



Department for  
Business, Energy  
& Industrial Strategy

# National Living Wage and National Minimum Wage

Government evidence on compliance and  
enforcement 2018/19

February 2020



**OGI**

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This report provides an overview of Minimum Wage enforcement activity during 2018/19...



**HMRC enforce the Minimum Wage**, and use a number of levers to encourage compliance. They follow a **‘Promote, Prevent and Respond’ strategy** and use a variety of techniques to promote compliance...


 <b>1.4 million</b> texts to “at risk” workers	 <b>44,600</b> webinar attendees, and <b>2,700</b> directed towards e-learning	 <b>125,000</b> unique email openings, following a mass email campaign about internships	 <b>264,000</b> employers and workers directly facilitated to seek further information
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... supplemented by a **£1.1 million BEIS media campaign** and **employer guidance**, resulting in **one million** visits to the campaign website, and **9/10** workers being aware of the NLW.




**2018/19 was another record breaking year for Minimum Wage enforcement...**

 **£24.4 million** identified in arrears, for over **220,000 workers...** 

 ...with a record amount of penalties (over 1,000) issued, totalling over **£17 million**

 Targeted enforcement activity continued to increase, accounting for **over half (55%) of the cases closed**

 HMRC issued **seven Labour Market Undertakings**, and their **Serious Non Compliance teams completed 199 joint visits**, more than in 2017/18 (127)

Over the course of 2019/20, our priority is to build upon this success, and expand the work of HMRC to better support low paid workers. We plan to further our evaluative work to better understand whether the current enforcement approach is appropriately focused; whether it deters future non-compliance; and whether it encourages long-term, meaningful, behaviour change.

# Chapter 1. Executive summary

- 1.1 **The National Living Wage (NLW) and National Minimum Wage (NMW)<sup>1</sup> provide essential protection for the lowest paid workers and ensure that they are fairly rewarded for their contribution to the economy.**
- 1.2 The NLW was introduced in April 2016 for workers over the age of 25 and represented a significant increase to the wages of the lowest paid – around 1.8 million workers are estimated to have benefitted from the most recent uprating in April 2019, where the NLW rate was increased from £7.83 to £8.21 per hour.
- 1.3 All employers, irrespective of their size or sector, are responsible for paying the correct Minimum Wage. **Government is clear that anyone entitled to the Minimum Wage should receive it and is committed to pursuing employers who do not pay it.** Identifying workers who are underpaid the Minimum Wage and pursuing enforcement sanctions against employers who do not pay it is, therefore, critical.
- 1.4 **This report provides an overview of Minimum Wage enforcement activity during 2018/19, following a similar report published in 2018 covering activity during 2017/18<sup>2</sup>.** Evidence presented in this report covers: estimated non-compliance with the minimum wage, statistical estimates of low paid jobs, awareness of the Minimum Wage, HMRC's enforcement operations and enforcement statistics.
- 1.5 **In this report, we also respond to recommendations made by the Low Pay Commission (LPC) in their April 2019 report<sup>3</sup>. The government accepts all of their recommendations.**

## Estimating the scale of Minimum Wage non-compliance

- 1.6 We monitor non-compliance with the Minimum Wage to understand how underpayment has changed over time. Measuring non-compliance is inherently difficult, and there is no single official estimate. We therefore use a range of data and information to inform our understanding.
- 1.7 One of the most important sources of information on non-compliance is the ONS' Annual Survey of Hours and Earnings (ASHE), most recently published in 2019. **An estimated 424,000 jobs were paid below the applicable Minimum Wage rate, equivalent to 1.5% of all jobs held by employees<sup>4</sup>.** This is a 17,000 decrease from the 2018 ASHE, where 1.6% of all jobs held by employees were paid below the Minimum Wage.

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<sup>1</sup> Referred to collectively in this report as the Minimum Wage.

<sup>2</sup> Department for Business, Energy and Industrial Strategy (2018)

<sup>3</sup> Low Pay Commission (2019)

<sup>4</sup> ASHE is used to estimate the number of employee jobs paid below the applicable Minimum Wage rate in April 2018. Estimates of non-compliance are adjusted to account for pay periods which predate or span the 1 April 2018.

- 1.8 There are a number of reasons why this is may not be a fully accurate estimate of non-compliance in the wider economy (discussed further in [Chapter 3](#)), and we continue to work to improve estimates of minimum wage non-compliance. We discuss this work in more detail in [Chapter 3](#) and [Chapter 9](#).

## Enforcing the Minimum Wage

- 1.9 **Her Majesty's Revenue and Customs (HMRC) enforce Minimum Wage and use a number of levers to encourage compliance**, informing employers of their responsibilities and raising awareness amongst workers of their rights. HMRC achieves a deterrent effect by using a range of interventions to maximise the visibility and coverage of the enforcement programme. HMRC use their understanding of employers and of risk to ensure they use the right methods to address different aspects of non-compliance.
- 1.10 HMRC's approach to enforcement has been refined in recent years – moving to an increasingly sophisticated, risk-driven approach based on a **'Promote, Prevent and Respond' strategy**. This is discussed in further detail in [Chapter 4](#).

## Promoting compliance and raising awareness

- 1.11 A key element of preventing non-compliance is to promote Minimum Wage legislation and raise awareness of its regulations. Both BEIS and HMRC undertake communications activity to do this, improving worker and employer awareness to encourage compliance. HMRC's Promote and Prevent activity aims to stop Minimum Wage non-compliance before it arises, by changing the behaviour of both employers and workers.
- 1.12 As part of this, BEIS launched a £1.1 million campaign in April 2019 to encourage eligible workers to check their pay and act if they are underpaid. This was supplemented with general social media communications alongside published guidance that sets out the rights and responsibilities for workers and employers. The campaign targeted both workers and employers in high-risk sectors where non-compliance is known to be prevalent, as well as workers who are not typically known to raise complaints about underpayment.
- 1.13 The campaign ran across radio, outdoor posters and digital media. The campaign generated significant national and local media coverage, and to date, the campaign website<sup>5</sup> has received just under one million visits. Analysis of this communications campaign shows that 90% of eligible workers were aware of the NLW, a in line with 2018 (89%). **We will continue communications activity across 2019/20, following recommendations made by the LPC.**
- 1.14 HMRC's NMW 'Promote' team also improve compliance with the Minimum Wage by seeking to change the behaviour of employers and workers. HMRC undertakes a variety of work, ranging from delivering webinars on common errors that lead to Minimum Wage underpayment to using innovative communication techniques to raise

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<sup>5</sup> The 'Check Your Pay' website (<https://checkyourpay.campaign.gov.uk/>) provides information on the correct Minimum Wage rates, advice for workers and employers, and information on how to raise a complaint via Acas or HMRC's online complaints form.

awareness of Minimum Wage risks (this is discussed in more detail in [Chapter 5](#)). **Over the course of 2018/19, the HMRC Promote team directly facilitated over 264,000 employers and workers to seek further information in relation to the Minimum Wage.**

- 1.15 **BEIS and HMRC have reviewed Minimum Wage guidance following recommendations made by the LPC as well as the Office of the Director of Labour Market Enforcement (ODLME).** We will shortly publish this.

## Identifying underpayment

- 1.16 Identifying cases to be investigated for Minimum Wage breaches is fundamental to our enforcement strategy. Cases can be opened as a result of a worker complaint (made to either Acas, or directly to HMRC), or as a result of targeted investigations initiated by HMRC (using risk modelling and Third-Party Information, TPI).
- 1.17 **Acas handled over 700,000 enquiries in 2018/19:** covering a wide range of employment issues. More specifically, Acas received over 7,700 Minimum Wage enquiries – a 25% fall compared to the previous year. This fall can partly be attributed to a greater emphasis now being placed on directing queries towards HMRC’s online complaint form, meaning that workers are now able to raise complaints direct with the body responsible for enforcement (as opposed to being passed to HMRC via the Acas helpline).
- 1.18 Although the number of Minimum Wage enquiries received by Acas has declined over time, it has been accompanied by a rising proportion of calls referred to HMRC – 24% in 2018/19, compared to 19% in 2017/18. This may be indicative of a better understanding of Minimum Wage regulations among workers, making calls that genuinely relate to and which are therefore more likely to result in an investigation.
- 1.19 **HMRC received approximately 7,700 contacts regarding Minimum Wage and/or its underpayment in 2018/19.** This is a 14% decrease on the number of contacts received in the previous year. Over 3,800 (nearly 50%) of these contacts were received through online forms; a slight decline compared to the previous year.
- 1.20 **HMRC are continuing to analyse the complaints received via the online form and evaluate the online form to identify where any improvements can be made.**

## Enforcement of the Minimum Wage in 2018/19

- 1.21 **The last financial year (2018/19) was another record-breaking year for Minimum Wage enforcement<sup>6</sup>.** HMRC identified the largest amount of arrears, for the highest number of workers in any single year since the Minimum Wage came into force. **HMRC identified over £24.4 million in arrears for over 220,000 workers. A record number of penalties were issued in 2018/19 (over 1,000), totalling just over £17 million.**

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<sup>6</sup> Please note that enforcement figures for 2018/19 are provisional and are subject to revision throughout the 2019/20 reporting year as a more detailed audit of cases is completed.



- 1.22 **Targeted enforcement activity continued to increase in 2018/19, accounting for over half (55%) of the cases closed by HMRC and representing 45% of the cases closed with arrears.** This demonstrates that targeted enforcement plays an important role in the success of enforcement.
- 1.23 HMRC also use employer self-correction (described in [Chapter 7](#)) as a lever to resolve enquiries and ensure arrears are paid to workers more quickly. **HMRC identified over £10 million in self-correction arrears in 2018/19** (approximately two-fifths of the total arrears they identified), almost double the amount identified in 2017/18.

## Penalties, prosecution and naming

- 1.24 HMRC will always consider a case for prosecution where there is evidence that a Minimum Wage offence has been committed. HMRC reserves this for the most serious cases of non-compliance and recognises that it is often not the best approach for many enforcement cases.
- 1.25 **Since 2007, 15 employers have been successfully prosecuted for underpaying the Minimum Wage.** Four cases were referred to the HMRC Fraud Investigation Service for criminal investigation over the course of the year.
- 1.26 HMRC's Serious Non-Compliance (SNC) teams undertake employer-specific investigations and multi-agency operations to identify potentially criminal behaviour (with the ultimate aim of referring cases of serious non-compliance for criminal investigation by HMRC's Fraud Investigation Service (FIS)). **In 2018/19, SNC teams completed 199 joint visits: more than in 2017/18 (127).** The HMRC enforcement team will, over the course of this year (2019/20), aim to increase the number of serious cases of non-compliance referred to FIS.
- 1.27 HMRC also use the new Labour Market Undertaking and Enforcement regime to target non-compliant businesses who persistently and brazenly commit breaches of NMW legislations. **HMRC issued seven LMUs to drive compliance and protect workers from ongoing abuse.**
- 1.28 The BEIS Minimum Wage Naming Scheme is a key part of our enforcement programme, raising awareness of, and deterring, Minimum Wage underpayment. **Since the introduction of the revised scheme in 2013** (where the criteria for being named were updated), **BEIS has named 1,957 employers, who between them owed over £10.7 million in arrears and paid penalties of over £8.3 million.**
- 1.29 The Naming Scheme has been under review since the last naming round in July 2018. This is in response to a recommendation made by the ODLME in their 2018 Enforcement Strategy. We have reviewed the Naming Scheme to ensure that it continues to best fulfil its purpose. **The Naming Scheme remains an important part of our enforcement strategy, and we have made a number of revisions to the scheme (see [Chapter 8](#)).** We accept the LPC's recommendation that government restart regular naming rounds and will start naming employers under the revised scheme in approximately three months' time.

## Enforcement in 2019/20

- 1.30 BEIS increased the funding for promoting compliance and enforcing the Minimum Wage to £27.4 million in the 2019/20 financial year. This increase in financial resource is resulting in more wages being returned to workers, a higher volume of financial penalties to non-compliant employers, and a far greater volume of workers who have received arrears of pay as a result of HMRC action. **The government's priority for this financial year and next is to build upon this success and to expand the work of HMRC further to better support low paid workers.**
- 1.31 There is already a large amount of high-quality data that can be used to assess the effectiveness of Minimum Wage enforcement. However, it is clear that more can be done to understand whether the current enforcement approach is appropriately focused; whether it deters future non-compliance; and whether it encourages long-term, meaningful behaviour change.
- 1.32 This need to evaluate is touched upon by both the LPC and the ODLME and we intend to act on their recommendations. Evaluative work will focus on two main areas: improving monitoring information and understanding the effectiveness of enforcement itself. These areas, and work that can be undertaken, are discussed in more in [Chapter 9](#).

## Chapter 2. Introduction

*This report outlines government's approach to enforcing the Minimum Wage, and enforcement activity across the 2018/19 financial year.*

### Background to the Minimum Wage

- 2.1 The National Minimum Wage (NMW) was introduced in 1999, with the NLW introduced in 2016. **The NMW and NLW (referred to together as the Minimum Wage) provide essential protection for the lowest paid workers and ensure that they are fairly rewarded for their contribution to the economy.** The introduction of the NLW represented a significant increase to the wages of the lowest paid, with an estimated 2.1 million workers covered by the Minimum Wage rates.
- 2.2 To inform the setting of the Minimum Wage, government receives annual recommendations from the independent Low Pay Commission (LPC). The Minimum Wage has increased every April since the introduction of the minimum wage in 1999. The Minimum Wage applies to almost all workers in the UK<sup>7</sup>, and the rate of pay that workers are entitled to depends on their age and whether they are an apprentice. [Table 2.1](#) below illustrates the Minimum Wage rates that were applicable across the 2018/19 financial year (the enforcement year covered in this report<sup>8</sup>).

**Table 2.1. Minimum Wage rates (per hour) as of April 2018 and April 2019**

Age Band	April 2018	April 2019
25 years old and over	£7.83	£8.21
21 to 24 years old	£7.38	£7.70
18 to 20 years old	£5.90	£6.15
16 to 17 years old	£4.20	£4.35
Apprentice	£3.70	£3.90

- 2.3 **All employers, irrespective of their size or sector, are responsible for paying the correct Minimum Wage to their staff.** Whilst the vast majority of employers pay their staff correctly, there is a small minority who do not (either deliberately, or through inadvertent non-compliance with the NMW legislation). **Government is clear that anyone entitled to the Minimum Wage should receive it and is committed to pursuing employers do not pay it** (here referred to as non-compliance).
- 2.4 Her Majesty's Revenue and Customs (HMRC) enforce the Minimum Wage on behalf of the government. HMRC follow a 'Promote, Prevent and Respond' strategy; proactively using a range of the compliance and deterrence measures. These vary from light-

<sup>7</sup> See HM Government (2019a) for details of workers entitled to the Minimum Wage, and exceptions to this.

<sup>8</sup> See HM Government (2019b) for details of the current (2019/ 20) Minimum Wage rates.

touch awareness raising activity, to penalties and criminal prosecutions in cases of more serious non-compliance.

