



Department for
Business, Energy
& Industrial Strategy

NATIONAL LIVING WAGE AND NATIONAL MINIMUM WAGE

Government evidence on compliance and
enforcement 2017/2018

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Figure 1: Summary of key statistics for 2017/18



Executive Summary

The National Living Wage (NLW) was introduced in April 2016 and represented a significant increase to the wages of the lowest paid – over 2 million workers are estimated to have benefitted from the most recent uprating in April 2018, where the NLW rate was increased from £7.50 to £7.83 per hour.

The NLW and National Minimum Wage (NMW)¹ provide essential protection for the lowest paid workers and ensure that these people are fairly rewarded for their contribution to the economy.

This report provides an overview of minimum wage enforcement activity during 2017/18, following a similar report published last year covering activity during 2016/17². Evidence presented in this report covers: estimated non-compliance with the minimum wage, statistical estimates of low paid jobs, awareness of the minimum wage, routes to HMRC enforcement, enforcement operations and enforcement statistics.

Estimating the scale of minimum wage non-compliance

1. There is no single official estimate of minimum wage non-compliance, and as such we use a range of data and information to inform our understanding of the scale and nature of minimum wage underpayment. Statistical estimates of the number of employee jobs paid below the relevant minimum wage in April 2017 count 341,000 jobs – in line with 2016. In the data, over 90,000 of these jobs show very low levels of hourly underpayment, i.e. within 3 pence of the hourly rates. However, there are a number of reasons why this is not a fully accurate estimate of non-compliance in the wider economy. The government will continue to work to improve estimates of minimum wage non-compliance.

Promoting compliance and improving employer awareness

2. The government is committed to increasing compliance with the minimum wage through the provision of guidance, support to employers and workers to understand the law and their rights, and targeted communications campaigns. Guidance published on the GOV.UK website provides practical advice to help employers meet national minimum wage legislation and also applies to workers entitled to the national living wage.

¹ Referred to collectively in this report as the minimum wage. The National Living Wage, which was £7.50 in April 2017, is applicable for those aged 25 and over. There are four National Minimum Wage rates, for 16-17 year olds, 18-20 year olds, 21-24 year olds and an apprentice rate (for those aged under 19 or 19 and over for those in their first year of the apprenticeship)

² Department for Business, Energy and Industrial Strategy (2017) – [“National minimum wage and National Living Wage: government evidence to the Low Pay Commission on compliance and enforcement – 2017”](#)

3. Following a successful communication campaign supporting the introduction of the NLW in April 2016, the government has continued to run further campaigns ahead of minimum wage upratings in April. These campaigns target workers and employers across a range of channels, highlighting scenarios in which employers and workers may be at risk of minimum wage non-compliance and encouraging workers to raise queries if they felt they were being underpaid. “Promote” activity has been expanded significantly – both in terms of the types of activity undertaken (e.g. innovating with text messages) and volumes of businesses reached. In order to increase the awareness of the NMW and of the NLW amongst eligible workers, a £1.48 million campaign was launched in April 2018 and to date, the campaign website has received more than 600,000 visits.
4. Her Majesty’s Revenue and Customs (HMRC) enforce the NLW/NMW on behalf of the government. It also works with employers to help them understand their obligations and to promote compliance with the law. This includes sector specific guidance and using innovative techniques to “nudge” employers towards compliance. There has been particular focus on targeting at-risk groups, with over 1.6 million text messages sent to workers, 1.3 million texts sent to working tax credit recipients, and 370,000 texts sent to apprentices.

Identifying underpayment

5. We are tough on employers who fail to comply and have strengthened enforcement of the minimum wage. We have increased resources to HMRC to enforce the minimum wage – rising to £25.3 million in 2017/18 from £20 million in 2016/17.
6. In 2017/18, underpinned by this investment in enforcement resources, HMRC achieved record enforcement results - identifying £15.6 million of minimum wage arrears benefitting over 200,000 workers (double the number workers identified in 2016/17). This is the largest amount of money recovered for the highest number of workers in any single year since the NMW came in to force, demonstrating a high marginal return on the increase in enforcement resources.
7. This year the government prioritised the Social Care, Retail & Commercial Warehousing and Gig Economy sectors for targeted enforcement, alongside employment agencies, apprentices and migrant workers. The level of targeted enforcement activity continued to increase in 2017/18, reflecting the increased focus on cases where non-compliance with minimum wage legislation is perceived to be more widespread. Just over 1,600 such cases were opened in 2017/18 – a 27% increase compared to 2016/17 – with £3.8 million of the total £15.6 million of underpayments identified in these cases.

Enforcing National Minimum Wage and deterring further non-compliance

8. Tough enforcement action is primarily intended to act as a deterrent to employers otherwise tempted to break the law. It does this by sending a clear message to the employers investigated by HMRC but also by raising awareness of employers' minimum wage responsibilities and worker's entitlements more widely for example through the NMW naming announcements. In 2017/18, there have also been a number of employers who have voluntarily announced large amounts of minimum wage underpayment. In total, just under £6 million (of the total £15.6 million) was identified by HMRC in self-corrected arrears, in line with 2016/17.
9. HMRC responds to 100% of worker complaints and also conducts proactive, targeted enforcement of at risk employers. HMRC have been transitioning in terms of both the scale and type of their enforcement activity. This includes increasing awareness raising activity to prevent non-compliance in the first place and therefore reduce the need for enforcement action.
10. We continue to share intelligence and work with other enforcement bodies. For example, HMRC take part in joint operations with enforcement bodies such as the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards inspectorate (EAS), Police and Local Authorities.
11. HMRC undertook a pilot for assisted self-correction to assist businesses who hadn't received a complaint, but who wanted to do the right thing for their workers; building on efforts to develop a proportionate approach to enforcing minimum wage and to improve our general enforcement approach. Between August 2017 and March 2018, 3,000 letters were issued by HMRC. Although this was only a pilot scheme, 56 employers took this opportunity, leading to £246,000 arrears being declared for just under 700 workers.
12. The number of closed complaint-led cases in 2017/18 increased by 17% compared the previous year, reversing the trend seen in 2016/17. Similarly, the value of arrears and number of workers affected in complaint-led cases has dramatically increased over the last year; with the value of arrears doubling from £5.7 million to £11.8 million, and the number of workers affected rising from just under 30,000 to just under 140,000. This is primarily due to the closure of one complaint-led investigation of a large high-street retailer.
13. Targeted enforcement activity continued to increase during 2017/18; reflecting the increased focus on cases where non-compliance with minimum wage legislation is perceived to be more widespread. In 2017/18 targeted enforcement levied penalties of £3.4m on employers – more than in any previous year. The strike rate for these targeted enforcement cases also increased considerably over the same period (rising to 39% from 34% in 2016/17).

Penalties, Prosecution and Naming

14. This year was a watershed year for penalties, with the impact of the introduction of tougher penalties in April 2016 (whereby, dependent on the pay reference period for the arrears, a penalty is now calculated based on 200 per cent of the arrears that workers are owed) now materialising. A record £14 million in penalties were issued to employers in 2017/18.
15. Civil enforcement (i.e. through penalties) is the quickest way to ensure that arrears are paid back to workers, which is a priority for this government. Criminal prosecutions are pursued in the most serious cases of minimum wage non-compliance. Fourteen criminal prosecutions have occurred since the introduction of the NMW in 1999, one of which was in 2017/18.
16. We also continue to publish regular “naming” lists, of employers who are found to have underpaid their workers the minimum wage. This naming covers a large volume of employers and continues to attract widespread media coverage. As of July 2018 1,957 employers have been named since the naming scheme began, with over 600 employers named in 2017/18 alone (233 in August 2017, 260 in December 2017 and 179 in March 2018).
17. We will continue to refine our evidence base on NMW non-compliance and look to develop how we estimate the deterrence effect of NMW enforcement. We welcome the work of the Director of Labour Market Enforcement (DLME) and his report published in May 2018. We will shortly respond to recommendations made by the DLME to help stop the exploitation of the UK’s lowest paid workers.

Estimating the scale of minimum wage non-compliance

This section of the report summarises data from the Office for National Statistics' (ONS) Annual Survey of Hours and Earnings (ASHE), providing an estimate of the extent of non-compliance with the minimum wage in 2017.

Estimates from 2017 ASHE data suggest that there were around 282,300 jobs which were paid below the NLW. This is equivalent to around 1.2% of all jobs held by employees aged 25 or over, and in line with findings from the previous year (where this was equivalent to around 1.3% of all jobs held by employees aged 25 or over).

Where jobs were paid below NLW, a large number (around 90,000) were paid within 3 pence of the NLW (£7.50) at the time of the survey. Despite the expanded reach of NLW, this level of underpayment remained consistent with estimates reported in 2016 and suggests that some underpayment is in part due to differences in how weekly and hourly pay is derived from annual or monthly salary information.

Statistical Estimates of Low Paid Jobs

18. There is no register or dataset which allows us to comprehensively estimate the number of employers who are non-compliant with minimum wage legislation at any point in time, or accurately identify businesses that are non-compliant. As with all unlawful activity, there are a number of challenges in accurately estimating it. As such, we rely on a number of sources of information to inform our assessment of the scale and nature of minimum wage non-compliance, which in turn informs our enforcement approach.
19. Information on jobs paid below the minimum wage at a particular point in time can be gleaned from the ASHE survey. ASHE is a survey of employees completed by employers. However, this data **does not offer a direct measure of minimum wage non-compliance** in the population. There are legitimate reasons why a job may appear to be paid below the minimum wage in the data, for example where accommodation is provided by the employer, or when varying rates are paid for on call time or travel time.
20. ASHE is considered an accurate measure of pay information in the formal economy at a point in time; however, an evidence gap remains in reliable earnings data in the informal economy. The government published a feasibility study on the possible approaches to estimate the nature and scale of underpayment in the hidden economy in July 2017³ and continues to work with the Director of Labour Market

³ Department for Business, Energy and Industrial Strategy (2017) "[Minimum wage underpayment in the informal economy](#)"

Enforcement (DLME) to develop the broader evidence base and help inform better enforcement going forwards.

21. Below we consider analysis from 2017 ASHE data, which is the latest available. 2018 ASHE data is expected to be released later this year.

