Department for
Business & Trade

National Living Wage and National Minimum Wage

Government evidence on enforcement and compliance 2021/22

April 2023

Report outline

Introduction

This report outlines the government's[1] enforcement of the National Minimum Wage (NMW) and the National Living Wage (NLW) during the 2021/22 financial year. It presents key statistics and describes important trends shown in the supplementary data, which is referenced throughout. It follows a similar structure to last year's report, published in May 2022[2], covering activity during the 2020/21 financial year.

The first half of 2021/22 coincided with the phasing out of Covid-19 restrictions, which continued to have a significant impact on some employers' business activities, as well as on worker complaints and His Majesty's Revenue and Customs (HMRC) investigations. Despite this, HMRC continued to enforce minimum wage legislation, adopting a flexible approach in response to restrictions and in line with government guidance.

The Low Pay Commission (LPC) regularly make recommendations to the government on NMW/NLW enforcement. In their 2022 enforcement report[3], the LPC focused on the state of the Leicester textiles sector and set out recommendations regarding barriers to worker complaints and addressing insecure work. In this report, we include the government's response to those recommendations.

Key Results

Box 1: Summary of 2021/22 enforcement results

2021/22 saw strong enforcement activity with a significant amount of arrears returned to workers

HMRC closed **over 2,800 cases** with almost **900 closed with arrears.**

£16.3 million in arrears were identified for **over 120,000 workers.**

HMRC issued nearly **700 penalties** totalling **£13.2 million.**

Targeted enforcement continued to be the primary method of identifying arrears, accounting for **71% of closed cases**, a two-year trend **up from 65%** in 2019/20.

[1] Following a Machinery of Government change in February 2023, the policy responsibility for the NMW and NLW, previously under the Department for Business, Energy and Industrial Strategy (BEIS), now sits under the Department for Business and Trade (DBT).

[2] See References, Department for Business, Energy and Industrial Strategy (2022)

[3] Low Pay Commission (2022)

Background

The minimum wage rates

The National Minimum Wage (NMW) was introduced in 1999, and the National Living Wage (NLW) was introduced in 2016. The NMW and NLW (together referred to as the minimum wage) provide essential protection for the lowest paid workers, ensuring they are fairly paid for their contribution to the UK economy.

The minimum wage sets the minimum hourly rate of pay that all employers are legally required to pay to their workers. Almost all UK workers are entitled to be paid at least the relevant minimum wage rate, subject to their age and whether they are an apprentice[4].

Table 1 below shows the minimum wage rates that were applicable across the 2021/22 financial year.[5]

Table 1: Minimum wage hourly rates as of April 2021 and April 2022

Age Band[6]	From 1st April 2021	Age Band	From 1st April 2022
23 years old and over	£8.91	23+	£9.50
21 to 22	£8.36	21 to 22	£9.18
18 to 20	£6.56	18 to 20	£6.83
Under 18	£4.62	Under 18	£4.81
Apprentice	£4.30	Apprentice	£4.81

Enforcement of the minimum wage

The government is clear that anyone entitled to the minimum wage should receive it and is committed to taking robust enforcement action against employers who fail to pay their staff correctly.

HMRC enforces the minimum wage on behalf of the government, proactively using a variety of methods to encourage compliance and enforce the minimum wage legislation, based around a "Promote, Prevent and Respond" strategy.

"Promote" is based on the idea that some instances of failure to comply with minimum wage legislation are due to insufficient information or understanding, rather than deliberate non-compliance by an employer. The key aim is to improve the information available to employers on the assumption that employers will comply with the law once they understand their

[4] See HM Government (2023a) for details of the workers entitled to the Minimum Wage and relevant exceptions.

[5] The rates that applied from April 2021 were relevant to most of the financial year, but the April 2022 rates applied for the last few days of the financial year.

[6] The upper age band was extended to include workers aged 23 years and over with effect from 1st April 2021.

obligations. Employers who do not respond to compliance measures will be subject to full enforcement action.

“Prevent” is based on the principle that some employers will deliberately underpay, balancing the potential benefits of underpaying workers against the risk of being caught. The prevent strategy aims to alter employers’ behaviour by highlighting the consequences of failing to comply.

“Respond” is triggered when HMRC identify non-compliance, either as a result of a worker complaint, or of their targeted enforcement work that draws on HMRC intelligence and risk analysis.

Once underpayment has been identified, HMRC issue a notice of underpayment (NoU) which requires the employer to pay the arrears back to the corresponding workers within 28 days. In almost all cases where HMRC issue an NoU, they will impose penalties and pass on details to the Department for Business and Trade (DBT), who may “Name” the employer on Gov.uk[7].

In more serious cases, HMRC can seek a Labour Market Enforcement Undertaking (LMEU) or Order (LMEO)[8] and, in the most serious cases, may pursue a criminal prosecution (see page 15 for further detail).

The budget for minimum wage enforcement and compliance has more than doubled since the introduction of the NLW, increasing from £13.2 million in 2015/16 to £27.5 million in 2021/22. The increased budget pays for more HMRC compliance officers to investigate worker complaints, undertake enforcement activity and, increasingly, promote compliance. It also reflects the increasing number of workers brought within scope of the legislation since the introduction of the NLW as the rates have risen.

[7] Employers will only be eligible for Naming if the total value of arrears owed to workers exceeds £500.
[8] LMEUs and LMEOs are issued to employers where serious or persistent breaches of NMW law have been identified and require employers to meet a number of measures which will ensure future compliance.