- 2.5 The DLME sets the strategic direction of enforcement across the three labour market enforcement bodies<sup>9</sup>. **The DLME produces an annual strategy, outlining common priorities and makes recommendations to ensure that enforcement is effectively coordinated and targeted.** We discuss these further in [Chapter 4](#).
- 2.6 In addition to making recommendations about the Minimum Wage rate, **the LPC also monitors non-compliance and enforcement.** The LPC produces an annual non-compliance and enforcement report<sup>10</sup>, which makes recommendations for the coming financial year. [Table 2.2](#) below lists the LPC's most recent recommendations. **This report also addresses our response to the LPC's recommendations.**

**Table 2.2. Recommendations made by the LPC in their 2019 Enforcement report**

LPC Recommendation	BEIS Response
Use all available opportunities to improve the measurement of underpayment, and investigate new ways to assess the extent of non-compliance with the Minimum Wage	<b>Accept</b> See <a href="#">Chapter 3</a>
Continue to invest strongly in communications to workers	<b>Accept</b> See <a href="#">Chapter 5</a>
Consider how to build confidence in the complaints process, and work with trade unions to understand the current barriers to workers reporting minimum wage underpayment	<b>Accept</b> See <a href="#">Chapter 6</a>
Use communications to build confidence in the third-party complaints process, and work closely with Acas, trade unions and other bodies to achieve this	<b>Accept</b> See <a href="#">Chapter 6</a>
Invest time in getting employer guidance right, to simplify enforcement in the longer-term	<b>Accept</b> See <a href="#">Chapter 5</a>
Restart regular naming rounds to create momentum, increasing coverage and allowing stakeholders more time to prepare and support	<b>Accept</b> See <a href="#">Chapter 8</a>

<sup>9</sup> This includes HMRC's enforcement of the Minimum Wage, the Employment Agency Standards Inspectorate (EAS), and the Gangmasters and Labour Abuse Authority (GLAA).

<sup>10</sup> For the most recent report, see Low Pay Commission (2019).

## Report outline

2.7 The remainder of this report will discuss the following:

- [Chapter 3: Estimating the scale of non-compliance with the Minimum Wage](#)
- [Chapter 4: Enforcing the Minimum Wage](#)
- [Chapter 5: Promoting compliance and raising awareness](#)
- [Chapter 6: Identifying underpayment](#)
- [Chapter 7: Enforcement of the Minimum Wage in 2018/19](#)
- [Chapter 8: Penalties, prosecution and naming](#)
- [Chapter 9: Enforcement in 2019/20](#)

## Chapter 3. Estimating the scale of non-compliance with the Minimum Wage

*Information on non-compliance with the minimum wage can be gleaned from the Office for National Statistics (ONS) Annual Survey of Hours and Earnings (ASHE); a survey of employees completed by employers. This section of the report summarises data from the 2019 ASHE<sup>11</sup>, and provides an estimate of the extent of non-compliance with the Minimum Wage in 2019.*

### Measuring low paid jobs and Minimum Wage coverage using ASHE

- 3.1 **There is no register or dataset which allows us to comprehensively estimate the number of employers who are non-compliant with minimum wage legislation at any point in time, or accurately identify businesses that are non-compliant.** As with all unlawful activity, there are a number of challenges in accurately estimating it – this is discussed further in this chapter.
- 3.2 As such, we rely on a number of sources of information to inform our assessment of the scale and nature of minimum wage non-compliance, which in turn informs our enforcement approach.
- 3.3 **Information on jobs paid below the minimum wage at a particular point in time can be gleaned from ASHE.** ASHE is a survey of employees completed by employers. ASHE provides information about the levels, distribution and make-up of earnings and hours paid for employees. ASHE is the official source of estimates for the number of jobs paid below the NLW / NMW, allowing estimates to be broken down by sex, age, region, sector, and full-time and part-time working.
- 3.4 However, **ASHE does not offer a direct measure of minimum wage non-compliance** in the population, as we outline below.
- 3.5 The ASHE survey relates to a specific pay period in April. This date moves within April each year (to avoid Easter). For 2015 and earlier years, the minimum wage rates that applied at the time of the survey had been in place since the previous October, some six months earlier.
- 3.6 However, for ASHE 2016 onwards, employers were asked to return information for pay reference periods that were relatively close to the annual minimum wage uprating. For the 2019 survey, employers were asked to return information for pay references that included the 10 April, just 10 days following the introduction of the new minimum wage rates on the 1 April 2019.

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<sup>11</sup> Office for National Statistics (2019)

- 3.7 **Whilst 2019 estimates of jobs paid below minimum wage rates are comparable to those of the last three years, they are not comparable to earlier years (2015 and previous) due to the close proximity of the ASHE reference date to the annual minimum wage uprating.**
- 3.8 In addition to the proximity issue, some employers submit earnings information for employees whose pay period contained the ASHE reference date but started before the 1 April (e.g. 31 March for employees paid on a monthly basis). In order to comply with NLW legislation for the 2019 uprating, employers need only pay the new NLW for pay periods that commenced on or after the 1 April 2019, therefore pay information that included the 1 April should be assessed against the previous minimum wage rates. The ONS have worked to mitigate the impact of this in the data by flagging cases such as these to show a more representative estimate of underpayment.
- 3.9 Additionally, there are legitimate reasons why a job may appear to be paid below the minimum wage in the data, for example where accommodation is provided by the employer, or when varying rates are paid for on call time or travel time.
- 3.10 ASHE is an accurate measure of pay in the *formal* economy at a point in time; however, it does not provide robust information about earnings for some specific types of work, for example apprenticeships and the informal (or hidden) economy.
- 3.11 The government published a feasibility study on the possible approaches to estimate the nature and scale of underpayment in the hidden economy in July 2017<sup>12</sup> and continues to work with the DLME to develop the broader evidence base and help inform better enforcement going forwards.

## Non-compliance with the Minimum Wage in 2019

- 3.12 Despite these evidence gaps, ASHE remains one of the best methods to measure non-compliance with the Minimum Wage.
- 3.13 Adjusting for pay periods which predate or span the 1 April 2019, both BEIS and the ONS estimate **there were around 424,000 jobs paid below the applicable Minimum Wage rate** (equivalent to 1.5% of all jobs held by employees, see [Table 3.1](#)) – **approximately 16,000 fewer than in 2018.**
- 3.14 According to ASHE, **around 361,000 jobs were paid below the NLW** (see [Table 3.1](#) below). **This is equivalent to around 1.5% of all jobs held by employees aged 25 or over**, in line the previous years' findings.

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<sup>12</sup> Department for Business, Energy and Industrial Strategy (2017)

**Table 3.1: Estimated number of jobs paid below NMW / NLW by rate, 2019**

	A. No. of jobs paid below relevant NMW rate	B. Total no. of 16+ jobs	C. Coverage (low paid jobs)	D. Jobs paid below as a proportion of all 16+ jobs
Apprentice rate	9,000	190,000	32,000	4.7%
16-17 years	3,000	286,000	36,000	1.0%
18-20 years	19,000	947,000	115,000	2.0%
21-24 years (NMW)	33,000	1,972,000	154,000	1.7%
25+ years (NLW)	361,000	24,687,000	1,639,000	1.5%
<b>Total</b>	<b>424,000</b>	<b>28,083,000</b>	<b>1,975,000</b>	<b>1.5%</b>
<i>Formula</i>	-	-	-	=A/B

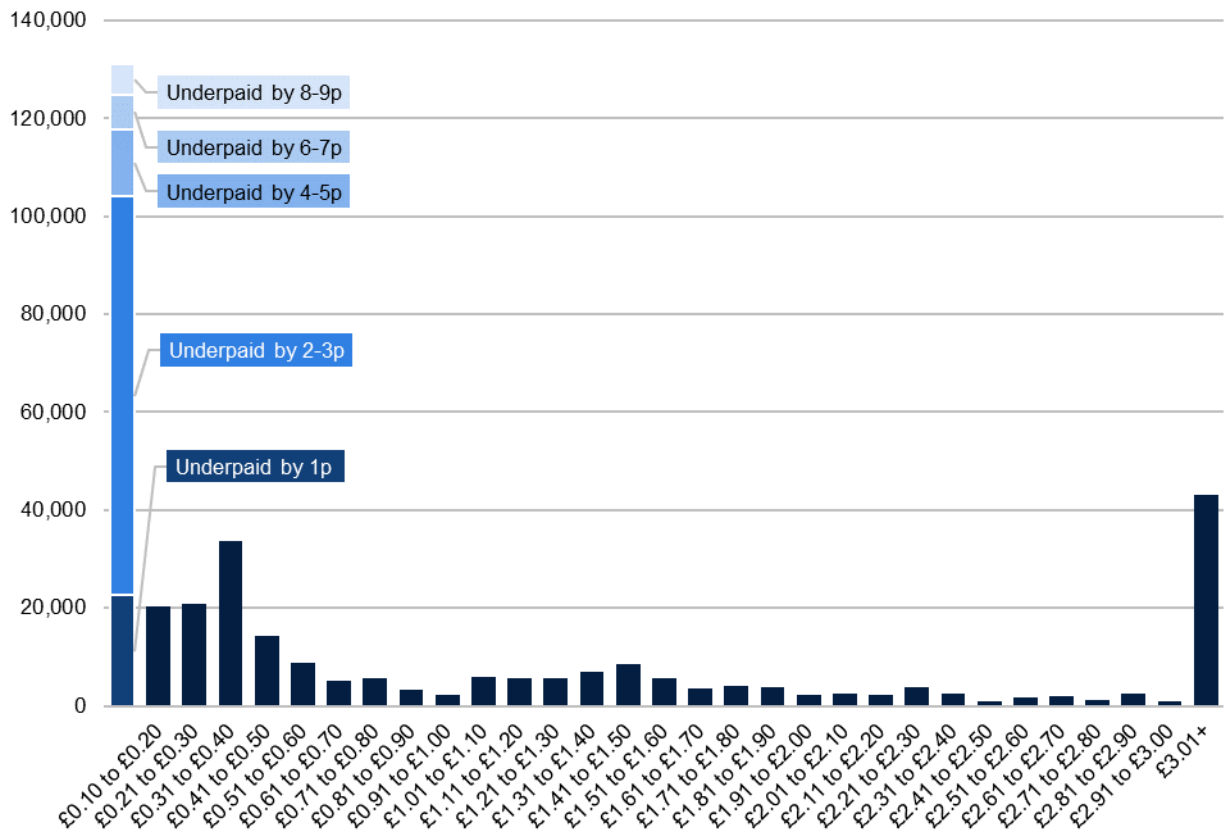
Source: BEIS analysis of Annual Survey of Hours and Earnings 2019

Note: Figures are rounded to the nearest thousand

- 3.15 [Figure 3.1](#) looks in more detail at the level of hourly underpayment in the jobs paid below the NLW. **Over 131,000 workers were paid within 10 pence of the NLW (£8.21)** at the time of the survey, of which over 104,000 were paid within 3 pence.
- 3.16 As in previous years, a possible explanation for **underpayments which are just below minimum wage rates may be due to how weekly and hourly pay is derived** from annual or monthly salary information. Some employers may calculate hourly pay using 4.33 weeks (52 weeks divided by 12 months), and others may use 4.34 weeks per month (365 days, divided by 7 days per week is slightly more than 52 weeks in a year). This small calculation difference can result in an estimated hourly underpayment of around 2 pence for a full-time worker on the NLW. This could be an artefact of performing the calculation for the purposes of completing the survey, or for the purposes of real life pay.
- 3.17 A smaller spike can also be seen in the data between the £0.31 and £0.40 degree of underpayment. This is possibly due to employers incorrectly paying the previous rate of £7.83.



**Figure 3.1. NLW (£8.21) underpayment for those due the 25 years + rate in 10p pay band**

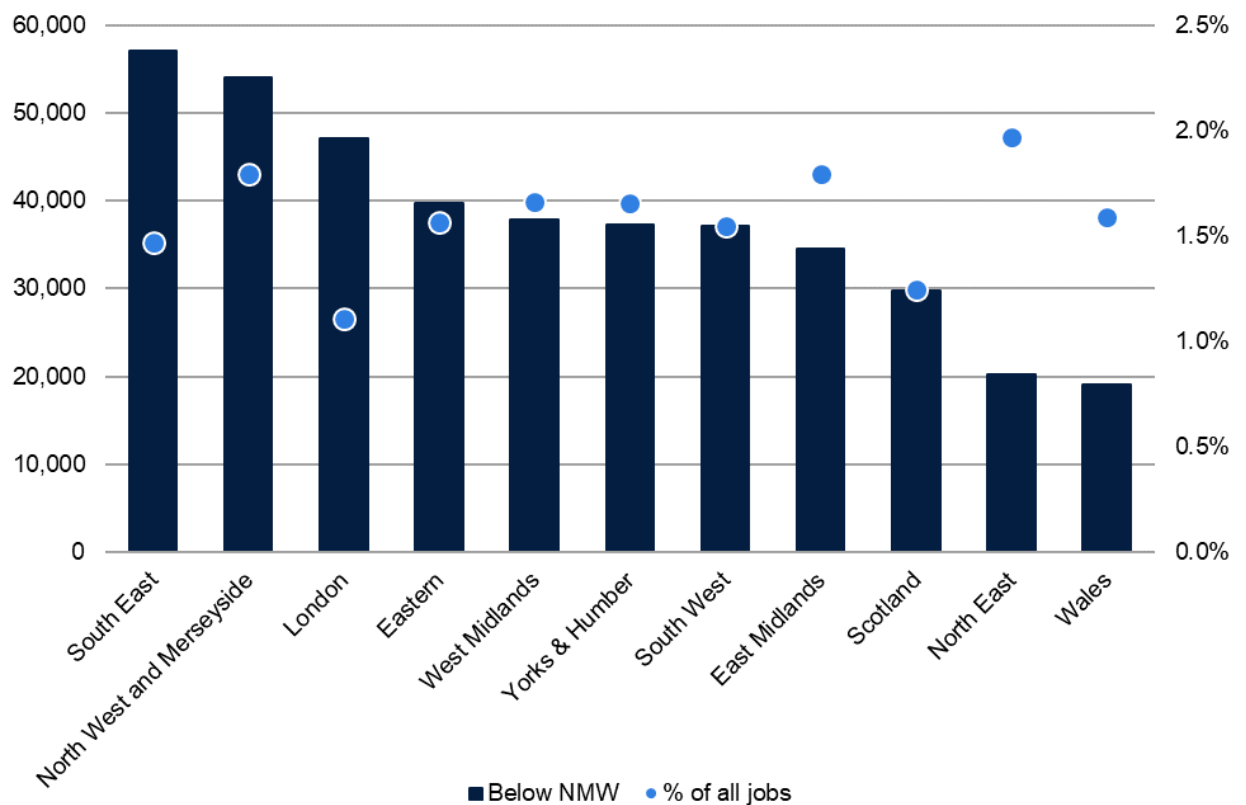


Source: BEIS analysis of Annual Survey of Hours and Earnings 2019

Note: The spike at £3.01+ is due to underpayments of £3.01 or greater being grouped into one category for display purposes. There is little clustering around a particular underpayment amount beyond £3.01.

- 3.18 [Figure 3.2](#) shows the estimated number and percentage of jobs (of all 16+ jobs) paid below NMW and NLW rates in April 2018 by region. As in our 2017/18 report, **the regions with the largest number of jobs paid below the Minimum Wage were the South East and North West** (57,000 and 54,000 jobs respectively). In contrast, Wales and the North East remain the regions with the lowest number of jobs paid below with NMW / NLW (with an estimated 19,000 and 20,000 jobs respectively). This pattern is in part a reflection of the total number of low paid jobs in these regions.
- 3.19 This data suggest that **the North East is one of the regions with the highest proportion of jobs paid below NMW / NLW**, (with an estimated 2.0% of all jobs aged 16 years + paid below the NMW and NLW rates), **alongside the East Midlands and North West and Merseyside** (each 1.8%). Although London has a comparably high number of jobs paid below the NMW / NLW, the graph shows that as a proportion of all jobs in the region, this is the smallest proportion across the regions (1.1%).

