Compliance and enforcement of the National Minimum Wage in 2024

A report by the Low Pay Commission

December 2024

Contents

Compliance and enforcement of the National Minimum Wage in 2024

Introduction

1 This is the Low Pay Commission's seventh separate report on non-compliance and enforcement. Although our core remit is to recommend the level of the National Living Wage (NLW) and other National Minimum Wage (NMW) rates, we have a clear interest in how compliance and enforcement works. We hear a large volume of evidence each year on how the enforcement system functions; and we produce estimates of the prevalence of non-compliance. Underpayment means workers do not get their due entitlement to the minimum wage and employers do not compete on a level playing field.

2 In our 2023 compliance and enforcement report, we noted a decrease in headline measures of underpayment. For the first time, we used linked data from the Annual Survey of Hours and Earnings (ASHE) to investigate what had happened to underpaid workers from one year to the next, over the period from 2012 to 2022. We found that on average around one in three underpaid workers continued to be underpaid a year later, with two in three moving to be paid at or above the NMW. This finding, that underpayment can persist for a long time in a significant minority of cases, was consistent with other data sources and with what we know about the labour market for low-paid workers. For a range of reasons, low-paid workers are reluctant to move jobs – research we commissioned last year from YouGov explored these factors in greater depth. We ended our 2023 report (Low Pay Commission, 2023) with a question, asking whether the tighter labour market since the pandemic would make workers more willing to move. The new data in this report allows us to explore this question for the first time.

3 This report arrives at a moment of transition. The Employment Rights Bill proposes new single enforcement body, the Fair Work Agency (FWA). The FWA will bring enforcement of the NMW together with that for other workers' rights. The Bill also introduces a range of other rights, which have the potential to address some of the reasons for workers' reluctance to move jobs. This transition brings with it important questions of design and approach, and the opportunity for substantial change to the way the NMW is enforced. Having this opportunity makes it all the more important we understand the nature of underpayment and the ways in which enforcement gets it right and wrong. Our recent reports and recommendations should be a useful resource for understanding the strengths and shortcomings of the current approach.

4 In one sense, defining underpayment is easy. Any practice which does not conform with the legislation on the minimum wage, and which leads to workers not receiving the pay they're entitled to, is underpayment. If we want to assess the existing policy interventions against underpayment and design better ones, we need to understand the forms of underpayment and the reasons they occur.

Non-compliance takes a range of forms, from inadvertent mistakes to negligence to deliberate underpayment and the most serious forms of abuse and exploitation. All of these have in common workers being denied their due wages, but their causes and the appropriate policy responses are very different.

5 Our statistical estimates tell us something about the scale of non-compliance, but not its nature; anecdotes and case studies illuminate the nature of the problem but aren't easy to generalise. In recent years we've made recommendations focused on finding ways to knit these two together by improving the data collected by HMRC. We've looked deeper into the statistics, using linked datasets to track underpaid workers from year to year. We've drawn links with the wider experiences of low-paid workers and their paths through the labour market.

Executive summary

6 Using the most recent Annual Survey of Hours and Earnings (ASHE) data, we estimate that in total around 371,000 workers may have been underpaid in April 2024. This marks a slight increase on the previous year, but is still below the pre-pandemic period. It also comes in the context of overall minimum wage coverage jumping between 2023 and 2024, from 1.5m to 1.9m. This means that numbers underpaid as a share of coverage – a measure we often use to think about the relative probability of low-paid workers being underpaid – in fact fell in the latest data. The characteristics of underpaid workers have shifted since 2019. Most underpayment now affects salaried workers, and there are more full-time workers underpaid than part-time ones. The number of underpaid workers in non low-paying sectors[1] has risen by nearly 40 per cent since 2019.

7 In April 2024, looking at the NLW population alone (that is, workers aged 21 and over) there were 344,000 jobs underpaid. Of these, 140,000 were underpaid by more than 50 pence per hour, with a similar number paid within 10p of the NLW. Data published alongside the most recent naming rounds tell us that deductions and unpaid working time are the leading causes of underpayment logged by HMRC, each occurring in more than one in three cases.

8 We hear evidence of both of these issues in testimony from stakeholders. We have heard that regulations around work type are often misunderstood, with consequences for how working time is calculated, and we have heard examples of employers preventing low-paid workers from benefiting from salary sacrifice schemes because of the risk of potential underpayment. Employers see this as an unintended consequence of the NMW rules which prevents these workers from using salary sacrifice to, for example, save potential NI contributions. Worker representatives tend to view it more as a necessary protection for workers against underpayment.

9 We have updated our analysis of the persistence of underpayment using data from the post-pandemic period. This shows a decline in persistent underpayment in this period, with fewer workers remaining underpaid from year to year. The share of underpaid workers remaining 'stuck' in their

[1] We define industries and occupations as low-paying or non low-paying on the basis of the share of the workforce who are paid at the minimum wage. See Appendix 3 of our annual report for more details.

underpaying jobs fell from a third to around 13 per cent. This has been partly offset by an increase in new workers falling into underpayment. These improved outcomes for underpaid workers may reflect the impact of a tight labour market and wider positive changes in job mobility for the low-paid – meaning employers need to give more thought to retaining existing staff. In a labour market with abundant vacancies, underpaid workers have more options to go elsewhere and be paid appropriately.

10 The increase in resources for NMW enforcement and the creation of the Fair Work Agency envisaged by the Employment Rights Bill represents a significant opportunity to change the relationship of workers and employers with state enforcement. Low levels of complaints to HMRC reflect workers worries about speaking out. Building workers' confidence matters because it makes them more likely to assert their employment rights; it should also increase the quantity and quality of the intelligence received by the enforcement body. It would also be beneficial for the Government to publicise more widely how employees can complain about being underpaid.

11 In last year's report we reiterated a number of recommendations we had made previously. These recommendations still stand and are set out at the end of this report. We note that the Employment Rights Bill potentially brings into force the measures we recommended in our 2018 report on one-sided flexibility. We urge the Government to consider each of them carefully as it moves through the process of setting up the Fair Work Agency.

An estimated three hundred and seventy thousand workers were underpaid in April 2024

12 Underpayment of the minimum wage is not straightforward to measure but we know it exists. Every year, the enforcement body, HM Revenue & Customs (HMRC), finds over a hundred thousand workers who have been underpaid by millions of pounds collectively. We can also use statistical data sets to estimate the number of workers underpaid. These do not give a definitive picture (see box below) but represent the best available estimate of the scale of the problem. Beyond HMRC's work, we can see the records of employment tribunals which identify minimum wage underpayment and other forms of labour abuse for workers. Each year we hear anecdotes and examples about underpayment from workers, employers, charities and business representatives. In some cases and sectors, journalists and researchers are able to document cases of underpayment and exploitation.

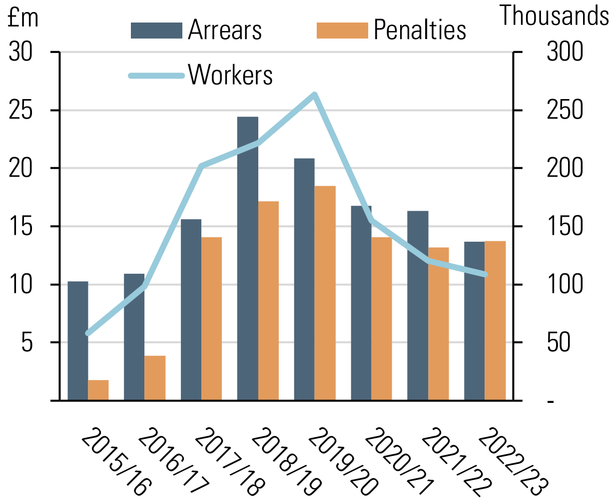
How we estimate underpayment

We use the Annual Survey of Hours and Earnings (ASHE) to estimate underpayment. This is a survey of employers based on a one per cent sample of employee jobs taken from HM Revenue and Customs' (HMRC) Pay As You Earn (PAYE) records. ASHE provides the best available estimate of underpayment, but comes with a number of caveats. In some cases, it is likely to record legitimate practices as underpayment (for example, if accommodation charges are deducted from workers); in others, underpayment will go unrecorded (for example, if an employer doesn't accurately log working hours for payroll). Because it is based on PAYE, it will not capture any underpayment in the informal economy, where a lot of underpayment is likely to take place. In addition, the prevalence of underpayment changes over the year, with its highest point in April, immediately after new rates have come into force.

13 Using the most recent Annual Survey of Hours and Earnings (ASHE) data, we estimate that in total around 371,000 workers may have been underpaid in April 2024. These figures are set out in Table 1 below. The ASHE figures for 2024 mark a slight increase on the previous year, but still represents a fall when compared with the pre-pandemic period. It also comes in the context of overall minimum wage coverage jumping substantially between 2023 and 2024. This means that numbers underpaid as a share of coverage – a measure we often use to think about the relative probability of low-paid workers being underpaid – in fact fell in the latest data.

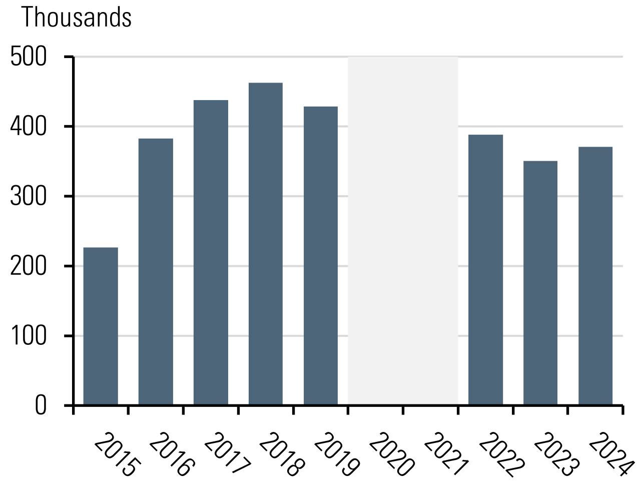
14 In comparison, Figure 1 shows that in the year to April 2023 (the most recent available data), HMRC identified more than 109,000 underpaid workers. The overall number of cases closed by HMRC increased in 2022/23, but the number of closed cases which ended with arrears being repaid to workers did not. The total arrears recouped and the numbers of workers receiving those arrears both fell, while the value of the penalties levied by HMRC on employers very slightly increased.