ASHE 2017 Estimates

22. The ASHE survey pertains to a specific pay period in April. This date moves within April each year (to avoid Easter). For 2015 and earlier years, the minimum wage rates that applied at the time of the survey had been in place since the previous October, some six months earlier. However, for ASHE 2016 onwards, employers were asked to return information for pay reference periods that were relatively close to the annual minimum wage uprating. For the 2017 survey, employers were asked to return information for pay references that included the 26th April, just 25 days following the introduction of the new minimum wage rates on the 1st April 2017.
23. Whilst 2017 estimates of jobs paid below minimum wage rates are comparable to those of 2016, they are not comparable to earlier years (2015 and previous) due to the close proximity of the ASHE reference date to the annual minimum wage uprating.
24. In addition to the proximity issue, some employers submitted earnings information for employees whose pay period contained the ASHE reference date but started before the 1st April (e.g. 31st March for employees paid on a monthly basis). In order to comply with NLW legislation for the 2017 uprating, employers need only pay the new NLW for pay periods that commenced on or after the 1st April 2017, therefore pay information that included the 1st April should be assessed against the previous minimum wage rates.
25. Adjusting for pay periods which predate or span the 1st April 2017, both BEIS and the ONS estimate there were around 282,300 jobs paid below the NLW according to ASHE (see Table 1). This is equivalent to around 1.2% of all jobs held by employees aged 25 or over, and in line with findings from the previous year (where 1.3% of all jobs held by employees aged 25 or over were paid below the NLW).
26. In order to further contextualise these numbers, the LPC have compared the estimated number of jobs paid below the NLW to the total number of “low paid” jobs in the economy. The LPC’s autumn 2017 report (p.70) defines a low paid job as being paid up to five pence above the NLW rate. On this basis, they find that 18% of all low paid jobs held by those aged 25 or over are estimated to be paid below the NLW; again in line with 2016 (19%).

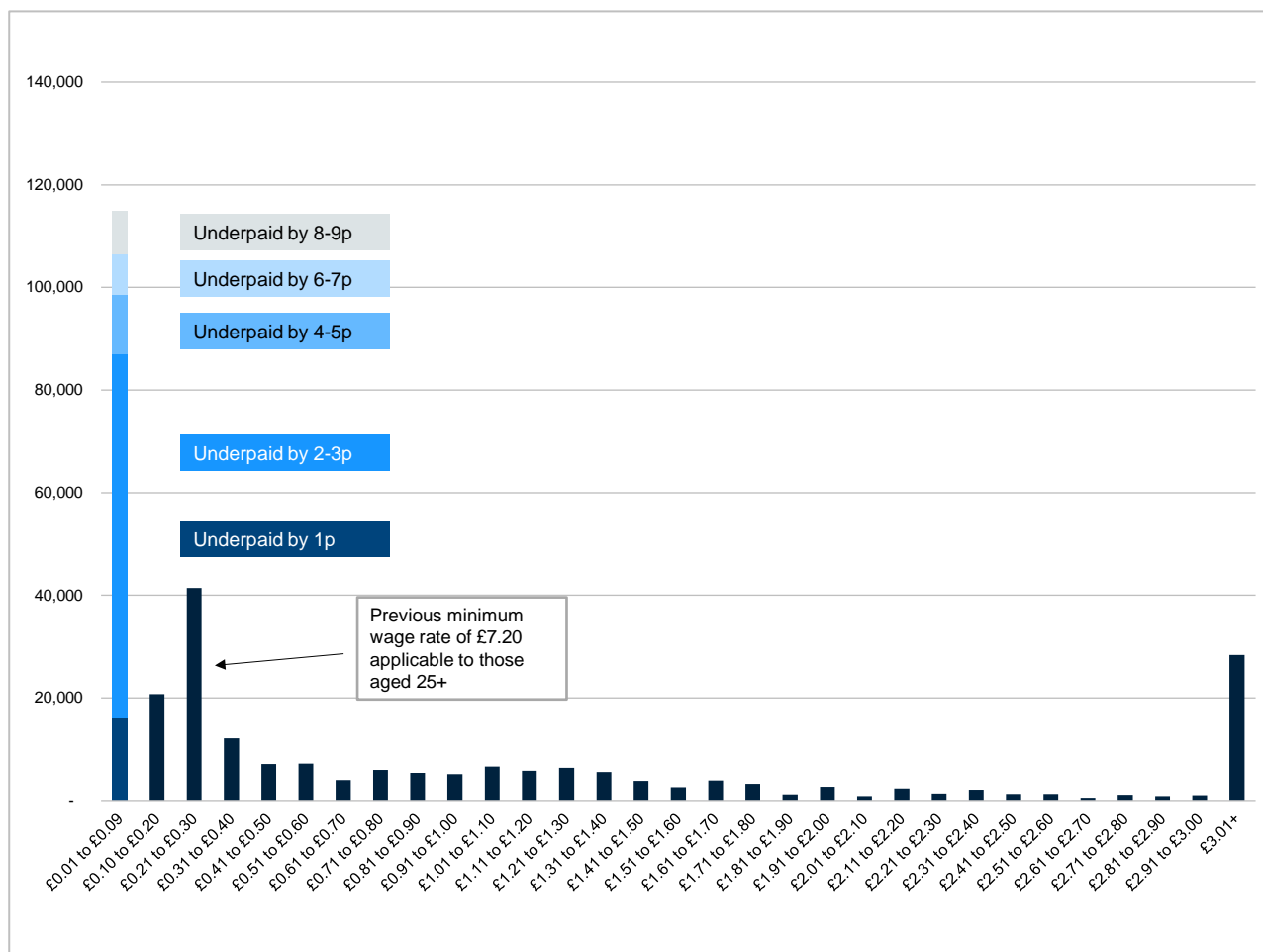
Table 1: Estimated number of jobs paid below NMW / NLW by rate, 2017

	A. No. of jobs paid below relevant NMW rate	B. total no. of 16+ jobs	C. Jobs paid below as a proportion of all 16+ jobs
Apprentice Rate	6,200	198,700	3.1%
16-17 years	4,000	272,600	1.5%
18-20 years	18,800	973,300	1.9%
21-24 years (NMW)	29,700	1,984,000	1.5%
25+ years (NLW)	282,300	24,306,500	1.2%
Formula	-	-	=A / B
Total	341,000	27,735,100	1.2%

Source: BEIS analysis of Annual Survey of Hours and Earnings 2017

27. Chart 1 looks in more detail at the level of hourly underpayment in the jobs paid below the NLW. Over 100,000 workers were paid within 10 pence of the NLW (£7.50) at the time of the survey, of which almost 90,000 were paid within 3 pence. This level of potential underpayment is consistent with that reported in 2016.
28. As in 2016, a possible explanation for underpayments which are just below minimum wage rates may be due to how weekly and hourly pay is derived from annual or monthly salary information. Some employers may calculate hourly pay using 4.33 weeks (52 weeks divided by 12 months), and others may use 4.34 weeks per month (365 days, divided by 7 days per week is slightly more than 52 weeks in a year). This small calculation difference can result in an estimated hourly underpayment of around 2 pence for a full-time worker on the NLW. This could be an artefact of both performing the calculation for the purposes of completing the survey, or for the purposes of real life pay.
29. A smaller spike can also be seen in the data between the £0.21 and £0.30 degree of underpayment. This is possibly due to employers incorrectly paying the previous rate of £7.20.

Chart 1: Underpayment of the NLW (£7.50) for those due the 25+ rate in 10p pay band



Source: BEIS analysis of Annual Survey of Hours and Earnings 2017

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

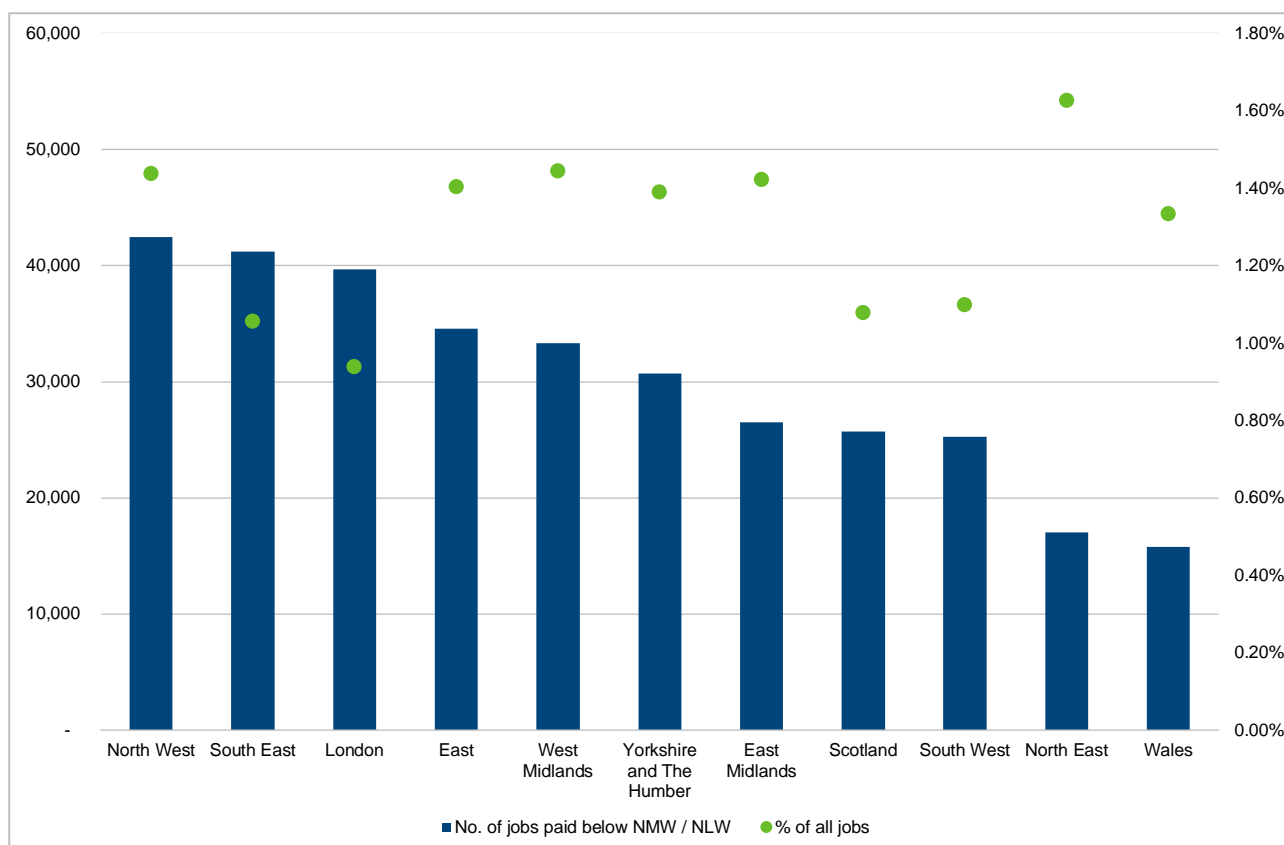
30. with an estimated 1.6% of all jobs aged 16 years + paid below the NMW and NLW rates), alongside the North West and West Midlands (1.4%). Although the South East and London have a comparably high number of jobs paid below the NMW / NLW, the graph shows that these jobs represent the smallest proportion of all jobs across the regions (1.0% and 0.9% respectively), implying that non-compliance is not as prevalent in these areas.

