Department for
Business & Trade

National Living Wage and National Minimum Wage

Government evidence on enforcement and compliance in 2022 to 2023

October 2024

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 2022 to 2023 financial year. It presents key statistics and describes important trends shown in the supplementary data, which is referenced throughout.

The government increased the NLW to £9.50 on 1 April 2022 and to £10.42 on 1 April 2023. The NLW was subsequently increased to £11.44 on 1 April 2024, however the focus of this report is the enforcement in the 2022 to 2023 financial year of the rates in place at the time.

The significant increases to the NMW and NLW in recent years mean a growing proportion of workers are earning within a narrow range of the NMW and NLW rates. Due to the rising population at risk, enforcement of the NMW and NLW continues to be as important as ever. HMRC continued to enforce minimum wage legislation, considering all complaints and supporting employers with compliance. This report focuses on the 2022 to 2023 financial year.

The Low Pay Commission (LPC) regularly makes recommendations to the government on NMW and NLW enforcement. In their 2023 enforcement report[2], the LPC focused on the persistence of underpayment for individuals from year to year and set out recommendations regarding:

- one-sided flexibility
- the frequency of the minimum wage naming scheme
- expansion of data collection on underpayment

In this report, we include the government's response to some of those recommendations.

[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] Low Pay Commission (2023a).

Key results

Box 1: Summary of 2022 to 2023 enforcement results

Enforcement activity in 2022 to 2023 saw an increasing number of cases closed and a significant level of arrears identified.

HMRC closed **almost 3,200 cases** with over **900 closed with arrears.**

£13.66 million in arrears was identified for **over 108,000 workers.**

HMRC issued **750 penalties** totalling **£13.72 million.**

Targeted enforcement continued to be the primary method of identifying arrears, accounting for **74% of closed cases, up from 71%** in 2021 to 2022.

Nearly **12 million workers** reached by targeted communications campaigns.

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[3].

Table 1 below shows the minimum wage rates that were applicable across the 2022 to 2023 financial year[4].

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

[4] The rates that applied from April 2022 were relevant to most of the financial year, but the April 2023 rates applied for the last few days of the financial year.

Table 1: Minimum wage hourly rates as of April 2022 and April 2023

Age Band	From 1 April 2022	Age Band	From 1 April 2023
23 years old and over	£9.50	23 years old and over	£10.42
21 to 22	£9.18	21 to 22	£10.18
18 to 20	£6.83	18 to 20	£7.49
Under 18	£4.81	Under 18	£5.28
Apprentice	£4.81	Apprentice	£5.28

Enforcement of the minimum wage

Anyone entitled to the minimum wage should receive it, and the government 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 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 identifies non-compliance, either as a result of a worker complaint, or of their targeted enforcement work that draws on HMRC intelligence and risk analysis.

Where HMRC identify that an employer has underpaid their workers, action will be taken to ensure workers are repaid the money they are owed. Generally, this will include issuing 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 issues 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[5].

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[5] Employers will only be eligible for naming if the total value of arrears owed to workers exceeds £500.

In more serious cases where HMRC identifies evidence of a Section 31[6] criminal offence and have concerns that this may lead to future non-compliance, they can seek a labour market enforcement undertaking (LMEU) or order (LMEO)[7]. In the most serious cases, may pursue a criminal prosecution. See 'Labour market enforcement undertakings and orders' 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 to 2016 to £27.8 million in 2022 to 2023. The increased budget pays for more HMRC compliance officers to investigate worker complaints, undertake enforcement activity and, increasingly, promote compliance.

However, we must also ensure that the enforcement budget is spent as effectively as possible. This is why the Geographical Compliance Approach (GCA) was an important feature of HMRC's work during 2022 to 2023. The GCA facilitates the compliance of employers who want to get things right by providing support and education. To achieve this, the GCA targets employers by geographical region, allowing HMRC to reach all employers within a chosen location, including sectors previously less likely to be reached by targeted enforcement. This provides HMRC with further insights into the broader picture of risk. See Focus item: HMRC's 'Geographical Compliance Approach' for further detail.

Enforcement in 2022 to 2023

In 2022 to 2023, HMRC opened over 3,250 cases and closed almost 3,200. More than 900 closed cases resulted in workers being paid arrears. The proportion of closed investigations where employers were found to be non-compliant, 'the strike rate', was 33%[8] (compared to 35% in 2021 to 2022).

In 2022 to 2023, HMRC identified £13.66 million in arrears owed to over 108,000 workers and issued 750 penalties totalling £13.72 million to non-compliant employers. By comparison, in 2021 to 2022, HMRC identified £16.32 million in arrears owed to more than

[6] Section 31 of the National Minimum Wage Act 1998 makes provision for criminal proceedings to be brought for a number of offences covering a range of misconduct. Department for Business and Trade (2024).