Figure 1: HMRC headline measures, UK, 2015/16-2022/23



Source: LPC analysis of DBT NMW enforcement and compliance data.

Figure 2: Underpaid workers in ASHE, UK, 2015-2024



Source: LPC analysis of ASHE data: low-pay weights, chain linked, UK, 2015-2024.
Note: Data from 2020 and 2021 were affected by the pandemic.

Table 1: Number of employee jobs paid below the minimum wage and underpayment as a share of coverage, by rate population, UK, 2019, 2023 and 2024

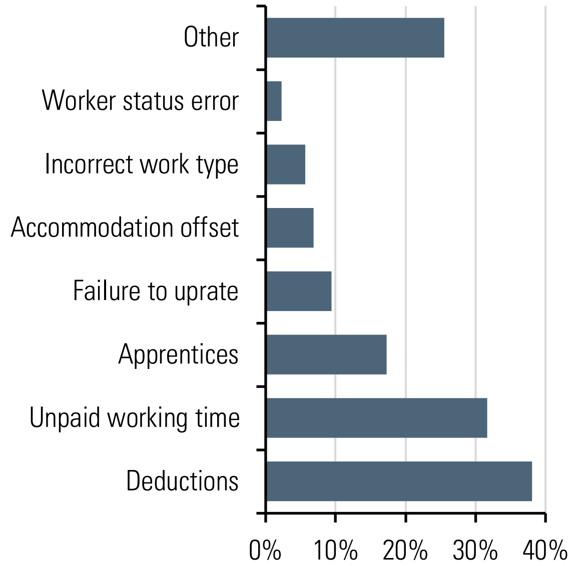
	Underpayment[a]			Coverage			Underpayment as a share of coverage		
MW rate	2019	2023	2024	2019	2023	2024	2019	2023	2024
		Thousands			Thousands			Per cent	
AR	9	6	8	31	24	27	29.7	26.1	31.5
16-17	3	3	4	36	34	51	9.4	10.0	8.0
18-20	19	14	14	116	82	88	16.3	17.2	15.9
21-22[b]	20	26	31	98	93	147	20.9	27.5	21.2
23-24[c]	12	23	21	57	89	107	21.6	25.5	19.8
25+	364	279	292	1649	1204	1494	22.1	23.1	19.5
Total	**428**	**351**	**371**	**1987**	**1527**	**1914**	**21.6**	**23.0**	**19.4**
NLW[d]	*364*	*301*	*344*	*1649*	*1294*	*1748*	*22.1*	*23.3*	*19.7*

Source: LPC analysis of ASHE, low-pay weights, chain linked, UK, 2019-2024.
Notes:
a. Underpayment is measured as anyone paid below the rate for the relevant minimum wage population.
b. 21-22 became a new rate in 2021. Prior to this they were part of the 21-24 Year Old Rate.
c. 23-24 year olds became entitled to the NLW in 2021. Prior to this they were part of the 21-24 Year Old Rate.
d. NLW was 25+ from introduction in 2016 until the addition of 23-24 year olds in 2021, 2022 and 2023. 21-22 year olds became entitled to the NLW in 2024.
e. Figures may not sum due to rounding.

Underpayment takes a range of forms

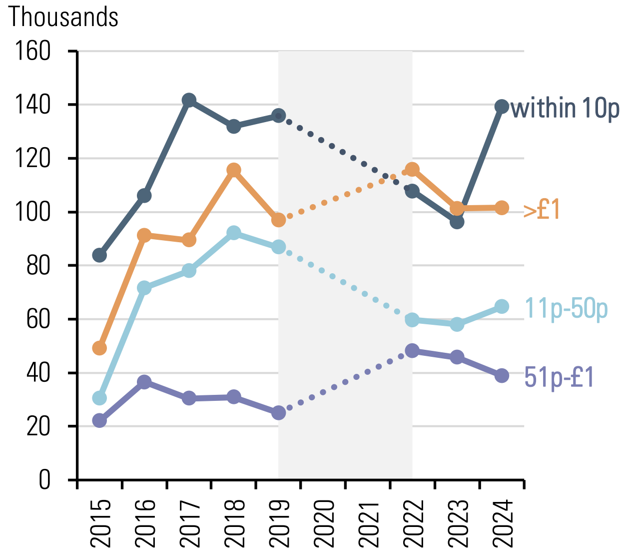
15 The Government's naming rounds give us an idea of the main kinds of underpayment identified by HMRC. Alongside this, data from the ASHE give a sense of the margins of underpayment workers face, and how this differs between different groups. Looking at Figure 3, data published alongside the most recent naming rounds[2] tell us that deductions and unpaid working time are the leading causes of underpayment logged by HMRC, each occurring in more than one in three cases. Figure 4 shows margins of underpayment in the ASHE data since 2015; the underpayment captured in employers' records is just as likely to be by a lot than a little. In April 2024, there were 140,000 NLW jobs underpaid by more than 50 pence per hour, with a similar number paid within 10p of the NLW. For a full-time worker, being underpaid by 50 pence per hour would mean losing out on nearly £1000 per year.

Figure 3: Reasons for minimum wage underpayment, NMW Naming Scheme Rounds 17-20



Source: LPC analysis of NMW Naming Scheme Rounds

Figure 4: Margin of underpayment in main adult NMW rate, UK, 2015-2024



Source: LPC analysis of ASHE data; low-pay weights, unchain linked, UK, 2015-2024
Note: Data from 2020 and 2021 were affected by the pandemic.

16 There are notable differences in the likelihood of a low-paid worker being underpaid, depending on their characteristics and the sector they work in. In Figures 5 and 6 below we look at how underpayment as a share of coverage varies with these factors, and how it has changed since 2019. We use underpayment as a share of coverage as a way of looking at relative rates of underpayment.

17 Given overall measured underpayment has fallen, the same is true for most of the characteristics and sectors we look at. In most cases, though, the relative probabilities of being underpaid have remained the same. It is still the case, for example, that salaried workers are much more likely to be underpaid than those paid an hourly rate; or, connected to this, that covered workers in non

[2] Rounds 17 to 20 were published between August 2021 and February 2024, but the cases involved cover a longer period, from as early as 2012.

low-paid sectors[3] are more likely than their counterparts in low-paid sectors to be underpaid. While in 2019 women were more likely to be underpaid than men, in 2024 this was no longer the case; despite this, because of their relative levels of coverage, there are still more underpaid female than male workers.

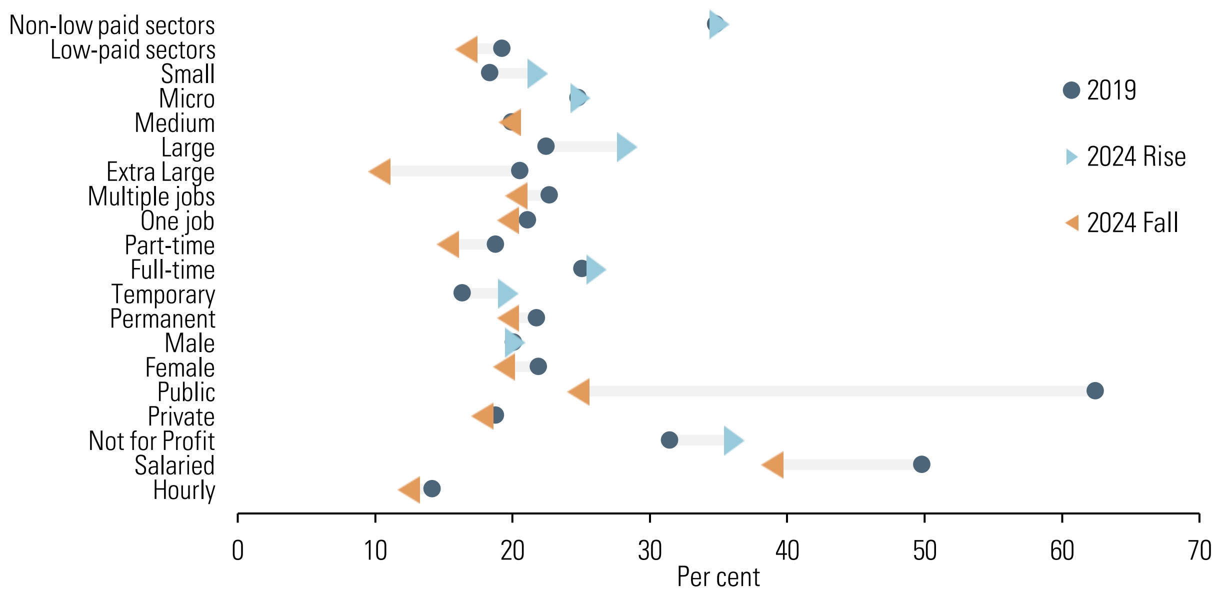
18 The most striking change in Figure 5 is the dramatic fall of the share of underpaid public sector workers; this is the result of a threefold increase in the number of covered workers in the period from 2019 to 2024, while the corresponding rise in underpayment was much more modest. It is important to note that ASHE figures on the public sector do not include low-paid workers in sectors like social care and childcare, who are employed by the private sector even though their sectors are substantially funded by the public purse. As Figure 6 shows, the large majority of underpaid workers still work in the private sector.

19 Among low-paying sectors, education, childcare and office work have the highest rates of underpayment. In most sectors, underpayment as a share of coverage fell between 2019 and 2024. The largest rise was in social care. Stakeholders in social care have long presented evidence to us suggesting that underpayment is prevalent in that sector, with non-payment of home care workers' travel time a key issue. It is not clear to what extent the ASHE figure captures that form of underpayment; much of the non-payment of travel time is likely to be invisible to ASHE, given that it turns on whether employers count travel time as working time to be paid for. As Figure 8 shows most clearly, underpayment numbers have risen notably in non low-paying sectors, with new jobs previously outside the range of the NLW falling into underpayment. In some sectors – office work and healthcare – underpayment as a share of coverage fell even though the number of underpaid workers rose, a consequence of overall coverage rising in those sectors.