**Figure 3.2. Estimate of jobs paid below the Minimum Wage in April 2019 by region<sup>13</sup>**



Source: BEIS analysis of Annual Survey of Hours and Earnings 2019

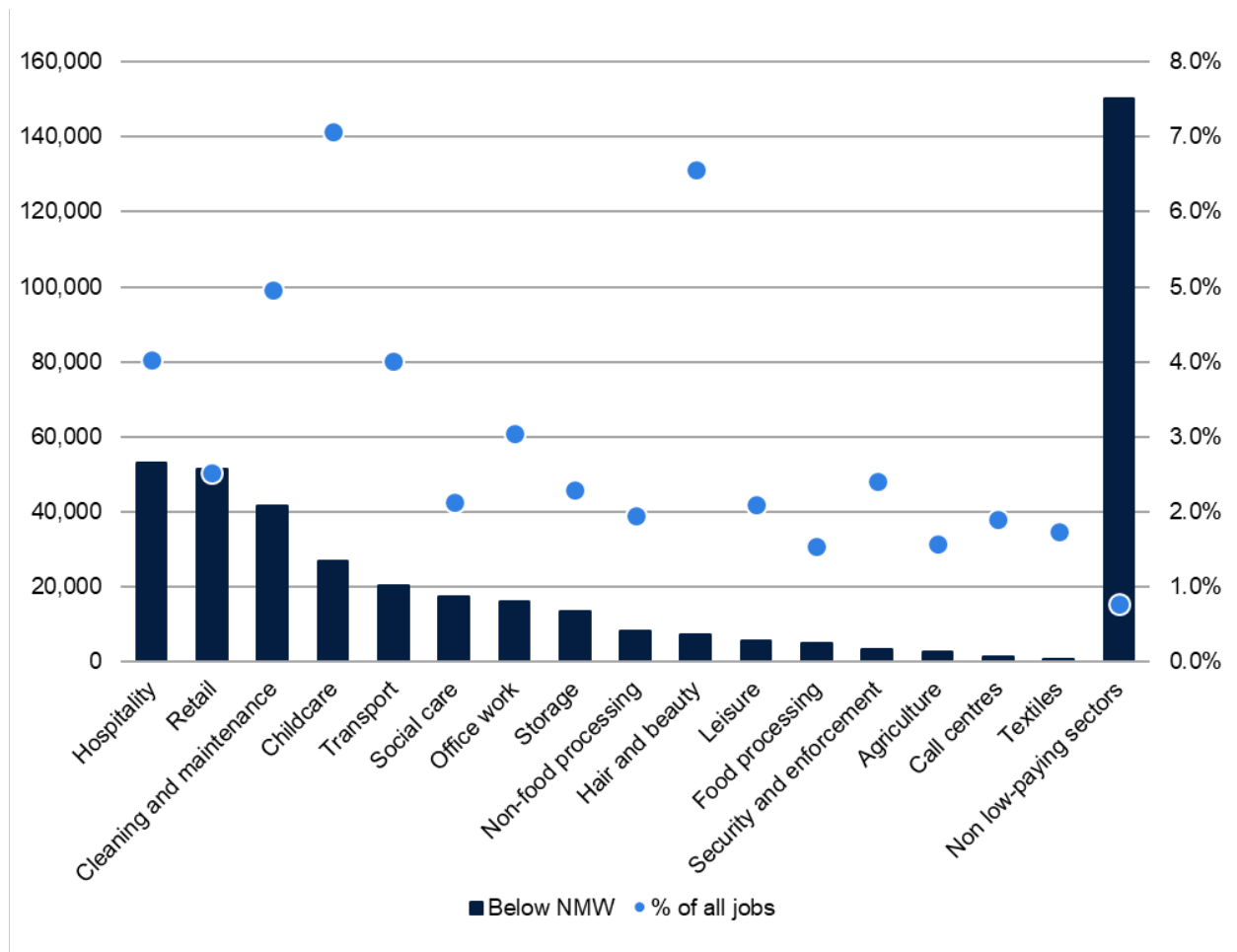
3.20 [Figure 3.3](#) presents estimates for low paid sectors in April 2019. The general pattern of non-compliance amongst low paid sectors remains consistent with previous years, with ASHE estimating that the Hospitality sector has the highest number (53,000) of jobs paid below the Minimum Wage, followed by the Retail sector (51,000 jobs), equivalent to 4% and 2.5 of all 16+ jobs respectively. Childcare continues to be the sector with the highest proportion of jobs paid below minimum wage rates, with 7.1% of all jobs being paid under the minimum wage, followed by Hair and Beauty (6.6%).

3.21 HMRC targets a number of sectors as part of their enforcement of the Minimum Wage (see further discussion in [Chapter 7](#)). The areas that HMRC targeted in 2018/19 included: Social Care; Employment Agencies; the Gig Economy; Apprentices; Migrant Workers and Retail / Commercial Warehouses – **all of which show a relatively high number or proportion of jobs estimated to be paid below the minimum wage<sup>14</sup>.**

<sup>13</sup> Data analysed by Government Office Region (LHS) and expressed as a percentage of all jobs in that region (RHS)

<sup>14</sup> Other sectors covered by the targeted enforcement programme included childcare, hairdressing, small garages and food processing. Targeted sectors are discussed in more detail in Chapter 7.

**Figure 3.3. Estimated number of jobs paid below Minimum Wage by low pay sector in April 2019**



Source: BEIS analysis of Annual Survey of Hours and Earnings 2019

## Improving measures of non-compliance

- 3.22 ASHE is an extremely valuable and useful evidence source for measuring non-compliance with the Minimum Wage. However, we accept that it has some limitations – as are outlined above. Chiefly, ASHE is a snapshot survey, it does not accurately capture all areas of the labour market (e.g. the gig economy and apprentices), instances of non-compliance may be due to differences in calculating pay, and the survey itself has the potential to be affected by the annual Minimum Wage uprating.
- 3.23 Indeed, we have recently published the Apprenticeship Pay Survey (APS)<sup>15</sup> to supplement the information provided by ASHE. Participants are chosen for ASHE based on a random 1% sample of PAYE records, and this means that the likelihood of a large number of apprentices being selected for the survey is low. The APS better targets apprentices, and accurately measures non-compliance with the Minimum Wage.

<sup>15</sup> For the most recent iteration of the APS, see Department for Business, Energy and Industrial Strategy (2020).

- 3.24 Levels of non-compliance vary across these two surveys. The 2018/19 iteration of the APS showed that approximately 19% of Level 2 and 3 apprentices<sup>16</sup> were paid below the appropriate Minimum Wage rate, compared to 5% in the equivalent ASHE survey<sup>17</sup>.
- 3.25 We agree with the LPC's recommendation that we investigate all opportunities to improve our measures and understanding of non-compliance (see [Box 3.1](#)). In addition to work on the APS (and understanding how these estimates differ to those found in ASHE), we are working closely with the DLME, HMT, HMRC and the ONS to develop measures of non-compliance, and intend to continue this over the coming year (see [Chapter 9](#)). We similarly welcome further discussions with the LPC to identify concrete amendments of non-compliance.

**Box 3.1. Recommendation made by the LPC in their 2019 Non-compliance and Enforcement report**

**We urge the government to use all available opportunities to improve the measurement of underpayment, and to investigate methodologies for assessing the scale of non-compliance.**

The government accepts this recommendation and will work with the DLME, HMT, HMRC and the ONS to identify workable concrete solutions to improve measures of non-compliance.

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<sup>16</sup> Level 2 apprenticeships are equivalent to GCSE level, and Level 3 apprenticeships are equivalent to A-level

<sup>17</sup> Low Pay Commission (2016)

# Chapter 4. Enforcing the Minimum Wage

*This chapter outlines our approach to enforcing the Minimum Wage; the theory behind it and the different methods used by HMRC to encourage compliance with the Minimum Wage and to deter non-compliance with it.*

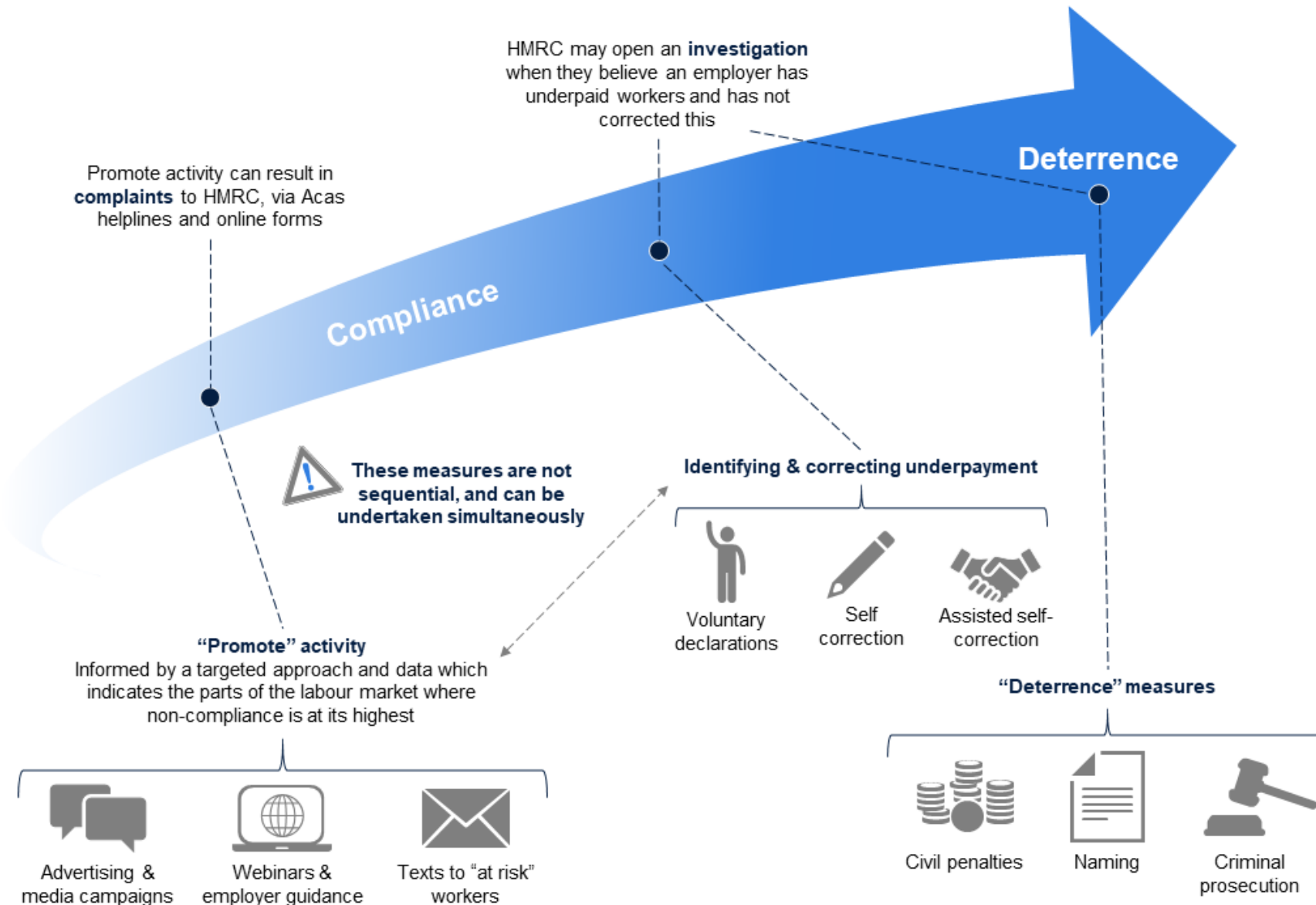
## Enforcement theory

- 4.1 As explained in this report's introduction, the DLME sets the strategic direction of the three existing labour market enforcement bodies and ensures that enforcement efforts are coordinated and targeted.
- 4.2 In the ODLME's view<sup>18</sup>, any enforcement approach should aim to encourage continued compliance and deter further non-compliance. Enforcement relies as much on education and influencing decision-making as it does on punishment. Within enforcement, **the DLME notes that there are two broad approaches: compliance and deterrence, with the most effective enforcement being a combination of the two.**
- 4.3 Promoting compliance is based on the idea that violations of the law are a result of a lack of information (ignorance) and/or incompetence, rather than deliberate behaviour on the part of the employer. **The main approach, therefore, for promoting compliance is to improve the information available to employers;** on the assumption that employers will become compliant with the law once they better understand it. Employers who do not respond to compliance measures can then be identified and subjected to enforcement action.
- 4.4 Deterrence is based on the principal that some employers make a rational decision whether to underpay, balancing the potential benefits against the perceived risk and consequences of being caught. The ODLME suggested that **the aim, therefore, of enforcement should be to alter employers' behaviour by raising the risk of being caught.**

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<sup>18</sup> Director of Labour Market Enforcement (2018)

Figure 4.1. Minimum Wage enforcement



## Our enforcement strategy

- 4.5 **The government is committed to cracking down on employers who break Minimum Wage law and is clear that everyone entitled to be paid the Minimum Wage should receive it.**
- 4.6 **The budget for enforcing the Minimum Wage has doubled since the introduction of the NLW**, increasing from £13.2 million in 2015/16 to £25.2 million in 2018/19 (with a further £1.1 million used by BEIS) – the year of enforcement activity covered in this report. The budget for the 19/20 financial year stood at £26.3 million.
- 4.7 The increased funding, in part to promote changes in Minimum Wage legislation, enhance compliance, and account for the higher coverage of rising Minimum Wage rates, has served to increase the number of HMRC compliance officers to 442 (as of 31 March 2019), allowing for greater targeted enforcement.
- 4.8 Since 1 April 2018, HMRC has used this funding to recruit 124 new staff deployed on Minimum Wage enforcement. New recruits complete a structured technical induction programme which will normally see them involved in investigations after 3 months. The induction programme involves the support of experienced staff. Recruitment on this scale reflects the investment to build future capacity.
- 4.9 As outlined in [paragraphs 4.3 and 4.4](#), Minimum Wage enforcement needs to strike a careful balance, working with workers and employers to encourage compliance whilst taking action to deter underpayment.
- 4.10 As shown in [Figure 4.1](#), **HMRC uses a variety of methods to address different aspects of non-compliance**, ensuring that enforcement is proportionate, joined-up, deters further non-compliance and encourages long-term, meaningful behaviour change. HMRC use their understanding of employers and of risk to ensure they use the right methods to address different aspects of non-compliance.
- 4.11 HMRC's approach to enforcement has been refined in recent years – moving to an increasingly sophisticated, risk-driven approach based around three distinct aims: **'Promote, Prevent and Respond'**. HMRC promote Minimum Wage to encourage compliance, work with employers and workers to prevent non-compliance and, in instances of underpayment, respond by using enforcement sanctions to deter further non-compliance. Enforcement activity typically involves an element of all three. This is discussed in more detail in [Box 4.1](#) below.