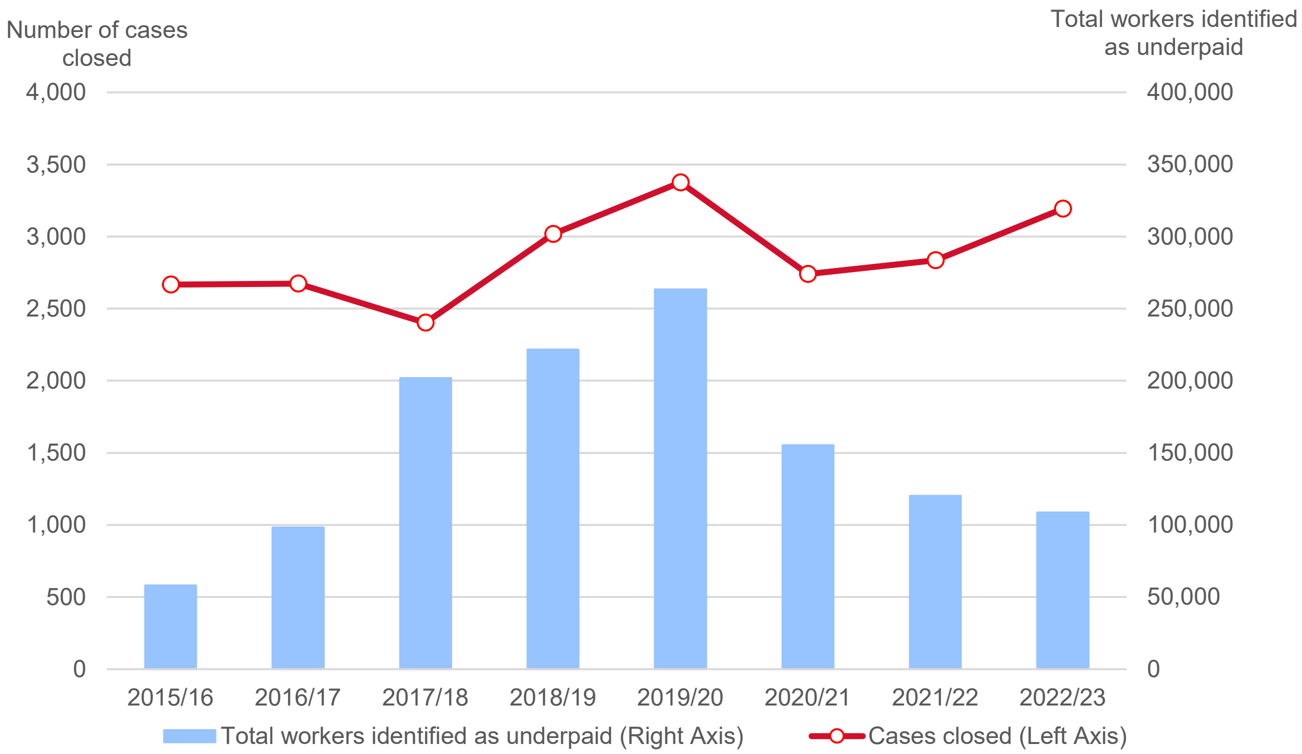
[7] LMEUs and LMEOs are issued to employers where serious or persistent breaches of NMW law have been identified and require employers to meet a number of measures which will ensure future compliance.

[8] The 2022 to 2023 strike rate excludes 449 educational (or compliance) cases. The strike rate comprises 914 cases with arrears out of 2,743 closed cases. This is because traditional measures of success do not adequately capture the impacts of educational cases. 481 GCA targeted enforcement (TE) cases are included in the strike rate. GCA TE cases aim to test compliance amongst employers who do not engage with HMRC's upstream efforts to support compliance. These cases are opened across the risk spectrum. Although traditional measures of success do not fully capture the aims and impacts of GCA TE cases, they are included in the strike rate to reflect the full picture of enforcement activity.

120,000 workers and issued 696 penalties totalling £13.17 million to non-compliant employers.

This means that since the introduction of the NMW in 1999, the government has overseen the repayment of over £186 million to almost 1.5 million workers, issued over £100 million in financial penalties and completed over 90,000 investigations[9].

Figure 1: Minimum wage investigations: number of cases closed and workers identified as underpaid



Source: DBT and HMRC enforcement data
Note: Worker figures for 2018 to 2019 and 2019 to 2020 include workers identified through the Social Care Compliance Scheme (SCCS), amounting to 24,834 and 1,011 respectively.

Although the number of cases closed with arrears by HMRC is stable on previous years, the average arrears per case closed with arrears fell. Table 1 in the supplementary data shows average arrears per case (among cases where arrears were identified) stood at just over £14,780 – this is the lowest figure since 2016 to 2017. Average arrears per worker was £126, a slight decrease on 2021 to 2022 but higher than previous years.

[9]These figures refer to the period from the introduction of the NMW in 1999 up to and including 2022 to 2023.

It appears the average arrears per case figure was impacted by the increase in GCA targeted enforcement (TE) cases where arrears identified per case closed tend to be lower than through other routes of investigation.

The GCA was introduced in 2021 to increase enforcement and compliance coverage as the number of workers at risk of NMW underpayment has risen as the NMW/NLW rate increases. The primary aim of GCA TE cases is to understand if employers who do not engage with HMRC's targeted efforts to support employer compliance are non-compliant. In the initial stages of the GCA, these cases were also opened to test the effectiveness of the HMRC risk model. In 2022 to 2023, GCA TE cases made up almost 10% of cases closed with arrears but only 0.3% of total arrears.

As such, GCA TE cases were initially opened into employers across the risk spectrum, including a proportion of those considered at low or medium risk of non-compliance, leading to lower arrears identified per case. In addition to this, GCA activity creates a wider impact beyond direct employer contacts and may induce a ripple effect which influences behavioural change in the surrounding employer population. We believe this will have contributed to greater compliance and improved outcomes for workers as getting paid correctly in the first instance removes the need for a lengthy investigation. However, these positive impacts are not always effectively reflected in the enforcement statistics on arrears and workers identified.