---

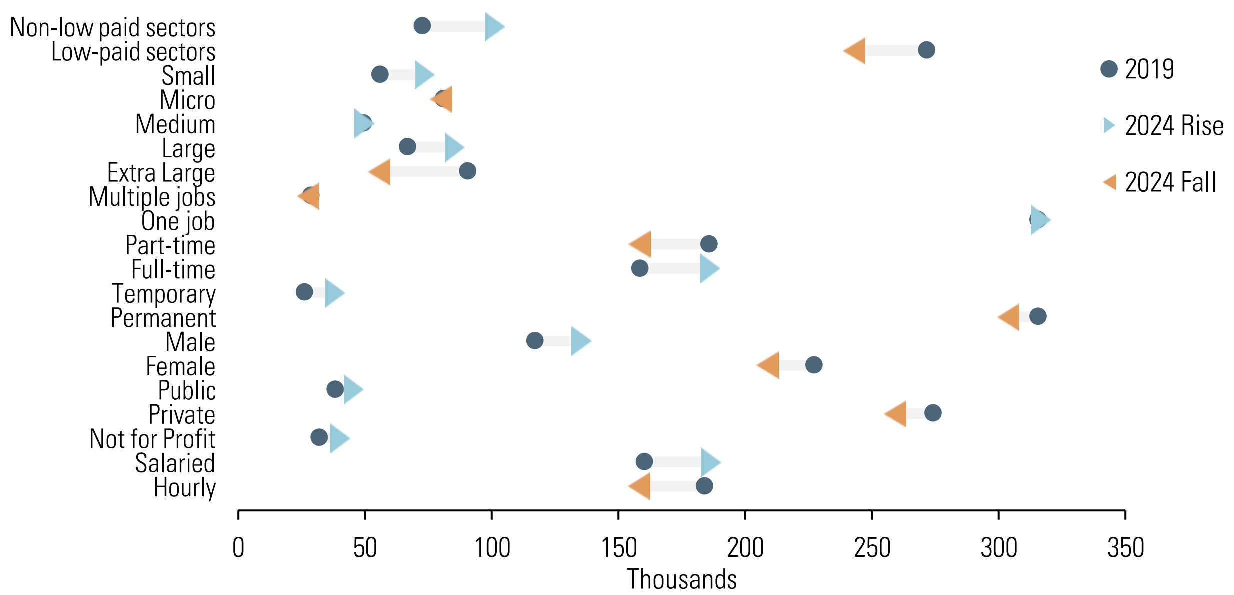
[3] We define industries and occupations as low-paying and non-low paying to capture which are most exposed to minimum wage rises. The full definitions of low-paying industries and occupations are available in Appendix 3 of [our 2023 report](#) (Low Pay Commission, 2024).

Figure 5: Minimum wage underpayment of the main adult rate as a share of coverage, by characteristic, UK, 2019 and 2024



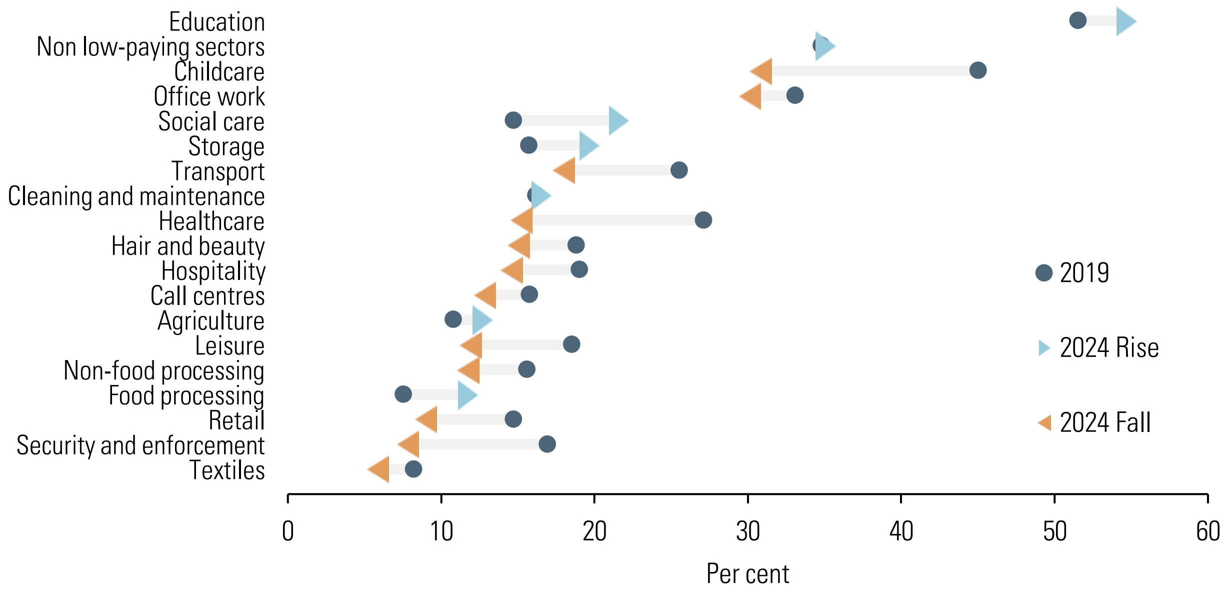
Source: LPC analysis of ASHE data; low-pay weights, unchain linked, UK, 2019-2024.

Figure 6: Numbers underpaid the main adult minimum wage rate, by characteristic, UK, 2019 and 2024



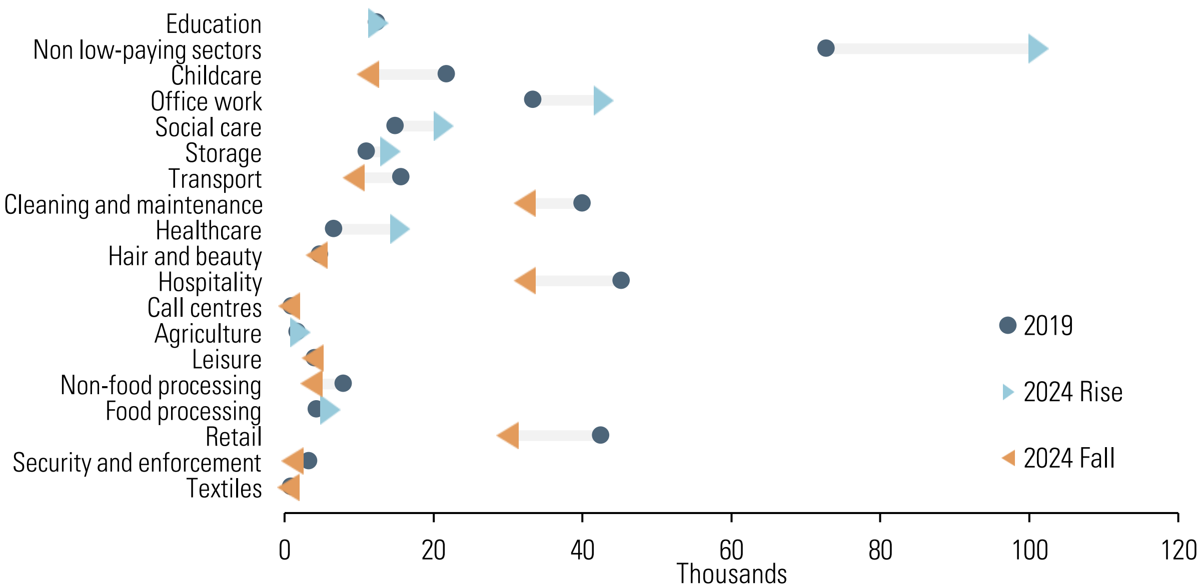
Source: LPC analysis of ASHE data; low-pay weights, unchain linked, UK, 2019-2024.

Figure 7: Minimum wage underpayment of the main adult rate as a share of coverage, by sector, UK, 2019 and 2024



Source: LPC analysis of ASHE data; low-pay weights, unchain linked, UK, 2019-2024.

Figure 8: Minimum wage underpayment levels of the main adult rate, by sector, UK, 2019 and 2024



Source: LPC analysis of ASHE data; low-pay weights, unchain linked, UK, 2019-2024.

Salaried workers

20 The overall ASHE figures for underpayment hide a significant disparity between workers paid by the hour and those with salaries. Salaried workers make up a smaller (but growing) share of the low-paid workforce, but they now represent the majority of underpayment of the NLW measured in ASHE (around 186,000 underpaid salaried workers versus 158,000 underpaid hourly-paid workers). In particular, salaried workers make up the majority of those underpaid by more than £1 per hour. Perhaps not surprisingly, employers tend to make smaller errors when it comes to their hourly-paid employees than those with an annual salary. It is likely that measurement of working time is at the heart of this – with salaried workers more likely to work extra unmeasured hours beyond those for which they are contracted. Indeed, the second most common category in HMRC's caseload is "unpaid working time," which we surmise is more likely to affect salaried workers than their hourly-paid counterparts. It is also possible that a fast-rising NLW has caught some employers of salaried workers unaware of the annual salary required to be compliant.