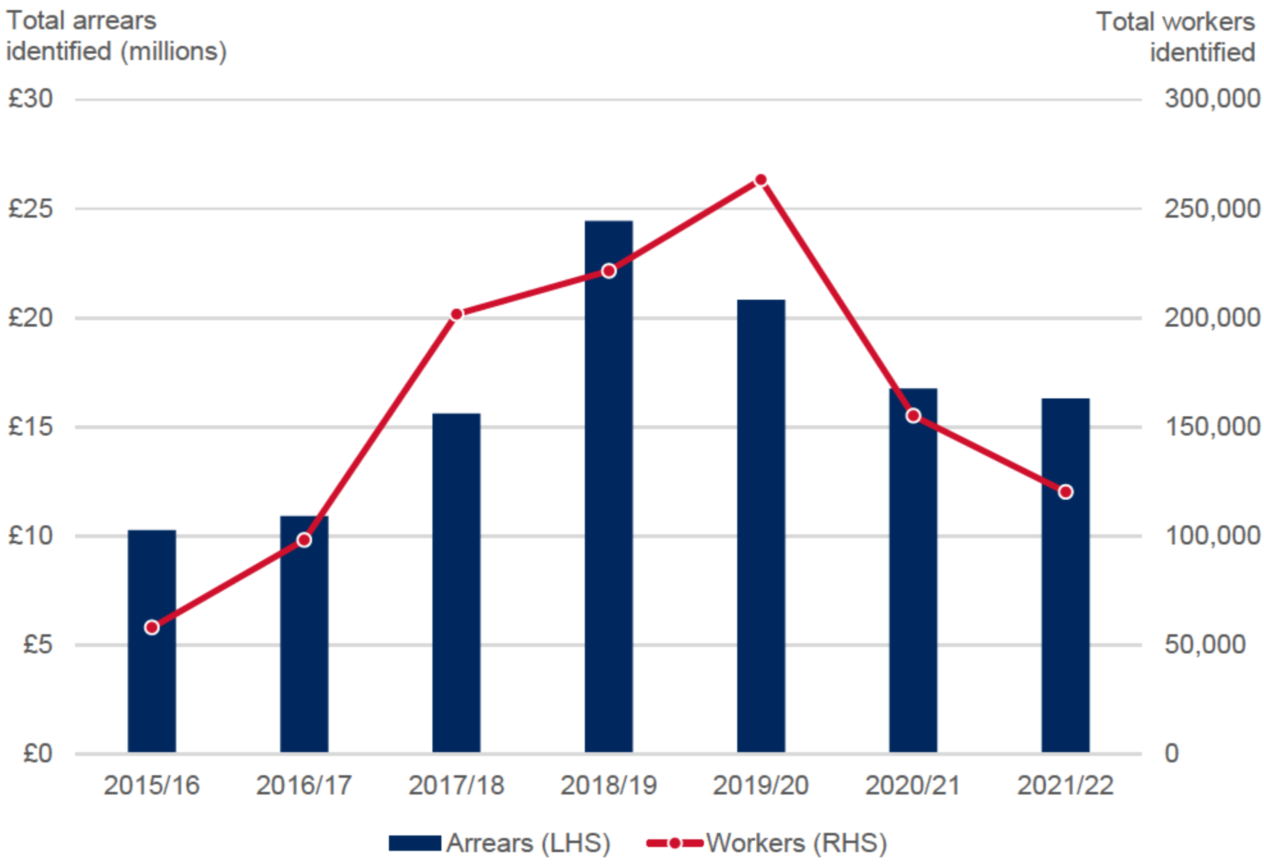
Enforcement in 2021/22

The 2021/22 financial year was a strong year for minimum wage enforcement coming off the back of disruption caused by Covid-19. HMRC opened over 3,000 cases and closed more than 2,800; almost 900 closed cases resulted in workers being paid arrears. The proportion of closed investigations where employers were found to be non-compliant was 35% compared to 39% in 2020/21.

In 2021/22, HMRC identified £16.3 million in arrears owed to more than 120,000 workers (see Figure 1 below) and issued 696 penalties totalling £13.2 million to non-compliant employers.

Since 2015, there has been a substantial increase in the total arrears identified by HMRC. Since the introduction of the NMW in 1999, the government has overseen the repayment of over £173 million to 1.4 million workers, issued nearly £86.5 million in financial penalties and completed over 87,000 investigations.

Figure 1: Minimum wage investigations, arrears and workers identified



Source: DBT / HMRC enforcement data

Note:
1. Arrears figures for 2018/19 and 2019/20 include arrears identified via the Social Care Compliance Scheme, amounting to £6,075,912 and £255,356, respectively.

Table 1 in the supplementary data shows average arrears per case (among cases where arrears were identified) stood at over £18,170 and average arrears per worker was £136 – both of which are at their highest levels in five years. On the other hand, the strike rate, or the proportion of cases closed where arrears were identified, has fallen four percentage points to 35%.

It appears the average arrears figure was impacted by outlier cases where a high rate of arrears was owed to a small number of workers - a trend that may be linked to the evolution of investigations carried out by the HMRC Specialist Enforcement Teams (SET). Over the last few years, the SET, responsible for dealing with large businesses and complex minimum wage enforcement issues, has moved away from primarily investigating large employers in retail and diversified into other large businesses with more complex structures in other sectors. Investigations of the former tend to be characterised by large amounts of workers but smaller arrears per worker, whilst the latter has uncovered various risks that affect fewer workers but result in higher arrears per worker. The 'Focus item' in the 2020/21 edition of this report provides more information on the SET.

Accordingly, Table 2 in the supplementary data shows that in 2021/22, of the 898 cases closed with arrears, HMRC closed 23 cases (3% of closed cases with arrears) which had over £100,000 in arrears each. Collectively, these cases amounted to over £12.5 million in arrears (77% of total arrears) and accounted for nearly 83,400 workers (69% of total workers). This reflects HMRC's efforts to enforce the NMW, protect workers and their rights and return arrears to workers as quickly as possible.

Enforcement during the Covid-19 pandemic

The Covid-19 pandemic impacted on enforcement activity during 2020/21 and the first half of 2021/22.

The 2020/21 edition of this report explained that HMRC's response was to prioritise worker complaints and carry out mostly desk-based investigations, whilst opting for face-to-face visits when appropriate to match the NMW risks identified. HMRC adopted a more flexible and dynamic approach when contacting employers and workers, particularly those in the hardest hit sectors, allowing extra time for employers dealing with Covid guidelines and furloughed staff. This approach continued in the first half of 2021/22 when the UK was still under various Covid-19 restrictions.

HMRC also took the opportunity to focus more on "Promote" activity that aims to drive compliance by promoting better understanding of minimum wage regulations through webinars and guidance. Notably, over the course of 2021/22 HMRC issued a record high 7.8 million advisory notices to workers, employers and their agents (see Focus item: HMRC's 'Promoting compliance' work for further detail).

Despite making several adjustments, there were still a number of challenges HMRC faced as a result of Covid-19, including employer reluctance to engage with HMRC during a time of uncertainty and hardship, and the Coronavirus Job Retention Scheme (CJRS), or furlough scheme making it harder to identify underpayment. Since many low-paid workers were not working, they were not entitled to be paid at least the minimum wage, leading to a reduction in the number of complaints. In addition, some workers will have been excluded, both in part and in full, from HMRC's employer investigations while they were furloughed. Challenges such as these are likely to have impacted enforcement statistics for 2020/21 and 2021/22 and will continue to do so for years to come as HMRC can review records going back up to six years.

Targeted and complaint-led enforcement

Non-compliance with the minimum wage is identified through two routes. Firstly, 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. HMRC consider every complaint made by a worker (either to HMRC or referred via Acas) and use a risk-based triage to determine the most appropriate course of action.

As with last year, the majority of complaint-led cases in 2021/22 were received via HMRC's online complaint form (3,004), as opposed to the Acas helpline (298) or 'Other' sources (8). For more information, please see Table 8b in the supplementary data.

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. These interventions include: 'nudge' letters, telephone contact with employers and workers and face-to-face meetings with employers and workers[9].

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".

Targeted enforcement is informed by HMRC's risk model, which uses data from a range of sources (including PAYE, other labour market enforcement bodies, NMW intelligence, and complaints data) to identify workers most at risk of NMW underpayment. The risk model continues to yield encouraging results and accurately identify businesses with a high risk of underpayment. For further information about the volume of targeted enforcement cases broken down by source, see Table 7b in the supplementary data.

