Fieldwork Dates:** 7<sup>th</sup> Feb – 4<sup>th</sup> March 2011

### Quotas

<b>Compliance behaviour</b>		
“Compliant” (i.e. no arrears of NMW identified)	15 interviews	
“Non-compliant” (Notice of Underpayment issued to the employer requiring them to repay arrears of the NMW)	15 interviews	
<b>Trade sector</b>	<b>Compliant</b>	<b>Non-compliant</b>
Hospitality	3	3
Retail and personal services	4	4
Other services	3	3
Other	3	3
No quota	2	2
<b>Region</b>		
London and the South East	6	6
North West and Merseyside	2	2
East Midlands/East of England	2	2
Others	3	3
No quota	2	2

Good morning/afternoon/evening. I'm <INTERVIEW NAME> from Ipsos MORI, the independent Market & Opinion Research Company.

Could I speak to <NAME ON SAMPLE>, please?

If asked about the nature of the call, say "We recently sent <NAME ON SAMPLE> a letter about research we are conducting regarding the National Minimum Wage on behalf of the Department for Business Innovation and Skills. We are contacting them to see if they would be willing to take part in the research.

#### WHEN PUT THROUGH

**INTRO B:** Good morning/afternoon/evening (NAME ON SAMPLE). I'm <INTERVIEW NAME> from Ipsos MORI, the independent Market & Opinion Research Company. I am calling about a letter that you will have recently received from us about research we are conducting on behalf of the Department for Business, Innovation and Skills (BIS) on employers' experiences of the National Minimum Wage. Do you remember receiving this letter? **PROMPT WITH FIRST PARAGRAPH OF THE LETTER IF NO.**

We would like to arrange an interview with a senior member of staff from your organisation with responsibility for managing the administration of the National Minimum Wage.

Q1. And are you the correct person to speak to with regard to this? *SINGLE CODE ONLY*

Yes	1	CONTINUE – MAKE A NOTE OF WHY THEY ARE THE CORRECT PERSON TO SPEAK TO, EG CONFIRMED OWNED BUSINESS.
No	2	TAKE NAME AND NUMBER OF CORRECT CONTACT AND ASK TO BE PUT THROUGH

**REINTRODUCE FROM INTRO B IF NEEDS BE AS SPEAKING TO A REFERRAL.**

We have obtained your businesses details from records held by the Department for Business Innovation and Skills as someone who might be able to help us with our research, which aims to improve employers' experiences of National Minimum Wage compliance. We are interested in your views on how minimum wage obligations are communicated to employers like yourself, the guidance that is available to you and deterrents and other factors that may influence willingness to comply with minimum wage rules. According to these records, your business **HAS RECENTLY HAD SOME DEALINGS WITH HM Revenue and Customs** who enforce the National Minimum Wage. This would have involved you being contacted or visited by a compliance officer from HM Revenue and Customs.

Q2. Do you remember HMRC contacting you? *SINGLE CODE ONLY*

Yes	1	CONTINUE
No	2	THANK & CLOSE

Q2a. *FOR RECRUITER ONLY – DO NOT READ OUT TAKE FROM SAMPLE Is employer compliant or non-compliant?*

Compliant	1	RECRUIT TO QUOTA
Non-compliant	2	RECRUIT TO QUOTA

Ipsos MORI would welcome the opportunity to talk to you in more detail about your experiences of National Minimum Wage compliance. This is an opportunity to have your say and make a difference as BIS will use the findings of this research to inform their strategy towards the National Minimum Wage. If you would be willing to help us, then one of our researchers would come to you to conduct an interview of no longer than an hour. The interview will take place at a time convenient to you, and could either be at your workplace or another suitable location. To say thank you for your time Ipsos MORI would like offer you £40 in cash. I would like to reassure you that if you were to take part all the information provided

would be completely confidential; BIS will not be told which business have taken part in this research and they will not see individual responses.

Q3. Would you be interested in taking part in this research? **SINGLE CODE ONLY**

Yes	1	CONTINUE
No	2	THANK & CLOSE

In order to check whether you are eligible for the research though I need to ask you a couple of questions. All information collected will be anonymised & is confidential. If they want to speak to an Ipsos MORI researcher, please tell them to call John Higton, Research Manager, 0207 247 3391

Q4. Can I check that your business currently operates in the <INSERT SECTOR FROM SAMPLE> sector?

Yes	1 – GO TO Q6	RECRUIT TO QUOTA
No	2 – GO TO Q5	

Q5. Which of these sectors would you say best represents your business?

Hospitality	1	
Retail and personal services (comprising retail, clothing & footwear, hairdressing and social care)	2	
Other service	3	RECRUIT TO QUOTA
Other (comprising market service, production/construction, public service and security/cleaning)	4	
None of the above	THANK & CLOSE	

Q6. And can I just check, in which of the following regions is your business based?