Despite this, a number of investigations resulted in high levels of arrears and workers identified. Table 2 in the supplementary data shows that in 2022 to 2023, of the 924 cases closed with arrears, HMRC closed 18 cases (2% of closed cases with arrears) which had over £100,000 in arrears each. Collectively, these cases amounted to over £9.7 million in arrears (71% of total arrears) and accounted for nearly 87,900 workers (81% 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.

Focus item: HMRC's Geographical Compliance Approach

In this 'Focus item' section, we review a specific part of enforcement and compliance activity in more depth. This year's report looks at HMRC Geographical Compliance Approach (GCA), which is a growing part of the compliance toolkit.

The GCA uses an escalating suite of interventions in a targeted geographical location (for example Cumbria). It provides a more supportive approach for employers, making it easier for them to comply. The GCA also reminds employers of their responsibilities under NMW law, helps workers understand their rights and signposts them to where to complain if they think they are underpaid.

In addition, the GCA aims to:

- test whether using geography to target a population could create a wider impact beyond the customer touched directly, creating a ripple effect which causes behavioural change in the surrounding employers as well
- test the NMW risk model[10] and provide insight into sectors not previously touched through targeted enforcement
- use a broader suite of measures and evaluation techniques to assess the impact of HMRC activity going beyond arrears, workers and strike rate – this provides a better understanding of the impact of NMW compliance and enforcement activity on the short, medium- and long-term behaviour of employers
- test the effectiveness and longevity of HMRC varying intervention types on customer behaviour to allow them to resource to risk more effectively in the long term

How the Geographical Compliance Approach works

The first step of the GCA is that HMRC's NMW Promote team carries out a variety of activities, such as press releases, educational letters and awareness sessions, to publicise the minimum wage as well as improve worker, employer, and agent awareness[11]. This education work underpins the escalating suite of interventions for the GCA. The Promote team works with employers to educate and inform, thereby putting them in a position to be compliant. They also target workers encouraging them to check their pay in line with the minimum wage legislation and educating them on how and where to make a complaint if necessary.

This initiative targets all employers, regardless of sector within a targeted location. These targeted locations are defined by a specific number of employers so the size of location will vary dependent on the number of employers in the area. HMRC's Promote team offer all agents in GCA locations an opportunity to attend an awareness session about common NMW errors and risk. HMRC also write to the most 'at-risk' workers highlighting the most common reasons why they may be underpaid and signposting them to support channels and how to complain.

To select locations, HMRC initially looked to target areas with low levels of complaints, but significant numbers of employers and workers. HMRC has subsequently developed a more sophisticated approach based on their internal strategic geographical picture of risk.

The phases of the GCA are illustrated below:

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[10] HMRC's risk model 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.

[11] An agent is a third party acting on behalf of an employer. For example, an accountant is considered an agent in this scenario.

Phase 1 – Informing the population

HMRC issues a mass educational letter to all employers in a designated area.

These letters signpost employers to common errors and support mechanisms to help them comply with NMW rates.

Phase 2 – Supporting employers

HMRC identifies a selection of employers from the Phase 1 population where risk modelling identifies that they are more likely to have business practices which could lead to NMW breaches.

HMRC writes to these employers, giving them an opportunity to call and speak to an NMW officer.

At this employer support call, employers can talk through their business practices to help them identify any areas where they could be more at risk of underpaying workers.

If issues are identified, employers can make a voluntary declaration and do not receive the usual sanctions and Notice of Underpayment (NoU) or naming.

Participation is voluntary, although strongly recommended by HMRC who may follow up with a review to understand whether employers have acted upon the advice provided during the GCA campaigns.

Phase 3 – Targeted enforcement

If employers do not take up the offer of support at Phase 2, HMRC may select those businesses most at risk of underpaying workers for targeted enforcement (TE), where a full investigation is undertaken.

If any non-compliance is identified the full range of sanctions apply. In these cases, an NoU, penalties and naming can apply.

HMRC constantly reviews the content and tone of the letters sent at each phase, adapting to lessons learnt and better understanding of behavioural prompts. The letters are reviewed and revised accordingly. Engagement with the employer support calls has improved considerably in recent locations due to the improved and increased upstream activities, such as press releases, working with the local authorities, and improving stakeholder engagement.

Employers have been receptive to the offer – 14% on average across all locations have taken up the employer support calls. If issues are identified employers can make a voluntary declaration and do not receive the usual sanctions and Notice of Underpayment (NoU) or naming.

Box 2: Summary of 2022 to 2023 Geographical Compliance Approach activity

17,600 letters sent to employers

426 employer support calls completed

3 new locations covered (Belfast, Cornwall and Watford)

481 cases completed

In addition to this, HMRC identified **£42,496** in arrears for **287** workers through GCA targeted enforcement cases, phase 3 of the approach.

Box 2 shows that under the GCA, HMRC has reached almost 18,000 employers and completed 426 employer support calls across three locations during 2022 to 2023. This demonstrates HMRC's work in supporting employers into compliance at the earliest opportunity by providing the right help and education.

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. Namely, these do not adequately reflect where HMRC has supported employers into compliance at the earliest opportunity. Therefore, GCA uses different success measures across a broader range of indicators, including how behaviour changes in response to Promote activity.