Similarly to complaint-led enforcement, there are a number of ways in which HMRC can pursue a targeted enforcement case. These include one-to-one meetings with employers, team-based reviews of larger businesses and multi-agency joint working (to tackle risks of cross-cutting illegal behaviours).

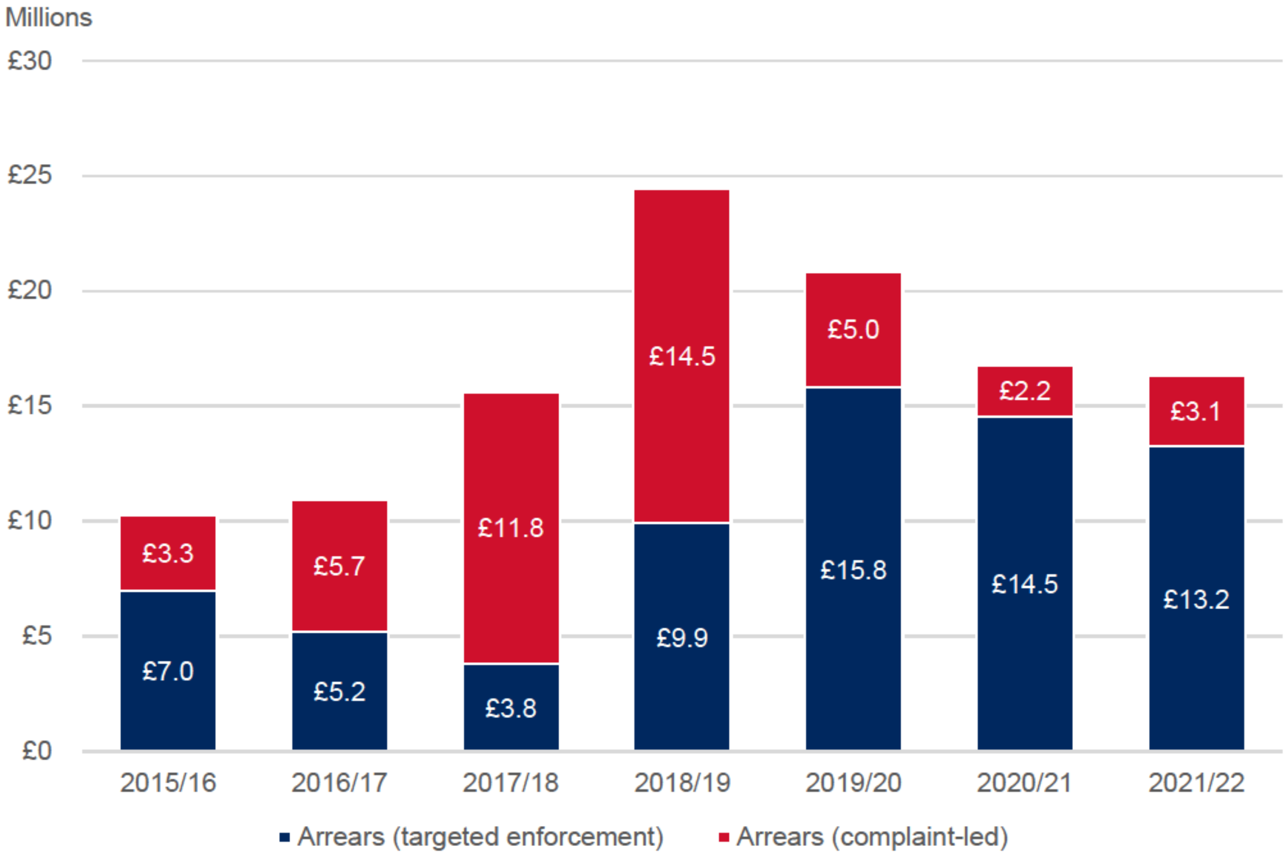
The risk of being the subject of targeted enforcement provides a valuable deterrent to employers and supports workers who may be unaware they are being underpaid or who are unwilling to raise a complaint. Targeted enforcement is therefore an essential means to reach at risk workers who may not otherwise come forward to make a complaint.

In 2021/22, targeted enforcement continued to form an important part of enforcement activity: HMRC closed just under 1,700 targeted enforcement cases and more than 300 educational cases, with 30% of targeted enforcement cases closing with arrears. Educational cases are

[9] For more information about this activity, please see the 2018/19 report on minimum wage enforcement and compliance (Department for Business, Energy and Industrial Strategy, 2020a).

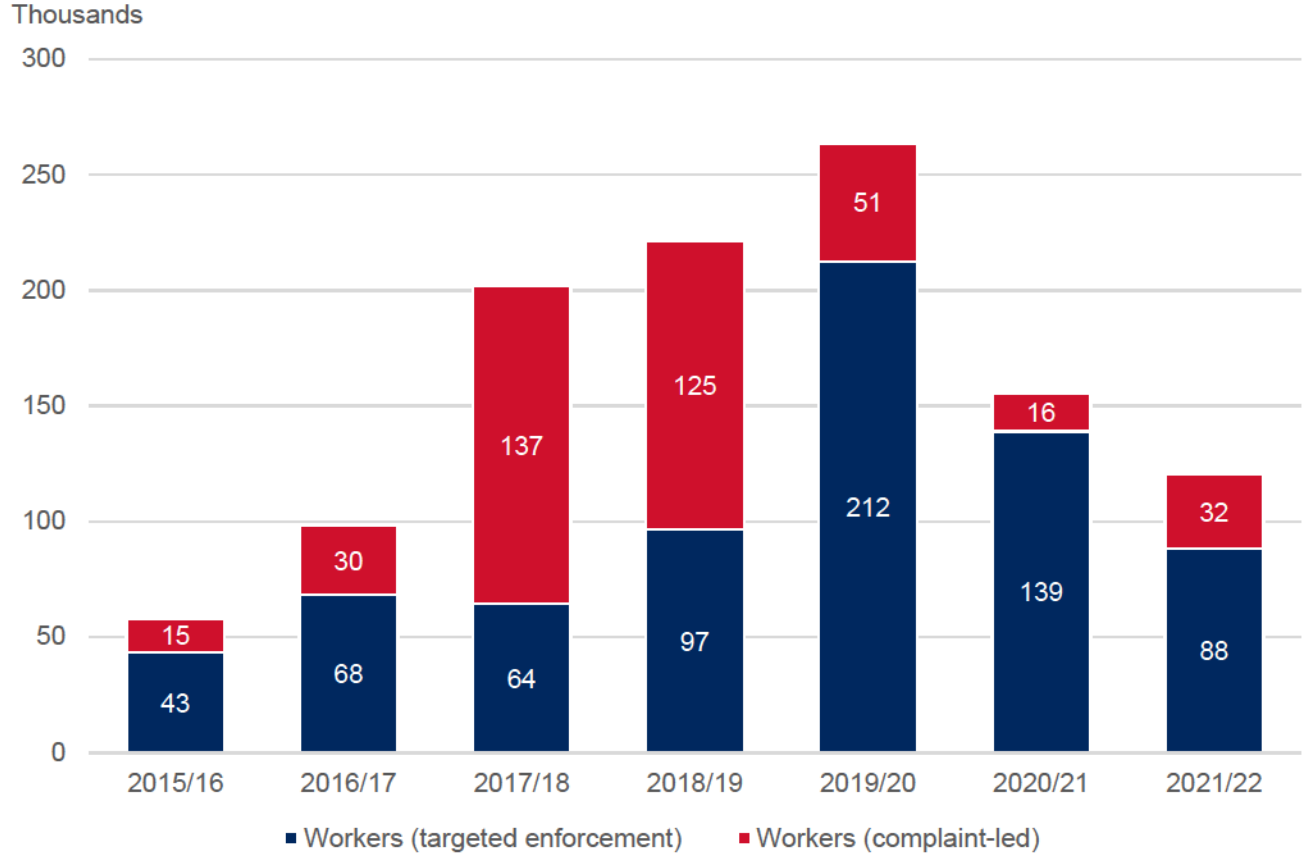
opened under HMRC's new operative model, the Geographical Compliance approach, covered in further detail later in this section. These cases returned £13.2m in arrears to over 88,000 workers. Figure 2 and Figure 3 below show that 81% of arrears and 73% of workers identified were found through targeted enforcement – proportions similar to pre-pandemic levels. For more information, see Table 7a in the supplementary data.