London and the South East	1	RECRUIT TO QUOTA
North West and Merseyside	2	
East Midlands/East of England	3	
Other	4	

**\*RECRUITER NOTE: Please check personal details with respondent when confirming a time for the interview.**

Interviewer number:

Interviewer name (CAPS): .....

I confirm that I have conducted this recruitment questionnaire **over the telephone** with the above person and that I asked all the relevant questions and recorded the answers in conformance with the survey specifications and with the MRS Code of Conduct and the 1998 Data Protection Act.

Interviewer Signature: .....

Date: .....

**THIS MUST BE THE LAST PAGE OF THE QUESTIONNAIRE AND MUST BE SINGLE SIDED**

TRANSFER DETAILS FROM FRONT PAGE

**Customer Perceptions of National Minimum Wage Compliance**  
**Ipsos MORI**

Interview	<b>RESPONDENT RECRUITED FOR:</b>
<b>Recruitment Questionnaire</b>	RESPONDENT NO:

**PERSONAL IDENTIFIERS**

Details Location: _____ Date: _____ Time: _____
---

Name/Initial/Title: Mr/Mrs/Ms/Miss \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Full Postcode

<b>Tel. Number (WRITE IN INCL. STD code)</b>	
Home/mobile	1
Work	2
Refused/Ex-directory	3

<b>e-mail address (WRITE IN)</b>	1
_____	

<b>Is respondent willing to take part and available?</b>	
Yes	1
No	2

<b>Respondent attended?</b>	
Yes	1
No	2

## **Appendix D – Not Inspected Recruitment Questionnaire**

## Recruitment Questionnaire

### Ipsos MORI

Employer Perceptions of NMW Compliance	<b>RESPONDENT RECRUITED FOR:</b>
Interviews – Employers who have experienced an NMW compliance intervention	RESPONDENT NO:

**Specification - This questionnaire recruits 10 employers for face-to-face depth interviews. All of these should be taken from the sample files. Quotas are detailed below.**

#### **Recruit 45**

**Recruitment Dates:** 4<sup>th</sup> Feb – 7<sup>th</sup> February 2011

**Fieldwork Dates:** 7<sup>th</sup> Feb – 4<sup>th</sup> March 2011

#### **Quotas**

<b>Trade sector</b>	
Hospitality	2
Retail and personal services	3
Other services	2
Other	2
No quota	1
<b>Region</b>	
London and the South East	5
North West and Merseyside	2
East Midlands/East of England	1
No quota	2
<b>Business size</b>	
Small (24 or less)	7
Medium (25-249)	3



Good morning/afternoon/evening. I'm <INTERVIEW NAME> from Ipsos MORI, the independent Market & Opinion Research Company. We are conducting some research on behalf of the Department for Business, Innovation and Skills (BIS) on employers' experiences of the National Minimum Wage.

We are speaking to a number of employers about national minimum wage (NMW) compliance and would like to discuss this issue with the owner or manager who is responsible for ensuring that your workforce is paid the National Minimum Wage.

If your organisation is selected for this research we will offer £40 in cash to thank you for your time. This can be paid to a charity of your choice if you prefer.

**THE INCENTIVE OFFERED REPRESENTS COMPENSATION FOR THEIR TIME, TRAVEL EXPENSES AND ANY CHILDCARE.**

We are endeavouring to speak to employers across a range of sectors so I would like to start by asking you some questions about your business. All information collected will be anonymised and BIS will not be given details of individual responses.

**Q1 Do you pay the National Minimum Wage to at least some of your employees? SINGLE CODE ONLY**

Yes	1	CONTINUE RECRUITMENT
No	2	THANK AND CLOSE

**Q1a. Are you the owner, senior manager or manager with responsibility for ensuring that the business pays the NMW? SINGLE CODE ONLY**

Yes, the owner of the business	1	CONTINUE TO Q2
Yes, a manager with responsibility for ensuring that the NMW is paid.	2	
No	3	GO TO Q1B

**Q1b. Could you please give me the contact details for the owner of the business or the manager who is responsible for ensuring that the NMW is paid? SINGLE CODE ONLY**

Yes	1	TAKE DETAILS & ASK TO BE PUT THROUGH TO THAT INDIVIDUAL. IF UNAVAILABLE, CLOSE
No	2	THANK AND CLOSE

Ipsos MORI would welcome the opportunity to talk to you in more detail about your experiences of National Minimum Wage compliance. This is an opportunity to have your say and make a difference as BIS will use the findings of this research to inform their strategy on the National Minimum Wage. If you would be willing to help us, then one of our researchers would come to you to conduct an interview of no longer than an hour. If your business is selected to take part in this research, to say thank you for your time Ipsos MORI would like offer you £40 – this can be paid to you direct or to a charity of your choice. I would like to reassure you that if you were to take part all the information provided would be completely confidential; BIS will not be told which business have taken part in this research and they will not see individual responses.