Figure 9: Margins of underpayment in main adult NMW rate for hourly-paid workers, UK, 2015-2024

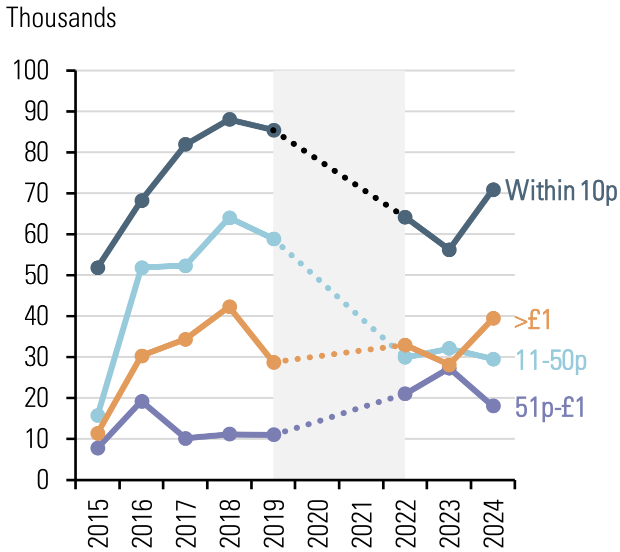
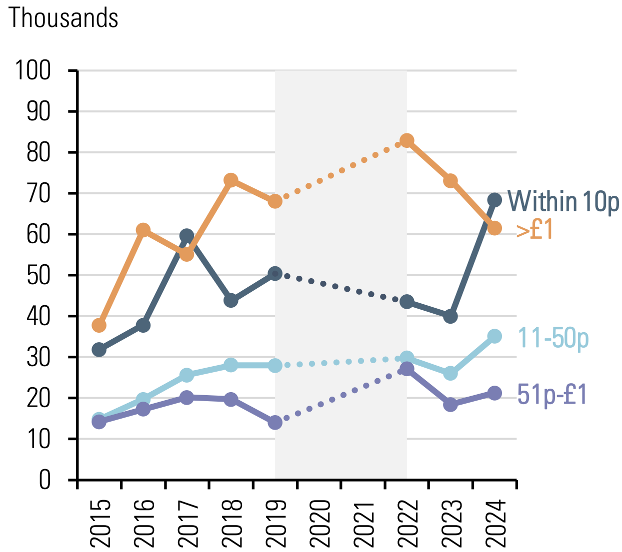


Figure 10: Margins of underpayment in main adult NMW rate for salaried workers, UK, 2015-2024



Source: LPC analysis of ASHE data; low-pay weights, unchain linked, UK, 2015-2024.
Note: Data from 2020 and 2021 were affected by the pandemic.

21 Recent TUC research (Trades Union Congress, 2024) found a range of jobs being advertised on online job boards at salaries below the annualised NLW of £20,820.20 for a 35 hour week. In one day, a non-exhaustive search found 46 full-time jobs advertised at rates below the NLW. While the rates advertised may be legal for younger workers, more than half the jobs stated experience was required, while seven stated requirements for qualifications. As the TUC reported, "One advert, for a graduate copywriter in Hampshire, gave an annual salary range from £15,000 - £20,000. Another, for an assistant accountant with a minimum of two years' experience, gave a salary range of £16,770 - £22,308."

22 One of the less common reasons for underpayment recorded in naming rounds is 'incorrect work type,' which is a factor in around 6 per cent of cases. The NMW rules around work type – and their implications for working time and underpayment – are complex, and we have heard from both employers and advisory bodies that they are routinely misunderstood. In ASHE, the workers we define as salaried are all those who are not paid an hourly rate. Under NMW rules, this group is likely to span both salaried and "unmeasured" work, a residual category for workers who do not meet the definitions of other categories.

23 As the NLW rises, it is covering more and more workers who are not paid by the hour, and confusion on this from workers and unions is likely to lead to this problem being under-reported. This is an area which merits more attention, and where the application of the rules by the enforcement body can have a significant impact on how underpayment is identified and attributed. We believe there is too great a risk of employers being caught out by the rules around work types, and it would be good to address this. **We recommend the Government look at improving the guidance on work type and the differences in calculating working time between salaried and unmeasured work**. This should emphasise the need for employers to verify their employees' work type and correctly measure working hours.

Box: Salaried versus unmeasured work

Guidance on GOV.UK states that "Most people paid an annual salary are classed as doing 'salaried hours work'." But to meet the definition of such work, an individual's working arrangements must meet a number of conditions:

- They must be paid an annual salary (which may have a performance bonus on top) – and only this annual salary and bonus.
- Their working hours must be ascertainable in advance.
- They must be paid in equal, regular instalments throughout the year.

Employers may fail to meet these conditions if, for example, a worker's contract does not explicitly state how many hours they work across the year, or if they work unpaid additional hours to those contracted. If this is the case, and an employer has inadvertently misclassified a worker, there are specific underpayment risks which may arise in relation to how working time is measured.

Deductions and salary sacrifice

24 Deductions and salary sacrifice are two areas where we regularly hear frustration from employers. NMW rules restrict employers from agreeing a lower rate of pay than the minimum wage, or making certain types of deductions from workers' pay that take pay below the NMW. Salary sacrifice involves a change to the worker's contractual entitlement to pay and will always have the effect of reducing the pay that is considered for NMW purposes. By contrast, deductions are made from the pay that is considered for NMW purposes; whether those deductions result in a worker's pay being taken below the NMW will depend on the individual facts and circumstance. Although employers sometimes conflate the effects of deductions from pay with effects of salary sacrifice, for NMW purposes these arrangements are different.

25 In consequence, we have heard examples of employers preventing low-paid workers from using salary sacrifice for pensions, or preventing them from accessing vehicle lease schemes. Employers see this as an unintended consequence of the NMW rules. Worker representatives tend to view it more as a necessary protection against exploitation of workers, particularly if salary sacrifice risks taking workers below the Lower Earnings Limit (see box below). The withdrawal of salary sacrifice schemes from some workers isn't a new problem. The Government consulted on but decided against changes to salary sacrifice rules in 2020 (Department for Business, Energy and Industrial Strategy, 2020). The issue may though become a more prominent one, given the increases in the NLW and the changing profile of workers covered by or within reach of the NLW and the 2024 Budget announcement of higher employer NICs rates and a lower threshold.

Box: What is salary sacrifice?

Salary sacrifice refers to an arrangement whereby a worker agrees to "sacrifice" part of their contractual entitlement to pay in exchange for another, usually non-cash benefit. The term is not used in NMW legislation. Salary sacrifice arrangements result in a reduction in the workers contractual pay, and it is this new (lower) amount that is considered as the starting point for NMW calculations. If the benefits the worker receives under a salary sacrifice scheme are not liable to tax and/or National Insurance contributions (NICs) then they could be in a better position overall than if they had merely purchased the benefit from their net (after tax and NICs) pay independently. The employer also avoids paying employer NICs on the cash amount given up for any pay above the NICs Secondary threshold of £175 a week (15.3 hours on the NLW).

For example, an individual works 37 hours a week and is paid £13 per hour. He uses salary sacrifice to give up £50 of his £481 weekly pay packet for childcare vouchers. This brings his cash pay down to £431 per week (above the NLW of £11.44). He saves £10 in Income Tax and £4 in NICs, or £14 per week in total. His employer saves £6.90 per week in NICs.

The category of non-taxable benefits includes pension contributions, travel schemes (for example cycle to work or vehicle lease schemes) and childcare vouchers (which have been closed to new entrants since 2018).

For low earners - especially part-time workers on the minimum wage – the advantages of salary sacrifice arrangements can be limited. If a worker normally earns employment income between the lower earnings limit (£123 per week, or just under 11 hours at the NLW) and the earnings threshold (£242 per week, or just over 21 hours at the NLW), they do not pay class 1 (employee) NICs, so there is no saving from switching from cash to a non-cash benefit. If salary sacrifice reduces earnings below the lower earnings limit the worker will not pay class 1 NICs and may lose entitlement to contributory benefits and the state pension. NICs thresholds have remained frozen in recent years while the NLW has risen significantly, lessening this risk.

The changes to employer NICs announced at the Autumn Budget on 30 October 2024 are likely to affect employers' incentives to offer salary sacrifice schemes. From 6 April 2025, the per-employee threshold at which employers start to pay NICs will be reduced from £9,100 per year to £5,000 per year, and the contribution rate will increase from 13.8 to 15 per cent. The resulting increase in employers' costs will create a strong incentive to offer salary sacrifice schemes to offset some of those costs.

26 During our evidence-gathering in 2024, frustrations with salary sacrifice rules were widely held among employers (particularly large ones) and their representatives. Most argued that the current rules unfairly penalised low-paid workers – particularly when it came to saving for pensions – and should be changed. Worker representatives recognised the problem but were more circumspect about whether the rules should be changed. They were not supportive of salary sacrifice NLW exemptions that would have implications for contracts of employment and state benefits, while making enforcement more complex.

27 Survey evidence from the Chartered Institute of Personnel and Development (CIPD) gave us our first data on the scale of the problem.

Box: Have employers withdrawn salary sacrifice because of the NLW?

At our request, the CIPD included questions on salary sacrifice in their summer Labour Market Outlook survey, a survey of over 2000 senior HR professionals and decision-makers across the economy. This represents our best data on the provision of salary sacrifice arrangements and their interaction with the NMW. Just over half of survey respondents offered their workers salary sacrifice; 39 per cent offer salary sacrifice to the whole workforce, while another 14 per cent offer it just to some. Public sector employers are more likely to make it available than private sector ones (60 versus 52 per cent), and it was more likely to be on offer in larger organisations (71 per cent of employers with over 1000 employees make it available). Pension and travel schemes were the most common kinds of benefit available via salary sacrifice. 77 per cent of employers offering salary sacrifice offered it for pension contributions; 70 per cent for travel schemes such as vehicle lease or cycle to work.

Less than 10 per cent of employers in the survey had withdrawn salary sacrifice as a result of the NLW; 2 per cent had withdrawn for all eligible workers, and 7 per cent for some eligible workers. Among employers with 250 or more employees, 14 per cent had withdrawn salary sacrifice schemes from some of their workforce and 4 per cent had withdrawn them totally. The effect was greater in certain sectors (with the caveat that sample sizes are smaller when looking at individual sectors): in manufacturing, 29 per cent withdrew it for some of their workers and 2 per cent for all; in construction these figures were 28 per cent and 1 per cent respectively; in healthcare 10 and 7 per cent. Among employers who did not offer salary sacrifice schemes, three-quarters said the NLW was not a factor at all in this decision. Lower-paid workers are more likely to be affected by the withdrawal of salary sacrifice schemes. Beyond salary sacrifice, 14 per cent of employers have either taken away or never offered other (non-salary sacrifice) benefits to staff on or just above the NLW.