Figure 2: Arrears identified through targeted and complaint-led enforcement



Source: DBT / HMRC enforcement data

Figure 3: Workers identified as underpaid through targeted and complaint-led enforcement



Source: DBT / HMRC enforcement data

Tables 7a and 8a in the accompanying supplementary data show that the proportion of cases closed with arrears for targeted enforcement cases is lower than in complaint-led cases (30%, as opposed to 46%). The former has fallen significantly over 2020/21 and 2021/22 due to difficulties related to Covid-19, where moving to desk-based investigations meant relying more heavily on worker testimony, which proved challenging as workers did not always respond to requests. In addition, as highlighted in the 'Enforcement during the Covid-19 pandemic' section, enforcement during and coming out of the pandemic period shifted towards the sectors that were least affected by Covid, which in most cases meant moving away from high-risk sectors that would have had a higher instance of identifying arrears. On the other hand, the strike rate for complaint-led cases remained high by historic standards, despite a year-over-year fall of four percentage points, as these cases are helped by having a complainant worker who is able to provide their concerns and HMRC were at a minimum able to establish contact with the relevant worker.

An important part of HMRC's work in 2021/22 was the introduction of the Geographical Compliance Approach (GCA) to facilitate the compliance of employers who want to get things right by providing support and education. The GCA targets employers by geographical region, allowing HRMC to provide intel and insights within a chosen region to sectors previously unreached by targeted enforcement. Traditional measures of success such as arrears, workers and strike rate do not provide a full picture of the impacts of HMRC's activity on employers' behaviours: these do not adequately reflect where HMRC have supported employers into compliance at the earliest opportunity. Therefore, this new approach has different success measures across a broader range of indicators, including how behaviour changes in response to Promote activity.

Using a suite of interventions escalating in severity, the GCA tests the effectiveness and longevity of HMRC's different types of intervention on customer behaviour, allowing them to allocate resources more effectively in the long term. In addition, GCA allows HMRC to evaluate the extent to which their activity creates a wider impact beyond the customer contacted and how this might induce a ripple effect which influences behavioural change in the surrounding employer population. Alongside these interventions, HMRC write to all workers, signposting them to how to complain if they feel they may be being underpaid.

Focus item: HMRC's 'Promoting compliance' work

In this 'Focus item' Section, we review a specific part of enforcement and compliance activity in more depth.

The HMRC minimum wage Promote team was created in 2016 to improve their 'upstream' compliance offering and make better use of behavioural insights in line with HMRC's "Promote, Prevent and Respond" strategy. The overall aim is to drive innovative interventions that help employers understand their obligations, providing them with the capability, opportunity and motivation to comply, as well as help workers to better understand their entitlement and routes of redress.

Promote activity aims to prevent non-compliance by changing the behaviour of employers and workers. Both DBT and HMRC carry out communications activity to raise awareness of the minimum wage regulations and encourage compliance.

HMRC's Promote team carries out a variety of work to achieve this, working with employers to put them in a position to be compliant, encouraging workers to check their pay in line with the minimum wage legislation and signposting routes to make a complaint if necessary. This activity also provides workers with more detailed information about the complaint process and outlines the ease and benefits of doing so. Ultimately, this provides valuable reassurance to workers of their right to query if they are being paid the minimum wage.

In 2021/22, HMRC's Promote team issued 7.8 million advisory notices to workers, employers and their agents, providing a record amount of information to ensure that workers and employers were aware of legislation. Advisory notices play a crucial role as they can articulate at scale, in a simple and clear way, common issues that can lead to NMW underpayment and increase understanding of the legislation. This was mainly through text messaging (SMS) and mass email and letter campaigns.

Box 2: Summary of 2021/22 educational activity

6.4 million mass emails sent

15,000 views of Minimum Wage webinars

5,000 views of pre-recorded Minimum Wage content

1 million SMS sent

In addition to this, HMRC sent **395,000** letters to employers and workers and provided expert advice to **2,000** queries.
In total, over **7.8 million** advisory notices were issued to workers, employers and their agents.

Box 2 demonstrates the significant work the Promote team has done to inform workers of their rights and employers of their obligations, ensuring future compliance with legislation. These figures underline how employers and workers are making use of the information and are actively seeking to educate themselves.

"One to Many" (OTM) Contacts

In 2021/22, HMRC issued over 395,000 letters to employers and workers in sectors deemed to be "high risk": i.e., those most likely to be underpaid. Letters to employers in a particular sector highlight the common risks and signpost them towards further guidance that help them comply with NMW legislation. Letters to workers clearly articulate the common risks associated with the relevant sector and highlight the different complaint routes and overall benefits of reporting concerns.

Key successes on the back of worker letters being issued include:

- 33,000 Takeaway OTM Worker Letters, in which HMRC saw a 15% increase in complaints received from workers in this sector in the three months following the letter release compared to the pre-release 3-month baseline.
- 40,500 Cleaning Sector Worker OTM Letters resulted in a 75% increase in complaints received from workers in the cleaning sector in the three months following letter release compared to the pre-release 3-month baseline.
- 50,000 OTM letters to workers who fall under the likely characteristics of being more likely to be underpaid outlined in the LPC report. As part of this, HMRC carried out a Randomised Control Trial (RCT) to test the effectiveness of different letters, and the messaging within them, to understand which generate more worker complaints. The results of this RCT now drive all letters and give HMRC a clearer understanding of the types of messaging that land with their audience and best influence behaviour.