31. **Chart 2** shows the estimated number and percentage of jobs (of all 16+ jobs) paid below NMW and NLW rates in April 2017 by region. Of the 341,000 jobs paid below NMW / NLW, an estimated 42,000 jobs were located in the North West and 41,000 in the South East. These regions continue to be the areas with the greatest number of jobs paid below the NMW / NLW. In contrast, the North East and Wales continue to be the regions with the lowest number of jobs paid below with NMW / NLW (with an estimated 17,000 and 16,000 jobs respectively). This pattern is in part a

reflection of the total number of low paid jobs (defined as those paid within 5 pence of the NMW / NLW rates) in these regions.

32. This data also suggests that the North East is one of the regions with the highest proportion of jobs paid below NMW / NLW, (with an estimated 1.6% of all jobs aged 16 years + paid below the NMW and NLW rates), alongside the North West and West Midlands (1.4%). Although the South East and London have a comparably high number of jobs paid below the NMW / NLW, the graph shows that these jobs represent the smallest proportion of all jobs across the regions (1.0% and 0.9% respectively), implying that non-compliance is not as prevalent in these areas.

Chart 2: Estimated number of jobs paid below the NMW / NLW in April 2017 by Government Office Region (LHS) – and expressed as a percentage of all jobs in that region (RHS)



Source: BEIS analysis of Annual Survey of Hours and Earnings 2017

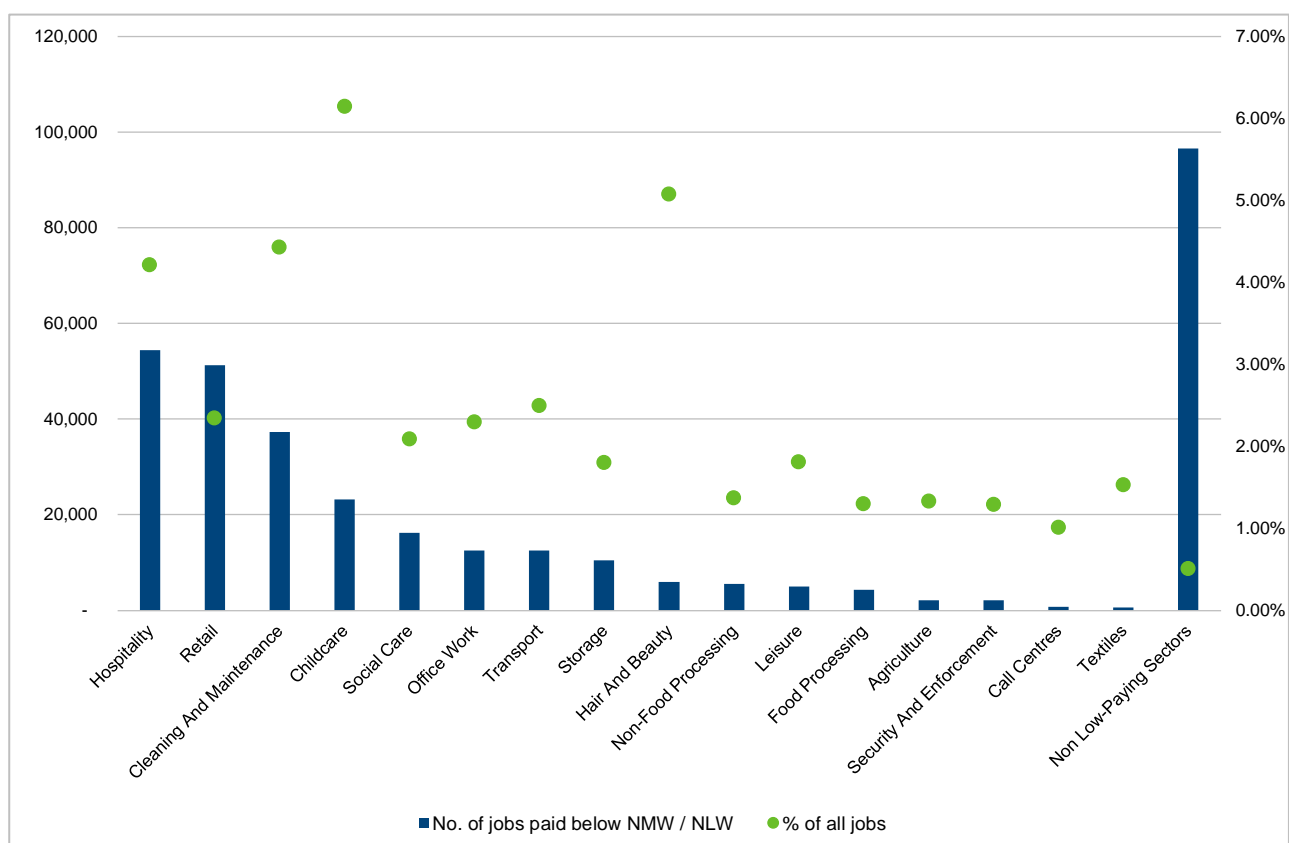
Notes: Data for Northern Ireland has not been included due to small sample sizes

33. Chart 3 presents estimates for low paid sectors in April 2017. ASHE estimates that the Hospitality sector continues to have the highest number of jobs (54,500) paid below the minimum wage, followed by the Retail sector (with 51,300 jobs paid below the minimum wage, in line with 2016). This is equivalent to 4.21% and 2.34%, respectively, of all 16+ jobs in these sectors. Childcare continues to be the sector

with the highest proportion of jobs paid below minimum wage rates (other than “non-low-pay sector”⁴), with 6.15% of all jobs being paid under the minimum wage.

34. The areas that HMRC targeted in 2017/18 were, Social Care; Employment Agencies; the Gig Economy; Apprentices; Migrant Workers and Retail / Commercial Warehouses – all of which show a relatively high number or proportion of jobs estimated to be paid below the minimum wage according to the data. New priority sectors will be agreed for 2018/19 and reported in next year’s evidence report. Other sectors covered by the targeted enforcement programme included childcare and nurseries, hairdressing, small garages and food processors. Targeted sectors are discussed in more detail later in this report.

Chart 3: Estimated number of jobs paid below NMW /NLW by Low Pay Sector in April 2017



Source: BEIS analysis of Annual Survey of Hours and Earnings 2017

⁴ Non low-pay sector includes all other sectors

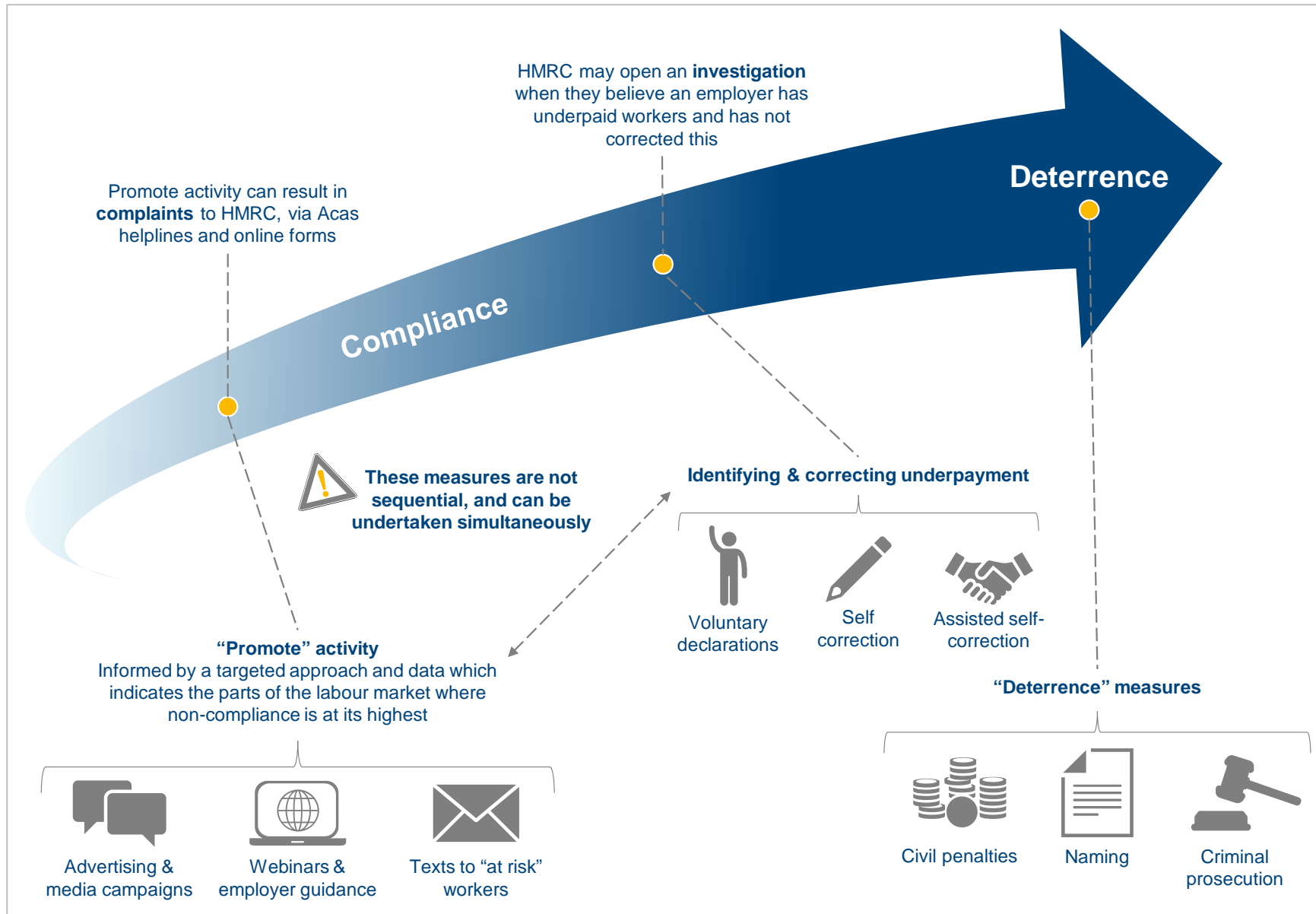
Addressing non-compliance with the National Minimum Wage