Evaluation and outcomes

As such, to evaluate GCA and its outcomes, HMRC has commissioned a social research project which tests the NMW knowledge and awareness of workers, agents, and employers before and after each intervention. This is being delivered by a leading independent provider of market research services to the UK public and social sectors. HMRC NMW have worked with market research experts to develop pre- and post-evaluation questions for the agent, employer, and worker populations with the aim of testing the effectiveness of each GCA intervention at changing the behaviours and increasing the subject's knowledge and understanding of NMW issues and risks. The results of this research will be received in 2024 to 2025.

In addition, the GCA tests the effectiveness and longevity of HMRC's different types of intervention on customer behaviour using a suite of interventions escalating in severity and including some assurance repeat visits to employers. The HMRC NMW Team and

Department for Business and Trade (DBT) will continue to build their understanding of the mechanisms and timing required to maintain compliance in the willing population segments. But they will also broaden their knowledge of recidivism, and how to mitigate for that, which will shape their future compliance and enforcement strategies. Assurance activity for 2022 to 2023 is still ongoing so full evidence will only be available next year, but initial activity already undertaken is confirming that employers have understood their obligations and are remaining compliant.

Enforcement challenges

The effects of the COVID-19 pandemic on enforcement activity are still prevalent in the 2022 to 2023 data, as the Coronavirus Job Retention Scheme (CJRS), or furlough scheme, continued to impact investigations. This is because many low-paid workers were not working and were not entitled to the minimum wage while on furlough. While HMRC investigations can go back up to 6 years, HMRC works chronologically backwards from the current year as a proportionate approach. The investigations stop once HMRC reaches a financial year where there is no longer a risk of underpayment. Ultimately, this leads to fewer instances of underpayment identified. If, however, there is any indication that a risk may have occurred pre-pandemic then HMRC continues to investigate further. These challenges will continue to impact enforcement statistics.

Another challenge faced by HMRC during 2022 to 2023 was the cost of living crisis which placed many employers under increased financial strain and may have left some workers at greater risk of underpayment. Conversely, underpayment is, in theory, likely to decrease when the labour market is tight as firms struggle to recruit, focus on job retention, and offer higher wage increases. Given the tight labour market throughout 2022 to 2023, the risk of underpayment may therefore have decreased for some workers, particularly in sectors such as hospitality where staff shortages have led to higher offered wages.

To address these challenges, HMRC continued its robust upstream and sectoral targeted enforcement programmes as well as placing greater emphasis on supporting employer compliance with NMW legislation through the GCA.

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 considers 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 2022 to 2023 were received via HMRC's online complaint form (3,127), as opposed to the Acas helpline (340) or 'other' sources (22). For more information, 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
- face-to-face meetings with employers and workers[12]

The second enforcement route is that 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 positive 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
- 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 2022 to 2023, targeted enforcement continued to form an important part of enforcement activity, with the largest number of TE closed cases ever. HMRC closed just over 1,900 targeted enforcement cases and almost 450 educational (or compliance) cases, with 29% of targeted enforcement cases closing with arrears.

[12] For more information about this activity, please see the 2018 to 2019 report on minimum wage enforcement and compliance (Department for Business, Energy and Industrial Strategy, 2020a).

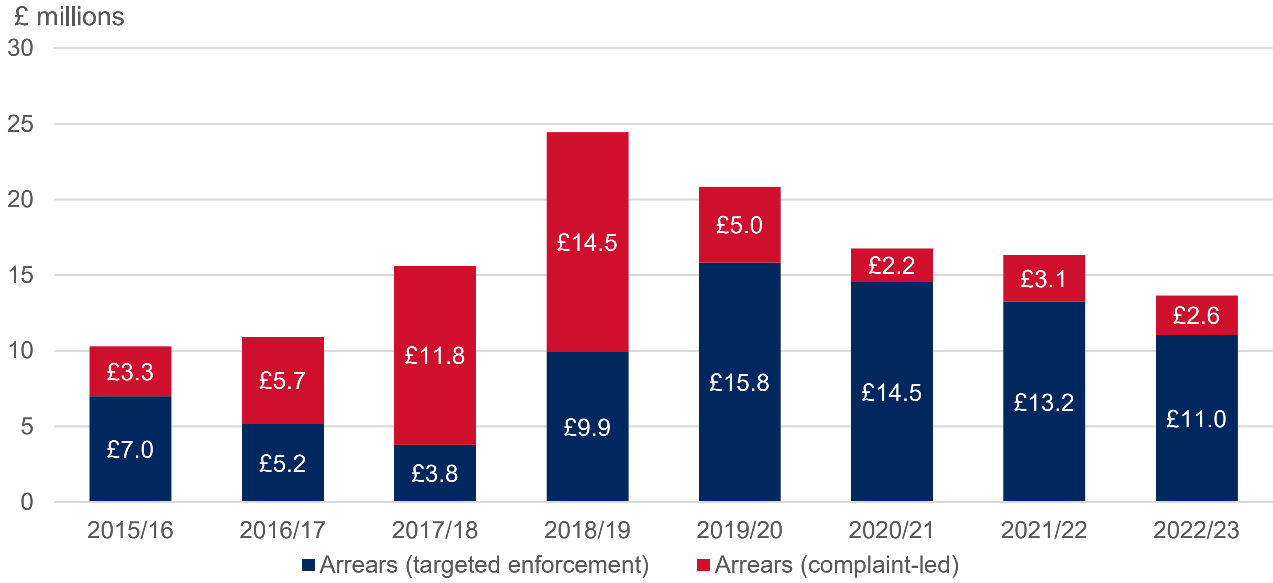
Educational cases are excluded from calculation of the strike rate for targeted enforcement. This is because the success of these cases is generally measured through the positive impacts on employers' behaviours rather than identifying arrears.