#### **Box 4.1. HMRC's 'Promote, Prevent and Respond' strategy**

##### ***Promoting compliance, improving awareness and preventing underpayment***

HMRC encourages awareness of worker rights (discussed further in [Chapter 5](#)) whilst simultaneously supporting employers to comply with Minimum Wage law from the outset, therefore avoiding underpayment.

HMRC uses a number of levers to promote compliance and prevent underpayment including: communications campaigns, webinars, 'nudge letters', online support and guidance and direct contact with those most likely to be underpaid the Minimum Wage.

##### ***Responding to complaints and the risk of non-compliance to deter further non-compliance***

HMRC responds to all worker complaints regarding suspected underpayment of the minimum wage. Each complaint is subjected to a risk-based triage to determine the most appropriate and proportionate response, taking into account the suspected level of non-compliance by the employer. In addition HMRC conducts an extensive national programme of proactive, targeted enforcement and takes part in joint operations with other labour market enforcement bodies.

Once underpayment has been identified, HMRC pursue employers to ensure that any arrears are paid to workers as soon as possible. In some instances, employers are given the opportunity to 'self-correct' their own arrears, before HRMC pursues more stringent penalties if employers fail to take steps to ensure workers' pay is compliant with the law.

HMRC uses a range of sanctions to deter further non-compliance, ranging from penalty fines, public naming by BEIS on the GOV.UK website and (in the most malicious, serious cases of non-compliance), prosecution.

#### 4.12 Examples of recent enforcement work undertaken by HMRC include:

- **Worker complaints:** targeting employers that are the subject of a worker (or workers') complaint.
- **Campaigns:** a structured, sustained programme of work aimed at improving understanding and compliance levels amongst particular sectors or groups of workers where there is a high risk of non-compliance (including campaigns with new and small businesses)
- **Large and complex organisations:** targeting businesses with 250 or more workers with complex structures and payroll systems where there is a higher risk of non-compliance
- **Serious non-compliance:** targeting employers and vulnerable workers most at risk of labour abuse, including modern day slavery
- **Flexible response:** targeting employers across various sectors of the labour market where enforcement data, intelligence and risk modelling indicate a high risk of non-compliance



- **Test and learn:** targeting employers using novel and innovative enforcement techniques where intelligence and data indicates there may be an emerging risk of non-compliance
- 4.13 As part of this work, HMRC meets with employers on a one-to-one basis and also uses a team-based approach to review businesses' records. HMRC has an extensive national programme of proactive, targeted enforcement, taking part in joint, multi-agency operations with other labour market enforcement bodies<sup>19</sup> to tackle cross-cutting illegal behaviour.
- 4.14 As highlighted by the ODLME, there are challenges in ensuring that enforcement is as effective as possible. These include: ensuring that enforcement targets the most serious (and deliberate) cases of non-compliance; that it is proportionate and uses the right methods; that it deters further non-compliance; and that it encourages long-term, meaningful behaviour change.
- 4.15 The ODLME<sup>20</sup> recommended that we undertake work to evaluate the effectiveness of labour market (specifically Minimum Wage) enforcement. Recent changes, as highlighted in our enforcement strategy<sup>21</sup>, will look to address some of these issues and we will continue to act on these challenges.
- 4.16 **The remainder of this report will analyse 2018/19 enforcement activity across each of the three strands of Minimum Wage enforcement described above. Alongside this, this report will discuss the LPC's recommendations as well as our plans for evaluating enforcement in the coming year (see [Chapter 9](#))<sup>22</sup>.**

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<sup>19</sup> Including the GLAA, EAS, police and local authorities.

<sup>20</sup> Director of Labour Market Enforcement (2018)

<sup>21</sup> Director of Labour Market Enforcement (2019)

<sup>22</sup> Government will issue a formal, full, response to the recommendations made by the previous DLME in their 2019/29 strategy. This report should not be treated as the government's official response.

## Chapter 5. Promoting compliance and raising awareness

*Both BEIS and HMRC undertake communications activity to promote the Minimum Wage, improve worker and employer awareness and encourage compliance. Promote activity aims to stop Minimum Wage non-compliance before it arises, by changing the behaviour of both employers and workers. This chapter will discuss communications and awareness raising activity across 2018/19.*

- 5.1 In order to increase the awareness of the Minimum Wage, we launched a **£1.1 million campaign** in April 2019, to encourage eligible workers to check their pay and act if they are underpaid. This year's campaign following on from both 2017's (£1.7 million) and 2018's (£1.48 million) campaigns. The 2019 campaign builds understanding amongst workers about the common ways that they might be underpaid and the routes they can take if they are concerned about being underpaid.
- 5.2 The communications campaign is supplemented with general BEIS social media communications throughout the year to drive awareness, alongside regularly updated, published guidance that sets out the rights and responsibilities for workers and employers respectively.
- 5.3 Our communications campaign targets both workers and employers in high-risk sectors where Minimum Wage underpayment is known to be prevalent (discussed in [Chapter 3](#)). Additionally, the campaign targets workers (e.g. apprentices and those from Black, Asian and Minority Ethnic (BAME) backgrounds) who are not typically known to raise complaints about underpayment.
- 5.4 Using learning from previous years, the campaign ran across radio, outdoor posters digital and social media. **Once more, the campaign levered significant national and local media coverage.** Our approach is estimated to have directly led to a further 371 complaints from 1 April to 25 June 2018, and to date, the campaign website<sup>23</sup> has received just under one million visits.
- 5.5 Analysis of this communications campaign shows that **90% of eligible workers were aware of the NLW** (broadly in line with that in 2018 (89%). Evaluative work also showed that certain communications channels (e.g. promoting the Minimum Wage on social media platforms and working with influencers to focus on specific groups of workers most likely to benefit from the Minimum Wage uprating) were particularly effective.
- 5.6 **We continue to invest in communications activity and will use lessons learnt from this year's campaign to inform our future work, following on from recommendations made by the LPC** (see [Box 5.1](#) below).

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<sup>23</sup> The 'Check Your Pay' website (<https://checkyourpay.campaign.gov.uk/>) provides information on the correct Minimum Wage rates, advice for workers and employers, and information on how to raise a complaint via Acas or HMRC's online complaints form.

**Box 5.1. Recommendation made by the LPC in their 2019 Non-compliance and Enforcement report**

**We recommend that the government continues to invest strongly in communications to workers.**

The government accepts this recommendation and will continue to invest in communications activity. We will continue to publicise the annual Minimum Wage upratings and will work with HMRC to identify further promotional opportunities.

## HMRC 'Promote' activity

- 5.7 **HMRC's NMW 'Promote' team improve compliance with the Minimum Wage by seeking to change the behaviour of employers and workers.** They achieve this by:
- Working with employers, putting them in a position to be compliant and encouraging employers to self-review and correct any errors that have occurred
  - Encouraging workers to check their pay in line with the NMW legislation, seeking information and/or making a complaint as necessary
- 5.8 **In 2018/19, the Promote team directly facilitated over 264,000 employers and workers to seek further information in relation to the Minimum Wage** (i.e. access further Minimum Wage guidance).
- 5.9 HMRC undertakes a variety of work, ranging from delivering webinars on common errors that lead to Minimum Wage underpayment to using innovative communication techniques to raise awareness of Minimum Wage risks. This work involves 'nudging' employers to carrying out necessary checks and providing an opportunity for any underpayment to be voluntarily declared to HMRC. [Box 5.2](#) below provides specific examples of recent Promote work.

### **Box 5.2. Promote work undertaken by HMRC**

**Webinars:** Over 44,600 attendees utilised HMRC-delivered webinars (11,700 in 2017/18), exploring common causes of non-compliance.

**Mass emails:** HMRC sent large-scale, one-to-many, email campaigns to employers flagging common underpayment errors and directing them towards detailed guidance. For example, a mass email about internships and work placements resulted in 125,000 unique email openings and over 12,000 corresponding guidance views.

**eLearning:** Over 2,700 employers and workers were directed towards and accessed the HMRC minimum wage eLearning product.

**Small Business Online Forum:** Dedicated minimum wage section included within the HMRC Small Business Online Forum, a forum and webchat service to support small businesses.

**Email nudges:** HMRC sent one-to-one emails to employers at risk of non-compliance. For example, employers and vacancy advertisers who advertised unpaid internships via Universal Jobmatch, and who demonstrated questionable understanding of minimum wage legislation, were sent emails.

**One-to-many letters:** HMRC undertook large scale, one-to-many, letter campaigns, directed at employers in high risk trade sectors.

**SMS texts:** HMRC designed large-scale SMS text campaigns for workers identified as at risk of underpayment. Around 1.4 million texts were to apprentices and to recipients of Working Tax Credits, two populations known to be at risk of underpayment of Minimum Wage.

- 5.10 **BEIS and HMRC have reviewed NMW guidance for employers, following recommendations made by the LPC as well as the ODLME** (see [Box 5.3](#)). We convened an external panel of representative organisations to support the guidance review and intend to shortly publish this. The guidance will be structured thematically and will be grouped in different levels of detail. The information contained in the updated guidance will be complemented by a quarterly educational bulletin (see [Chapter 8](#)).
- 5.11 We have also recently published the government's response to the recent Salaried Hours consultation, alongside updated regulations<sup>24</sup>. At the point of updating regulations, we will also look to update our guidance further, reflecting these proposed changes.

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<sup>24</sup> These updated regulations will allow salaried hours workers to be paid in additional equal instalments (such as fortnightly or four weekly) and will provide employers with the discretion to choose a calculation year for their workers. These updated regulations will also provide employers with further clarity around Minimum Wage legislation.

**Box 5.3. Recommendation made by the LPC in their 2019 Non-compliance and Enforcement report**

**We urge the government to invest time in getting the guidance to employers right, as this will simplify the task of enforcement in the longer term.**

The government accepts this recommendation and has reviewed NMW guidance for employers alongside HMRC. We will shortly publish this guidance alongside the government/s response to the recent Salaried Hours consultation.

## Chapter 6. Identifying underpayment

*Identifying cases to be investigated for Minimum Wage breaches is fundamental to our enforcement strategy. Cases can be opened as a result of a worker complaint, or as a result of targeted investigations initiated by HMRC (discussed in more detail in Chapter 9). This chapter discusses our successes in identifying cases of underpayment in 2018/19.*

### Online complaints form

- 6.1 In 2018/19 HMRC received approximately 7,900 contacts regarding Minimum Wage and/or its underpayment. This is a 14% decrease on the number of contacts received in the previous year (almost 9,200 contacts in 2017/18), but still represents a 47% increase on 2016/17 (5,400 contacts).
- 6.2 We believe the decrease in the number of contacts received between 2017/18 and 2018/19 is due to the position on sleeping time being clarified<sup>25</sup>, an issue which had generated a significant volume of contacts via the ACAS helpline and HMRC's online form. This is covered in more detail in [Chapter 7](#).
- 6.3 Across our communications campaign, a greater emphasis is now placed on directing queries through to HMRC's online complaint form, as an alternative to calling Acas (discussed below in further detail). This means that workers and third parties can raise a complaint directly with HMRC, as opposed to going through Acas first.
- 6.4 In 2018/19, over 3,800 complaints were made via online forms. This represents nearly 50% of the total number of contacts received, and a slight decline compared to the previous year (approximately 4,200 in 2017/18). However, HMRC received more third-party intelligence via the online form in the corresponding period<sup>26</sup>. Moreover, the previous form led to HMRC typically receiving around 30 online complaints each month.
- 6.5 The impact of this form demonstrates an improvement in the routes to enforcement that are available to workers 24 hours a day (as opposed to the helpline, which is constrained to normal office hours), and which serve to protect the anonymity of vulnerable workers who might not otherwise complain over the telephone.
- 6.6 We agree with the LPC's recommendation that government should consider how to build confidence in the complaints process (see [Box 6.1](#) below). **HMRC continue to analyse the complaints received via the online form with a view to evaluating the online form and identifying enhancements to the complaints process.**

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<sup>25</sup> Mencap v. Tomlinson-Blake (2018)

<sup>26</sup> 2,045 in 2018/19, up from 1,959 in 2017/18

### **Box 6.1. Recommendations made by the LPC in their 2019 Non-compliance and Enforcement report**

#### **LPC recommendations**

**We urge the government to consider how to build confidence in the complaints process, and to work closely with trade unions to understand the current barriers to reporting**

The government accepts this recommendation and will continue to engage with trade unions. We hold regular meetings with trade unions, this year including Trade Union representatives on the readership panel for our Minimum Wage guidance review. We will continue to involve them in, and discuss, future Minimum Wage policy issues

**We recommend that the government's communications should build confidence in the third-party complaints process, including via guidance or case studies around successful complaints. We urge the government to work closely with Acas, trade unions and other bodies to achieve this.**

The government accepts this recommendation and will engage with stakeholders to identify suitable and workable solutions to building confidence in the third-party complaints process that still maintains the integrity of worker anonymity. Where possible, we will use our new educational bulletin to highlight issues around the complaints process.

## The ACAS helpline

- 6.7 Any worker who requires advice on Minimum Wage legislation is encouraged to contact the Acas helpline on 0300 123 1100. Acas call handlers provide expert and confidential advice on minimum wage legislation. The majority of calls on minimum wage topics are categorised as 'enquiries' which are resolved with advice from the call handler. In addition to its usual services, the Acas Helpline answers queries previously handled by the Pay and Work Rights Helpline. This has been in place since the 1 April 2015.
- 6.8 As [Table 6.1](#) shows, **Acas handled over 700,000 enquiries in 2018/19**: covering a wide range of employment issues (including dismissal, grievances, redundancies and contractual matters). An enquiry is classified as related to the Minimum Wage when it concerns the rates, or how legislation is applied in specific circumstances. An enquiry is classed 'Non-payment'-related when a worker indicates that underpayment may be an issue. One call may cover both (or either) topic.
- 6.9 Acas advisers offer a referral to HMRC as an option should callers feel they may have been underpaid. Referrals are made to HMRC where the call handler believes the information should be considered by the Minimum Wage team. This process includes using call transfers, voicemails and directing users to the online form.
- 6.10 Calls referred to HMRC will not always result in an employer investigation. For example, some discussions with workers reveal that their pay is in fact compliant with minimum wage or the complaint relates to something other than a Minimum Wage issue, for example holiday pay.

- 6.11 As shown in [Table 6.2](#), **the volume of Minimum Wage enquiries received by Acas continued to fall across 2018/19**. Acas received over 7,700 enquiries - a 25% fall compared to the previous year and a continuation of the trend seen in 2017/18 (where enquiries fell by 33% from 2016/17). The number of enquiries relating to the non-payment of Minimum Wage also fell by 34%, to approximately 2,900 in 2018/19.
- 6.12 While some of this can attributed to a decrease in the total number of general enquiries received by Acas and an increase in the volume of complaints going through HMRC's online form, the proportion of total calls that are Minimum Wage related has also fallen. This is despite an increase in the estimated scale of non-compliance - estimates from the Annual Survey of Hours and Earnings (ASHE) show that just over 20,000 more workers were underpaid NMW in 2018 compared to in 2017.
- 6.13 The decline in the number of Minimum Wage enquiries received by Acas has been accompanied by a rise in the proportion of calls referred to HMRC – 24% in 2018/19, compared to 19% in 2017/18 and 11% in 2015/16. Although this isn't necessarily a positive story, it may be indicative of a better understanding of Minimum Wage regulations among workers, making calls that genuinely relate to Minimum wage underpayment and which are more likely to result in an investigation.