28 Responses to our 2024 consultation from employer representatives noted the withdrawal of salary sacrifice schemes, with many calling for a review of the rules. The submission by the Chartered Institute of Payroll Professionals (CIPP) was typical in its argument that “salary sacrifice arrangements have been heavily impacted by large rises in NMW rates … employees who had headroom to sacrifice salary no longer do and must be removed from the schemes”. Employers, they told us, were concerned about the fairness of such decisions. Pension contributions were the most frequently identified and discussed benefit, with employers highlighting how the withdrawal of such schemes could leave employees worse off. The main policy proposal suggested was to allow salary sacrifice to take workers below the NMW, whether for certain benefits only (e.g. pension contributions) or for a wider range of benefits. The CIPP acknowledged this would require “long and thoughtful” consideration, to protect those on low incomes. “It is understood that NMW regulations are there to protect the lowest paid and most vulnerable, therefore we do not propose that salary sacrifice should be allowed to bring a worker below NMW in all situations.”

29 While worker representatives acknowledged that salary sacrifice schemes were being withdrawn, their views on the appropriate remedy tended to differ from those of employers. The TUC told us they “would approach any proposal [to allow sub-NMW pay via salary sacrifice] with a very high level of suspicion because of all the implications of … changing somebody's contractual pay rate,” including losing eligibility to contributory benefits and detriment to workers’ access to finance. They argued that “if an employer wants to provide such a benefit, do it at a rate that's sufficiently high that it doesn't take someone below the minimum wage.”

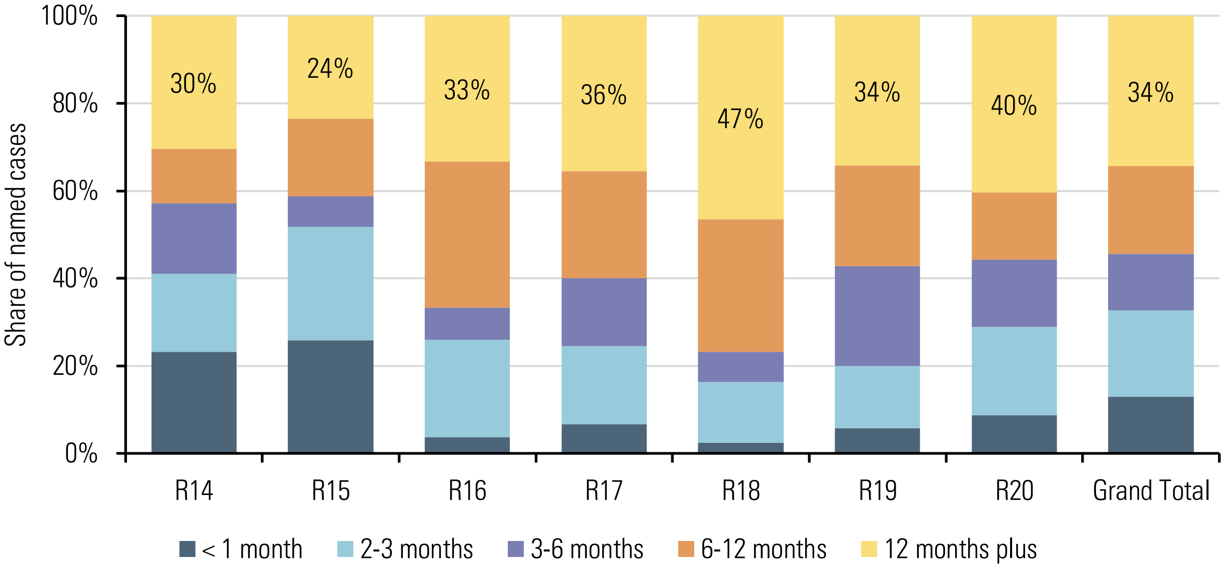
30 The benefits and risks to workers from the current rules on salary sacrifice are clearly finely balanced. We understand the frustration of employers and workers alike at the loss of access to some salary sacrifice schemes. We also appreciate the broader risks to low-paid workers from any changes to the current rules.

More workers escape underpayment when the labour market is tight

31 Given the varied nature of underpayment already discussed, we're interested in the length of time workers endure underpayment. We took a step forward in last year's compliance and enforcement report, which used nearly a decade's worth of ASHE data to evaluate what share of workers remained underpaid from one year to the next. We found that over time around one in three workers who were underpaid in a given year were still underpaid in the following year. We connected this to the broader barriers low-paid workers faced when moving jobs, a recurrent feature in our conversations with low-paid workers.

32 The evidence from ASHE broadly matches the picture we find in DBT's naming rounds. The last seven such rounds have included information on the period over which arrears extended. Where there is more than one worker involved in a case, it is not possible to know to what extent the arrears periods overlap. But in cases involving one worker only, this metric gives us an insight into how long workers continue to be underpaid. Figure 11 shows that although the figures shift from round to round, it is more common for underpayment to be long-lasting than brief. In around a third of these cases, underpayment lasts more than a year, compared with only 13 per cent of cases where underpayment lasts less than a month (potentially involving just a single pay cheque).

Figure 11: Duration of underpayment in cases involving a single worker, NMW Naming Scheme Rounds 14-20



Source: LPC analysis of data published alongside NMW naming rounds 14-20.
Note: These rounds were published between and March 2018 and February 2024. The cases included in the rounds cover a longer period, involving underpayment as early as 2011 and as recently as 2021.

33 The data we used in last year's report extended from 2013 to 2019, before the start of the Covid-19 pandemic, which severely affected the ASHE dataset. Now with access to the 2024 ASHE, we can draw on two linked periods of post-pandemic data to compare the outcomes of underpaid workers since the pandemic. This is particularly interesting because this period has seen a marked tightening of the labour market.

Box: ASHE linked data

Our analysis in this section relies on linked data from ASHE – that is, data where we can track the same worker from one year to the next.

ASHE is an annual survey of employees completed by employers. The sampling frame consists of a one per cent sample of employee jobs in PAYE income tax schemes obtained from HM Revenue & Customs (HMRC). The sample is identified on the basis of the last two digits of an employee's National Insurance number, so in principle the same individuals should be included from year to year. In practice, though, individuals drop out of (and re-enter) the sample. This could be because of an employer's failure to make a return, because they have dropped out of the labour market or they have moved into a role not covered by ASHE (for example, a self-employed role). The 'drop out' rate is around one in three across the whole sample, but this is higher for workers covered by the NLW, for whom the drop-out rate is closer to one in two.

This means our analysis of the linked data is based on a subset of the overall sample – those workers who haven't dropped out from one year to the next.

34 The headline finding is that compared with the pre-pandemic period there has been a large decline in the prevalence of persistent underpayment. This rebounded somewhat between 2023 and 2024, but remained lower than in 2019 and the years before. The decline in 'persistently' underpaid workers was greater than the overall decline in underpayment across this period, suggesting that even though more workers were escaping underpayment, new workers were entering it – particularly (as we have seen above) salaried workers and those in non-low paying sectors.

35 The share of underpaid workers remaining 'stuck' in their underpaying jobs fell from a third to around 13 per cent (the orange line in Figure 12). Two-thirds of workers underpaid in 2023 were paid above the minimum wage in 2024, compared to around half in the decade preceding. The purple line in Figure 12 shows those that moved from being in underpaid jobs to being paid at the minimum wage, the blue line shows those that moved from underpayment to being paid above the minimum wage.

36 Moving job increases your chances of better pay; as we would expect, it increases underpaid workers' chances of exiting underpayment. Figure 13 looks at those underpaid in Year 1 and their chance of remaining underpaid depending on whether they stayed in the same job or changed employer. The pattern since 2013 has been that workers are more likely to remain underpaid if they stay in the same job, and more likely to escape underpayment if they move. This continues to be the case: only 5 per cent of workers underpaid in Year 1 who changed employer continued to be underpaid in Year 2 – a similar share to the preceding decade (95 per cent of this group leave underpayment). The share of underpaid workers who remained in the same job and continued to be underpaid has fallen sharply post-pandemic to 15 per cent of cases, from over 35 per cent in 2019.

Figure 12: Transitions of underpaid workers from Year 1 to Year 2, UK, 2012-2024

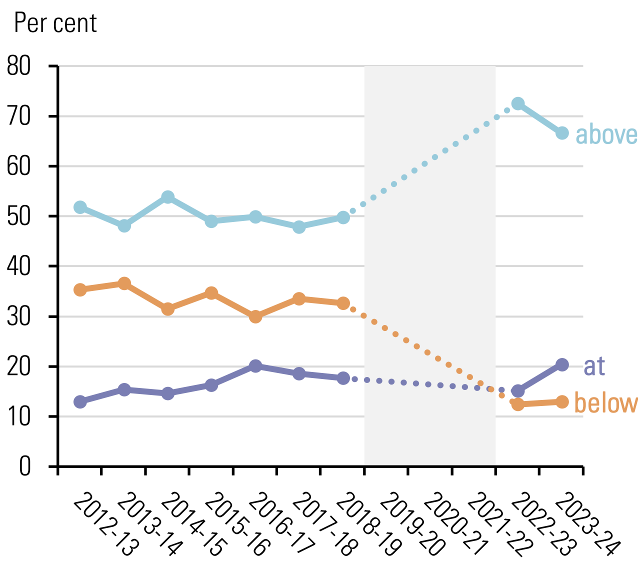
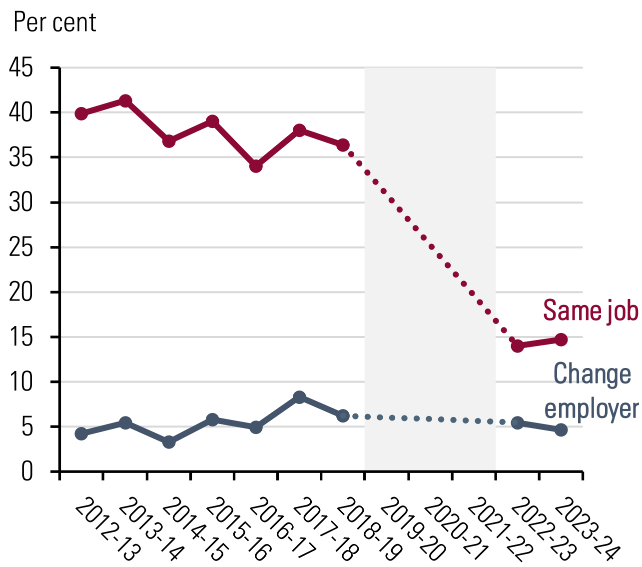


Figure 13 Share of workers who remain underpaid in Year 2, by employment transition status, UK, 2012-2024



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, UK, 2012 – 2024.
Note: Data from 2020 - 2022 were affected by the pandemic.