Educational Engagement Webinars

HMRC routinely deliver in-house educational webinars on the different minimum wage related risks employers and workers face. Examples of webinar topics include: ‘Paying the minimum wage correctly in the Social Care Sector’, ‘Paying the Apprentice rate correctly’, ‘Umbrella companies - risks for employers’, ‘Payments and Deductions’, and ‘Protecting your business by protecting workers rights’. HMRC frequently receives excellent feedback on the expertise of presenters who often speak about their own experiences, making the overall messaging a lot more relatable and engaging for viewers:

- *“The presentation was fantastic, easy to follow and right level of detail. Examples of where there might be non-compliance were particularly helpful.”*
- *“It was particularly nice to have the webinar focused on issues that specifically often face the hospitality industry, which is why I attended – and it kept me engaged.”*
- *“I have just taken over our payroll and this is the second webinar I have attended. I am finding the information in small bitesize clear pieces like this really useful and easier to follow – just reading it does not have the same effect as having someone clearly define the guidance whilst identifying potential pitfalls; thank you.”*

Reporting activity: complaint driving

HMRC has invested a significant amount of resource into building and maintaining well established relationships with key business stakeholders and worker advocacy groups. These provide a route to hard-to-reach and vulnerable workers and help HMRC spread key messages and raise awareness of the NMW and the complexities of the legislation.

Increased investment also helps overcome the barriers of assumed knowledge. HMRC has worked with trade unions, Citizens Advice (CA) and charities to run hundreds of NMW awareness training sessions, develop clear NMW worker guides and feature in newsletters and blogs. A key success was the creation of a bespoke product which now forms part of all mandatory training for new starters at CA.

Finding the right balance

HMRC is committed to ensuring that their enforcement approach balances the need to crack down on employers who break the law with the need to promote compliance, supporting and educating employers to do the right thing.

Supporting employers to comply with minimum wage rules not only assists business but also protects workers by helping to ensure that they are not underpaid in the first place. This led to the introduction of the Geographical Compliance Approach (GCA, renamed from the New Compliance Approach) in 2021/22, which seeks to improve compliance by increasing communication between HMRC and businesses, promoting and supporting self-correction where possible.

Penalties, the minimum wage Naming Scheme, undertakings and prosecutions

HMRC continues to respond strongly in cases where workers have been underpaid the minimum wage, using a mixture of civil penalties, Labour Market Enforcement Undertakings and Orders, and criminal prosecutions. In addition, the DBT National Minimum Wage Naming Scheme acts as a deterrent to employers from underpaying their workers.

Civil penalties

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, the quickest way of ensuring workers receive their arrears. The civil route involves HMRC conducting an investigation, identifying if workers have been underpaid, calculating the value of any arrears, and instructing employers to repay the arrears as quickly as possible. A penalty of 200% of the total underpayment for all workers specified on the NoU is also imposed, with the incentive of a reduction to 100% if all the unpaid wages and the penalty are paid within 14 days. HMRC can also take further enforcement action via the civil courts if employers fail to repay arrears to workers.

696 penalties were issued to non-compliant employers in 2021/22 totalling £13.2m. Whilst the total value of the penalties fell from £14.1m in 2020/21, the number of penalties issued increased from 575, suggesting that more employers paid within fourteen days and received a penalty reduction (see Table 1 in the supplementary data for data going back to 2015/16).

Naming Scheme

The National Minimum Wage Naming Scheme remains a key deterrent to employers breaking minimum wage law. The Naming Scheme highlights non-compliant employers by publicly exposing their breaches and promoting their future compliance to deter other businesses from underpaying the minimum wage.

Following the review of the Naming Scheme in 2020[10] and the increase in the Naming arrears threshold to £500 or above, Naming Rounds 17 and 18 were published in August[11] and December[12] 2021, respectively.

Collectively, Rounds 17 and 18 saw 399 employers named for £3.3m in minimum wage arrears owed to 46,000 workers. This means that up to and including these Naming rounds, nearly 2,500 employers have been named for £20.8m in arrears for 231,000 workers.

Alongside the list of named employers, the government continues to publish an educational bulletin which highlights and explains the risk of minimum wage underpayment in connection with a relevant subtopic: the focus was on apprentices in Round 17 and salaried hours work in

[10] Department for Business, Energy and Industrial Strategy (2020b)
[11] Department for Business, Energy and Industrial Strategy (2021a)
[12] Department for Business, Energy and Industrial Strategy (2021b)

Round 18. The bulletins' purpose is to increase awareness of the most common reasons for underpayment, providing employers with an opportunity to review their practices in these areas.

For more information, please see: https://www.gov.uk/government/news/over-200-employers-called-out-for-falling-short-of-paying-staff-the-minimum-wage.

Labour Market Enforcement Undertakings and Orders

The regime of Labour Market Enforcement Undertakings (LMEUs) and Orders (LMEOs) is specifically targeted at those employers where serious or persistent breaches of NMW law have been identified and action is needed to prevent further offences. Where HMRC identifies an employer in this category, they may ask them to agree to enter an Undertaking with a number of measures which will ensure future compliance. If the employer refuses to enter an Undertaking or fails to comply with an Undertaking, a magistrates' or, more seldom, a Crown court (or similar in devolved administrations) will have the power to impose an LMEO requiring the employer to take action to avoid further offences. Failure to comply with an LMEO can result in a two-year custodial penalty and/or unlimited fine. The number of LMEUs issued by HMRC has increased from last year, rising to 40 open at the end of 2021/22.

Criminal prosecutions

For the most serious non-compliance offences, HMRC can refer cases for criminal investigation and prosecution. Criminal prosecutions are significantly more costly than civil cases, involve much longer timescales and, therefore, delays in securing arrears, and do not guarantee that the full value of arrears is repaid to workers. Therefore, further enforcement may be required to secure all arrears.

HMRC's Serious Non-Compliance teams undertake a programme of employer-specific investigations and multi-agency operations to identify deliberate and persistent offenders and take action to bring these employers into compliance. As a result of this, HMRC may also identify criminal offences to refer for criminal investigation by HMRC's Fraud Investigation Service (FIS). FIS will consider all the evidence and whether it is in the public interest to prosecute. HMRC will then refer cases to the Crown Prosecution Service, which will ultimately decide whether to bring a case for criminal prosecution.

Since 2007, 18 employers have been successfully prosecuted for underpaying the minimum wage with an additional case accepting a caution; this is an increase on last year's figure (16), with the most recent prosecution taking place in February 2022. For more information about these prosecutions, see Table 12 in the supplementary data.

Measuring minimum wage non-compliance

The government uses a number of information sources to assess the scale and nature of minimum wage non-compliance, which in turn informs our enforcement approach. These include the Acas helpline, HMRC's online complaint form, HMRC risk modelling and HMRC's Intelligence Bureau for sanitised third-party intelligence.