**Table 6.1. Minimum Wage related calls received by Acas, 2015/16-2018/19**

	2015/16	2016/17	2017/18	2018/19
Total enquiries	942,020	890,180	756,310	730,609
Of which...				
Minimum Wage enquiry	13,490	15,360	10,310	7,736
Enquiry about non-payment of Minimum Wage	4,500	4,660	4,430	2,939
Referred to HMRC	1,520	2,310	1,980	1,895

Source: Acas

- 6.14 [Table 6.2](#) shows a breakdown of 'Minimum Wage' and 'Non-Payment of Minimum Wage' enquiries by gender and caller type for 2016/17- 2018/19. Most enquiries were made by employees, with a greater number of enquiries being made by female workers than males.
- 6.15 Acas collects demographic information (e.g. age and sector) but does not systematically ask callers to disclose this information. As this information is only recorded when a caller chooses to provide it, it has not been presented here given the large number of 'unknowns' where it has not been provided.



**Table 6.2. Acas calls received by key topic and caller breakdown, 2016/17-2018/19**

	2016/17		2017/18		2018/19	
	Minimum Wage enquiry	Enquiry about non-payment of Minimum Wage	Minimum Wage enquiry	Enquiry about non-payment of Minimum Wage	Minimum Wage enquiry	Enquiry about non-payment of Minimum Wage
<b>Total</b>	<b>15,360</b>	<b>4,660</b>	<b>10,310</b>	<b>4,430</b>	<b>7,736</b>	<b>2,939</b>
Gender						
Female	9,470	2,630	6,480	2,590	4,628	1,655
Male	5,870	2,010	3,810	1,820	3,091	1,274
Unknown	10	10	20	10	10	5
Caller type						
Employee	10,330	4,030	7,300	3,870	5,579	2,574
Employer	3,940	250	2,300	220	1,455	133
Agency Worker	240	110	170	110	161	99
Apprentice	600	160	360	120	391	82
Intern	20	10	20	10	12	3
Other	220	100	170	90	135	48

Source: Acas

## Customer responsiveness

- 6.16 **The government remains committed to supporting workers who seek assistance where they believe their pay is not compliant with the law.**
- 6.17 **HMRC continues to respond to 100% of worker complaints within five working days**, with customer waiting times for worker complaint cases monitored throughout the year. This includes making contact with workers who submitted an online.
- 6.18 Each complaint is subject to a risk-based triage to determine the most appropriate and proportionate response, taking into account the suspected level of non-compliance by the employer. HMRC gather essential information from complainants to begin an investigation and protect anonymity where requested. HMRC's response is geared to ensuring workers understand their legal entitlements and result in them receiving arrears of pay owed.
- 6.19 Across 2018/19, **HMRC closed nearly 40% of cases involving workers complaints within 120 days** (compared to 51% in 2017/18), **and nearly 80% within 240 days** (compared to 87% in 2017/18). These changes are likely the consequence of a shift in HMRC's approach to enforcement; now reviewing a business' entire workforce and organisational structure for wider underpayment (rather than just the original complainant worker in isolation). Whilst this means that there are better outcomes for workers as a whole (because investigations are broadened out to cover an organisation's whole workforce), cases may take longer to close, and the original worker complainant may have to wait longer for their complaint to be resolved.
- 6.20 Amongst worker complaint-driven cases, HMRC identified approximately £14.5m in arrears for 125,000 workers. This amount of arrears is a 23% increase compared to the arrears identified 2017/18. This increase is also reflected in the increased proportion of complaint-driven cases where HMRC find arrears (55% of investigations compared to 44% in 2017/18<sup>27</sup>).

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<sup>27</sup> This includes complaint-driven cases that were resolved through the Social Care Compliance Scheme.

# Chapter 7. Enforcement of the Minimum Wage in 2018/19

*HMRC use a range of techniques to enforce the Minimum Wage, ranging from 'nudge letters' in low risk cases to criminal prosecution in the most serious. The following chapter examines Minimum Wage enforcement activity across 2018/19.*

## Box 7.1. Understanding enforcement statistics

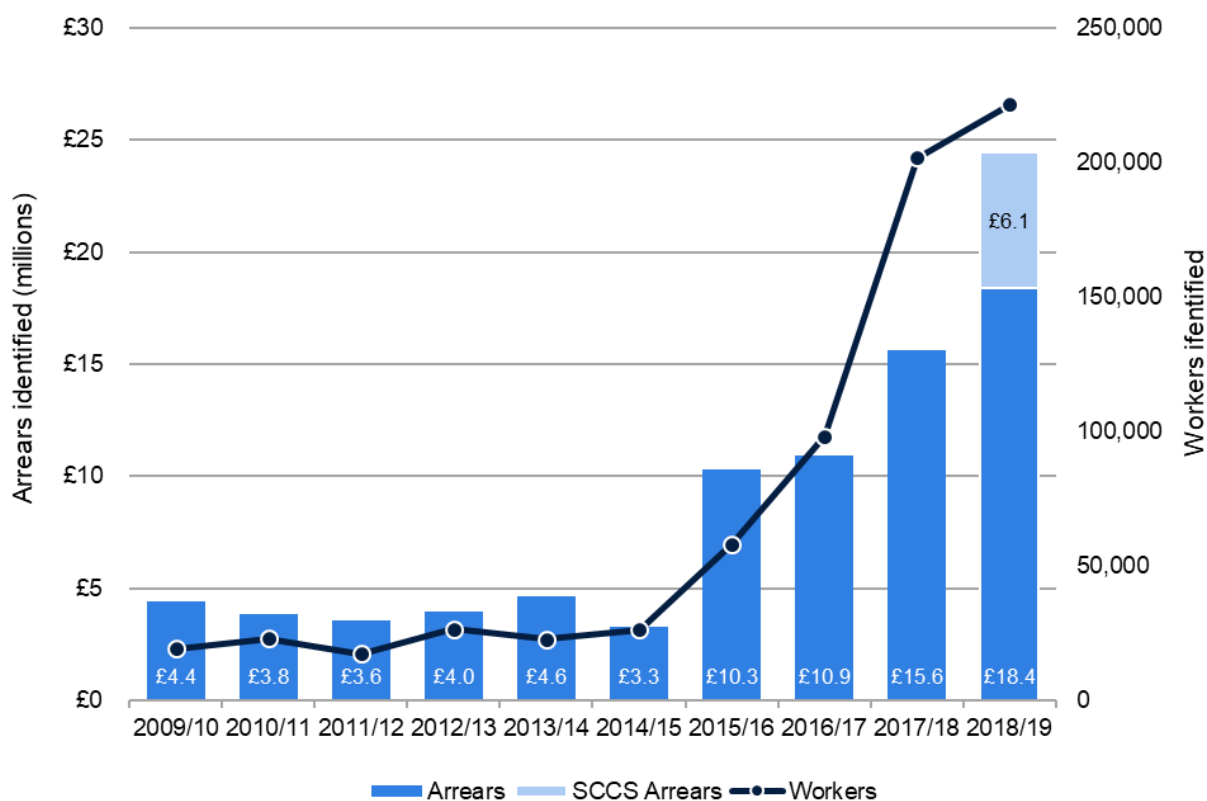
The enforcement statistics presented in this report are compiled from management information representing the outcome of cases closed in a 12-month period ending 31 March 2019. As such, **the data is an annual snapshot of a caseload that is continually changing** – new cases are opened and closed every month and, depending on their complexity and outcomes, will be open for different durations. In addition, during an investigation HMRC can review wage arrears dating back to a maximum of 6 years so the statistics will also include a historical picture of underpayment<sup>8</sup>.

## Enforcement across 2018/19

- 7.1 **The last financial year (2018/19) was another record-breaking year for Minimum Wage enforcement<sup>28</sup>. HMRC identified the largest amount of arrears, for the highest number of workers in any single year since the Minimum Wage came into force.**
- 7.2 [Table 7.2](#) and [Figure 7.1](#) show that in 2018/19 HMRC identified over **£24.4 million in arrears for over 220,000 workers** (note: figures include the Social Care Compliance Scheme (SCCS) - see [Box 7.2](#)). This is more than a 50% increase on the amount of arrears identified in the previous financial year (£15.6 million identified in 2017/18), and a 10% increase on the number of workers identified (201,785).

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<sup>28</sup> Please note that enforcement figures for 2018/19 are provisional and are subject to revision throughout the 2019/20 reporting year as a more detailed audit of cases is completed.

**Figure 7.1. Minimum Wage investigations: arrears and workers identified**

Source: BEIS / HMRC enforcement data

### Box 7.2. The Social Care Compliance Scheme

We introduced the Social Care Compliance Scheme (SCCS) to give employers more support and certainty. The SCCS is a voluntary scheme that allows employers to conduct a self-review in order to identify and pay any wage arrears to workers. Employers have up until March 2019 to identify and repay any arrears they owe their workers. Employers are supported with advice from HMRC, and, providing all arrears are paid within the SCCS timescales, are exempt from financial penalties naming as part of the BEIS Naming Scheme.

The SCCS has passed both the December 2018 deadline for employers to make declarations and the March 2019 deadline for employers to pay the arrears owed to workers. **HMRC received over 1,000 declarations from employers and, for 180 of these declarations, have so far identified over £6 million in arrears for over 24,800 workers.** Arrears and workers numbers are only included in the overall performance data reported by HMRC when payment of arrears to workers has been assured.

7.3 [Table 7.2](#) also shows that **a record amount of penalties was issued in 2018/19**, totalling just **over £17 million**. This was over a 20% increase from the previous year and forms part of a longer-term trend of increasing amounts of penalties being issued to employers. This trend is largely a result of changes made in 2016 to the amount of

penalties that employers are liable for<sup>29</sup>. **This year's record penalties show that this change is continuing to have an effect**, with employers facing severe consequences for breaking Minimum Wage law.

7.4 [Table 7.1](#) shows that in 2018/19, **34 cases, each involving arrears of over £100,000, were closed for a total of over £17 million in arrears**. These figures include arrears that were normally assessed (i.e. arrears assessed by HMRC) and those that were self-corrected. Only arrears that are normally assessed are subject to a penalty and are included in the naming announcements (discussed further in [Chapter 8](#)).

**Table 7.1. Minimum Wage closed cases, arrears and workers by banded arrears per case (2018/19)<sup>1</sup>**

Arrears per case	Closed cases with arrears	Arrears	Workers
£1 - £100	180	£7,911	383
£101 - £500	302	£83,947	1,423
£501 - £1000	166	£118,773	1,670
£1,001 - £5000	384	£893,120	8,365
£5,001 - £10,000	124	£921,590	6,693
£10,001 - £20,000	83	£1,172,741	8,174
£20,001 - £50,000	72	£2,214,044	16,042
£50,001 - £100,000	23	£1,649,779	15,186
£100,000+	34	£17,386,014	163,645
<b>Total</b>	<b>1368<sup>2</sup></b>	<b>£24,447,919</b>	<b>221,581</b>

Source: BEIS / HMRC enforcement data

Note:

1 The figures presented in this table include the Social Care Compliance Scheme (SCCS)

2 An additional 11 cases were originally closed prior to 2018/19, but the employer notified HMRC of additional arrears in 2018/19. The arrears in these cases are included in the total for 2018/19.

7.5 HMRC investigations aim to ensure that employers are compliant with Minimum Wage legislation and that all workers have been paid the Minimum Wage to which they are entitled. The complexity of payroll systems and the wide range of risks identified in large workforces can require considerable resource and experienced staff to investigate.

7.6 Since April 2017 HMRC has invested additional funding in creating 5 new teams to specifically tackle non-compliance in larger and more complex organisations and their supply chains, where there is a risk of widespread non-compliance. These teams work closely with HMRC tax counterparts, making a holistic assessment of the risks within

<sup>29</sup> In 2016 the calculation of penalties that employers were liable for was altered. This now means that employers, whose arrears occur in a pay reference period from 2016 onwards, are liable for penalties that are 200% of the underpayment owed to their workers (as opposed to the original 100%, pre-2016).

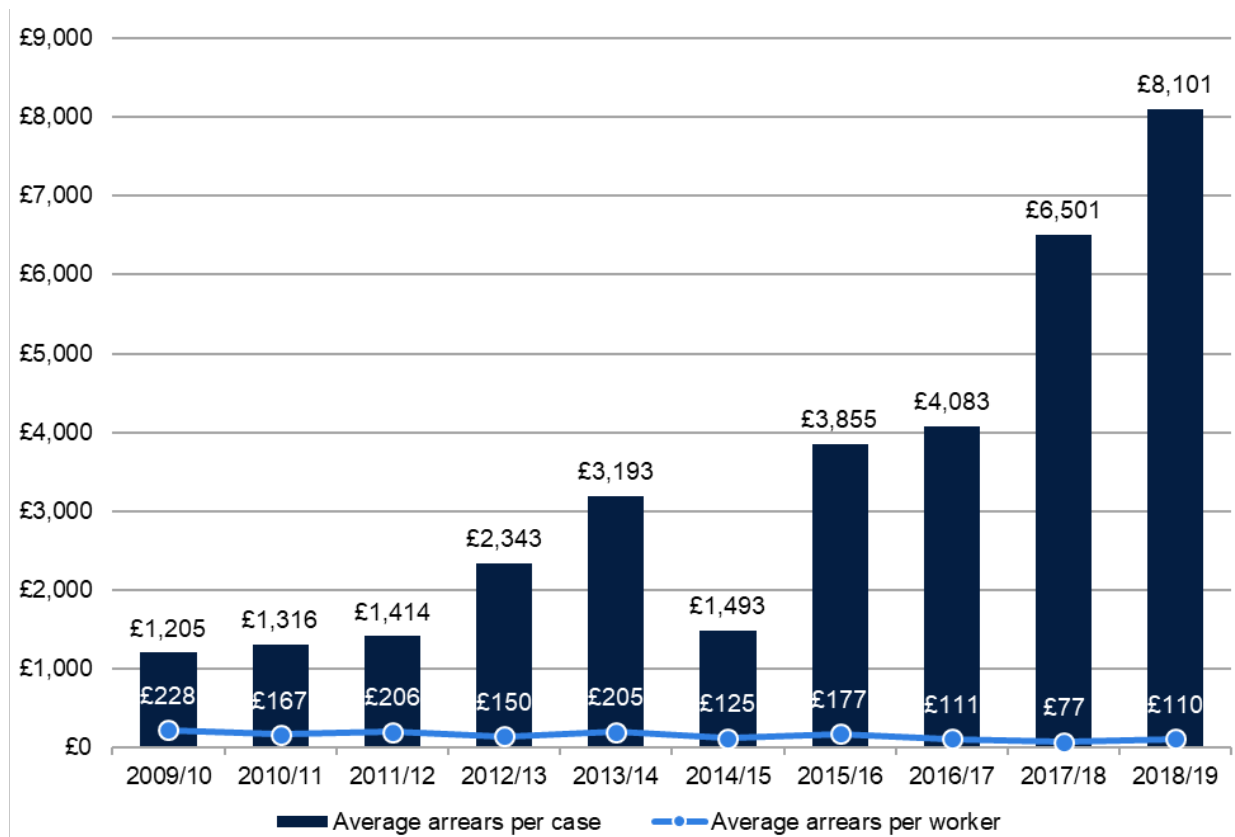
business structures and digital payroll systems to review the pay of large numbers of at-risk workers.