However, in some instances, educational cases lead to workers and arrears being identified when there is need to escalate to enforcement. Therefore, to provide a complete picture of the outcomes of targeted enforcement activity, these cases are included in totals for the arrears and workers identified.

GCA TE cases differ from educational cases as they aim to understand and evaluate whether employers who do not engage with HMRC's educational activities are compliant or non-compliant. These cases are included in the strike rate as they form a key part of targeted enforcement activity, but it is important to note that the wider impacts of GCA TE on employer compliance are not fully captured by traditional case measures.

In total, targeted enforcement cases returned over £11.0 million in arrears to nearly 92,000 workers. Figure 2 and Figure 3 below show that 81% of arrears and 84% of workers identified were found through targeted enforcement – the arrears figure is the same as 2021 to 2022 although workers figure is higher (73% in 2021 to 2022). For more information, see Table 7a in the supplementary data.

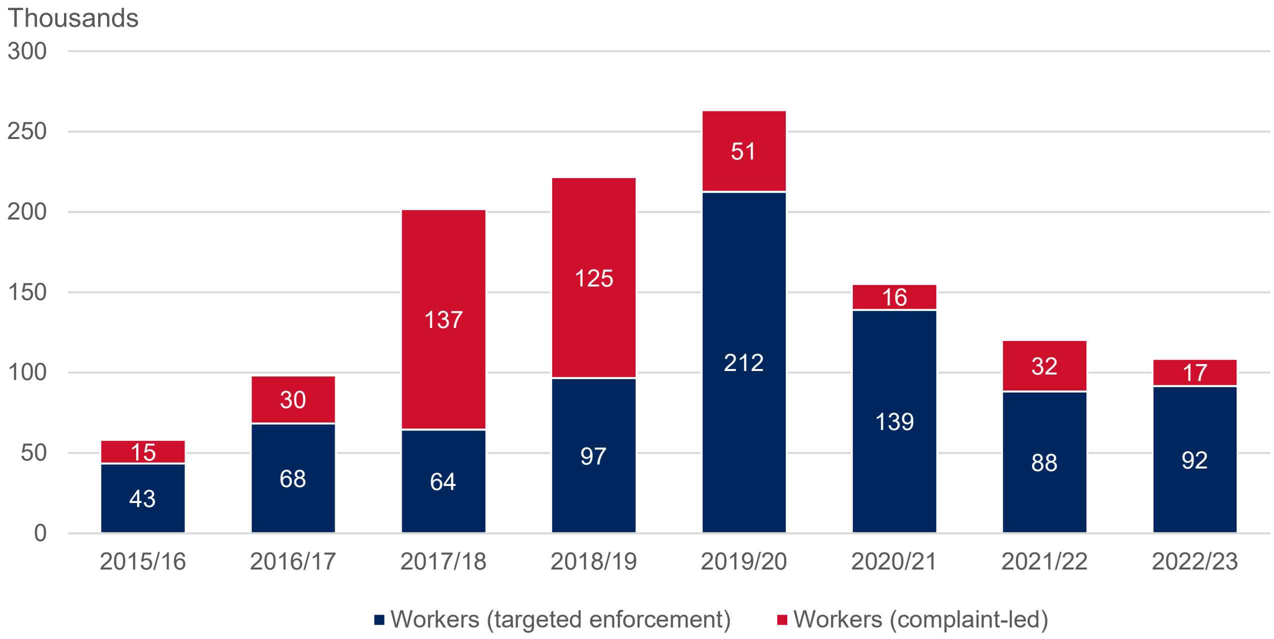
Figure 2: Arrears identified through targeted and complaint-led enforcement



Source: DBT and HMRC enforcement data

Note: Arrears figures for 2018 to 2019 and 2019 to 2020 include arrears identified via the Social Care Compliance Scheme, amounting to £6,075,912 and £255,356, respectively.

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



Source: DBT and HMRC enforcement data

Note: Worker figures for 2018 to 2019 and 2019 to 2020 include workers identified through the SCCS, amounting to 24,834 and 1,011 in 2018 to 2019 and 2019 to 2020 respectively.

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 (29%, as opposed to 42%). The former has fallen by 1 percentage point since 2021 to 2022 - the strike rate for targeted enforcement cases tends to fluctuate dependent on different levels of risk across sectors and factors affecting HMRC's investigations.

However, the strike rate for complaint-led cases has decreased by 4 percentage points on last year, primarily driven by the food and beverages sector which was the top sector for complaints in both 2021 to 2022 and 2022 to 2023. Between 2021 to 2022 and 2022 to 2023, the complaint-led strike rate in this sector fell from 46% to 34%. This trend may be linked to labour shortages in the sector contributing to employers offering higher wages, which tends to reduce the number of complaints that result in identified arrears. Therefore, the falling complaint-led strike rate in the food and beverage sector has impacted the overall complaint-led strike rate. Despite this, the strike rate for complaint-led cases is still higher than the targeted enforcement strike rate. These cases are helped by having a complainant worker who can provide their concerns and HMRC were at a minimum able to establish contact with the relevant worker.