In addition, estimates of non-compliance can be made using the Office for National Statistics' (ONS) Annual Survey of Hours and Earnings (ASHE), a survey of employees completed by employers. ASHE provides information about the levels, distribution and make-up of employees' earnings and hours paid[13]. ASHE data enables an estimate of the number of jobs paid below the minimum wage at a particular point in time. These estimates can be broken down by sex, age, region, sector, and full-time and part-time working.

However, a number of methodological issues (including the proximity of the survey to the annual minimum wage uprating, the fact that the survey only measures underpayment in the formal economy and there being legitimate reasons for underpayment) mean that ASHE does not offer a direct measure of the level and distribution of minimum wage non-compliance. Government takes these limitations into consideration when using ASHE to inform enforcement.

The waves of the survey from April 2021 and 2022 also faced challenges brought about by the Covid-19 pandemic[14], including:

> **A reduced sample size**, given the challenges to data collection during the pandemic and response rates being between 18% to 22% lower than pre-pandemic levels, the sample was 147,000 compared to 180,000 in 2019. This signifies that the ASHE estimates for 2021 and 2022 are subject to more uncertainty than usual.

For a further breakdown of the impact of the Covid-19 pandemic on data collection, as well as the steps taken in response by the Office for National Statistics (ONS), see the 2020/21 edition of this report.

Analysis of workers with pay below the NLW/NMW

DBT analysis of ASHE finds that approximately 507,000[15] workers were paid below the relevant minimum wage in April 2022, as shown in Table 2 and Figure 4 below. Compared to pre-pandemic, this represents an increase in underpayment levels of 79,000 and a 0.2 percentage point increase to 1.7% in the proportion of underpaid out of all jobs[16]. Tables 15 to 17 and Figures

[13] Office for National Statistics (2016)
[14] Office for National Statistics (2022)
[15] The ONS found a slightly higher underpayment figure (509,000) likely due to small methodological differences, but the variance does not affect the overall takeaway and the margin of error is negligible.
[16] A new way of classifying occupations (SOC 2020) reflecting changes in the composition of the labour market was introduced in April 2021, meaning that estimates from ASHE before and after 2021 are not directly comparable. To account for this change, DBT has used 'chain-linked' data to make this data more comparable. The effect on 2019 estimates is expected to be relatively small. More information on chain-linking methodology is available in Appendix 3 of Low Pay Commission (2023).

16 and 17 in the supplementary data provide further information on underpayment across different sectors and regions.

Analysis from the Low Pay Commission (LPC)[17] of the Labour Force Survey (LFS) provides an alternative measure of underpayment. While LFS data usually shows higher levels of underpayment than in ASHE, it offers a consistent quarterly time series that allows for the identification of within-year patterns.

The LPC's latest analysis of the LFS, using data from the second quarter of 2022, finds total underpayment of around 763,000, which is well below 2019 levels of 1.12 million and broadly a return to 2017 levels of 857,000. This could be attributable to the NLW moving to a round figure of £9.50 in 2021, comparable to the increase in 2017 to £7.50, for two reasons. The LFS is based on employee responses and respondents will be more likely to accurately recall their pay. This would lead to lower underpayment from measurement error than in, for example, April 2021, where the £8.91 NLW could be incorrectly cited as £8.90, artificially inflating the underpayment figure. In addition, firms are less likely to underpay at round numbers[18].

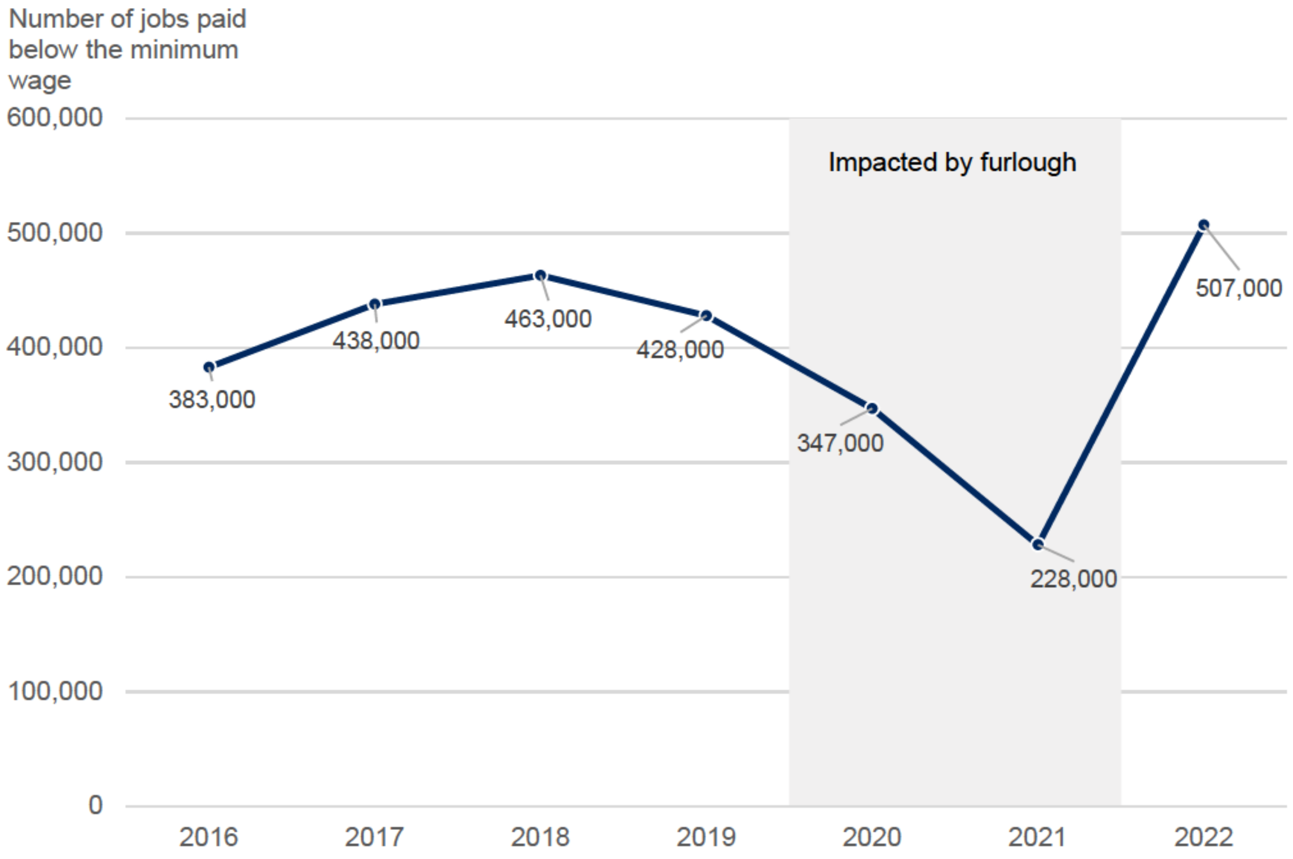
Table 2: Estimates of minimum wage non-compliance by minimum wage rate, April 2022

Minimum wage rate	April 2022
23 years old and over (NLW)	435,000
21 to 22 years old (NMW)	36,000
18 to 20 years old (Development)	21,000
16 to 17 years old (Youth)	5,000
Apprentice	10,000
Total	**507,000**

Source: DBT analysis of ASHE 2022 (ONS)
Note:
1. ASHE estimates of jobs paid below the NMW/NLW have been rounded to the nearest thousand. As a result, figures may not always tally to the total.