7.7 As [Table 7.1](#) above shows, this approach has resulted in the identification of significant arrears in investigations where non-compliance is found to affect large numbers of workers. Since 2016/17, the number of workers identified in cases where HMRC have identified £100,000 or more in arrears has more than doubled (from over 78,000 to 164,000 workers).

7.8 [Figure 7.2](#) shows that the **average arrears per case** now stand at just over £8,100 per case – the highest amount recorded. Similarly, **average arrears per worker now stand at £110 per worker**. However, this year’s increase in average arrears per worker forms part of a longer-term trend of declining average arrears per worker.

7.9 This is because HMRC has changed its approach to investigation, taking account of non-compliance risks across an employer’s whole business (i.e. not just the specific worker(s) who may have complained), enabling them to be fully compliant going forward. This approach can result in identifying arrears owed to workers that can range significantly in value. These arrears can be associated with a wide range of non-compliance issues occurring over varying periods of time. For example in ten of the highest yielding investigations over the last two years, the highest arrears owed to a single worker ranged from £27,268 to £358. These represents significant infringements by the employers in question, which is not apparent from the fact that in these cases the average arrears per worker was £70.

**Figure 7.2. Minimum Wage investigations: arrears per case and arrears per worker, 2009/10-2018/19 (financial years)**



Source: BEIS / HMRC enforcement data

Note: The figures presented in this table include the Social Care Compliance Scheme (SCCS)

- 7.10 Similarly, the **'strike rate'** (see [Box 7.3](#) and [Table 7.2](#)) **also improved in 2018/19**, rising from 42% in 2017/18 to 45% - the highest strike rate since the introduction of the NLW in 2016, and almost equal to the highest strike rate ever recorded (47% in 2013/14).

### **Box 7.3. Understanding strike rates**

**The 'strike rate' is the proportion of closed investigations where employers are found to be non-compliant.**

Whilst this metric helps us to monitor trends in enforcement, it does not on its own provide a complete picture of enforcement. Strike rates may be interpreted as either a positive or negative indicator of minimum wage compliance in the labour market. In one sense, an increasing strike rate may be an indicator that the non-compliance in the population as a whole has increased. On the other hand, it could mean that investigations are better targeted.

**Strike rates** (and other enforcement statistics) **do not directly reflect current levels of non-compliance in the labour market.** Strike rates are computed at the time the case was closed rather than the date the underpayment occurred.

Likewise, strike rates do not reveal anything about the scale of workers impacted at case level. One worker underpaid in a small business affects the strike rate in the same way as every worker being underpaid in a larger business.

Strike rates can vary across sectors as a result of different pay levels and work characteristics. For example, some sectors have a greater use of travel time, uniforms or apprentices; all of which may increase the risk of non-compliance.

- 7.11 This success can, in part, be attributed to increased resources to enforce the Minimum Wage, with the budget for Minimum Wage compliance and enforcement increasing, and our enforcement approach evolving over time with improvements made to risk analysis. This has enabled better focus on cases where there is evidence that non-compliance with the Minimum Wage is more widespread and where we believe serious non-compliance is particularly prevalent. (discussed further in '[Targeted and complaint-led enforcement](#)' below).

**Table 7.2. NMW investigations summary, 2009/10 to 2018/19**

Financial Year	Opened cases	Closed cases	Closed cases with arrears	Strike rate	Arrears	Workers	Penalties Issued	Value of Penalties
2009/10	n/a	3,643	1,256	34%	£4,390,023	19,245	381	£111,183
2010/11	n/a	2,901	1,140	39%	£3,818,396	22,919	934	£520,568
2011/12	n/a	2,534	968	38%	£3,582,685	17,371	906	£766,807
2012/13	n/a	1,696	736	43%	£3,974,008	26,519	708	£776,517
2013/14	n/a	1,455	680	47%	£4,645,547	22,610	652	£815,269
2014/15	2,328	2,204	735	33%	£3,291,529	26,318	705	£934,660
2015/16	3,246	2,667	958	36%	£10,281,396	58,080	815	£1,780,500
2016/17	2,775	2,674	1,134*	42%	£10,918,047	98,150	821	£3,892,381
2017/18	3,975	2,402	1,016	42%	£15,615,609	201,785	810	£14,070,621
2018/19	2,823	3,018	1,357	45%	£24,447,919	221,581	1,008	£17,134,737

Source: BEIS / HMRC enforcement data

## Notes:

1. Between 2005/06 and 2009/10, there were 21,208 investigations, which found arrears of £19,094,334 to 101,259 workers and 753 penalties and charges were issued.
2. An additional 30 cases were originally closed in 2015/16 but the employer notified HMRC of additional arrears in 2016/17. The arrears in these cases are included in the arrears total for 2016/17.
3. Opened cases data is not available on a consistent basis for 2009/10 to 2013/14.
4. There are an additional 11 cases originally closed prior to 2018/19 which notified further arrears in 2018/19. These cases are included in the arrears total for 2018/19
5. The figures for 2018/19 presented in this table include the Social Care Compliance Scheme (SCCS)



## Targeted and complaint-led enforcement

- 7.12 Cases of non-compliance with the Minimum Wage are identified through two routes. **In the first instance, a worker can raise a complaint** via the Acas helpline or via HMRC's online complaint form. **This is referred to as 'complaint-led' or reactive enforcement.**
- 7.13 As with last year, the majority of complaint-led cases in 2018/19 were received via HMRC's online complaint form (3,808), as opposed to the Acas helpline (1,034) or 'other' sources (82).
- 7.14 **HMRC respond to every single complaint made by a worker** (either directly to HMRC or referred via Acas) **and use a risk-based triage to determine the most appropriate course of action.** When deciding on a course of action, HMRC consider both the level of potential non-compliance by the employer and the level of confidentiality requested by the worker.
- 7.15 There are a number of interventions that HMRC can use to pursue a complaint-led case. These are proportionate to the level of risk of non-compliance and are designed to ensure that workers understand their legal entitlements and receive any arrears owed. The interventions that HMRC use include:
- **Nudge letters:** where HMRC writes to employers, alerting them of what they need to do to put things right, and asks them to report back
  - **Telephone contact with the employer and workers:** to discuss payroll practices, review business records remotely and take formal action to recover any arrears owed
  - **Face to face meetings with employers and workers:** HMRC visits business premises to discuss payroll practices, review business records and take formal action to recover any arrears owed.
- 7.16 Additionally, **HMRC can themselves identify cases of non-compliance by proactively targeting sectors or employers where they believe non-compliance is prevalent. This is referred to as targeted enforcement.** Proactively identifying cases to investigate for Minimum Wage breaches is fundamental to our overall enforcement strategy.
- 7.17 **The threat of being the subject of targeted enforcement provides a valuable deterrent to employers and supports workers who may not be aware that they are being underpaid or are unwilling to raise a complaint.** Targeted enforcement is therefore an essential means to reach workers who are at risk of being underpaid the Minimum Wage, as these workers may not otherwise come forward to make a complaint.
- 7.18 Targeted enforcement is informed by HMRC's risk model (which uses data from a range of sources including PAYE, Tax Credits information and machine learning to identify workers most at risk of NMW underpayment), the outcomes of the enforcement programme (including joint working and intelligence sharing with other agencies), BEIS and DLME analysis, third party intelligence and ministerial priorities. The risk model continues to yield encouraging results and accurately identify businesses with a high

risk of underpayment. In 2018/19, over 400 targeted enforcement cases were identified via HMRC's risk model (see Table 7.3 below).

**Table 7.3. Source of Targeted Enforcement cases, 2015/16 - 2018/19**

	Risk Model	Priority sectors	Third Party Intelligence	Other
<b>2015/16</b>	n/a	Unknown	536	1,473
<b>2016/17</b>	344	593	350	565
<b>2017/18</b>	608	818	390	605
<b>2018/19</b>	441	649	382	683

Source: BEIS / HMRC enforcement data

- 7.19 For the 2018/19 reporting year, BEIS and HMRC agreed that the Social Care, Retail & Commercial Warehousing and Gig Economy sectors would be priority areas for targeted enforcement, alongside employment agencies, apprentices and migrant workers.
- 7.20 These sectors were chosen based on a combination of quantitative and qualitative data, including: data from the NMW Risk Model; findings from ASHE (discussed above in [Chapter 3](#)); information from HMRC enforcement investigations; intelligence from the DLME and other enforcement bodies; stakeholder feedback (such as the Low Pay Commission's report on Minimum Wage non-compliance<sup>30</sup>), and Ministerial priorities.
- 7.21 As with complaint-led enforcement, **there are a number of ways in which HMRC can pursue a targeted enforcement case**. Amongst others, these include one-to-one meetings with employers, team-based reviews of businesses and multi-agency joint working (to tackle risks of cross-cutting illegal behaviours).
- 7.22 As [Table 7.4](#) shows, **targeted enforcement continues to contribute to enforcement successes**; reflecting an increased focus on certain cases where non-compliance with the Minimum Wage is believed to be more widespread. HMRC opened just over 1,500 cases in 2018/19 – in line with 2017/18.
- 7.23 In our 2017/18 report<sup>31</sup>, we noted a decrease in the proportion of targeted enforcement cases closed in that year. When looked at in isolation, this understated the level of targeted enforcement activity – HMRC opened 1,603 targeted cases in 2017/18<sup>32</sup>, a 27% increase compared to 2016/17. As expected, this increase in case openings in 2017/18 was followed by an increase in the proportion of targeted cases closed in 2018/19. **HMRC closed over 1,600 cases in 2018/19, a 68% increase compared to 2017/18** (shown in [Table 7.4](#)).

<sup>30</sup> Low Pay Commission (2019)

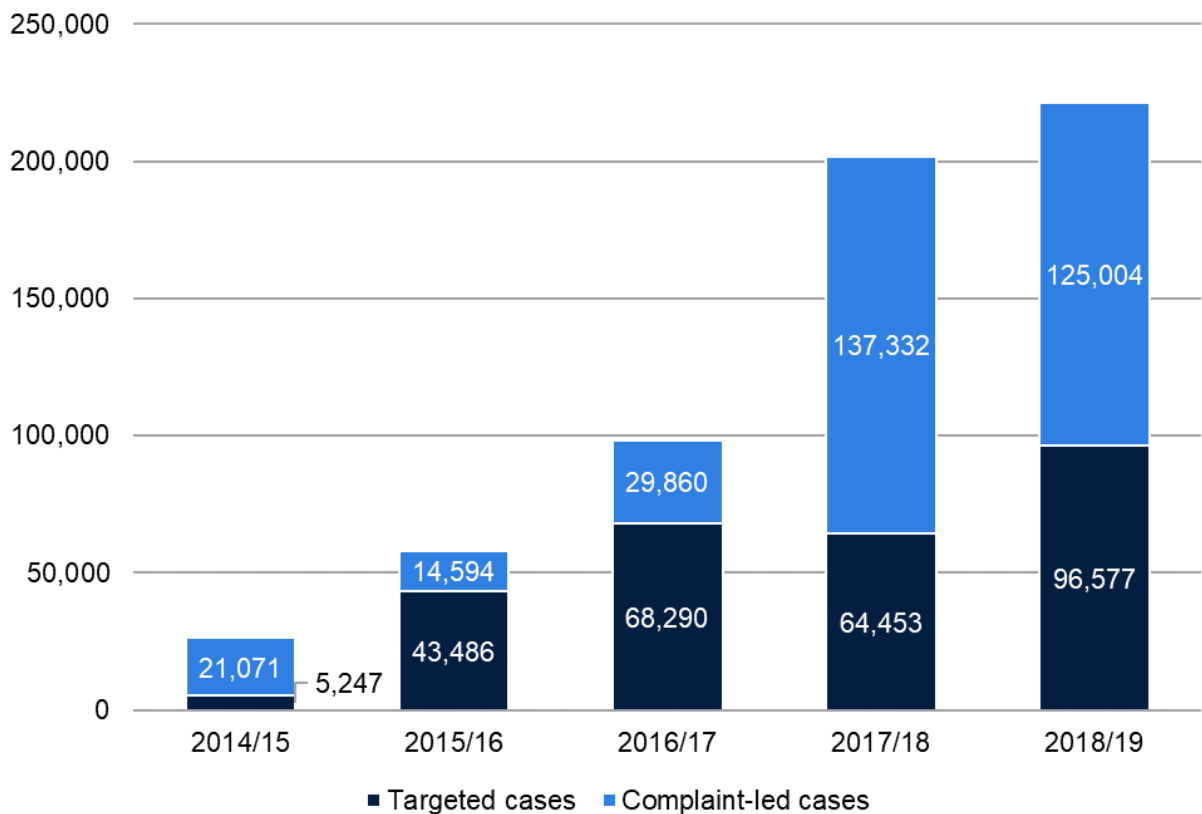
<sup>31</sup> Department for Business, Energy and Industrial Strategy (2018)

<sup>32</sup> Department for Business, Energy and Industrial Strategy (2018)

7.24 In 2018/19 targeted enforcement cases accounted for over half (55%) of the cases closed by HMRC and represented 45% of the cases closed with arrears. **This demonstrates that targeted enforcement plays an important role in the success of enforcement.**

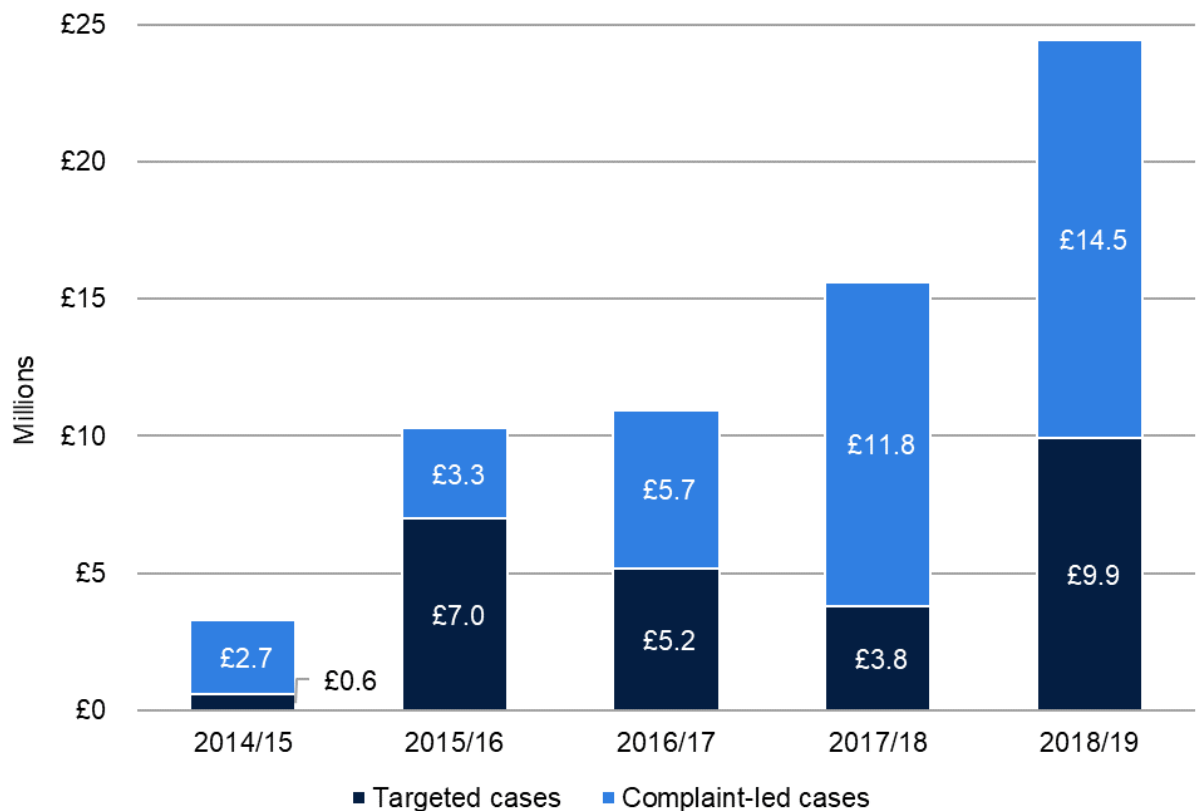
7.25 A record number of workers (96,577) and arrears (£9.9 million) were identified alongside the increased number (and proportion) of targeted cases opened and closed (with arrears) in 2018/19<sup>33</sup>. [Figure 7.3](#) and [Figure 7.4](#) show the proportion of arrears and workers identified under targeted and complaint-led enforcement. In 2018/19 44% of workers were identified as part of targeted enforcement, as was 41% of arrears.