**Q2. Would you be interested in taking part in this research? *SINGLE CODE ONLY***

Yes	1	CONTINUE
No	2	REASSURE ON CONFIDENTIALITY. IF STILL REFUSED, THANK & CLOSE
		INTERVIEWER TO NOTE ANY REASONS GIVEN FOR REFUSAL BELOW
Reason for refusal if given		

**Our research aims to improve employers' experiences of National Minimum Wage compliance. We are interested in your views on how National Minimum Wage obligations are communicated to employers like yourself, the guidance that is available to you and deterrents and other factors that may influence willingness to comply with National Minimum Wage rules. We would like to speak to the owners or managers of businesses which have never had dealings with HM Revenue and Customs with regard to compliance with the National Minimum Wage. This would have involved the business being contacted or visited by a compliance officer from HM Revenue and Customs.**

**Q3. Do you remember HMRC visiting your business in relation to compliance with the NMW? *SINGLE CODE ONLY***

Yes	1	THANK & CLOSE
No	2	CONTINUE
Unsure	3	PROBE USING TEXT BELOW, THEN RESTATE QUESTION

**If unsure: HM Revenue and Customs would have contacted and then visited your business to check your records to ensure the National Minimum Wage was being administered correctly. You would have then been told the outcome of that visit.**

**In order to check whether the business is suitable for this research I need to ask you a couple of questions. All information which your provided will be anonymised & is confidential.**

**Q4. Which of these sectors would you say best represents your business?**

Hospitality	1	
Retail and personal services (comprising retail, clothing & footwear, hairdressing and social care)	2	
Other of specific interest to HMRC (comprising market services, production/ construction, public services and security/cleaning)	3	RECRUIT TO QUOTA
Other not listed above	4	

**Q5. Roughly how many employees work for your business?**

24 or less (SMALL)	1	RECRUIT TO QUOTA
25-249 (MEDIUM)	2	
250+ (LARGE)	3	
Don't know	4	RECONFIRM THEY ARE THE BEST PERSON TO SPEAK TO. IF SO, THANK & CLOSE

**Q6. Can I just check, is the business you manage based in this region?**

SELECT REGION IN WHICH YOU ARE RECRUITING		
London and the South East	1	RECRUIT TO QUOTA
North West and Merseyside	2	
East Midlands/East of England	3	
Other	4	

**Q7 And which of the following best describes your business? SINGLE CODE ONLY**

My place of work is the only site in which our business is based	1	RECRUIT
My business operates a number of different sites and I work at the business headquarters	2	
My business operates a number of different sites and I <b>do not</b> work at the business headquarters	3	THANK AND CLOSE

**Thank you for agreeing to take part. I'll finish by taking a few contact details and a researcher will be in touch later to arrange a convenient time for an interview. If you wish, I can also provide a couple of contact numbers for the person managing this research for Ipsos MORI and the Department for Business Innovation and Skills.**

**IF THEY WANT DETAILS:**

IPSOS MORI RESEARCHER, JOHN HIGTON, RESEARCH MANAGER, 0207 247 3391  
 BIS PROJECT MANAGER, SHILPA PATEL, SENIOR RESEARCH OFFICER, 020 7215 6160

**\*RECRUITER NOTE: Please check personal details with respondent when confirming a time for the interview.**

Interviewer number:

Interviewer name (CAPS): .....

I confirm that I have conducted this recruitment questionnaire **face-to-face / over the telephone** with the above person and that I asked all the relevant questions and recorded the answers in conformance with the survey specifications and with the MRS Code of Conduct and the 1998 Data Protection Act.

Interviewer Signature: .....

Date: .....

**THIS MUST BE THE LAST PAGE OF THE QUESTIONNAIRE AND MUST BE SINGLE SIDED**

TRANSFER DETAILS FROM FRONT PAGE

Interview	<b>RESPONDENT RECRUITED FOR:</b>
<b>Recruitment Questionnaire</b>	RESPONDENT NO:

**PERSONAL IDENTIFIERS**

**Customer Perceptions of National Minimum Wage Compliance**  
**Ipsos MORI**

Details Location: Time:	Date:
-------------------------------	-------

Name/Initial/Title: Mr/Mrs/Ms/Miss

Address:

Full Postcode

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------

<b>Tel. Number (WRITE IN INCL. STD code)</b>	
Home/mobile	1
Work	2
Refused/Ex-directory	3