Promoting compliance activity

'Promote' activity aims to prevent non-compliance by changing the behaviour of employers and workers. 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 better understand their entitlement and routes of redress. 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.

Box 3: Summary of 2022 to 2023 educational activity

10.8 million mass emails sent

17,800 views of Minimum Wage webinars

55,000 views of pre-recorded Minimum Wage content

550,000 SMS sent

In addition to this, HMRC sent **463,000** letters to employers and workers and provided expert advice to **1,800** queries.

In total, over **11.9 million** advisory notices were issued to workers, employers and their agents.

Box 3 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.

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.

750 penalties were issued to non-compliant employers in 2022 to 2023 totalling £13.72 million. Both the number and total value of penalties increased compared to 2021 to 2022, from 696 and £13.17 million respectively. See Table 1 in the supplementary data for data going back to 2015 to 2016.

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. The naming scheme also aims to increase compliance by publishing an educational bulletin tailored to the areas of non-compliance for that particular round. Up to and including round 18, which took place in December 2021, nearly 2,500 employers were named for £20.8 million in arrears to 231,000 workers. During the 2022 to 2023 financial year, there were no rounds of the naming scheme. This government now commits to regular naming rounds given the strong deterrence effect.

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 2-year custodial penalty and/or unlimited fine. There were 43 LMEUs open at the end of 2022 to 2023 (compared to 42 at the end of 2021 to 2022).

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 and involve much longer timescales. Therefore, they delay securing of 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 decide if there is sufficient evidence to prosecute the employer and will then refer cases to the Crown Prosecution Service, which will ultimately decide whether to bring a case for criminal prosecution.

Between 2007 and March 2023, 21 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 (18). For more information about these prosecutions, see Table 12 in the supplementary data.

Measuring minimum wage non-compliance

The government uses several 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
- 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 is our main source for analysis of earnings in the UK. 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 and the fact that the survey only measures underpayment in the formal economy, 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.

Since 2020, the data quality of ASHE has been affected by the COVID-19 pandemic, namely lower response rates from some low paying sectors. The wave of ASHE from April 2023 is largely unaffected by direct pandemic effects, however sample sizes have still not fully recovered. The response rate in April 2023 was around 13% lower than pre-pandemic

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[13] Office for National Statistics (2016).

levels, with a sample size of 156,000 compared to 180,000 in 2019[14]. This is an improvement on sample sizes for previous waves but estimates of underpayment are still subject to increased uncertainty and should be treated with caution.

Analysis of workers with pay below the NLW and NMW

DBT analysis of ASHE finds that approximately 365,000[15] workers were paid below the relevant minimum wage in April 2023, as shown in Table 2 and Figure 4 below. Compared to last year[16], this represents a decrease in underpayment levels of 24,000 and the proportion of employee jobs underpaid out of all jobs[17] remains the same at 1.3%.

Estimates of underpayment vary between sectors and regions. ASHE 2023 data shows that 1.7% of all employee jobs in the North East were paid below the minimum wage – the highest proportion across all regions. In general, a higher proportion of employee jobs in low-paying sectors are paid below the relevant minimum wage rates compared to jobs in non-low-paying sectors. Amongst low-paying sectors, the hair and beauty sector has the highest proportion of all jobs paid below the minimum wage at 4.4%, followed by childcare at 4.0%. Jobs in these sectors are often paid at or close to the minimum wage which can place workers at greater risk of underpayment. Paying at or close to the minimum wage rate can increase the risk of underpayment because employers are more likely to accidentally underpay when making deductions from wages or not accounting for all working time, for example. Tables 15 to 17 and Figures 16 and 17 in the supplementary data provide further information on underpayment across different sectors and regions.

Analysis from the LPC[18] of the Labour Force Survey (LFS) provides an alternative measure of underpayment. The LFS has some advantages over ASHE: for example, LFS data offers consistent quarterly time series that allows for the identification of within-year patterns. However, the LFS is based on employee responses and therefore usually shows higher levels of underpayment than ASHE because of error and rounding in individual's responses to survey questions on pay. As a result, LFS estimates of underpayment tend to be much lower in years where the NLW is a round number (for example £9.50 in 2022) as respondents are more likely to accurately record their pay.

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[14] ONS Low and High Pay 2023 (2023).

[15] The ONS found a slightly higher underpayment figure (366,000).

[16] Since the publishing of our 2021 to 2022 Enforcement and Compliance report, the ONS has revised ASHE and DBT estimates for workers paid below the relevant minimum wage rate in April 2022 have decreased from 507,000 (as previously reported) to 388,000. More information is available from Low and high pay in the UK:2023 (ONS).

[17] A new way of classifying occupations (Standard Occupational Classification, 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).

[18] Low Pay Commission (2024).