**Figure 7.3. Targeted and Complaint-led enforcement: Workers identified**



Source: BEIS / HMRC enforcement data

<sup>33</sup> This includes the SCCS.

**Figure 7.4. Targeted and Complaint-led enforcement: Arrears identified**

Source: BEIS / HMRC enforcement data

- 7.26 A comparison of [Tables 7.4 and 7.5](#) shows that the strike rate in targeted enforcement cases tends to be lower (37% in 2018/19) than in complaint-led cases (55% in 2018/19). This is, in part, a reflection of the fact that it is impossible to perfectly predict whether an employer has underpaid any of its staff based only on risk factors; a complaint tends to be a stronger indication that an employer may have underpaid a worker.
- 7.27 However, **the strike rate for proactive work has remained consistent with 2017/18**, at 37% (39% in 2017/18, up from 19% in 2015/16, see [Table 7.4](#)). This is a positive sign, given the increasing volume of targeted enforcement activity.

**Table 7.4. Targeted NMW investigations, 2014/15 to 2018/19**

Financial Year	Opened cases	Closed cases	Closed cases with arrears	Strike rate	Arrears	Average arrears per closed case <sup>1</sup>	Workers	No. of penalties issued	Value of penalties <sup>2</sup>
2014/15	106	151	60	40%	£579,385	£9,656	5,247	49	£127,367
2015/16	2,009	1,091	206	19%	£6,984,043	£33,903	43,486	133	£733,716
2016/17	1,259	1,473	494	34%	£5,181,343	£10,489	68,290	368	£2,534,618
2017/18	1,603	994	392	39%	£3,800,083	£9,694	64,453	332	£3,416,736
2018/19	1,506	1,665	609	37%	£9,936,606	£16,316	96,577	516	£8,890,792

**Table 7.5. Complaint-led NMW investigations, 2014/15 to 2018/19**

Financial Year	Opened cases	Closed cases	Closed cases with arrears	Strike rate	Arrears	Average arrears per closed case <sup>1</sup>	Workers	No. of penalties issued	Value of penalties <sup>2</sup>
2014/15	2,222	2,053	675	33%	£2,712,144	£4,018	21,071	656	£807,293
2015/16	1,237	1,576	752	48%	£3,297,353	£4,358	14,594	682	£1,046,751
2016/17	1,516	1,201	640	53%	£5,736,704	£8,964	29,860	453	£1,357,763
2017/18	2,372	1,408	624	44%	£11,815,526	£18,935	137,332	478	£10,653,885
2018/19	1,317	1,353	748	55%	£14,511,313	£19,400	125,004	492	£8,243,945

Source (both Table 7.4 and Table 7.5): BEIS / HMRC enforcement data

Notes:

1. Average arrears per closed case includes only cases where arrears have been found
2. The large increase in penalties in 2017/18 is in part due to the increase in the penalty for Minimum Wage underpayment from 100% to 200% of underpayments
3. The figures presented in these tables include the Social Care Compliance Scheme (SCCS)

## Tackling serious non-compliance

- 7.28 Since November 2015, **HMRC has created four dedicated Serious Non-Compliance (SNC) teams focused on targeting the most serious cases of wilful non-compliance**, where there may also be evidence of modern-day slavery, or serious exploitation, and identifying early when cases may reach the threshold for prosecution (see [Chapter 8](#)).
- 7.29 The SNC teams complete a programme of employer-specific investigations and multi-agency operations to identifying potential criminal behaviours for referral for criminal investigation by HMRC's Fraud Investigation Service (FIS).
- 7.30 The SNC teams:
- Target resources on cases where there is the highest risk of non-compliance and respond to systemic and behavioural non-compliance.
  - Collaborate with other agencies to deliver greater protection through enforcement for vulnerable workers across the UK labour force.
  - Ensure appropriate sanctions are applied to employers who deliberately abuse the rights of workers across the UK
  - Raise the profile of the Minimum Wage enforcement programme across the UK and influence the behaviours of our customers to improve the levels of voluntary compliance.
- 7.31 **HMRC has established effective operational links with other agencies.** In 2018-19 SNC teams completed 199 joint visits (up from 127 joint visits in 2017/18), with officers and officials from the GLAA, EAS, Home office Immigration Enforcement and the Police.
- 7.32 HMRC recently established a case referral process with the Insolvency Service to enable consideration of director disqualification where there is evidence of poor director conduct and non-compliance with NMW legislation. In 2018-19, under this new approach 12 cases were referred to the Insolvency service **resulting in 2 directors being disqualified** and prompting outstanding arrears to workers being settled in 2 further cases.
- 7.33 HMRC has used the new labour market undertaking and enforcement regime (introduced in the Immigration Act 2016) to specifically target non-compliant businesses who persistently and brazenly commit breaches of NMW legislations. **In 2018-19 we issued seven labour market undertakings to drive compliance and protect workers from ongoing abuse.** Minimum Wage prosecutions are discussed further in [Chapter 8](#).

## Self-correction, assisted self-correction and voluntary declaration

- 7.34 **HMRC uses Self-correction in both complaint and targeted enforcement cases to encourage employers to resolve enquiries and ensure arrears are paid to workers more quickly.** Self-correction allows employers the opportunity to correct some or all underpayments, after which HMRC will pursue formal enforcement measures (such as Notice of Underpayment with attached penalties, naming by BEIS, and prosecution in the most serious cases).
- 7.35 Where HMRC identifies underpayment of a worker or group of workers, self-correction is used to support effective and efficient enforcement. As well as issuing a Notice of Underpayment detailing the quantity of arrears and penalties an employer must pay in respect of the complainant worker, **HMRC has the flexibility to instruct the employer to self-correct for the rest of their payroll or for former employees** – freeing up compliance officers to work on other investigations (for example in response to surges in worker complaint volumes and extending the reach of the targeted enforcement programme).
- 7.36 Self-correction is only used in cases where it is considered appropriate and where there is confidence that the opportunity will not be abused by the employer. The purpose of using self-correction is to more quickly identify underpayment and return arrears to workers. Self-correction offers employers an incentive to co-operate with the enquiry process, particularly in cases where there is a high number of former workers owed arrears (where the time taken to make contact with former workers could result in delays to repayments to current workers). **In all self-correction cases, HMRC follow up by testing a sample of workers to ensure that the arrears due have been correctly calculated and paid to workers.**
- 7.37 Self-correction was introduced in 2014/15 and has helped to identify a significant amount of arrears and ensure these have been paid back to workers quickly (**over £10 million in 2018/19**<sup>34</sup>, almost double the amount identified in 2017/18) while requiring proportionally less investment of enforcement resources. [Table 7.6](#) shows further detail.
- 7.38 Arrears achieved via self-correction are included in total arrears figures reported but are not included in the total value of arrears employers are named for (see [Chapter 8](#)). In addition, penalties are only applied to arrears recorded on a Notice of Underpayment (NoU), so **self-correction reduces the employer's liability to penalties, but does not reduce the amount of arrears they must repay to workers.**
- 7.39 In contrast, assisted self-correction describes cases where employers are prompted to come forward, outside of an investigation, to declare arrears as part of a time limited self-review opportunity, where HMRC works with cooperative employers to identify and correct arrears. Assisted Self Correction formed part of HMRC's campaign to promote compliance (e.g. awareness-raising, publicity material and information and guidance).

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<sup>34</sup> This includes the arrears identified as part of the SCCS.

- 7.40 HMRC has created a new process to enable employers to make voluntary declarations to correct underpayments of the minimum wage to workers. Since 1 April 2019 five employers have made voluntary declarations totalling £237,704 worth of wages to be returned for 881 workers. There are plans to expand this work into new and small businesses.

## Nudge activity

- 7.41 As discussed in '[Targeted and complaint-led enforcement](#)', **every individual worker complaint is followed up by HMRC**. Where HMRC estimates the potential arrears owed are low and the number of workers is small and believe the employer will respond positively if prompted to do the right thing, a nudge letter may be issued as a first, proportionate response.
- 7.42 Nudge letters apply behavioural economics principles to encourage employers to check for underpayment, repay any arrears and then declare the repayment to HMRC. They incorporate messages to employers on the consequences of not paying NMW to encourage sustained compliance
- 7.43 This approach enables HMRC to minimise the time taken to investigate complaints, support resolution at the earliest stage possible and ensures enforcement action is proportionate to the risk of non-compliance.
- 7.44 Investigative resources can be used, instead, on employers where non-compliance is more extensive, complex or deliberate. Where employers do not respond to a nudge letter there is a clear escalation route to a full compliance intervention including penalties and referral to BEIS for naming and, in the most serious cases, referral for criminal investigation.



**Table 7.6. Minimum Wage investigations by Notice of Underpayment or Self Correction (2018/19)**

Enforcement type		Closed cases with arrears	Arrears	Workers	Penalties
	<b>Total</b>	<b>1,368</b>	<b>£24,447,919</b>	<b>221,581</b>	<b>£17,134,737</b>
<b>A</b>	All arrears within a case assessed by HMRC (captured on NoU)	963	£8,752,715	67,974	£10,316,526
<b>B</b>	All arrears within a case assessed by self-correction	153	£1,872,999	16,041	£0
<b>C</b>	Arrears partly assessed by HMRC and partly by self-correction	72	£7,763,462	112,732	£6,818,211
<i>Of which</i>	<b>D</b> <i>HMRC assessed arrears</i>	-	£5,050,419	72,771	£6,818,211
	<b>E</b> <i>Self-corrected arrears</i>	-	£2,713,043	39,961	£0
<b>F</b>	Social Care Compliance Scheme (SCCS)	180	£6,058,743	24,834	
<b>G = A+D</b>	<b>Total HMRC assessed arrears</b>		<b>£13,803,134</b>	<b>140,745</b>	<b>£17,134,737</b>
<b>H = B+E+F</b>	<b>Total self-corrected arrears</b>		<b>£10,644,785</b>	<b>80,836</b>	-

Source: BEIS / HMRC enforcement data

Note: Some NMW cases with arrears are solely HMRC assessed, some are solely self-assessed and some involve an element of both. These are reported in rows A, B and C respectively

## Chapter 8. Penalties, prosecution and naming

*HMRC continues to respond strongly in cases where workers have been underpaid the Minimum Wage. HMRC use a mix of civil penalties, criminal prosecutions and the Minimum Wage Naming Scheme to deter other employers from underpaying their workers. This chapter will discuss these enforcement mechanisms and HMRC's use of them during 2018/19.*

### Civil penalties

- 8.1 **One of the government's aims is to ensure that, as a result of enforcement action, workers receive the money they are owed as quickly as possible.** In the vast majority of cases HMRC pursues the civil enforcement route, which is the quickest way of ensuring workers receive their arrears. The civil route includes HMRC conducting an investigation and identifying if workers have been underpaid and then taking enforcement action via the civil courts if payment is not made.
- 8.2 **Minimum Wage underpayment is unacceptable.** The government has increased the civil penalty for minimum wage underpayment. For underpayments which have occurred since April 2016, the penalty is 200 per cent of the amount owed to workers which is halved if employers pay back unpaid wages and penalties in full within 14 days.
- 8.3 [Table 7.2](#) shows that **over 1,000 penalties were issued to employers in 2018/19**, an increase of over 20% compared to 2017/18 (810). As in the previous year, the combined total value of penalties (of almost £17.2 million in 2018/19 and £14.1 million in 2017/18) is vastly higher than in 2016/17 (£3.9 million)<sup>35</sup>; a sign that the increase in the penalty rate is having a major impact.

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<sup>35</sup> There are a number of reasons why the value of penalties collected in one year cannot be directly compared to the total value of arrears reported for that year:

- A 200 per cent penalty calculation is applied to arrears that related to periods on or after 1 April 2016. For underpayment that occurred before this time, a previous penalty calculation will be applied. [continued on the following page]
- Where the total value of arrears owed by an employer amounts to more than £20,000 for one worker, a maximum penalty cap is applied.
- Where the penalty amounts to more than £20,000 for one worker a maximum penalty cap is applied. In 2018/19, there were only 3 cases where an individual was owed arrears greater than £20,000. There have been no instances so far where the penalty cap has been applied under the current penalty regime.
- Penalties are only applied to arrears recorded on the Notice of Underpayment, therefore arrears identified as a result of self-correction are not in scope of the penalty regime.

## Criminal prosecutions

- 8.4 **Where there is evidence that a Minimum Wage offence has been committed, HMRC will always consider the case for prosecution.**
- 8.5 The government's intention is to work with employers and workers to help them understand Minimum Wage legislation, and to deter employers from underpaying Minimum Wage (either accidentally or deliberately). To that end, **HMRC reserves referral for criminal investigation and prosecution for the most serious cases of non-compliance and recognises that it is often not the best approach for many enforcement cases.**
- 8.6 Criminal prosecutions do not guarantee that arrears are repaid to workers, and further enforcement action may be needed to ensure that this happens. Criminal sanctions against companies can mean that workers, the ultimate beneficiaries of Minimum Wage enforcement, end up waiting longer for their lost earnings to be paid back.
- 8.7 HMRC's SNC teams (discussed in [Chapter 7](#)) pursue criminal sanctions in the following circumstances:
- Where an employer obstructs HMRC during the course of an investigation;
  - Where an employer has repeatedly failed to pay the minimum wage; or,
  - Where an employer has falsified records.
- 8.8 HMRC considers all the evidence and whether it is in the public interest to prosecute. The average cost of a prosecution case is estimated to be many times more costly than a civil case and may not result in the worker getting back what they are owed.
- 8.9 **HMRC refers cases to the Crown Prosecution Service (CPS) who ultimately decide whether to prosecute**<sup>36</sup>. The HMRC NMW enforcement team refers cases to FIS to investigate before any cases are sent to the CPS.
- 8.10 Since 2007, 15 employers have been successfully prosecuted for underpaying the Minimum Wage. Although there were no prosecutions for Minimum Wage underpayment in 2018/19, four cases were referred to the HMRC Fraud Investigation Service for criminal investigation over the course of the year. **We remain clear that the most serious and wilful cases of non-compliance with the Minimum Wage should be investigated and enforced to the fullest extent possible.** To that end the HMRC enforcement team will, over the course of this year (2019/20), aim to increase the number of serious cases of non-compliance that they refer to FIS for criminal investigation.
- 8.11 In addition, the Immigration Act 2016 created a new labour market undertaking and enforcement order regime. This new regime specifically targets those employers who persistently and brazenly commit breaches of labour law. Businesses can be requested to enter into an undertaking to take steps to prevent further offenses. If a business refuses or fails to comply, then a magistrates' court (or similar in devolved

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<sup>36</sup> The CPS prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales, whereas the Public Prosecution Service (PPS) and Crown Office and Procurator Fiscal Service are the principal prosecuting authorities in Northern Ireland and Scotland respectively.

administrations) has the power to impose an Order which requires the business to take steps to avoid further offences.