**Respondent attended?**

Yes	1
No	2

<b>e-mail address (WRITE IN)</b>	1
----------------------------------	---

**Is respondent willing to take part and available?**

Yes	1
No	2

## **Appendix E – Notice of Underpayment**

**Local Compliance  
Individuals & Public Bodies****Phone**

8.30am to 5.00pm Monday to Friday

**Fax**

www.hmrc.gov.uk

**Date**  
**Our ref**  
**Your ref****This Notice is issued under Section 19 of the National Minimum Wage Act 1998**

1. I am a National Minimum Wage Officer acting under powers given to me by the National Minimum Wage Act 1998 ("the Act"). The Act requires that workers who qualify for the national minimum wage ("NMW") are paid by their employers, in each pay reference period, at an hourly rate which is at least equal to the NMW. This must be calculated in accordance with regulation 14 of the National Minimum Wage Regulations 1999.
2. On x a visit was made to your premises at yyyy and your records were inspected.. It was identified that you should have paid the worker(s) listed in column (a) of the enclosed schedule ("the schedule") at an hourly rate which was at least equal to the NMW for the pay reference periods shown in column (e) of the schedule.
3. It is my opinion that, on the date shown in column (c) of the schedule, you have failed to pay the NMW to each worker listed and for each pay reference period shown on the schedule. The underpayments of NMW are shown in column (i) of the schedule.

**Arrears that are payable directly to workers**

4. You are required, under section 17 of the Act, to ensure that each worker listed is paid the arrears due to them as shown in column (j) of the schedule. There is further information on how I have calculated the arrears in the enclosed *Guidance Notes on the Notice of Underpayment*.
5. The total outstanding that you must pay directly to the worker(s) shown in column (a) of the schedule, taking into account any payments already made (as shown on the schedule) is £ x. Payment is due by x, which is 28 days from the date of service of this notice. You must ensure that you deduct any Income Tax or National Insurance contributions from the amounts due to the worker(s) as appropriate.

**Appealing against this Notice**

6. You have the right to appeal against this notice to an Employment Tribunal. **An appeal must be lodged with the tribunal by x**, which is 28 days from the date of service of this notice. An appeal form and explanatory notes are enclosed.
7. There is further information about the grounds on which you can appeal against this notice in the explanatory notes to the appeal form.

Information is available in large print, audio and Braille formats.  
Text relay service number – 18001



## Further Information

8. If you fail to pay the total outstanding due to the worker(s) shown on the schedule by 28 January 2011, HMRC may take legal proceedings against you on behalf of some or all of the workers listed on the schedule.
9. Legal proceedings taken against you may result in you incurring costs defending those proceedings.
10. It is a criminal offence for an employer to refuse or wilfully neglect to pay a worker, who qualifies for the NMW, for any pay reference period at a rate that is at least equal to the NMW.
11. If evidence comes to light that the employer to whom this Notice of Underpayment is addressed has committed a criminal offence relating to NMW he remains liable to be prosecuted in addition to being liable for arrears of NMW.

**Summary of amounts outstanding and penalty due**

Total underpayment for pay reference periods on or after 6 April 2009	1,955.08
Total amount outstanding for all workers	1,957.31
Amount paid to workers at the time this schedule was issued	0.00
Total amount outstanding	£1,957.31
Penalty charge due	977.54

**NMW noU2**  
 HMRC 03/09

(a) Name of Worker	(b) Age at start of PRP or date of birth	(c) Relevant day	(d) Rate applicable at calculation date	(e) Pay reference period (PRP)		(f) Hours worked in PRP	(g) Actual hourly rate of remuneration in PRP	(h) Applicable hourly rate of national minimum wage (NMW) in PRP	(i) Underpayment of NMW in PRP	(j) Amount outstanding payable by PRP
				start	End					
<b>Worker name</b>	19	21/06/2010	£4.83	20/09/2009	11/10/2009	81.50	£2.45	£4.77	£177.17	£179.40
	19		£4.83	12/10/2009	25/10/2009	81.50	£2.94	£4.83	£144.22	£144.22
	19		£4.83	26/10/2009	08/11/2009	81.50	£2.45	£4.83	£181.76	£181.76
	19		£4.83	09/11/2009	22/11/2009	81.50	£2.45	£4.83	£181.76	£181.76
	19		£4.83	23/11/2009	06/12/2009	40.75	£2.45	£4.83	£84.94	£84.94
	19		£4.83	07/12/2009	20/12/2009	81.50	£2.45	£4.83	£181.76	£181.76
	19		£4.83	21/12/2009	03/01/2010	81.50	£2.45	£4.83	£90.88	£90.88
	19		£4.83	04/01/2010	17/01/2010	81.50	£2.45	£4.83	£181.76	£181.76
	19		£4.83	18/01/2010	31/01/2010	81.50	£2.45	£4.83	£181.76	£181.76
	19		£4.83	01/02/2010	14/02/2010	86.50	£4.00	£4.83	£67.65	£67.65
	19		£4.83	15/02/2010	28/02/2010	83.50	£4.00	£4.83	£65.16	£65.16
	19		£4.83	01/03/2010	14/03/2010	84.50	£4.00	£4.83	£65.99	£65.99
	19		£4.83	15/03/2010	28/03/2010	81.00	£4.00	£4.83	£63.08	£63.08
	19		£4.83	29/03/2010	11/04/2010	81.00	£4.00	£4.83	£25.73	£25.73
	19		£4.83	12/04/2010	25/04/2010	83.00	£4.00	£4.83	£64.74	£64.74
	19		£4.83	26/04/2010	09/05/2010	74.50	£4.00	£4.83	£51.46	£51.46
	19		£4.83	10/05/2010	23/05/2010	87.50	£4.00	£4.83	£68.48	£68.48
	19		£4.83	24/05/2010	06/06/2010	70.00	£4.00	£4.83	£47.73	£47.73
	19		£4.83	07/06/2010	20/06/2010	40.00	£4.00	£4.83	£29.05	£29.05