Enforcement theory

35. The Director of Labour Market Enforcement (DLME) is responsible for producing an annual strategy setting the strategic direction of the three existing labour market enforcement bodies, including HMRC's minimum wage team, to ensure that enforcement efforts are coordinated and targeted. This includes insights from the Director's intelligence Hub, which aims to provide a single view of risk and priorities across the spectrum of non-compliance. NMW enforcement information is shared with the Hub on a monthly basis.
36. As outlined in their 2018 strategy⁵, any enforcement approach should aim to encourage continued compliance and deter further non-compliance. Enforcement relies as much on persuasion and influencing decision-making as it does on punishment. Within enforcement, DLME note that there are two broad approaches: **compliance** and **deterrence**, with the most effective enforcement being a combination of the two.
37. Encouraging compliance is based on the idea that violations of the law are a result of a lack of information (ignorance) and/or incompetence, rather than deliberate behaviour on the part of the employer. The main approach, therefore, for encouraging compliance is to improve the information available to employers; on the assumption that employers will become compliant with the law once they better understand it.
38. Employers who do not respond to compliance measures will then be identified and subjected to deterrence measures. Deterrence is based on the principle that employers will decide not to underpay their employees because the consequences of doing so are too severe. DLME then suggest that the aim, therefore, of enforcement should be to alter employers' behaviour by raising the risk of being caught.

⁵ Director of Labour Market Enforcement (2018) ["United Kingdom Labour Market Enforcement Strategy 2018/19"](#)

Figure 2: National Minimum Wage enforcement



Our enforcement strategy

39. The government is committed to cracking down on employers who break minimum wage law and is clear that everyone entitled to be paid the minimum wage should receive it. BEIS is responsible for minimum wage compliance and enforcement policy, and HMRC enforce the NMW Act (1998) on BEIS' behalf.
40. HMRC continues to respond to 100% of worker complaints, with customer waiting times for worker complaint cases monitored throughout the year. As well as complaints, HMRC also conducts proactive, targeted enforcement and takes part in joint operations with other enforcement bodies – such as the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards inspectorate (EAS), Police and Local Authorities.
41. The budget for enforcing the NMW increased from £20 million in 2016/17 to £25.3 million in 2017/18. The increased funding for 2017/18, in part to account for the higher coverage of the new NLW, has served to increase the number of HMRC compliance officers to 424 (as of 31st March 2018), and has allowed for greater targeted enforcement.
42. Since 1st April 2017, HMRC have used this funding to recruit 114 new staff deployed on NMW enforcement. New recruits complete a structured technical induction programme which will normally see them involved in investigations after 3 months. The induction programme involves the support of experienced staff. Recruitment on this scale, following on from the recruitment of over 200 compliance officers in 2016/17, is an investment to build future capacity.
43. HMRC's approach to enforcement has been refined in recent years – moving to an increasingly sophisticated, risk-driven approach based on a “**Promote, Prevent and Respond strategy**”. As shown in Figure 2, HMRC proactively use a number of levers to encourage compliance; informing employers of their responsibilities and raising awareness amongst workers of their rights. Similarly, the deterrent effect is achieved through a range of different interventions that ensure enforcement action is proportionate to the risk, joined-up and effective. This will include one-to-one meetings with employers, a team-based approach to reviewing some businesses and multi-agency joint working to tackle risks of cross-cutting illegal behaviours.
44. HMRC's enforcement of NMW is therefore based around three distinct aims (with enforcement activity typically involving an element of all three):
 - **To promote compliance and improving employer awareness**, by supporting employers to comply with NMW law from the outset and, therefore, avoiding the occurrence of any NMW underpayment. Levers include communications campaigns, webinars, “nudge letters”, online support and guidance and direct contact with those most likely to be underpaid minimum wage.

- **To identify underpayment and help return any lost wages to workers** as soon as possible. Enforcement activity comprises of both complaint-led investigations and targeted investigations in areas where non-compliance is known to be particularly high, using third party intelligence and HMRC's risk model . In some instance, employers are given the opportunity to "self-correct" their own arrears, before HMRC pursue more stringent penalties, if they fail to take steps to ensure workers' pay is compliant with the law.
 - **To enforce the NMW and deter further non-compliance** by punishing employers for underpayment. There are a range of enforcement policies which are geared to deterring further non-compliance, ranging from penalty fines, public naming by BEIS on the gov.uk website and (in the most malicious, serious cases of non-compliance) prosecution.
45. Although there are increasing activities aimed at preventing non-compliance through the 'Promote' workstream, the penalty regime is still applied to cases, regardless of intent or scale, where employers are issued with a Notice of Underpayment by HMRC in respect of arrears of pay owed to workers.
46. **The remainder of this report will analyse 2017/18 enforcement activity across each of the three strands of enforcement described above.**

Promoting compliance and improving employer awareness

This workstream, to improve worker and employer awareness of the minimum wage rates, and promote compliance, is dedicated to stopping underpayment from the outset, by changing the behaviour of employers and workers. This chapter of the report will discuss 2017/18 awareness-raising activity.

Communications campaigns

47. In order to increase the awareness of the NMW and of the NLW amongst eligible workers, a £1.48 million campaign was launched in April 2018, encouraging workers to check their pay and take action if they are underpaid. This campaign also aimed to build understanding amongst workers (including apprentices) in high-risk sectors about the common ways that they might be underpaid and the routes they can take if they are concerned about being underpaid.
48. Using learning from previous years, the campaign targeted both workers and employers, running across radio, outdoor posters and digital. This media is estimated to have led to a further 670 complaints during April. Analysis of this communications campaign highlighted that 89% of eligible workers were aware of the National Living Wage in 2018, which was a similar percentage to that in 2017.
49. Once more, the campaign levered significant national and local media coverage generated by naming rounds (notably March 2018's round) and to date, the campaign website has received more than 600,000 visits. It provides information on the correct rates as at 1st April 2018, the Acas helpline number and has a link to the HMRC online complaints form.
50. This communications campaign follows on the back of 2016's (£5 million campaign) and 2017's (£1.7 million), with the increased expenditure in 2016 due to the introduction of the NLW. These efforts are supplemented by general BEIS social media communications throughout the year to drive awareness, alongside regularly updated, published guidance that sets out the rights and responsibilities for workers and employers respectively.

HMRC "Promote" Activity

51. Having been established for over a year, the "Promote" team within HMRC aim to improve compliance with the minimum wage by changing the behaviour of employers and workers. This is through:
 - (a) Putting employers in a position to be compliant from the outset, encouraging employers to self-review and correct any errors that have occurred

- (b) Encouraging workers to check their pay in line with the NMW legislation, seeking information and/or making a complaint as necessary

52. The Promote team directly facilitated over 166,000 employers and workers to seek further information in relation to NMW through their activity in 2017/18, with their work varying from running webinars on common errors that lead to NMW underpayment, to using innovative communication techniques to raise awareness of NMW risks. This work involves “nudging” employers towards carrying out necessary checks and making a voluntary disclosure. Box 1 provides specific examples of recent Promote work.

Box 1: Promote work

Webinars: An estimated 11,700 attendees utilised HMRC-delivered webinars, which provide HMRC the opportunity to explain the details of good compliance. These webinars have been successful in exploring in detail the specifics of NMW which can lead to non-compliance whilst retaining high levels of attendee satisfaction, with a net promoter score of 47% (net promoter score = the percentage of “9s” and “10s” from the respondents {advocates} LESS the percentage of “0s” to “6s” {detractors})

Email nudges: The annual NMW rate increase is a key risk for underpayment as employers can fail to implement the rate increase in a timely fashion. HMRC sent 617,744 emails to employers in advance of the April 18 rate increases in an attempt to encourage them to view the rates in advance of them coming into effect. A previous Randomised Control Trial tested the efficacy of different nudge message types within an NMW context. The findings from this trial suggested that positive interventions (such as taking steps to raise awareness of workers' rights) perform better than deterrence messages at encouraging recipients to seek further information.

Text messages: Targeting at-risk workers, over 1.6 million text messages were sent in May and June, with 1.3 million texts sent to working tax credit recipients, and 370,000 texts sent to apprentices. These messages alerted recipients that the NMW/NLW rates had increased in April, encouraging them to check their new entitlement

Voluntary declarations: As part of the Autumn Budget 2016 the government made a commitment to provide targeted support for smaller businesses at risk of making mistakes with National Minimum and Living Wage. This involved offering a time limited opportunity for employers, who may have made genuine mistakes paying the NMW/NLW with no previous history or current investigation of NMW breaches, to be able to approach HMRC directly for help and advice in checking that they are meeting all the requirements of NMW legislation. The offer was open to all employers, but targeted at SMEs from those trade sectors most likely to underpay because of their elevated risk. As part of the terms and conditions of this opportunity employers were not the subject of either naming or penalties if workers were paid what they were owed. This resulted in 78 employers coming forward to formally engage with the process and

carry out a self review. From this 56 declarations were received with £246,000 in arrears identified for 689 workers

The lessons learnt from this test and learn project have been applied to a new voluntary declaration offering for employers who self-correct outside of a HMRC targeted investigation. Support is provided to employers via a suite of dedicated webinars

Identifying underpayment

Identifying cases to be investigated for NMW breaches is fundamental to the overall enforcement strategy. HMRC respond to every single NMW complaint made by a worker. This is referred to as complaint-led or reactive casework. Complaints can be raised via the Acas helpline or an online complaint form. HMRC also conducts investigations into employers when the complainant wishes to remain anonymous. Customer waiting times for worker complaint cases are monitored throughout the year. This chapter will discuss 2017/18 activity in identifying NMW underpayment.