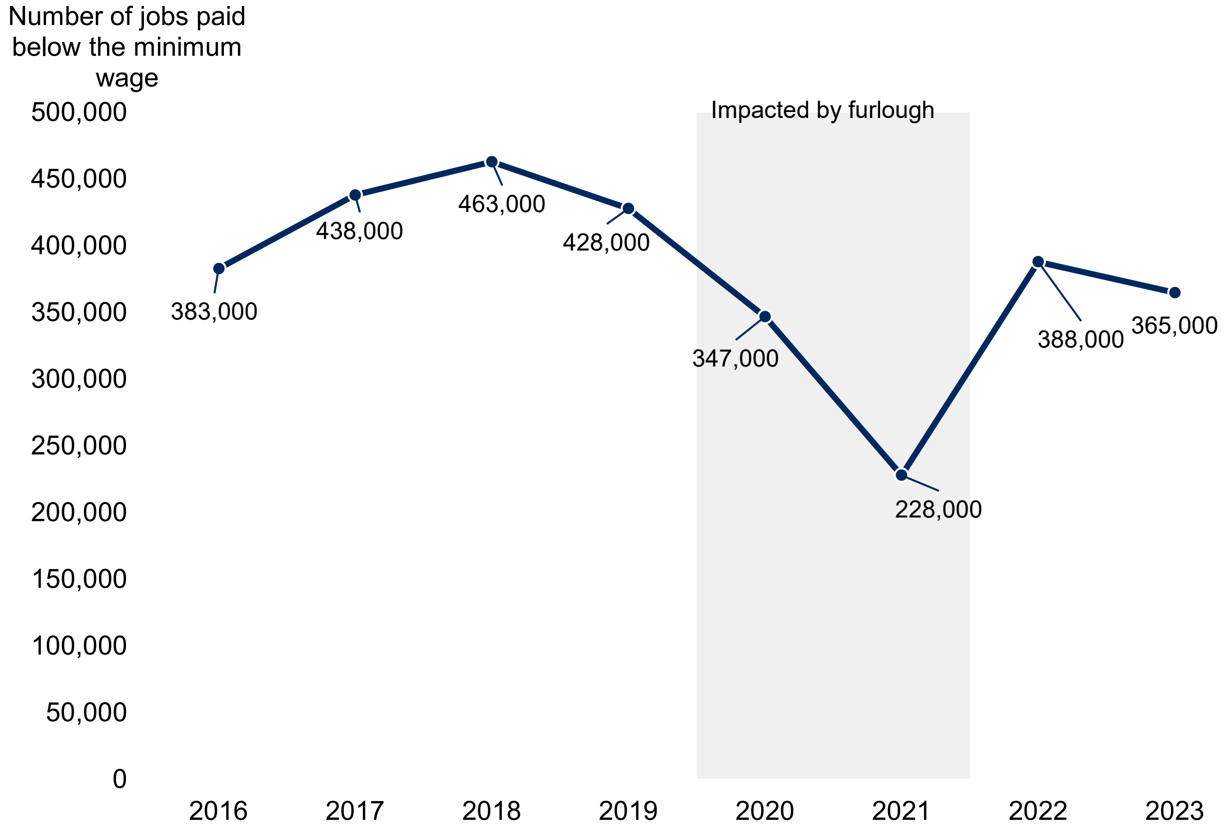
The LPC's latest analysis of the LFS, using data from the second quarter of 2023, finds total underpayment of around £1.2 million. With the exception of 2020 when the data was affected by the pandemic, this is the highest estimate of underpayment using LFS ever calculated by the LPC. This could be attributable to a shift from a round number rate in 2022 (£9.50) to a non-round number in 2023 (£10.42) as this likely increased the error in responses. In addition, the large NLW increase in April 2023 may have resulted in large numbers of individuals not being fully aware of the extent of the increase in their hourly pay. The LPC will explore this topic in further detail and report their findings in their 2024 report on non-compliance.

Table 2: Estimates of minimum wage non-compliance by minimum wage rate, April 2023

Minimum wage rate	April 2023
23 years old and over (NLW)	315,000
21 to 22 years old (NMW)	26,000
18 to 20 years old (Development)	14,000
16 to 17 years old (Youth)	4,000
Apprentice	7,000
Total	**365,000**

Source: DBT analysis of ASHE 2023 (ONS)
Note: 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.

Figure 4: Minimum wage underpayment over time, 2016 to 2023



Notes:

1. Figures up to 2019 are chain-linked to make figures comparable to 2022 and 2023. Figures for 2020 and 2021 exclude furloughed workers and are not directly comparable to other data points. See the 2020 to 2021 and 2021 to 2022 edition of this report for further information on the impact of furlough on measuring underpayment.