Total outstanding	£1,957.31
Less amount paid to date	£0.00
<b>Total amount outstanding</b>	<b>£1,957.31</b>



# Employment Relations Research Series

Reports published to date in the BIS Employment Relations Research Series are listed below. Adobe PDF copies can be downloaded either from the Labour Market Analysis & Minimum Wage search web pages or via the BIS Publications pages:

- <http://www.bis.gov.uk/publications>
- <http://www.bis.gov.uk/policies/employment-matters/research>

- 120      ***Insured Advice Pilots: Evaluation. Craig Barratt. URN 11/1080. July 2011***
- 119      ***Understanding the behaviour and decision making of employees in conflicts and disputes at work. Daniel Lucy and Andrea Broughton, Institute for Employment Studies. URN 11/918. May 2011***
- 118      ***2009 Compendium of Impact Assessments. Labour Market Analysis and Minimum Wage. URN 11/735. March 2011***
- 117      ***Information and Consultation under the ICE Regulations: evidence from longitudinal case studies. Mark Hall, Sue Hutchinson, John Purcell, Michael Terry and Jane Parker. URN 10/1380. December 2010***
- 116      ***2008 Compendium of Impact Assessments. Labour Market Analysis and Minimum Wage. URN 10/1115. December 2010***
- 115      ***International Review of Leave Policies and Related Research 2010. Peter Moss, Institute of Education, University of London. URN 10/1157 – September 2010***
- 114      ***Review of the default retirement age: summary of stakeholder evidence. URN 10/1018 - July 2010***
- 113      ***Survey of Pay and Work Rights Helpline Callers. URN 10/1128 – September 2010***

- 112 ***Vulnerability and adverse treatment in the workplace. Helen Bewley and John Forth, NIESR. URN 10/1127***
- 111 ***Union Modernisation Fund – Round 2 Evaluation Report URN 10/1084 – July 2010***
- 110 ***Second survey of employers’ policies, practices and preferences relating to age, 2010. URN 10/1008 - July 2010***
- 109 ***The Fair Treatment at Work - Age Report Findings from the 2008 Survey. URN 10/813. March 2010***
- 108 ***Evaluation of the Vulnerable Workers Pilots Year 2 (Final) report. Katie Shearn, Ben Knight and Ashvinder Kaur Matharoo, Opinion Leader Research. URN 10/775. March 2010***
- 107 ***Findings from the Survey of Employment Tribunal Applications 2008. Mark Peters, Ken Seeds, Carrie Harding and Erica Garnett. March 2010***
- 106 ***Implementing information and consultation: developments in medium-sized organisations. Mark Hall, Sue Hutchinson, John Purcell, Michael Terry, Jane Parker. URN 09/1544. December 2009***
- 105 ***Implementing information and consultation: evidence from longitudinal case studies in organisations with 150 or more employees. Mark Hall, Sue Hutchinson, John Purcell, Michael Terry, Jane Parker. URN 09/1543. December 2009***
- 104 ***[The Union Modernisation Fund - Round One: Final Evaluation Report](#). Mark Stuart, Miguel Martinez, Lucio and Andy Charlwood. URN 09/1346. October 2009***
- 103 ***Fair treatment at work report: findings from the 2008 survey Ralph Fevre, Theo Nicholas, Gillian Prior and Ian Rutherford. URN 09/P85. September 2009***
- 102 ***International Review of Leave Policies and Related Research 2009. Peter Moss, Institute of Education University of London. URN 09/1175. September 2009***
- 101 ***Something for nothing? Employment Tribunal claimants’ perspectives on legal funding. Richard Moorhead and Rebecca Cumming. URN 09/813. June 2009***