Online complaints form

53. In 2017/18, there were approximately 9,150 contacts received by Acas or HMRC, regarding NMW/NLW and/or its underpayment. This represents a 71% increase on the number of contacts received in 2016/17 (5,360 contacts).
54. This large increase is in part due to the growth in use of HMRC's online form, where a worker who suspects that they have been paid below the NMW/NLW may raise a complaint, which was re-launched in January 2017. Through our communications campaign, a greater emphasis was placed on directing queries through to HMRC's online complaint form, as an alternative to calling Acas.
55. By enabling workers or third parties to raise a complaint directly to HMRC without going through Acas first, there were 4,160 contacts received through online forms in 2017/18. This represents 45% of the total number of contacts received. By comparison, the previous form led to HMRC typically receiving around 30 online complaints each month.
56. The impact of this form demonstrates an improvement in the routes to enforcement that are available to workers 24 hours a day (as opposed to the helpline, which is constrained to "office" hours) and which serve to protect the anonymity of vulnerable workers who might not otherwise complain over the telephone. We will continue to monitor this trend, including the quality of complaints received via the online medium.

The Acas Helpline

57. Since the 1st April 2015, the Acas Helpline has, in addition to its usual services, been answering queries previously handled by the Pay and Work Rights Helpline. As Table 2 shows, Acas handle over 750,000 calls each year on a wide range of employment issues including dismissal, grievances, redundancies and contractual matters.
58. Any worker who requires advice on National Minimum Wage legislation is encouraged to contact the Acas helpline. Acas call handlers provide expert and

confidential advice on minimum wage legislation. The majority of calls on minimum wage topics are categorised as ‘enquiries’ which are resolved with advice from the call handler.

59. Following a 14% increase in the number of ‘NMW/NLW’ enquiries in 2016/17, these fell in 2017/18 to 10,310, a decrease of 33%. The number of enquiries on ‘Non-payment of NMW/NLW’ also fell in 2017/18, though to a smaller extent. While some of this may be explained by a decrease in the total number of calls received by Acas, the proportion of total calls that are ‘NMW/NLW’ related has fallen in 2017/18. Other reasons, such as the growth in usage of the HMRC online complaints form, are likely to explain these decreases.

Table 2: NMW related calls received by Acas, 2015/16 to 2017/18

	2015/16	2016/17	2017/18
Total Calls	942,020	890,180	756,310
Of which...			
Enquiry on ‘NMW/NLW’	13,490	15,360	10,310
Enquiry on ‘Non-payment of NMW/NLW’	4,500	4,660	4,430
Referred to HMRC	1,520	2,310	1,980

Source: Acas

60. The ‘NMW/NLW/’ topic includes enquiries on the minimum wage rates and how the legislation is applied in specific circumstances. The ‘Non payment of NMW/NLW’ topic includes enquiries where a worker indicates that underpayment may be an issue. One call may cover both (or either) topic.
61. Acas advisers offer a referral to HMRC as an option should callers feel they may have been underpaid. Referrals to HMRC are made in cases where the call handler believes the information should be considered by HMRC. This process includes using call transfers, voicemails and directing users to the online form.
62. Table 3 shows a breakdown of ‘NMW/NLW’ and ‘Non-Payment of NMW/NLW’ enquiries by gender and caller type for 2016/17 and 2017/18. The figures show that there were a greater number of enquiries by females than males, and that employees comprise a large proportion of enquiries.

Table 3: Acas calls received by key topic and caller breakdown, 2016/17 and 2017/18

	2016/17		2017/18	
	'NMW/NLW'	'Non-Payment of NMW/NLW'	'NMW/NLW'	'Non-Payment of NMW/NLW'
Gender				
Female	9,470	2,630	6,480	2,590
Male	5,870	2,010	3,810	1,820
Unknown	10	10	20	10
Caller Type				
Employee	10,330	4,030	7,300	3,870
Employer	3,940	250	2,300	220
Agency Worker	240	110	170	110
Apprentice	600	160	360	120
Intern	20	10	20	10
Other	220	100	170	90
Unknown	-	-	-	-
Total	15,360	4,660	10,310	4,430

Source: Acas

63. Information on age and sector is also collected but as Acas do not systematically ask callers to disclose this information and as it is only recorded when a caller chooses to provide it, it has not been presented here due to the large number of 'unknowns' for these breakdowns.
64. Calls referred to HMRC may not result in an employer investigation. For example, some discussions with workers reveal that their pay is in fact compliant with minimum wage or the complaint does not relate to an NMW/NLW issue such as holiday pay

Customer Responsiveness

65. HMRC have responded to 100% of complainants. This includes making contact with complainants who submit the online form within 5 working days. HMRC gather the essential information from complainants to begin an investigation and can protect

anonymity where requested. 2017/18 saw HMRC improve on their responsiveness to receiving complaints - 51% of cases involving workers complaints were closed within 120 days and 87% of cases were completed within 240 days. Both figures are an improvement in performance from 2016/17, where 49% of cases were closed within 120 days and 79% within 240 days.

Enforcing National Minimum Wage and deterring further non-compliance

HMRC use a range of techniques to enforce National Minimum Wage, ranging from ‘nudge’ letters in low risk cases to criminal prosecution in the most serious cases of underpayment. The following chapters examine NMW enforcement activity across 2017/18.

Box 2: Understanding Enforcement Statistics

The enforcement statistics presented in this report are compiled from management information representing the outcome of cases closed in a 12-month period ending 31st March 2018. As such, the data is an annual snapshot of a caseload that is continually changing – new cases are opened and closed every month and, depending on their complexity and outcomes, will be open for different durations. In addition, an HMRC investigation can review wage arrears dating back to a maximum of 6 years so the statistics will also include a historical picture of underpayment⁶.

The “strike rate” is the proportion of closed investigations in which the employer is found to be non-compliant. While this is one metric which helps us monitor trends in enforcement, on its own it does not provide a complete picture of enforcement performance – for example, it does not reveal anything about the scale of workers impacted at a case level. One worker underpaid in a small business affects the strike rate in the same way as every worker being underpaid in a larger business.

Importantly, strike rates (and other enforcement statistics) do not directly reflect current levels of non-compliance in the labour market for a number of reasons.

For example, strike rates are a reflection of the time in which the case was closed rather than the date the underpayment occurred in. Strike rates may be interpreted as either a positive or negative indicator of minimum wage compliance in the labour market. In one sense, an increasing strike rate may be an indicator that the non-compliance in the population as a whole has increased. On the other hand, it could mean that investigations are better targeted

The data presented here shows that strike-rates vary according to whether an investigation is the result of a worker complaint or targeted enforcement. Investigations resulting from a worker complaint closed during the period of review were found to be more likely to uncover minimum wage arrears, with arrears being found in 44% of closed cases, compared with 39% for cases initiated proactively. However, this difference in strike rate has narrowed over the last year (with the strike rate for complaint led cases

⁶ Arrears are calculated based on the minimum wage rate in force when the investigation takes place rather than those that were in force at the time of the underpayment, provided the current rates are higher.

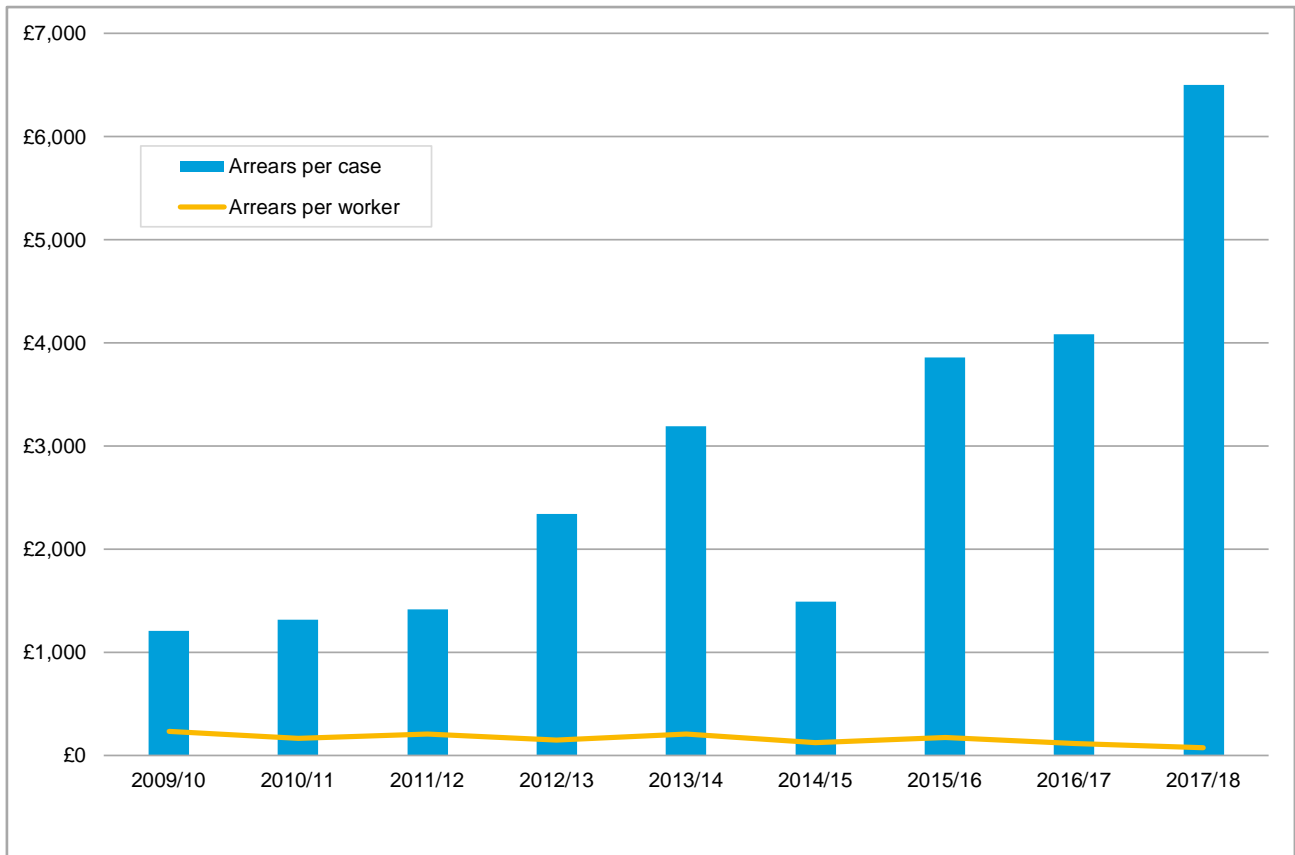
falling from 53%, and the strike rate for targeted cases increasing from 34%); see “Complaint-led and Targeted Enforcement” for further detail.