[17] Low Pay Commission (2023)
[18] Dube, Manning and Naidu (2018)

Figure 4: Minimum wage underpayment over time, 2016 to 2022



Source: DBT analysis of ASHE 2016 to 2022 (ONS)
Notes:
1. Figures up to 2019 are chain-linked to make figures comparable to 2022. Figures for 2020 and 2021 exclude furloughed workers and are not directly comparable to other data points. See last year's edition of this report for further information on the impact of furlough on measuring underpayment.
2. Figures are rounded to the nearest thousand and show underpayment across all minimum wage rates.

Due to the issues with the data from 2020 and 2021, discussed above, DBT adopts 2019 as the (pre-pandemic) benchmark for comparison of underpayment figures.

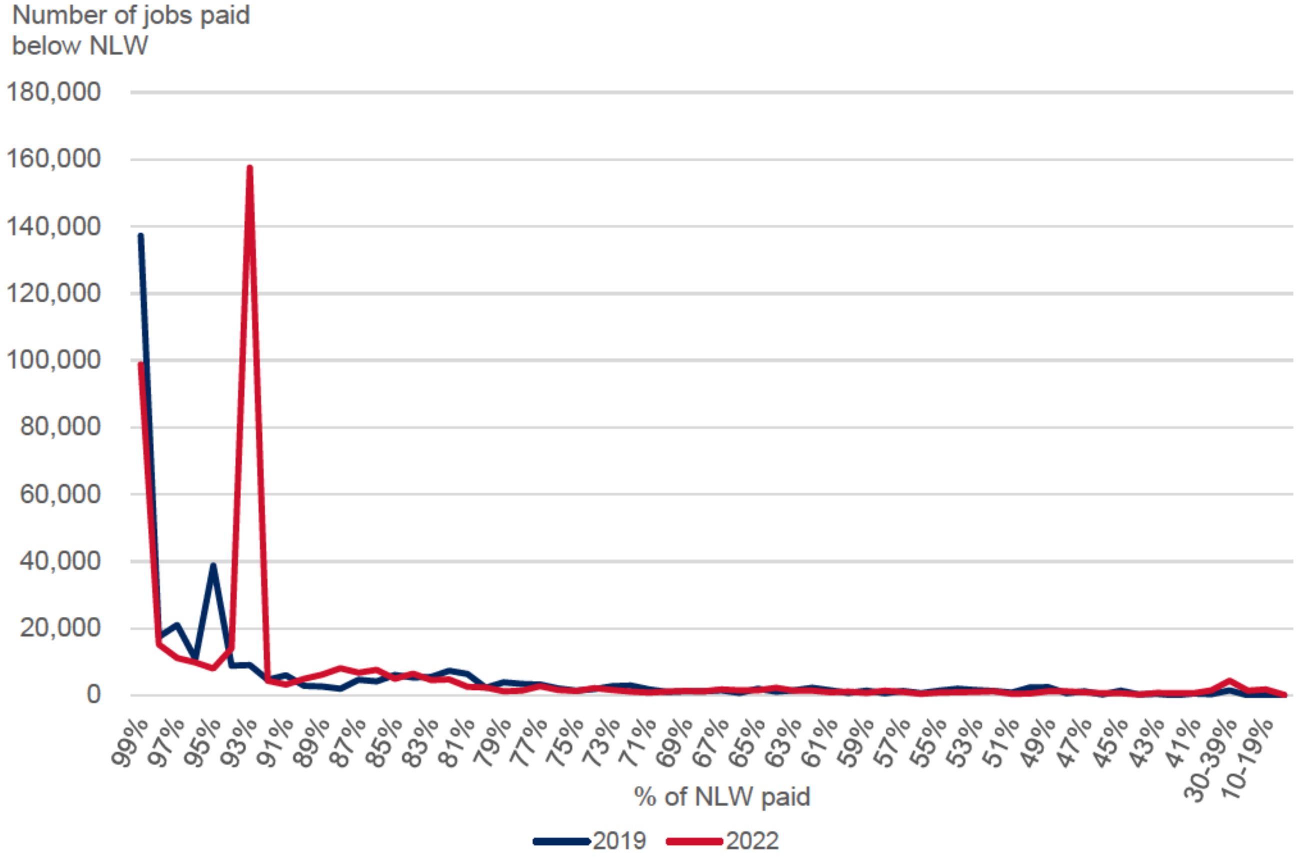
Figure 5 examines the composition of underpayment in more detail by looking at the percentile distribution. The analysis in this chart complements Table 18 and Figure 18 in the supplementary data. In 2022, there was a pronounced spike of 158,000 individuals being underpaid at the previous year's NLW rate of £8.91, significantly higher than the pre-pandemic equivalent of 37,000. This figure being higher than expected could reflect data collection issues related to workers being legitimately paid the previous rate due to the timing of their pay periods and other issues with how upratings were treated during the pandemic.[19]

To build a more complete picture of the underpayment landscape, this report considers the evolution of the number of minimum wage jobs – also called coverage – as well as the state of

[19] The rules for calculating furlough pay for the Coronavirus Job Retention Scheme meant that the 2020 and 2021 minimum wage upratings may not have applied to the calculation of furlough payments because furlough payments received via the CJRS corresponded to hours not worked and the minimum wage only applies to hours worked.

the labour market. Levels of underpayment would be expected to increase as coverage increases and fall as coverage falls. In addition, underpayment is likely to decrease when the labour market is tight as firms struggle to recruit, focus on job retention and offer higher wage increases. Therefore, the fall in coverage across all minimum wage rates by over 400,000 since 2019, as well as the tightening of the labour market throughout 2021/22, would suggest that the observed fall in underpayment in the LFS data is more robust than the increase observed in ASHE. The LPC will explore this topic in further detail and report their findings in their 2023 report on non-compliance.

Figure 5: Distribution of National Living Wage underpayment in April 2019 versus April 2022



Source: DBT analysis of ASHE 2019 and ASHE 2022 (ONS)
Note:
1. 2019 figures are chain-linked to make figures comparable.

Responding to the Low Pay Commission's enforcement recommendations

In their 2022 enforcement report,[20] the Low Pay Commission looked at enforcement and compliance activity in the Leicester textiles sector. This highlighted the joint working between enforcement bodies and others, and the challenges to improving the conditions of low-paid workers across the UK.