- 100 ***International review of leave policies and related research 2008. Peter Moss and Marta Korintus. URN 08/1057. July 2008***
- 99 ***Citizens Advice Client Research: Final Report. Derek Mitchell, Alpha Research. URN 08/1056. September 2008***
- 98 ***Vulnerable Workers Pilots' Evaluation: Interim findings from the evaluation of the vulnerable worker pilots at the end of Year 1. Liz Griffin. URN 08/1055. October 2008***
- 97 ***Implementing information and consultation in medium-sized organisations. Mark Hall, Sue Hutchinson, Jane Parker, John Purcell and Michael Terry. URN 08/969. October 2008***
- 96 ***Characteristics of Rejected Employment Tribunal Claims: Paul L. Latreille. URN 09/812. June 2009***
- 92 ***The Union Modernisation Fund: an interim progress report. Mark Stuart, Andy Charlwood, Miguel Martinez Lucio and Emma Wallis. URN 08/639. March 2008***
- 91 ***Offshoring and wage inequality in the UK, 1992-2004. Claudia Canals. URN 07/1667. December 2007***
- 88 ***Implementing information and consultation: early experience under the ICE Regulations. Mark Hall, Jane Parker, John Purcell, Michael Terry and Sue Hutchinson. URN 07/1388. September 2007***
87. ***The impact of employee representation upon workplace industrial relations outcomes. Sian Moore, Ali Tasiran and Steve Jefferys. URN 08/1037. September 2008***
86. ***The Third Work-Life Balance Employer Survey: Main findings. Bruce Hayward, Barry Fong and Alex Thorton. URN 07/1656. December 2007***
- 85 ***Developing an Index of Labour Market Adaptability. David Tinsley and Vassilis Monastiriotis. URN 07/1144. November 2007***
- 84 ***The influence of legal representation at Employment Tribunals on case outcome. Geraldine Hammersley, Jane Johnson and David Morris. URN 07/1150. July 2007***

- 83 ***The costs and benefits of Employment Tribunal cases for employers and claimants. Kathy Armstrong and David Coats. URN 07/1151. July 2007***
- 81 ***Doing the right thing? Does fair share capitalism improve workplace performance?. Alex Bryson and Richard Freeman. URN 07/906. May 2007***
- 80 ***International Review of Leave Policies and Related Research. Peter Moss and Karin Wall, eds. URN 07/1232. July 2007***
- 78 ***Mapping the recruitment agencies industry. Experian Business Strategies. URN 07/1259. October 2007***
- 77 ***Work-life policies in Great Britain: What works, where and how? Sadia Nadeem and Hilary Metcalf. URN 07/826. July 2007***
- 76 ***Reassessing the ‘family-friendly workplace’: trends and influences in Britain, 1998-2004. Gillian Whitehouse, Michele Haynes, Fiona Macdonald and Dionne Arts. URN 07/827. July 2007***
- 74 ***2006 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 07/669. April 2007***
- 73 ***Patterns of information disclosure and joint consultation in Great Britain – determinants and outcomes. Riccardo Peccei, Helen Bewley, Howard Gospel and Paul Willman. URN 07/599. February 2007***
- 72 ***Embedding the provision of information and consultation in the workplace: a longitudinal analysis of employee outcomes in 1998 and 2004. Annette Cox, Mick Marchington and Jane Suter. URN 07/598. February 2007***
- 70 ***Changing job quality in Great Britain 1998 – 2004. Andrew Brown, Andy Charlwood, Christopher Forde and David Spencer. URN 06/2125. December 2006***
- 69 ***Employee representation in grievance and disciplinary matters – making a difference? Richard Saundry and Valerie Antcliff. URN 06/2126. December 2006***

- 68 ***Union modernisation fund: interim evaluation of first round. Mark Stuart, Andy Charlwood, Miguel Martinez Lucio and Emma Wallis. URN 06/1803. September 2006***
- 67 ***1997-1998 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 06/1840. September 2006***
- 66 ***Labour market flexibility and sectoral productivity: a comparative study. Vassilis Monastiriotis. 06/1799. December 2006***
- 65 ***Employment flexibility and UK regional unemployment: persistence and macroeconomic shocks. Vassilis Monastiriotis. 06/1799. December 2006***
- 64 ***Review of judgments in race discrimination Employment Tribunal cases. Alison Brown, Angus Erskine and Doris Littlejohn. URN 06/1691. September 2006***
- 63 ***The First Fair Treatment at Work Survey: Executive summary – updated. Heidi Grainger and Grant Fitzner. URN 07/803 (replacing June 2006 version, URN 06/1380). March 2007***
- 61 ***The settlement of Employment Tribunal cases: evidence from SETA 2003. Paul L. Latreille. URN 07/1149. July 2007***
- 60 ***2000 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 06/1164. July 2006***
- 59 ***The right to request flexible working: a review of the evidence. Grant Fitzner and Heidi Grainger. URN 07/840. March 2007***
- 58 ***The Third Work-Life Balance Employee Survey: Main findings. Hülya Hooker, Fiona Neathey, Jo Casebourne and Miranda Munro. URN 07/714. March 2007***
- 57 ***International review of leave policies and related research. Peter Moss and Margaret O'Brien (editors). URN 06/1422. June 2006***
- 56 ***How have employees fared? Recent UK trends. Grant Fitzner. URN 06/924. June 2006***