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

Enforcement across 2017/18

66. Please note that enforcement figures for 2017/18 are provisional and are subject to revision throughout the 2018/19 reporting year as a more detailed audit of cases is completed.
67. Table 4 shows that in 2017/18 the government identified over £15.6 million in arrears for over 200,000 workers. This represents an increase on the number of arrears in 2016/17 (£10.9 million) and more than a doubling in the number of workers identified (98,150 in 2016/17). This is the largest amount of money recovered for the highest number of workers in any single year since the NMW came in to force.
68. Table 4 also shows that a record amount of penalties was issued in 2017/18; totalling just over £14 million, and over three times as much as in the previous year. In 2016 the calculation of penalties that employers are liable for was altered, meaning that employers, whose arrears occurred in a pay reference period from 2016 onwards, are now liable for penalties that are 200% of the underpayment owed to their workers (as opposed to the original 100%, pre-2016). This year’s record penalties shows that this change is taking effect, with employers now facing more severe consequences for breaking minimum wage law.
69. Chart 4 shows that the average arrears per case (in cases where arrears are found) have increased between 2009/10 and 2017/18, and now stand at just over £6,500 per case – the highest amount recorded. However, average arrears for workers in these cases have decreased over the same period, from a high of around £230 per worker in 2009/10 to just under £100 per worker in 2017/18. Whilst HMRC are identifying (on average) higher amounts of arrears per case, a larger number of workers are covered by these cases; resulting in the decrease in the average amount of arrears per worker that has been seen over time. This in part can be explained by an increased focus on cases where non-compliance with minimum wage legislation is perceived to be more widespread and involved a significant number of workers.

Chart 4: NMW investigations, arrears per case and arrears per worker, 2009/10 to 2017/18 (financial year)



Source: BEIS / HMRC enforcement data

Table 4: NMW investigations, 2009/10 to 2017/18 (financial year)

Financial Year	Opened cases	Closed cases	Closed cases with arrears	Strike rate	Arrears	Workers	Penalties Issued	Value of Penalties
2009/10¹	n/a ²	3,643	1,256	34%	£4,390,023	19,245	381	£111,183
2010/11	n/a	2,901	1,140	39%	£3,818,396	22,919	934	£520,568
2011/12	n/a	2,534	968	38%	£3,582,685	17,371	906	£766,807
2012/13	n/a	1,696	736	43%	£3,974,008	26,519	708	£776,517
2013/14	n/a	1,455	680	47%	£4,645,547	22,610	652	£815,269
2014/15	2,328	2,204	735	33%	£3,291,529	26,318	705	£934,660
2015/16	3,246	2,667	958	36%	£10,281,396	58,080	815	£1,780,500
2016/17	2,775	2,674	1,134 ³	42%	£10,918,047	98,150	821	£3,892,381
2017/18	3,975	2,402	1,016 ⁴	42%	£15,615,609	201,785	810	£14,070,621

Source: BEIS / HMRC enforcement data

Notes:

¹ Between 2005/06 and 2009/10, there were 21,208 investigations, which found arrears of £19,094,334 to 101,259 workers and 753 penalties and charges were issued.

² Opened cases data is not currently available on a consistent basis for 2009/10 to 2013/14.

³ An additional 30 cases were originally closed in 2015/16 but the employer notified HMRC of additional arrears in 2016/17. The arrears in these cases are included in the arrears total for 2016/17.

⁴ An additional 30 cases were originally closed in 2016/17 but the employer notified HMRC of additional arrears in 2017/18. The arrears in these cases are included in the arrears total for 2017/18.

Complaint-led and Targeted Enforcement

Complaint-led enforcement

70. Identifying cases to be investigated for NMW breaches is fundamental to the overall enforcement strategy. HMRC respond to every single NMW complaint made by a worker. This is referred to as complaint-led or reactive enforcement. Complaints can be raised via the Acas helpline or an online complaint form (as discussed above, in “Identifying underpayment”). The majority of complaint-led cases were received via the online complaint form (4,161), as opposed to the Acas helpline (1,790) or “other” sources (76).
71. Each complaint HMRC receives is subject to a risk-based triage to determine the most appropriate intervention, taking into account the level of potential non-compliance by the employer and level of confidentiality requested by the worker. The interventions include:
 - i. Nudge letters – employers are written to, alerting them of what they need to do to put things right, and asking them to report back to HMRC
 - ii. Telephone contact with the employer and workers – this is to discuss payroll practices, review business records remotely and take formal action to recover any arrears owed
 - iii. Face to face meeting with the employer and workers – business premises are visited to discuss payroll practices, review business records and take formal action to recover any arrears owed.
72. These actions are proportionate to the level of risk of non-compliance, but geared to ensuring that workers understand their legal entitlements and result in them receiving arrears to recover any arrears owed.
73. As shown in Table 5, the number of closed complaint-led cases in 2017/18 increased by 17% compared the previous year, reversing the trend seen in 2016/17 (where the number of closed complaint-led cases decreased by 24% compared to the previous year).
74. Whilst this is in part due to an increase in the volume of complaint-led cases received (which has more than doubled since the previous year, according to HMRC contact data), the 2016/17 report also anticipated that short-term decline in the number of cases referred to HMRC in 2016/17 would reverse, contributing to an increase in the number of closed complaint-led cases in 2017/18. This year’s data shows this to be the case.
75. Similarly, the value of arrears and number of workers affected in complaint-led cases has dramatically increased over the last year; with the value of arrears doubling from £5.7 million to £11.8 million, and the number of workers affected

rising from just under 30,000 to just under 140,000. This is primarily due to the closure of one complaint-led investigation of a large high street retailer.

Targeted enforcement

76. HMRC also undertake proactive investigations – this is referred to as *targeted enforcement* – based on the identification of the risk of non-compliance. This programme of work has been influenced by HMRC’s risk modelling, BEIS and Director of Labour Market Enforcement analysis, third party intelligence and ministerial priorities. One-to-one meetings with employers, a team-based approach to reviewing some businesses and multi-agency joint working (to tackle risks of cross-cutting illegal behaviours) are all ways in which this targeted enforcement is carried out.
77. The threat of being the subject of proactive enforcement provides a valuable deterrent to employers and supports workers who may not be aware that they are being underpaid or are unwilling to contact Acas. Targeted enforcement is therefore an essential means to reach such workers who are at risk of being underpaid the minimum wage, as these workers may not otherwise come forward to make a complaint.
78. For the 2017/18 reporting year, BEIS and HMRC agreed that the Social Care, Retail & Commercial Warehousing and Gig Economy sectors would be priority areas for targeted enforcement, alongside employment agencies, apprentices and migrant workers. These were chosen based on a combination of quantitative and qualitative data. Data from Pay As You Earn (PAYE) tax records and ASHE is considered alongside findings from HMRC enforcement investigations, intelligence from the Directorate of Labour Market Enforcement intelligence and other enforcement bodies, stakeholder feedback (reported in the Low Pay Commission report) and Ministerial priorities.
79. As Table 6 shows, the level of targeted enforcement activity continued to increase at an overall level in 2017/18; reflecting the increased focus on certain cases where non-compliance with minimum wage legislation is perceived to be more widespread. Just over 1,600 of these cases were opened in 2017/18 – a 27% increase compared to 2016/17.
80. Targeted enforcement accounted for around 41% of all closed cases, compared to 55% in 2016/17 and 41% in 2015/16. Whilst the cases closed this year decreased relative to 2016/17 (to 994 cases, down from 1,473), we would expect the increase in the number of opened cases (as described above) to translate into increased numbers of closed targeted cases in 2018/19.
81. The targeted enforcement cases closed in 2017/18 found arrears for a similar number of workers than the year before (64,000, compared to 68,000 in 2016/17) but yielded a smaller amount of underpayment with £3.8 million compared to almost £5.2 million in 2016/17. In 2017/18 targeted enforcement levied penalties of £3.4m on employers – more than in any previous year.

82. The strike rate in targeted enforcement cases has tended to be lower than in complaint-led cases. This is, in part, a reflection of the fact that it is impossible to perfectly predict whether an employer has underpaid any of its staff based only on risk factors; a complaint tends to be a stronger indication that an employer may have underpaid a worker. However, the strike rate for proactive work has continued to increase, doubling from 19% in 2015/16 to 39% in 2017/18 and almost reaching the record rate of 40% recorded in 2014/15. This is particularly notable given that the strike rate has increased alongside the volume of targeted enforcement cases.
83. We will continue to seek to improve our targeted enforcement approach by exploring the evidence on non-compliance and responding to this. In particular, HMRC have continued to develop a risk model to inform their approach; using data from a range of sources (including PAYE and Tax Credits information) and machine learning to identify workers most at risk of NMW underpayment. The model will continue to be refined in future to inform decisions on which employers should be targeted. Initial findings from the model have yielded encouraging results by identifying businesses with a high risk of underpayment to a high degree of accuracy. In 2017/18, over 600 of targeted enforcement cases were carried out through intelligence from the risk model, as shown in Table 7.

Table 5: NMW investigations, Complaint-led, 2014/15 - 2017/18 (financial year)

	Opened cases	Closed cases	Closed cases with arrears	Strike rate	Arrears	Average arrears / closed case ¹	Workers	No. of penalties issued	Value of penalties
2014/15	2,222	2,053	675	33%	£2,712,144	£4,017.99	21,071	656	£807,293
2015/16	1,237	1,576	752	48%	£3,297,353	£4,384.78	14,594	682	£1,046,751
2016/17	1,516	1,201	640	53%	£5,736,704	£8,963.60	29,860	453	£1,357,763
2017/18	2,372	1,408	624	44%	£11,815,526	£18,935.14	137,332	478	£10,653,885

Source: BEIS / HMRC enforcement data

Note:

¹ Average arrears per closed case includes only cases where arrears have been found.