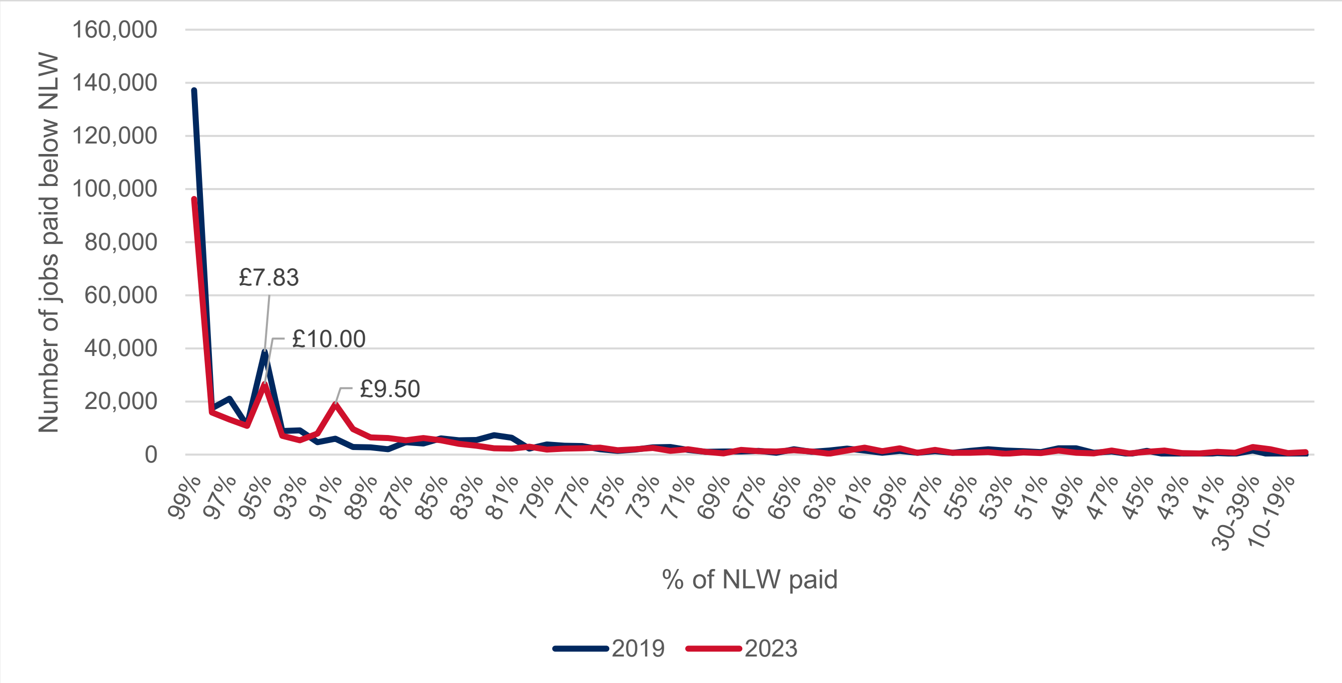
2. Figures are rounded to the nearest thousand and show underpayment across all minimum wage rates.

Figure 5 examines the composition of underpayment in more detail by looking at the percentile distribution. This reflects the percentage of the NLW rate that was actually paid to workers who were estimated in our ASHE analysis to be underpaid. The analysis in this chart complements Table 18 and Figure 18 in the supplementary data. Note that due to issues with the data from 2020 and 2021, which are discussed in both the 2020 to 2021 and 2021 to 2022 editions of this report, DBT adopts 2019 as the (pre-pandemic) benchmark for comparison of underpayment figures.

In 2023, the composition of underpayment followed a very similar pattern to pre-pandemic levels with underpayment for just over half of jobs paid below NLW occurring between 95-99% of the NLW rate. Spikes at previous NLW rates are often observed as some underpayment arises from an employer's failure to uplift their employees pay in line with new rates. This can be seen by a peak at around 91% of the 2023 rate, roughly equivalent to the 2022 NLW rate (£9.50). The spike at approximately 95% of the 2019 rate corresponds to the 2018 rate (£7.83). The peak at around 95% of the 2023 rate aligns to a rate of £10.00, potentially indicating employers were previously paying above the 2022 NLW rate and had failed to uplift to the 2023 rate, or employers were not aware of the level of the 2023 rate.

Overall, our ASHE estimates indicate that levels of underpayment may be slightly lower in comparison to pre-pandemic levels, but the composition appears to remain very similar.

Figure 5: Distribution of National Living Wage underpayment in April 2019 versus April 2023



Source: DBT analysis of ASHE 2019 and ASHE 2023 (ONS)
Note: 2019 figures are chain-linked to make figures comparable.

Responding to the Low Pay Commission's enforcement recommendations

Background
In their 2023 enforcement report, the Low Pay Commission highlighted the following recommendations for DBT and HMRC:

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

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

3. Expand the data HMRC collects on its caseload, in particular:
   - whether underpayment is formal or informal
   - the characteristics of underpaid workers involved
   - the working arrangements of underpaid workers

Our response on one-sided flexibility
We are taking forward a range of measures on the issue of one-sided flexibility based on the Low Pay Commission's 2018 recommendations. The government will end exploitative zero hours contracts by giving workers the right to a contract that reflects the number of hours they regularly work, which we expect will be based on a 12-week reference period.

The government will also introduce a new right to reasonable notice of shifts, with compensation for shifts cancelled or curtailed at short notice.

Our response on naming
The purpose of the naming scheme is to increase awareness of the rules, and to act as a deterrent to the minority of employers who may be tempted to underpay their workers.

We most recently published Naming Round 20 on 20 February 2024, naming 524 employers for failing to pay the minimum wage. This piloted an expanded number of workers in line with LPC recommendations. Previously we named around 200 employers at each round, but in Naming Round 20 we increased that to name more than 500 employers.

This means that, to date, we have named around 3,200 employers who have repaid a total of over £41 million in arrears to over 460,000 workers and paid over £60 million in penalties.

We will review the approach taken in round 20 and commit to publish more regularly.

Our response on expanding HMRC data
The government acknowledges that collecting such data would be informative. A balance though needs to be struck between the value of any additional data collected and:

- the additional burden this would place on workers, employers and HMRC

- the potential risk that asking for too much information could discourage workers from coming forward
- practical data-collection and legal considerations

The Department for Business and Trade continuously monitors and evaluates how to make best use of data HMRC collects, and any other data sets which may be informative for policy purposes.

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