37 These improved outcomes for underpaid workers may reflect the impact of a tight labour market and wider positive changes in job mobility for the low-paid – meaning employers need to give more thought to retaining existing staff. In a labour market with abundant vacancies, underpaid workers have more options to go elsewhere and be paid appropriately. Figure 14 looks at minimum wage workers more generally and their chances of remaining 'covered' or not in Year 2. From 2013 to 2019, over 40 per cent of workers covered in Year 1 consistently moved out of minimum wage work in Year 2 into higher pay. In 2023, this had increased to over 50 per cent, falling back in 2024 to 45 per cent of workers covered in Year 1 moving out of minimum wage work in Year 2 – still above its pre-pandemic level.

38 Figure 15 looks at workers who were underpaid in Year 2, by their status in Year 1. The orange line shows the fall in persistent underpayment, from 32 per cent of underpaid workers in 2018-19 to 10 per cent in 2023-24. The light blue line shows the offsetting rise in the share of these workers who entered underpayment in Year 2, having previously been paid above the minimum wage. This group now make up the majority of underpayment.

Figure 14: Transitions of minimum wage workers from Year 1 to Year 2, by whether they remained in minimum wage coverage, UK, 2012-2024

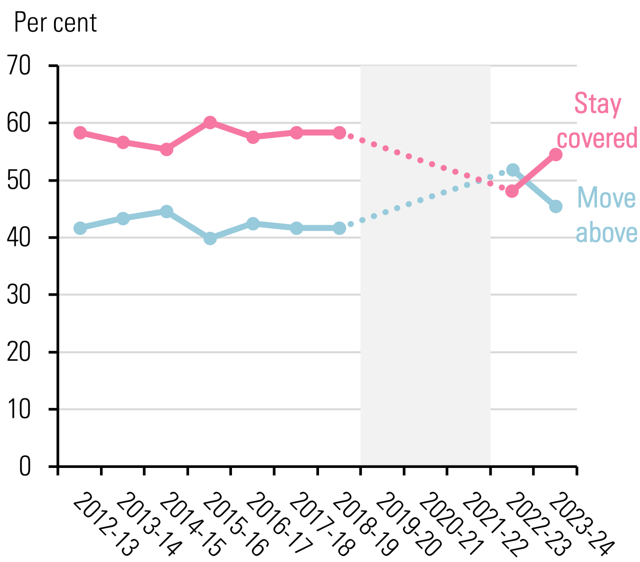
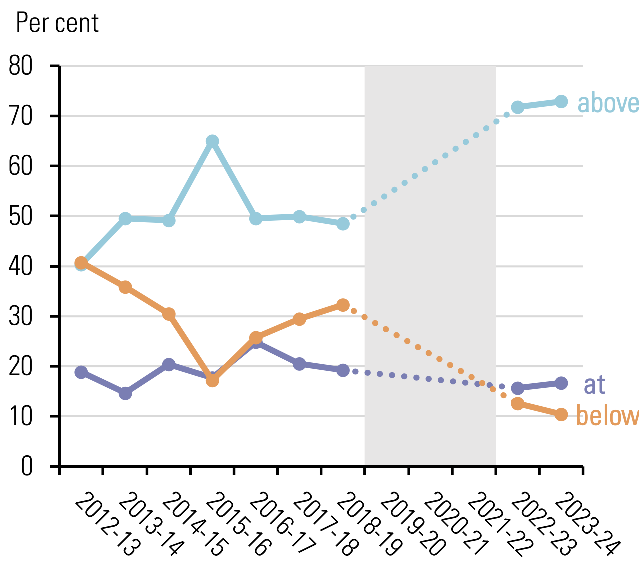


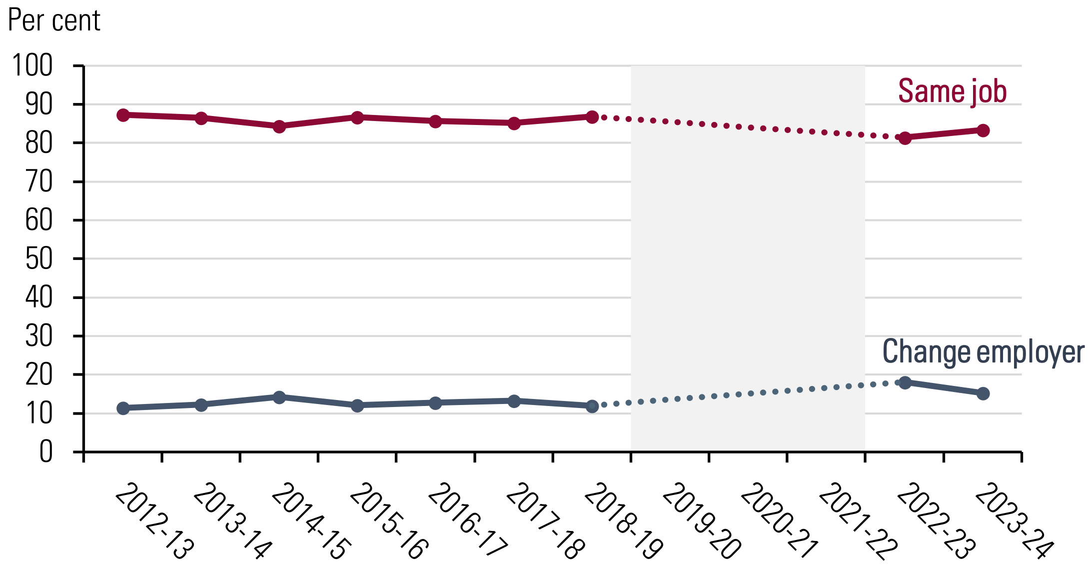
Figure 15: Workers underpaid in Year 2 by Year 1 status, UK, 2012-2024



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, UK, 2012 – 2024.
Note: Data from 2020 - 2022 were affected by the pandemic.

39 Figure 16 below shows the proportion of underpaid workers who stayed in the same job or changed employer in the following year. While the majority (over 80 per cent) still stay in same job, we have seen an increase in the share of underpaid workers changing employer, from just under 12 per cent to 18 per cent in 2023 and 15 per cent in 2024. In reality, this share may be higher but workers changing employer are more likely to drop out of the linked dataset between years. From this we conclude that in the recent period of a tight labour market even underpaid workers have a reduced chance of staying underpaid by remaining in the same job – with employers having to pay higher wages to retain staff.

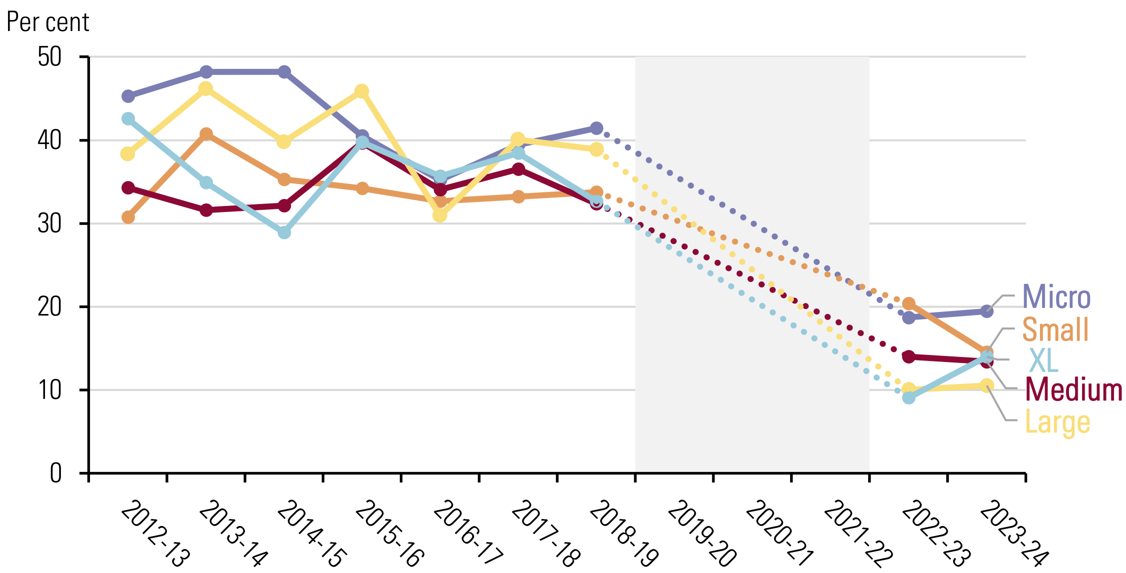
Figure 16: Share of workers underpaid in Year 1 and Year 2, by employment transition status, UK, 2012-2024



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, UK, 2012 – 2024.
Note: Data from 2020 - 2022 were affected by the pandemic.

40 Workers in the smallest firms continue to have the highest chance of remaining underpaid – although this probability has decreased across all firm sizes. Workers are more likely to remain underpaid if they work in micro firms than their counterparts in larger firms.

Figure 17: Chance of remaining underpaid, by firm size, UK, 2012-2024



Source: LPC estimates using ASHE 2 Year linked dataset: not seasonally adjusted, yearly, UK, 2012 – 2024.
Note: Data from 2020 - 2022 were affected by the pandemic.