² The large increase in penalties in 2017/18 is in part due to the increase in the penalty for minimum wage underpayment from 100% to 200% of underpayments

Table 6: NMW investigations, Targeted Enforcement, 2014/15 - 2017/18 (financial year)

	No. of cases	No. of cases with arrears	Closed cases with arrears	Strike rate	Arrears	Average arrears per closed case	Workers	No. of penalties issued	Value of penalties
2014/15	106	151	60	40%	£579,385	£9,656.42	5,247	49	£127,367
2015/16	2,009	1,091	206	19%	£6,984,043	£33,903.12	43,486	133	£733,716
2016/17	1,259	1,473	494	34%	£5,181,343	£10,488.55	68,290	368	£2,534,618
2017/18	1,603	994	392	39%	£3,800,083	£9,694.09	64,453	332	£3,416,736

Source: BEIS / HMRC enforcement data

Table 7: Source of Targeted Enforcement cases, 2015/16 - 2017/18 (financial year)

	Risk Model	BEIS Priority	Third Party Intelligence	Other
2015/16	n/a	Unknown	536	1,473
2016/17	344	593	350	565
2017/18	608	818	390	605

Source: BEIS / HMRC enforcement data

84. Table 8 shows that in 2017/18 there were ten cases with arrears of over £100,000. These cases resulted in the identification of over £11 million in arrears. Large arrears tend to be found in certain cases where a small amount of NMW underpayment affects a large number of workers. These cases may require considerable resource and experienced staff to close. The additional funding given to HMRC this year has enabled staff to pursue such cases, with the number of workers identified in these large cases more than doubling since 2016/17 (from over 78,000 to 174,000 workers).
85. These figures include arrears that were normally assessed (i.e. arrears assessed by HMRC) and those that were self-corrected. Only arrears that are normally assessed are subject to a penalty and are included in the naming announcements.

Table 8: NMW closed cases, arrears and workers by banded arrears per case (2017/18 financial year)

Arrears per case	Closed cases with arrears	Arrears ¹	Workers
£1 - £100	164	£7,796	291
£101 - £500	251	£71,661	1,229
£501 - £1000	132	£94,780	1,122
£1,001 - £5000	307	£713,467	3,931
£5,001 - £10,000	79	£555,978	2,699
£10,001 - £20,000	51	£742,650	4,298
£20,001 - £50,000	36	£1,104,611	7,771
£50,001 - £100,000	16	£1,157,420	6,208
£100,000+	10	£11,167,246	174,236
Total	1,046¹	£15,615,609	201,785

Source: BEIS / HMRC enforcement data

Notes:

¹ An additional 30 cases were originally closed prior to 2017/18 but the employer notified HRMC of additional arrears / workers in 2017/18. The further arrears and workers in these cases are included in the arrears and workers totals for 2017/18.

Self-Correction

86. Self-correction is one of the levers that HMRC use in complaint cases to nudge employers to compliance where the potential arrears owed are low and the number of workers is small. Self-correction allows employers the opportunity to manually correct underpayments before HMRC pursue more severe measures (such as Notices of Underpayment (with attached penalties) and prosecution) if the employer does not take steps to pay workers what they are owed under the law.
87. Where HMRC identify underpayment of a worker or group of workers, self-correction is an approach sometimes used to support effective and efficient enforcement. As well as issuing a Notice of Underpayment detailing the quantity of arrears and penalties an employer must pay, HMRC have the flexibility to instruct the employer to self-correct for the rest of their payroll or for ex-employees – freeing up compliance officers to work on other investigations (for example in response to surges in worker complaint volumes and extending the reach of the targeted enforcement programme). This approach is only used in cases where it is considered appropriate and there is confidence that self-correction will not be abused by the employer. Notwithstanding, in all self-correction cases, HMRC follow up by testing a sample of workers to ensure the arrears due have been correctly calculated and paid to workers.
88. Self-correction was introduced in 2014/15 and has helped to identify a significant amount of arrears and ensure it has been paid back to workers quickly (just under £6m in 2017/18, in line with the previous year) while requiring proportionally less investment of enforcement resources. Arrears achieved via self-correction are included in total arrears figures reported but are not included in the total value of arrears employers are named for. In addition, penalties are only applied to arrears recorded on a Notice of Underpayment (NoU), so self-correction reduces the employer's liability to penalties, but does not reduce the amount of arrears they must repay to workers.
89. In contrast, assisted self-correction describes an instance where employers were encouraged to come forward, outside of an investigation to declare arrears as part of a time limited supported self-review opportunity offered by HMRC; where HMRC worked with cooperative employers to identify and correct arrears.
90. Assisted Self Correction formed part of HMRC's campaign to promote compliance (e.g. awareness-raising, publicity material and information and guidance). Between August 2017 and March 2018, 3,000 letters were issued and 146 contacts to the helpline were received by HMRC. This pilot scheme, resulted in 78 employers coming forward to formally engage with the process and carry out a self-review. From this, 56 declarations were received with £246,000 in arrears identified for 689 workers. HMRC are reviewing the outcomes of the scheme and considering the options going forward.

Nudge Activity

91. Each and every individual worker complaint is followed up by HMRC. Where HMRC estimate the potential arrears owed are low and the number of workers is small, under the NMW triage process for handling worker complaints, a nudge letter may be issued to the employer as the first response; again demonstrating the “compliance” aspect of HMRC’s enforcement approach discussed above.
92. Nudge letters incorporate behavioural economics principles to encourage employers to check for underpayment, repay any arrears and then declare the repayment to HMRC. It encourages future compliance by sending key messages to employers on the consequences of not paying NMW.
93. This approach enables HMRC to minimise the time taken to investigate complaints, support resolution at the earliest stage possible and ensures enforcement action is proportionate to the risk of non-compliance.
94. It also means that HMRC expend proportionate resources for small amounts of arrears for smaller numbers of workers where the employer would respond positively to a nudge to comply. Investigative resources can be used, instead, on employers where non-compliance is more extensive or deliberate. Where employers do not respond to a nudge letter there is a clear escalation route to a full compliance intervention including penalties and referral for naming where Notice of Underpayments are identified.

Table 9: NMW investigations by Notice of Underpayment or Self-Correction 2017/18 (financial year)

Column	Enforcement type	Closed cases with arrears	Arrears	Workers	Penalties
-	Total	1046	£15,615,609	201,785	£14,070,621
A	All arrears within a case assessed by HMRC (captured on NoU)	768	£3,253,304	25,978	£4,125,295
B	All arrears within a case assessed by self-correction	216	£1,700,329	5,035	-
C	Arrears partly assessed by HMRC and partly by self-correction	62	£10,661,976	170,772	£9,945,326
D	<i>Of which</i>	<i>HMRC assessed arrears</i>	£6,439,622	103,869	£9,945,325
E		<i>Self-corrected arrears</i>	£4,222,354	66,903	-
F = A+D	Total HMRC assessed arrears	830	£9,692,926	129,847	£14,070,621
G = B+E	Total self-corrected arrears	278	£5,922,683	71,938	

Source: BEIS / HMRC enforcement data

Notes:

¹ The table includes 30 cases which were originally closed in 2016/17 but the employer notified HMRC of additional arrears in 2017/18.

² Some of the NMW cases with arrears are solely HMRC assessed, some are solely self-assessed and some involve an element of both. These are reported in rows A, B and C respectively.

Penalties, Prosecution and Naming

HMRC continues to ‘Respond’ strongly in cases where workers have been underpaid the minimum wage. Where there is evidence that a minimum wage offence has been committed, HMRC will always consider the case for prosecution. However, criminal prosecutions do not guarantee that arrears are repaid to workers, and further enforcement action may be needed to make sure this happens. This chapter will therefore discuss criminal prosecutions across 2017/18 alongside other enforcement “mechanisms”, including financial penalties and public naming.

Civil Penalties

95. The government uses a mix of civil penalties, criminal prosecutions and the minimum wage naming scheme to deter other employers from underpaying their workers.
96. 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 pursue the civil enforcement route, which is the quickest way of ensuring workers receive their arrears. The civil route includes HMRC conducting an investigation and identifying if workers have been underpaid and then taking enforcement action via the civil courts if payment is not made.
97. Minimum wage underpayment is unacceptable. The government has increased the the civil penalty for minimum wage underpayment. For underpayments which have occurred since April 2016, the penalty is calculated based on 200 per cent of the arrears that workers are owed, subject to prompt payment – employers are incentivised to pay back unpaid wages and penalties in full within 14 days, through a 50% discount in the value of civil penalties
98. Table 4 shows that 810 penalties were issued to employers in 2017/18, a similar number to that in 2016/17 (821). However, the combined total penalties of £14,070,621 is vastly higher than those in 2016/17 (£3,892,381)⁷; a sign that the increase in civil penalties is taking effect.

⁷ There are a number of reasons why the value of penalties collected in one year cannot be directly compared to the total value of arrears reported for that year:

- A 200 per cent penalty calculation is applied to arrears that related to periods on or after 1 April 2016. For underpayment that occurred before this time, a previous penalty calculation will be applied. [continued on the following page]
- Where the total value of arrears owed by an employer amounts to more than £20,000 for one worker, a maximum penalty cap is applied.

Criminal Prosecutions

99. HMRC refer cases to the Crown Prosecution Service who decide whether to prosecute. Prosecutions are reserved for the most serious cases of non-compliance, and are not necessarily the best approach in most cases. Criminal sanctions against companies can mean that workers, the ultimate beneficiaries of NMW enforcement, end up waiting longer for their lost earnings to be paid back.
100. In November 2015, HMRC set up a dedicated Serious Non Compliance (SNC) team focused on targeting the most serious cases of wilful non-compliance and where there may be evidence of modern day slavery, or exploitation, and identifying early when cases may reach the threshold for prosecution. In particular, criminal sanctions are pursued in the following circumstances:
- Where an employer obstructs HMRC during the course of an investigation;
 - Where an employer has repeatedly failed to pay the minimum wage; or,
 - Where an employer has falsified records.
101. The decision on whether to prosecute is ultimately made by the Crown Prosecution Service (CPS)⁸ who will consider all the evidence and whether it is in the public interest to prosecute. The average cost of a prosecution case is estimated to be many times more costly than a civil case, and may not result in the worker getting back what they are owed.
102. In addition, the Immigration Act 2016 created a new labour market undertaking and enforcement order regime. This new regime specifically targets those employers who persistently and brazenly commit breaches of labour law. Businesses can be requested to enter into an undertaking to take steps to prevent further offenses. If a business refuses or fails to comply, then a magistrates' court (or similar in devolved administrations) has the power to impose an Order which **requires** the business to take steps to avoid further offenses.
103. Information on the number of Undertakings and Orders will be a matter of public record and will be included in future reports. There are currently two Labour Market Enforcement Undertakings in place.
104. HMRC's SNC team has established effective operational links with other enforcement agencies. In 2017/18, the team conducted 127 visits in conjunction with Officers from the GLAA, EAS, Home Office Immigration Enforcement and the

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- Where the penalty amounts to more than £20,000 for one worker a maximum penalty cap is applied. In 2017/18, there were only 4 cases where an individual was owed arrears greater than £20,000. There have been no instances so far where the penalty cap has been applied under the current penalty regime.
 - Penalties are only applied to arrears recorded on the Notice of Underpayment, therefore arrears identified as a result of self-correction are not in scope of the penalty regime.