For the most part, the report did not make new recommendations to government. Instead, the LPC reviewed progress in some of the key areas they had focused on in recent years and expanded on some of their original recommendations in the context of their work in Leicester.

The recommendations for DBT and HMRC that the LPC highlighted in their report were:

1. We recommend HMRC addresses previous LPC recommendations to improve and promote third-party complaint protocols, including:
    a. communicating where the bar is for 'actionable' intelligence;
    b. setting a standard for providing prompt and regular feedback to third parties; and
    c. promoting options for underpaid individuals to nominate a third-party agent to act on their behalf.
2. We urge the government to take action on the measures we recommended in 2018[21] to address one-sided flexibility, including:
    a. a right to switch to a contract which reflects a worker's normal hours;
    b. a right to reasonable notice of work schedule;
    c. compensation for shift cancellation or curtailment without reasonable notice; and information for workers.

The government's response to these recommendations is below.

The government takes enforcing the minimum wage seriously. We are clear that anyone entitled to be paid the minimum wage should receive it and take robust enforcement action against employers who do not pay their staff correctly.

As such, HMRC welcomes any information that people or organisations have about potential NMW non-compliance, and workers and third parties can report this to HMRC directly online or via the Acas helpline. Furthermore, workers can nominate someone to act on their behalf during a NMW complaint. They can make this clear when they submit the complaint or with the person investigating their complaint at any time; however, HMRC will need to speak to the complainant worker or their representative to get a better understanding of their concern.

A third-party complainant can phone HMRC via Acas about the complaint itself or the type of information needed to take the complaint. In doing so, this enables the third party to provide as much comprehensive information as possible, enabling HMRC to take the third-party complaint

[20] Low Pay Commission (2022)
[21] Low Pay Commission (2018)

forward. It is important for a third party to provide enough information for the complaint to be considered.

The online complaint form on Gov.uk also asks for the relevant information that allows HMRC to open a complaint. Once complaints are received, either from a worker directly or a third party, they are triaged. This triage process is multi-faceted and undertaken by trained HMRC staff adhering to risk criteria. Third party information will be evaluated against other sources to ensure the highest-risk cases are prioritised. All information is retained and contributes to the wider compliance picture even in the absence of an enquiry.

Recommendation 1a – Partially accept

It would not be operationally expedient to set and communicate a minimum level of information required for HMRC to open a case because this varies across cases. HMRC review previously held information against new Third Party Information to build a fuller picture of risk. Where the Third Party Information is regarded as suitable, it will be considered alongside wider information sources to allow the case to be taken forward. This flexibility allows HMRC to make use of all the sources of information available to them to best prioritise the highest-risk cases.

In order to ensure third parties supply sufficient relevant information, HMRC will continue to provide support to third-party information providers who may require further guidance via the Acas helpline and the online complaint form. The online form asks for the relevant information to allow HMRC to consider taking a case forward and the helpline supplies ad-hoc advice where relevant. DBT and HMRC will use future engagement sessions to better highlight this information to relevant stakeholders.

In addition, HMRC is currently researching the introduction of a “Digital Assistant” to the online form. This will look to provide pointers for each element of the online complaint form, for both complainant workers and third parties, to ensure they provide as much relevant information as possible to allow HMRC to take the complaint forward. HMRC also reviews complaints and intelligence levels on a regular basis to observe trends, all of which feed into its Risk Governance Board and Targeted Enforcement Planning.

Recommendation 1b – Partially accept

Whilst third parties may find feedback on the outcomes of investigations helpful, HMRC are not able to commit to providing this. HMRC officers have a statutory duty to protect taxpayer confidentiality: Section 18 of the Commissioners for Revenue and Customs Act 2005 (CRCA) makes clear that an officer must not disclose HMRC information to anyone, including other government departments, agencies, local authorities, the police and other public bodies, unless they have lawful authority to do so. Section 19 of the CRCA makes it a criminal offence for a HMRC officer to disclose information in a way that is not lawful. In addition to the department taking disciplinary action, the offence carries a maximum penalty of imprisonment for two years, an unlimited fine or both. It is this statutory duty that means that except for circumstances where the person or organisation that the information is about has given consent, information cannot be shared with a third party. Even where information is aggregated at a regional and/or sectoral level, there can be risks that taxpayer confidentially is broken and therefore a standard feedback process for third parties is not possible.

Nevertheless, HMRC and DBT place significant value on working closely with stakeholders to tackle non-compliance and will continue to do so. Therefore, whilst we cannot accept the LPC's recommendation in full, DBT and HMRC will use existing channels to provide appropriate feedback and advice on the use of third-party reporting protocols. In addition, DBT and HMRC will continue to use these annual reports to provide information to stakeholders on outcomes from NMW enforcement and compliance activities. DBT also use the Naming scheme to publicise where investigations find non-compliance.

Recommendation 1c – Accept

Finally, a key element of preventing non-compliance is to promote and increase awareness of the NMW legislation to reduce the incidence of workers being underpaid in the first place. By changing the behaviour of both employers and workers, the need for complaints and subsequent enforcement action is reduced. Both DBT and HMRC undertake communications activity (see Focus item: HMRC's 'Promoting compliance' work for further detail) to improve worker and employer awareness that encourages compliance.

The government agrees with the LPC that it is important that workers are aware of all complaint routes, including nominating third-party agents to act on a worker's behalf. HMRC will continue to use their "Promote and Prevent" activity to increase awareness and advise the use of third-party reporting. For example, HMRC are currently refreshing their advisory notices to emphasise that workers who are worried about identifying themselves to their employers do have the option to preserve anonymity.

Recommendation 2 – Under consideration

The government remains grateful for the LPC's thoughts and recommendations on tackling one-sided flexibility. Considering those recommendations, the government has already taken forward steps to tackle the problem.

The government is backing a Private Member's Bill which will introduce a new right for workers to request a more predictable working pattern. The new right will allow a qualifying worker to make an application to change their existing working pattern if it lacks predictability in terms of the hours they are required to work, or if it is a fixed term contract of less than 12 months. Those who are content to work varied hours each week will be able to continue to do so. It will give workers on atypical contracts (especially zero hours contracts) more predictable working hours.

We have also extended the right to a written statement, covering additional information such as how long a job is expected to last, to be a day-one right for all workers and employees. Increased transparency gives all workers a basis of expectations about their working conditions and the tools they need to challenge these.

The government has consulted on the LPC's recommendation to introduce a right to reasonable notice of working hours and compensation for shifts cancelled without reasonable notice.

However, it would not be appropriate to comment further until the consultation response has been published. This will be published in due course.

DBT would like to thank the LPC for their valuable recommendations and their work on Leicester textiles, and reiterate its commitment to working closely with HMRC, the LPC and the Director for Labour Market Enforcement (DLME) going forward to support businesses and protect workers' statutory minimum pay.

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