- 55 ***The Experience of Claimants in Race Discrimination Employment Tribunal Cases. Jane Aston, Darcy Hill and Nil Djan Tackey. URN 06/1060. April 2006***
- 54 ***Findings from the Survey of Claimants in Race Discrimination Employment Tribunal Cases. URN 06/1059. Mark Peters, Ken Seeds and Carrie Harding. September 2006***
- 53 ***1999 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 06/955. July 2006***
- 52 ***2001 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 06/927. July 2006***
- 51 ***Employment Rights at Work: Survey of Employees. Jo Casebourne, Jo Regan, Fiona Neathey, Siobhan Tuohy. URN 06/ 837. April 2006.***
- 50 ***Maternity and paternity rights and benefits: survey of parents 2005. Deborah Smeaton and Alan Marsh. URN 06/836. March 2006.***
- 49 ***Survey of employers' policies, practices and preferences relating to age. Hilary Metcalf and Pamela Meadows. URN 05/674. April 2006***
- 48 ***2005 Compendium of Regulatory Impact Assessments. Volume 1 and Volume 2. Employment Market Analysis and Research. URN 06/627 (Volume 1) and 06/669X (Volume 2). March 2006***
- 47 ***'Small, flexible and family friendly' – work practices in service sector businesses. Lynette Harris and Carley Foster. URN 05/1491. October 2005***
- 46 ***People, Strategy and Performance: Results from the Second Work and Enterprise Business Survey. The Work Foundation. URN 05/1392. September 2005***
- 45 ***Review of research into the impact of employment relations legislation. Linda Dickens, Mark Hall and Professor Stephen Wood. URN 05/1257. October 2005***

- 44 ***Employment Relations monitoring and evaluation plan 2005, Employment Market Analysis and Research. URN 05/1019. July 2005***
- 43 ***The content of new voluntary trade union recognition agreements 1998-2002. Volume two – Findings from the survey of employers. Dr Sian Moore, Dr Sonia McKay and Helen Bewley. URN 05/1020. May 2005***
- 42 ***The age dimension of employment practices: employer case studies. Stephen McNair and Matt Flynn. URN 05/863. June 2005***
- 41 ***2004 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 05/1018. April 2005***
- 40 ***2002 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 05/582. April 2005***
- 39 ***Results of the Second Flexible Working Employee Survey. Heather Holt and Heidi Grainger. URN 05/606. April 2005***
- 38 ***Equal opportunities, employee attitudes and workplace performance: Findings from WERS 1998. John Forth and Ana Rincon-Aznar. URN 08/575. March 2008***
- 37 ***Job separations: A survey of workers who have recently left any employer. Volume one – Main analysis report. Tania Corbin. URN 04/1920. December 2004***
- 36 ***Employment attitudes: Main findings from the British Social Attitudes Survey 2003. Harjinder Kaur. URN 04/1868. December 2004***
- 35 ***Findings from the 1998 survey of representatives in Employment Tribunal cases. P.L.Latreille, J.A. Latreille and K.G. Knight. URN 04/1530. August 2004***
- 34 ***Employment relations monitoring and evaluation plan 2004. Employment Market Analysis and Research. URN 04/1256. September 2004***
- 33 ***Findings from the Survey of Employment Tribunal Applications 2003. Bruce Hayward, Mark Peters, Nicola Rousseau and Ken Seeds. URN 04/1071. August 2004***