41 The overall conclusion we draw from this analysis is that in the post-pandemic labour market it is less likely that workers stay "stuck" in underpaying jobs. This may be because they are better able to find alternative jobs which pay better, or because their existing employer is forced to change practices to retain staff. A tight labour market is one factor which empowers workers and reduces the chances of underpayment. There is also an important role for enforcement in this process, which we go onto discuss in the next section.

Enforcement can make a difference – but workers need to have confidence in the system

42 Despite the changes in the post-pandemic labour market outlined above, we've seen that for many workers underpayment remains more than a transient state. This makes it important to understand the factors which prevent workers from escaping underpayment – whether by speaking out at their current workplace or by finding alternative employment where they can be paid their legal wage. In our 2023 compliance and enforcement report, we outlined some of the things which inhibit workers' willingness to speak out and their ability to leave. In the workplace, the fear of losing hours and income is a powerful incentive not to rock the boat. A recent Citizens Advice report noted that: "We regularly see people who are afraid to stand up for their rights at work. They're worried that if they complain or take enforcement action, they'll lose their job, have their hours reduced, or face other forms of retaliation." Factors inhibiting mobility include the risk to employment rights which are only acquired after a qualifying period; insecurity over the number of guaranteed hours in a new job; and barriers such as transport which hinder geographic mobility.

43 Some groups of workers, too, are inherently more vulnerable to underpayment; migrant workers are one of the groups most frequently cited, particularly given the risk of losing their visa sponsor if their employer is sanctioned. We are pleased the Employment Rights Bill includes a number of measures which will address the issues we have identified, including the measures we recommended in our 2018 report on one-sided flexibility. It is also vital to publicise and communicate minimum wage rules and rates; we are content that the Government recognises this as a priority and understands the importance of continuing to evaluate and improve communications to workers and employers.

44 Over a long period, we've highlighted the relatively low number of complaints about underpayment which come into HMRC. The latest data (covering the period up to April 2023) show no significant change in this trend. Although the number of investigations opened via ACAS calls and online complaint forms has rebounded slightly, it remains substantially below its peak levels in the aftermath of the NLW's introduction in 2016 (which also saw an uptick in complaints following legal cases centred on sleep-in shifts in social care). The low level of complaints is likely to reflect the fear factors we identified in the previous paragraph; anecdotally, HMRC have told us that many workers raising complaints wait until they have left a job to do so. It may also tell us something about low-paid workers' awareness of their rights and their confidence in enforcement bodies. The fragmented way different employment rights are enforced is also a confounding factor for workers wishing to bring complaints. The creation of the Fair Work Agency envisaged by the Employment Rights Bill represents a significant opportunity to change the way workers think about state enforcement. **We recommend the Government ensure adequate information is available for employees to know where and how to complain about underpayment.**

45 The complexity and duration of enforcement cases is a source of discontent for both workers and employers. In 2022/23, around 40 per cent of cases were completed within 120 days and 75 per cent within 240 days, suggesting the median length of an HMRC investigation is somewhere between four and eight months. The share of cases completed within 120 days has remained steady in recent years, after a notable fall following the NLW's introduction and the expansion of enforcement resource. In 2022/23, 91 per cent of cases were completed within 360 days, while the longest cases can stretch over several years (typically involving very large employers where HMRC has to examine a large volume of information). As well as a burden for employers, the time taken to resolve cases is a problem for low-paid workers, who feel they are unlikely to see a quick resolution to any complaint they raise.

Figure 18: Source of complaints for HMRC NMW targeted cases, 2015/16-2022/23

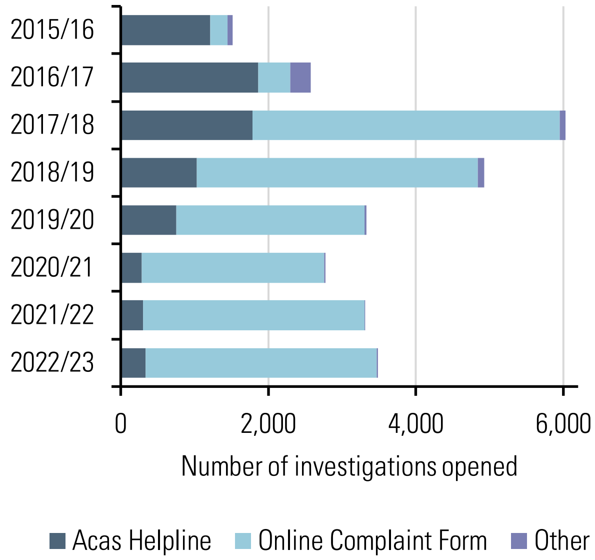
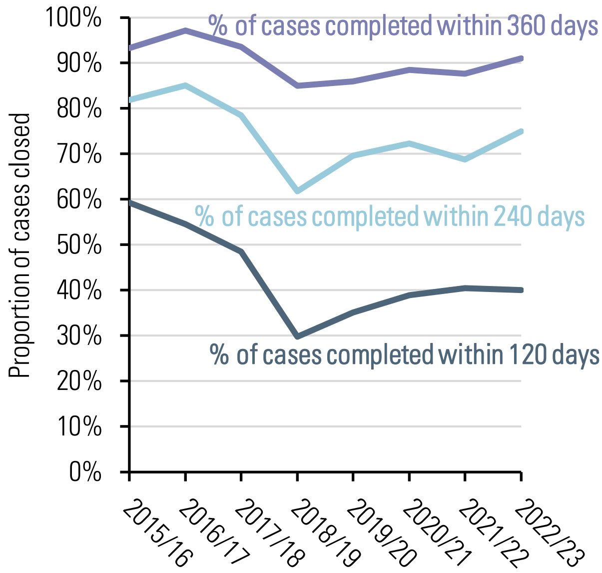


Figure 19: HMRC NMW customer responsiveness, 2015/16-2022/23



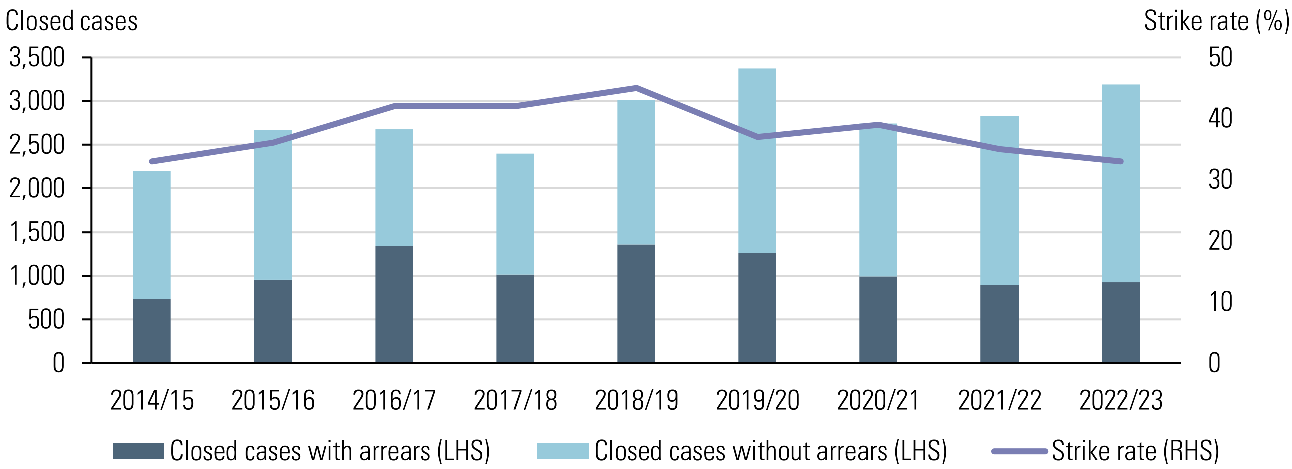
Source: LPC analysis of Government evidence on enforcement and compliance.

46 Worker representatives have long argued there should be a greater role for unions in the enforcement process and greater scope for them to present collective grievances on the behalf of workers. As GMB wrote in their written submission this year, there is a desire to see "more proactive work between enforcement agencies and trade unions, including a widely trusted third-party complaints system and providing unions with more information and oversight on non-compliance in the sectors they represent workers in." The Fair Work Agency's incorporation of an advisory board with a social partnership model is a positive step in this direction. We have previously recommended changes to the way HMRC deals with third-party complaints and the feedback it provides to groups providing intelligence (see box on page 25), and we hope this is considered by the Fair Work Agency as a key means of building workers' confidence.

47 Building workers' confidence matters because it makes them more likely to assert their employment rights; it should also increase the quantity and quality of the intelligence received by the enforcement body. All of this shapes the body's workload. HMRC's caseload is a mixture of complaint-led cases (initiated by a complaint coming into the department) and targeted ones (initiated on the basis of HMRC's own intelligence and strategy). There are notable differences between these two strands of work. In the former group, which made up just over a quarter of the total caseload, HMRC achieved a strike rate of 42 per cent; in the latter group, the strike rate was 24 per cent. The profiles of these two parts of the caseload are very different. Targeted cases on average find underpayment for more workers per case (161 versus 48 in 2022/23); greater total arrears per case (£19,395 versus £7,390); but a lower sum of arrears per worker (£120 versus £154). The caseload and the strike rate can fluctuate in response to external factors; in their latest publication on enforcement and compliance, DBT state the strike rate for complaint-led cases fell in 2022/23 in part because of changes in the food and beverage sector, where labour shortages led to higher pay rates and consequently, they surmise, made it less likely for workers to be underpaid.

48 The other factor shaping the enforcement body's workload is internal capacity. HMRC's NMW-focused teams employ around 450 staff, who in 2022/23 closed 3,192 cases. Staff numbers have been steady for several years, even while, as Figure 20 shows, the number of cases closed fluctuates from year to year. HMRC's closed cases rose alongside the NLW and concomitant expansion of enforcement resource; declined when the Covid-19 pandemic struck; and rose again as we exited the pandemic period. In 2022/23, the increase in cases closed was accompanied by a fall in the overall strike rate to 33 per cent, its lowest level since the introduction of the NLW.