- 8.12 In our 2017/18 report, we noted that we would provide information on Labour Market Enforcement Undertaking and Orders as we began to use them. **HMRC issued seven Labour Market Undertakings in 2018/19** and continue to use them as part of their enforcement approach to date.

## Minimum Wage Naming Scheme

- 8.13 Employers are considered for public naming on the gov.uk website when they are found to have underpaid a worker. A Minimum Wage Naming Scheme was originally introduced in 2012 but the strict criteria failed to deliver sufficient numbers of eligible cases. **The scheme (and the criteria for naming an employer) was revised in 2013 and it is a key part of the civil sanctions used to deter employers from breaking Minimum Wage rules.**
- 8.14 Up to now, BEIS has considered all employers for the Naming Scheme, with the exception of the following cases:
- Where the investigation commenced before the advent of the Naming Scheme (October 2013);
  - Where an employer has corrected all of the arrears and paid it back to workers before HMRC has commenced an investigation;
  - Where the arrears owed were £100 or less; or,
  - Where a case is being considered for criminal prosecution.
- 8.15 The published criteria for exemptions to naming include consideration where naming carries a risk of personal harm to an individual or their family, whether there would be a national security risk because of naming, or whether naming would be against the public interest. As such, there can be a lag between the cases accounted for in the enforcement statistics shown in [Table 7.2](#) and employers named.
- 8.16 The vast majority of employers (almost 95%) that are eligible under the Naming Scheme are ultimately named. It is important to note that employers are not named at the point when a Notice of Underpayment (NoU) is issued. Under the NMW regulations, employers have 28 days to appeal against a NoU. They then have a further 14 days to make representations to BEIS against being named.
- 8.17 [Table 8.1](#) shows that since the introduction of the revised scheme in 2013, BEIS has named 1,957 employers, who between them owed over £10.7 million in arrears and paid penalties of over £8.3 million (arrears achieved via self-correction are not included in the total arrears employers are named for).

**Table 8.1. Employers named for Minimum Wage underpayment (since 2013)**

Date of naming	Employers named	Arrears	Workers covered
Feb 2014	5	£6,866	6
Jun 2014	25	£43,907	78
Nov 2014	25	£89,601	80
Jan 2015	37	£177,114	806
Feb 2015	70	£157,674	405
Mar 2015	48	£162,791	4,026
Jul 2015	75	£154,964	293
Oct 2015	113	£387,504	1,693
Feb 2016	92	£1,873,712	3,352
Aug 2016	197	£465,292	2,168
Feb 2017	359	£994,685	15,513
Aug 2017	233	£1,967,445	13,264
Dec 2017	260	£1,764,183	16,393
Mar 2018	179	£1,096,246	9,213
Jul 2018	239	£1,438,466	22,361
<b>To date</b>	<b>1,957</b>	<b>£10,780,449</b>	<b>89,651</b>

Source: BEIS Naming Scheme data

- 8.18 The Naming Scheme has been under review since the last naming round in July 2018. This was in response to a recommendation made by the ODLME in their 2018 Enforcement Strategy<sup>37</sup>. The government accepted both of the DLME's recommendations relating to the Naming Scheme; specifically, that we would review its effectiveness and would consider how to provide further information within the Naming Scheme in future.
- 8.19 Our review looked at how to maintain the careful balance that we strike with our enforcement; working with employers to make sure they pay their workers correctly whilst highlighting the most serious cases of wilful non-compliance. The Naming Scheme is an important part of this strategy, increasing awareness of Minimum Wage rules and acting as a deterrent to the minority of employers who may be tempted to underpay their workers.

<sup>37</sup> Director of Labour Market Enforcement (2018)

8.20 We have made the following revisions to the revised 2013 Naming Scheme as a result of our review<sup>38</sup>:

- **Naming more frequently** to increase the momentum behind, and coverage of, the scheme
- **Increasing the threshold at which employers are considered for naming from £100 to £500**, to ensure that the most serious cases of non-compliance are highlighted
- **Publishing additional contextual information** alongside the employers named, to better detail the reason(s) why they have been named
- **Publishing a quarterly educational bulletin**, to highlight and explain common reasons for the Minimum Wage underpayment covered in naming rounds

8.21 Together, these revisions will ensure that the scheme continues to strike the balance that we look to achieve with our enforcement. The increased threshold will ensure that the most serious cases of non-compliance will continue to be highlighted, and the educational materials that we will publish alongside naming rounds will ensure that understanding of Minimum Wage rules continues to be improved.

8.22 **As a consequence of these revisions following our review of the scheme, we will be adhering to the LPC's recommendation that government restart regular naming rounds** (see [Box 8.1](#) below). We will commence revised naming rounds in approximately three months' time.

**Box 8.1. Recommendation made by the LPC in their 2019 Non-compliance and Enforcement report<sup>39</sup>**

**We recommend that the government restart regular naming rounds to create momentum, increase coverage and allow stakeholders more time to prepare and support.**

The government accepts this recommendation and will soon restart regular naming rounds. We will: name more frequently, increase the threshold at which employers become eligible for naming from £100 to £500, publish additional contextual information with each naming round and publish a quarterly educational bulletin to sit alongside naming rounds.

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<sup>38</sup> These changes to the Scheme will be communicated in further detail through the National Minimum Wage Enforcement policy documents (Department for Business, Energy and Industrial Strategy and HM Revenue & Customs (2013))

<sup>39</sup> Low Pay Commission (2019)

## Chapter 9. Enforcement in 2019/20

*This year has been another record-breaking year for Minimum Wage enforcement, with key successes in identifying the highest amount of arrears for the largest number of workers. However, alongside these results, it is important to understand the impact of our enforcement activity to date and to understand what works. In this chapter we discuss our plans for evaluating Minimum Wage enforcement in 2019/20 to ensure that it continues to be effective.*

### Budget and priority areas

- 9.1 **BEIS increased the funding for promoting compliance and enforcing the Minimum Wage to £27.4 million in the 2019/20 financial year.** This demonstrates the ongoing commitment of the government to ensuring low paid workers are paid fairly and at least at the appropriate Minimum Wage rate.
- 9.2 As shown throughout this report, the increase in financial resource available to enforce the Minimum Wage is resulting in more wages being returned to workers, a higher volume of financial penalties to non-compliant employers, and a far greater volume of workers receiving arrears as a result of HMRC action.
- 9.3 The government's priority for this financial year and next is to build upon this success and to expand the work of HMRC further to better support low paid workers. HMRC is consolidating an extensive programme of recruitment and expansion as they build new teams to respond to worker complaint, carry out proactive risk-based investigations and new targeted programmes to boost compliance on a sectoral basis, target individuals that they suspect of the highest levels of non-compliance and criminal behaviours, and to run their 'Promote' campaign.
- 9.4 HMRC are continuing their 'Promote' work; developing bite size webinars and podcasts on common pay errors and providing step by step information to encourage employers to self-review, check, voluntarily declare and pay any arrears owed. HMRC will share findings from this work through trade press articles, highlighting risks in specific sectors to encourage compliance. HMRC will also aim to improve online guidance, helping workers and employers to use it with confidence. HMRC will continue to use innovative techniques to raise awareness amongst workers of their entitlements, and how to make a complaint.

### Evaluating Minimum Wage enforcement

- 9.5 As highlighted throughout this report, there is already a large amount of high-quality data that can be used to assess the effectiveness of Minimum Wage enforcement. However, it is clear that more can be done to understand whether the current enforcement approach maximises its effectiveness; whether it deters future non-compliance; and whether it encourages long-term, meaningful behaviour change.
- 9.6 **This need to evaluate is touched upon by both the LPC and the ODLME and we intend to act on their recommendations.** We have already undertaken internal work

to form the basis of an evaluation (discussed below in more detail) and intend to develop this work over the coming year to identify ‘what works’.

- 9.7 **Evaluative work will focus on two main areas: improving monitoring information and understanding the effectiveness of enforcement itself. These areas are discussed in more detail below.**

## Monitoring information

- 9.8 The first part of this report uses findings from ASHE to examine the extent of non-compliance with the Minimum Wage (see [Chapter 3](#)). Notwithstanding its limitations, as noted by the LPC, ASHE is the most detailed and comprehensive source of earnings information available, allowing us to proxy both the scale and nature of non-compliance. This in turn provides us with **a good degree of confidence in the estimates produced**. ASHE is a large research study, covering a representative sample of the labour market. As a result of the richness of the earnings data provided from this survey, we are able to measure the scale of non-compliance with the Minimum Wage, to a greater extent than is possible with other areas of labour market non-compliance.
- 9.9 However, as with all survey vehicles, we recognise that ASHE has some limitations (discussed in ‘Improving measures of non-compliance’) and that **the LPC recommended that work be undertaken to improve measures of non-compliance**. We believe that there are some small changes that could be made to enhance the accuracy of measures of non-compliance with the Minimum Wage. These changes, alongside exploratory work, include:
- Analysing the extent to which non-compliance varies throughout the year (for example, as illustrated by the LPC, we can do further analysis of ASHE and the Labour Force Survey in tandem)
  - Exploring the feasibility of following up with respondents, to check their understanding of the figures provided
  - Using other data sources to corroborate ASHE findings (such as the Apprenticeship Pay Survey, or the Labour Force Survey) – for example, on how apprentices’ data is weighted
  - Engaging with other enforcement bodies (domestically and internationally) to understand how they use survey data to measure non-compliance
- 9.10 This last point aligns with work undertaken by the ODLME, who recommended that work be undertaken to measure non-compliance across different forms of labour market non-compliance. We will continue our involvement in this over the coming year.
- 9.11 As well as statistical estimates of non-compliance, **we receive good quality monitoring information from HMRC that allows us to track enforcement activity**. Indeed, much of this information is used throughout this report. HMRC have strong data collection mechanisms in place, which provide a detailed sense of the number of workers who have had arrears identified, the value of Minimum Wage underpayment and who is being reached by awareness raising activities (e.g. Promote work).
- 9.12 HMRC invest heavily in developing the quality of its risk analysis, focusing on the highest risk of non-compliance to ensure resources continue to be used effectively.



HMRC's Risk Model analyses a wide range of data to assess the risks and threats across the UK labour markets. The model serves as the foundation of the targeted enforcement programme, which is continuously informed by the outcomes of investigations. HMRC have a programme of work that includes return visits to employers where they consider there is a heightened risk of recidivism (repeated non-compliance).

- 9.13 To enhance this analysis, work is underway looking at how HMRC could use data to (a) assess the impact of investigations on the level of risk posed by employers and (b) develop a recidivism indicator to predict the likelihood of an investigation bringing about change in an employer's behaviour.
- 9.14 **HMRC continue to refine monitoring information, collecting additional information as part of the 2019/20 Service Level Agreement.** This includes data on the number of employers and workers who have engaged with elements of HMRC's promote material which are deemed to be of greater educational value or demonstrate more sophisticated engagement (for example, amongst others, guidance page views, views of HMRC's technical manual and eLearning take ups). Going forward, we will monitor how effective and suitable these measures are. This, in addition to any changes made to other measures of non-compliance, will allow us to compile a more detailed picture of underpayment and non-compliance.
- 9.15 As existing management information and measures of non-compliance are already relatively well developed and plans for improvement are in train, **efforts will need to be focused on evaluating enforcement activity itself.** Primarily, there are two areas of enforcement that would benefit from further work:
- **establishing the impact of communications and awareness raising activity;** and
  - **understanding the compliance and deterrent effect of various types of enforcement activity.**

## Awareness and understanding of enforcement

- 9.16 As outlined above (see [Chapter 7](#)), HMRC undertake a variety of 'Promote' activity, which is monitored through agreed, high-level, metrics in our SLA. Looking ahead, the 2019/20 SLA will build upon these metrics, helping us to better understand the impact and effectiveness of Promote activity.
- 9.17 Whilst the metrics going forward will continue to monitor the uptake and reach of promotional activity, **we would like to better understand what happens after an employer or worker engages with promotional material, and whether they go on to change their behaviour.** Similarly, we would like to gain insight into employers' and workers' views on awareness raising material.
- 9.18 BEIS commissions evaluative work alongside the annual Minimum Wage communications campaign (described in [Chapter 5](#)), examining whether employers and workers can recall the campaign, and whether they are aware of the change in policy. This work is extremely useful; providing insight into the specific aspects of the communication campaign which are most effective. **However, this work covers**

**Minimum Wage policy (e.g. the value of the rates) in general, and not specific compliance-raising activity.**

- 9.19 Given this, we will look to focus evaluation efforts on other specific forms of awareness raising activity, such as the Promote activity undertaken by HMRC. To inform the viability of this, we undertook an initial piece of small-scale qualitative research (see [Box 9.1](#) below). This has provided us with steers on how best to evaluate going forwards, enabling us to take forward recommendations made by the LPC (namely that we continue to invest in communications to workers, and that we invest time in getting the guidance to employers right).

**Box 9.1. Internal qualitative research**

Over the course of the last reporting year (2018/19) we took steps in evaluating Minimum Wage enforcement through a limited piece of internal qualitative research. A very small number of employers (16) and workers (6) took part in a series of focus groups, with the aim of establishing their views of Minimum Wage enforcement and the extent to which they viewed it as effective.

Whilst the findings from this research cannot be generalised across the enforcement landscape (due to the limited number of participants, and the inherently subjective nature of qualitative research), it identified a number of areas for further work, which we will look to expand upon over the next year. **This included examining workers' and employers' awareness of, and attitudes towards, different enforcement methods and awareness raising activity by...**

- Scaling up this study, to cover the enforcement experiences of a larger, more representative group of employers and workers to understand the extent to which Minimum Wage enforcement has encouraged long-term compliance and deterrence
- Evaluating Minimum Wage communications and awareness raising materials to explore the impact and effectiveness of targeted campaigns, and areas where further information and advice may be needed.
- Studying outcomes for named employers to better understand the impact of naming, and the longer-term impact on employers' financial performance

- 9.20 In 2019/20, we will enhance our evaluative work by:
- **Exploring the feasibility of building a 'customer satisfaction survey' into Promote materials.** Conducting this work would give insight into the areas of enforcement and Promote activity which employers and workers are most aware of, and whether they have prompted behaviour change.
  - **Scoping a large piece of qualitative work** (akin to the work described in [Box 9.1](#)) **to establish employers' and workers' views of enforcement itself**, and whether it encourages long-term compliance with the Minimum Wage
- 9.21 **Critical to all this work, however, is gaining consent from workers and employers to take part in further research.** It is essential that a mechanism for gaining consent be built into our approach, so we can follow up with employers and workers as part of future research, that is compliant with GDPR requirements. This is also something which we will explore.

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