- 32        ***The evaluation of the Work-Life Balance Challenge Fund. Adrian Nelson, Kathryn Nemec, Pernille Solvik and Chris Ramsden. URN 04/1043. August 2004***
- 31        ***A survey of workers' experiences of the Working Time Regulations. BMRB Social Research. URN 04/1165. November 2004***
- 30        ***Equal opportunities policies and practices at the workplace: secondary analysis of WERS98. Tracy Anderson, Neil Millward and John Forth. URN 04/836. June 2004***
- 29        ***Trade union recognition: statutory unfair labour practice regimes in the USA and Canada. John Godard. URN 04/855. March 2004***
- 28        ***2003 Compendium of Regulatory Impact Assessments. Employment Market Analysis and Research. URN 04/743. April 2004***
- 27        ***The Second Work-Life Balance Study: Results from the Employees' Survey. Jane Stevens, Juliet Brown and Caroline Lee. URN 04/740. March 2004***
- 26        ***The content of new voluntary trade union recognition agreements 1998-2002: Volume one – An analysis of new agreements and case studies. Dr Sian Moore, Dr Sonia McKay and Helen Bewley. URN 04/1084. August 2004***
- 25        ***How employers manage absence. Stephen Bevan, Sally Dench, Heather Harper and Sue Hayday. URN 04/553. March 2004***
- 24        ***Age matters: a review of the existing survey evidence. Dr. Peter Urwin. URN 03/1623. February 2004***
- 23        ***The business context to long hours working. T, Hogarth, W.W. Daniel, A.P.Dickerson, D. Campbell, M.Wintherbotham, D. Vivian. URN 03/833. November 2003***
- 22        ***The Second Work-Life Balance Study: Results from the Employer Survey. Stephen Woodland, Nadine Simmonds, Marie Thornby, Rory Fitzgerald and Alice McGee. URN 03/1252. October 2003***



- 21 ***Employee voice and training at work: analysis of case studies and WERS98. Helen Rainbird, Jim Sutherland, Paul Edwards, Lesley Holly and Ann Munro. URN 03/1063. September 2003***
- 20 ***The impact of employment legislation on small firms: a case study analysis. Paul Edwards, Monder Ram and John Black. URN 03/1095. September 2003***
- 19 ***Implementation of the Working Time Regulations: follow-up study. Fiona Neathey. URN03/970. July 2003***
- 18 ***Retirement ages in the UK: a review of the literature. Pamela Meadows. URN 03/820. July 2003***
- 17 ***Evaluation of the Partnership at Work Fund. Mike Terry and Jill Smith. URN 03/512. May 2003***
- 16 ***Working long hours: a review of the evidence. Volume 1 – Main report. Volume 2 – Case studies (and appendices). J Kodz et al. URN: 03/1228. November 2003***
- 15 ***Awareness, knowledge and exercise of individual employment rights. Nigel Meager, Claire Tyers, Sarah Perryman, Jo Rick and Rebecca Willison. URN 02/667. February 2002***
- 14 ***Small firms' awareness and knowledge of individual employment rights. Robert Blackburn and Mark Hart. URN 02/573. August 2002***
- 13 ***Findings from the 1998 Survey of Employment Tribunal Applications (Surveys of Applicants and Employers). URN 03/999. February 2004***
- 12 ***Collective bargaining and workplace performance: an investigation using the Workplace Employee Relations Survey 1998. Alex Bryson and David Wilkinson. URN 01/1224. November 2001***
- 11 ***Implementation of the Working Time Regulations. Fiona Neathey and James Arrowsmith. URN 01/682. April 2001***
- 10 ***Explaining the growth in the number of applications to Industrial Tribunals, 1972-1997. Simon Burgess, Carol Propper and Deborah Wilson. URN 00/624. April 2001***

- 9 ***Costs and benefits of European Works Councils Directive. Tina Weber, Peter Foster and Kursat Levent Egriboz. URN 00/630. February 2000***
- 8 ***Trends in earnings inequality and earnings mobility 1977-1997: the impact of mobility on long-term inequality. Abigail McKnight. URN 00/534. February 2000***
- 7 ***Partnership at work. John Knell. URN 99/1078. September 1999***
- 6 ***The employment status of individuals in non-standard employment. Brendan Burchell, Simon Deakin and Sheila Honey. URN 99/770. July 1999***
- 5 ***Redundancy consultation: a study of current practice and the effects of the Regulations. Jill Smith, Paul Edwards and Mark Hall. URN 99/512. July 1999***
- 4 ***The individualisation of employment contracts in Britain. William Brown, Simon Deakin, Maria Hudson, Cliff Pratten and Paul Ryan. URN 98/943. February 1999***
- 3 ***The dynamics of union membership in Britain – a study using the Family and Working Lives survey. Richard Disney, Amanda Gosling, Julian McCrae and Stephen Machin. URN 98/807. January 1999***
- 2 ***Industrial Tribunals, workplace disciplinary procedures and employment practice. Jill Earnshaw, John Goodman, Robin Harrison and Mick Marchington. URN 98/564. February 1998***
- 1 ***Involving employees in Total Quality Management: employee attitudes and organisational context in unionised environments. Margaret Collinson, Chris Rees, Paul Edwards with Linda Inness. URN 98/507. June 1998***

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit [www.nationalarchives.gov.uk/doc/open-government-licence](http://www.nationalarchives.gov.uk/doc/open-government-licence), write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication is also available on our website at [www.bis.gov.uk](http://www.bis.gov.uk)

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

**URN 11/1335**