Figure 20: HMRC closed cases and strike rate, 2014/15-2022/23



Source: LPC analysis of DBT minimum wage enforcement data.

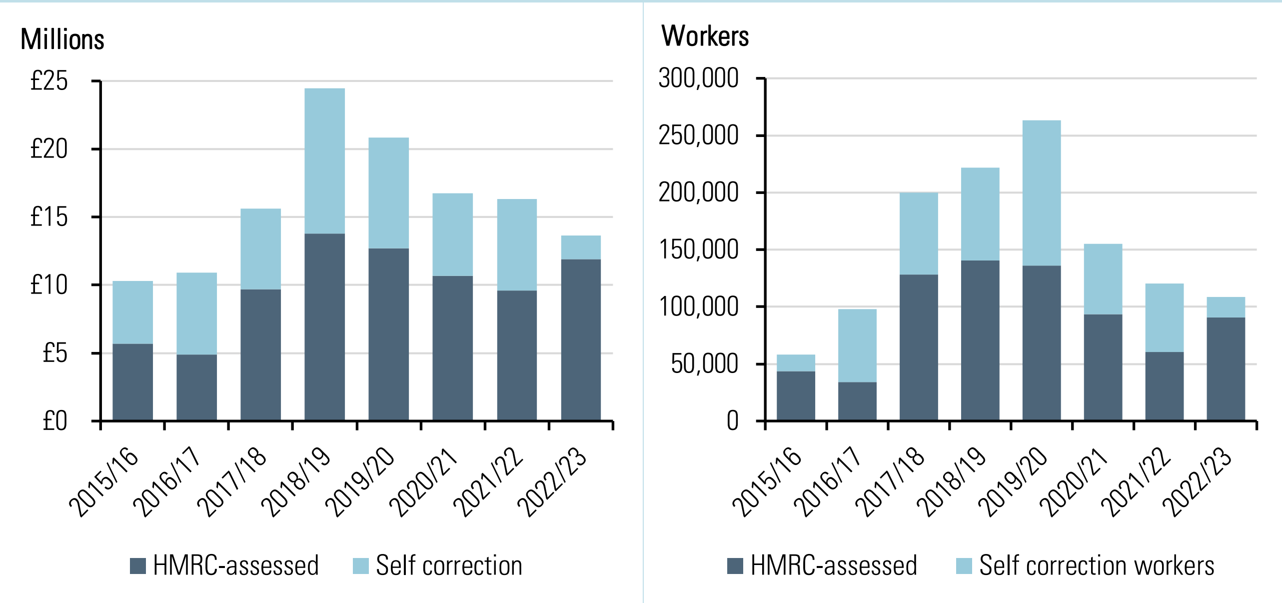
49 The disparity in strike rates reflects a broader feature of HMRC's activity, which is that it ranges across a huge breadth of different employers and cases of a different nature. In response to this challenge, HMRC has made efforts to innovate and better understand the effects of its interventions. In recent years this has meant greater evaluation of and experimentation with different compliance-centric approaches. It has also meant the development of a "Geographic Compliance Approach", which uses an escalating sequence of interventions to influence employer behaviour and improve compliance in a given area via a "ripple effect" among local employers.

50 In discussing the Geographical Compliance Approach, DBT note that "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." This statement could be applied to HMRC's work more generally. It also supports recommendations we have made over a long period calling for a different approach to collecting and publishing data. We want to better understand the nature of the underpayment identified by the enforcement body, to see whether it matches what we see in the data and what we hear from stakeholders. The creation of the Fair Work Agency is an opportunity to reset the way this evidence is collected, to understand the characteristics of underpaid workers and their working arrangements.

Box: Self-correction

We saw in Figure 1 above that despite the fall in the value of arrears in recent years, the value of the penalties levied by HMRC from employers has remained consistent. One factor in the resilience of penalty values is a decline in the use of self-correction by employers. The tool of self-correction allows employers to avoid penalties by identifying and making good instances of underpayment, which they then declare to HMRC. The figures for 2022/23 show that the value of arrears identified via self-correction fell by almost three-quarters compared to the previous year, from around 40 per cent of the total to only 12 per cent. It is not clear whether this decline in the use of self-correction has resulted from a change in policy, or whether it shows an incidental decline which could reverse in the future.

Figure 21: Arrears and workers, self-corrected versus HMRC-assessed arrears, 2015/16-2022/23



Source: LPC analysis of DBT minimum wage enforcement data.

National Minimum Wage naming rounds

51 The NMW naming round published on 20 February 2024 was the only such round published in 2024 and the twentieth overall. The Department for Business and Trade named 524 employers, with the most recent cases dating from 2021 and the oldest dating back to 2012. Long gaps between rounds – in particular a hiatus from July 2018 to December 2020 – have meant a backlog of cases have built up, with recent rounds naming longer lists of employers to try to address this.

52 In discussions with employers, we have noticed the diminishing awareness of and concern over naming, particularly given the delay between underpayment being identified and employers being named. In their submission this year, the Recruitment and Employment Confederation shared their concerns over the effectiveness of naming rounds. The long wait between offences first being identified and companies being named meant that by the time of naming "companies have often taken steps to correct whatever led to the breach occurring." Naming then "becomes little more than an act on a company's brand and reputation despite the issue having long been resolved." Deloitte also thought the time between naming and the actual underpayment was now so long that firms could write the naming off as “historic” or “under previous ownership”. In the past, HR directors would have been at risk of the sack if the business was named, whereas this was unheard of now.

53 We encourage the Government to publish more frequent naming rounds in the future, in an effort to reduce the backlog and restore the effectiveness of this measure as a deterrent against underpayment.

Conclusions

54 In last year’s report, we stressed the importance of thinking about NMW underpayment holistically, within the context of workers’ broader experience of the labour market, specifically their experience of insecurity, their awareness of their rights and their attitudes to moving jobs. Given this, it is positive that alongside the Fair Work Agency, the Employment Rights Bill looks set to introduce a broader range of rights for low-paid workers. In setting up the Fair Work Agency, we urge the Government to take a similarly ambitious approach. The future enforcement body should build on HMRC’s successes; it should also think hard about what it would take to become more agile, more responsive and more transparent. We stand ready to support this work and think our recent recommendations suggest some sensible initial steps.

Our recommendations to the Government

We urge the Government to ensure adequate information is available for employees to know where and how to complain about underpayment.

We recommend the Government look at improving the guidance on work type and the differences in calculating working time between salaried and unmeasured work.

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

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

Expand the data HMRC collects on its caseload, in particular:

- whether underpayment is formal or informal;
- the characteristics of underpaid workers involved; and
- the working arrangements of underpaid workers

[From our 2022 report] We recommend HMRC addresses previous LPC recommendations to improve and promote third-party complaint protocols. Specifically, this should include:

- communicating where the bar is for ‘actionable’ intelligence;
- setting a standard for providing prompt and regular feedback to third parties; and
- promoting options for underpaid individuals to nominate a third-party agent to act on their behalf.

References

Citizens Advice (2024). From rights to reality: Designing a Fair Work Agency that delivers for the most vulnerable workers. 24 July 2024. https://www.citizensadvice.org.uk/policy/publications/from-rights-to-reality-designing-a-fair-work-agency-that-delivers/

Department for Business and Trade (2023). More than 200 companies named for not paying staff minimum wage. Press release. 21 June 2023. https://www.gov.uk/government/news/more-than-200-companies-named-for-not-paying-staff-minimum-wage

Department for Business and Trade (2024a). Over 500 companies named for not paying minimum wage. Press release. 20 February 2024. https://www.gov.uk/government/news/over-500-companies-named-for-not-paying-minimum-wage

Department for Business and Trade (2024b). National Living Wage and National Minimum Wage: government evidence on enforcement and compliance, 2023. 10 October 2024. https://www.gov.uk/government/publications/national-living-wage-and-national-minimum-wage-government-evidence-on-enforcement-and-compliance-2023

Department for Business, Energy and Industrial Strategy (2020). Salaried workers and salary sacrifice schemes: changing the National Minimum Wage rules. 11 February 2020. https://www.gov.uk/government/consultations/salaried-workers-and-salary-sacrifice-schemes-changing-the-national-minimum-wage-rules

Department for Business, Energy and Industrial Strategy (2021a). Employers 'named and shamed' for paying less than minimum wage. Press release. 5 August 2021. https://www.gov.uk/government/news/employers-named-and-shamed-for-paying-less-than-minimum-wage

Department for Business, Energy and Industrial Strategy (2021b). Over 200 employers called out for falling short of paying staff the minimum wage. Press release. 8 December 2021. https://www.gov.uk/government/news/over-200-employers-called-out-for-falling-short-of-paying-staff-the-minimum-wage

HM Treasury (2024). Autumn Budget 2024. 30 October 2024. https://www.gov.uk/government/publications/autumn-budget-2024

Low Pay Commission (2018). A response to government on 'one-sided flexibility'. Low Pay Commission Report. 17 December 2018. https://www.gov.uk/government/publications/low-pay-commission-response-to-the-government-on-one-sided-flexibility

Low Pay Commission (2022). Compliance and enforcement of the National Minimum Wage: the case of the Leicester textiles sector. 25 July 2022. https://www.gov.uk/government/publications/minimum-wage-underpayment-in-leicester-textiles-manufacturers

Low Pay Commission (2023). Compliance and enforcement of the National Minimum Wage. 13 September 2023. https://www.gov.uk/government/publications/compliance-and-enforcement-of-the-national-minimum-wage

Low Pay Commission (2024). National Minimum Wage. Low Pay Commission Report 2023. CP 1032. 4 March 2024. https://www.gov.uk/government/publications/low-pay-commission-report-2023

Office for National Statistics (ongoing). Annual Survey of Hours and Earnings (ASHE). Annual.

Trades Union Congress (2024). Major job boards are advertising salaried jobs at below minimum wage – TUC research. Press release. 21 August 2024. https://www.tuc.org.uk/news/major-job-boards-are-advertising-salaried-jobs-below-minimum-wage-tuc-research

Any enquiries regarding this publication should be sent to us at: lpc@lowpay.gov.uk.