⁸ For England and Wales

Police. Expert NMW witness statements have been provided to assist Police investigations into suspected modern slavery. In addition, the team has participated in several joint Labour Market Enforcement operations targeting employment agencies, poultry farming and employers of migrant workers.

105. Since the introduction of the NMW Act there have been 14 prosecutions; all of which have occurred since 2007. There was one successful prosecution in 2017/18. BEIS and HMRC continue to monitor the number of cases under investigation and considered for prosecution. A project to remove some barriers to prosecution, including updating the prosecution policy and pursuing civil and criminal routes at the same time is under way. A table of all prosecutions is shown in Annex C.

Minimum Wage Naming Scheme

106. Where an employer has been found to have underpaid a worker they will be considered for public naming on the gov.uk website. A naming scheme was originally introduced in 2012 but the strict criteria failed to deliver sufficient numbers of eligible cases. The scheme was revised in 2013 and is now firmly established as part of the civil sanctions used to deter employers from breaking NMW rules.
107. Table 10 shows that since the introduction of the revised scheme, BEIS has named 1,957 employers, who between them owed over £10.7 million in arrears and paid penalties of over £6.4 million (arrears achieved via self-correction are not included in the total arrears employers are named for). BEIS considers all employers for the naming scheme, with the exemption of the following cases:
- Where the investigation commenced before the advent of the naming scheme (October 2013);
 - Where an employer has corrected all of the arrears and paid it back to workers before HMRC have commenced an investigation;
 - Where the arrears owed were £100 or less; and or,
 - Where a case is being considered for criminal prosecution.
108. The vast majority of employers (almost 95%) that are eligible under the naming scheme are ultimately named. It is important to note that employers are not named at the point when a Notice of Underpayment (NoU) is issued. Under the NMW regulations, employers have 28 days to appeal against a NoU. They then have a further 14 days to make representations to BEIS against being named.
109. The published criteria for exemptions to naming include consideration where naming carries a risk of personal harm to an individual or their family, whether there would be a national security risk because of naming, or whether naming would be against the public interest. As such, there can be a lag between the cases accounted for in the enforcement statistics shown in Table 4 and employers named.

Table 10: Employers named for NMW underpayment (revised naming scheme)

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

Source: BEIS / HMRC enforcement data

Note: The arrears figures included as part of naming rounds do not include self-corrected arrears

110. The regular announcements of employers named for minimum wage underpayment continues to attract strong national and local media coverage. Media reports of the naming scheme help to raise awareness of minimum wage rules, how employers have transgressed the rules and the consequences if identified by HMRC. For example, the last naming round of 2017/18 (in March) was extensively covered in the media. The naming round was covered in over 100 separate media pieces, with the round surpassing BEIS' own targets for national, broadcast and trade media coverage.
111. In 2017/18, there have been a number of employers who have publicly announced instances of minimum wage underpayment for a large number of workers, outside of the naming scheme, and who have shown a willing to put this right before an HMRC investigation has been closed.

Enforcement approach for 2018/19

Enforcement evaluation

112. It is critical to determine whether the NMW enforcement approach works and whether it can be refined further to ensure value for money. It is necessary to determine the extent to which the current enforcement approach is effective in order to justify future NMW enforcement spend.
113. Whilst there is already a large amount of high quality data that can be used to assess the effectiveness of NMW enforcement over the last year (as discussed throughout this report), there are areas where this can be improved in order to strengthen analytical insight and to add to our understanding of what is an appropriate approach for enforcing NMW in the future.
114. The data discussed throughout this report only captures those who have come into “contact” with the existing enforcement approach; for example, workers who have made a complaint to HMRC, and employers who have been identified by HMRC as non-compliant with the HMRC. There is little information concerning the broader effect of enforcement, i.e. the extent to which NMW enforcement encourages non-compliant employers to change their behaviour before workers ever make a complaint or before HMRC identify them as non-compliant.
115. In order to understand the true impact of the existing enforcement approach, and to be able to accurately determine the extent to which it acts as a deterrent against non-compliance with the NMW, all areas of NMW enforcement need to be accounted for in the data that we report (encompassing all enforcement activity, from awareness raising, “promote” activity to the penalties, fines and naming sanctions that are applied to non-compliant employers).
116. We have already undertaken initial work to identify areas where existing data can be adapted or improved upon, and where new evidence or research is needed to improve insights into the effectiveness of NMW enforcement.
117. Key areas which we will look to develop include:
 - Improving estimates of non-compliance with the minimum wage;
 - Determining the true drivers of employers’ behaviour;
 - Estimating the deterrence effect of NMW enforcement; and
 - Improving the usability of enforcement data to better inform enforcement strategy and targeting.

118. Work is ongoing on the latest iteration of the Apprenticeship Pay Survey, which will allow us to undertake a thorough assessment of the hourly pay of apprentices. The data from this survey is an important component in monitoring compliance with the Apprentice National Minimum Wage.
119. We would like to be able to calculate the value of the current enforcement approach and to be able to accurately determine the relative value of one enforcement approach over another (to inform the strategy underpinning future NMW enforcement). We are working with the DLME to better understand the scale and nature of non-compliance, as well as evaluating the effectiveness of different levers.
120. Similarly, we are reviewing the effectiveness of the Naming Scheme (as discussed above, in “Minimum Wage Naming Scheme”). We will look to publish a short report on the activity to date of the Naming Scheme in 2019 and will also undertake research on awareness of minimum wage legislation. We will seek to use this work to inform future NMW enforcement, alongside existing intelligence and insights.
121. In addition to reviewing our general approach to enforcement and to the Naming Scheme, we will shortly respond to recommendations made by the DLME to help stop the exploitation of the UK’s lowest paid workers⁹.

Budget and priority areas

122. BEIS increased the funding provided to HMRC for enforcement of the National Minimum Wage to £26.3 million in the 2018/19 financial year. The budget the government dedicates to enforcement of the National Minimum Wage has more than doubled since 2015. This demonstrates the ongoing commitment of the government to ensuring low paid workers are paid fairly and at least the National Minimum Wage.
123. As shown in this report, the increase in financial resource available to enforce the National Minimum Wage is resulting in more wages being returned to workers, a higher volume of financial penalties to noncompliant employers, and a far greater volume of workers who have received backpay as a result of HMRC action.
124. The government’s priority for this financial year and next is to build upon this success and to expand the work of HMRC further to better support low paid workers. HMRC is consolidating and extensive programme of recruitment and expansion as they build new teams to respond to worker complaint, make pro-active investigations of employers, and to run the ‘Promote’ campaign. In particular, HMRC will introduce new targeted programmes to boost compliance on a sectoral basis.

⁹ Director of Labour Market Enforcement (2018) [“United Kingdom Labour Market Enforcement Strategy 2018/19”](#)

125. HMRC will also develop 'Promote' activities through bite size webinars and podcasts on the most common errors and 'how to self-check step by step webinars to encourage employers to carry out a self-review check, pay arrears and voluntary declare. HMRC will share the findings of the targeted programmes through trade press articles highlighting risks in their sector to influence better compliance. HMRC will also aim to improve online guidance for customers to use with confidence to get it right. HMRC will continue to raise awareness amongst workers of entitlement and how to make a complaint using innovative approaches and techniques

Annex A: NMW investigations by Standard Industrial Classification (2007), 2017/18 (financial year)

SIC Division	Sic Division and / or Group Name	Closed cases	Closed cases with arrears	Strike-rate	Arrears (£)	Workers	No. of jobs paid at or below relevant NMW rate
A	AGRICULTURE, FORESTRY AND FISHING	33	11	33%	32,195	16	19,327
B	MINING AND QUARRYING	*	*	*	*	*	141
C	MANUFACTURING	129	48	37%	305,328	923	112,171
10	<i>Manufacture of food products</i>	60	21	35%	153,372	807	45,327
11-33	<i>Manufacture of beverages</i>	69	27	39%	151,956	116	66,844
D	ELECTRICITY, GAS, STEAM AND AIR CONDITIONING SUPPLY	2	1	50%	83	2	889
E	WATER SUPPLY; SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES	9	2	22%	1,213	2	7,402
F	CONSTRUCTION	98	46	47%	391,719	1,150	37,483
41	<i>Construction of buildings</i>	24	12	50%	40,732	31	8,227
42	<i>Civil engineering</i>	6	3	50%	8,396	5	6,171
43	<i>Specialised construction activities</i>	68	31	46%	342,591	1,114	23,085
G	WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	294	133	45%	9,715,307	171,847	410,486

SIC Division	Sic Division and / or Group Name	Closed cases	Closed cases with arrears	Strike-rate	Arrears (£)	Workers	No. of jobs paid at or below relevant NMW rate
45	<i>Wholesale and retail trade and repair of motor vehicles and motorcycles</i>	61	29	48%	60,957	186	49,522
46	<i>Wholesale trade, except of motor vehicles and motorcycles</i>	69	28	41%	103,820	349	50,581
47	<i>Retail trade, except of motor vehicles and motorcycles</i>	164	76	46%	9,550,530	171,312	310,383
H	TRANSPORTATION AND STORAGE	80	19	24%	44,066	116	37,226
I	ACCOMMODATION AND FOOD SERVICE ACTIVITIES	609	243	40%	1,820,253	11,366	382,021
55	<i>Accommodation</i>	192	92	48%	1,350,785	4,840	77,597
56	<i>Food and beverage service activities</i>	417	151	36%	469,468	6,526	304,424
J	INFORMATION AND COMMUNICATION	42	12	29%	7,575	15	16,750
K	FINANCIAL AND INSURANCE ACTIVITIES	9	4	44%	4,907	6	15,749
L	REAL ESTATE ACTIVITIES	36	17	47%	36,006	98	*
M	PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	65	27	42%	348,293	518	33,633
69	<i>Legal and accounting activities</i>	15	5	33%	7,571	26	11,322
70	<i>Activities of head offices; management consultancy activities</i>	10	4	40%	7,883	251	7,677
71	<i>Architectural and engineering activities; technical testing and analysis</i>	4	4	100%	31,540	17	4,676
72	<i>Scientific research and development</i>	3	3	100%	175,270	126	791

SIC Division	Sic Division and / or Group Name	Closed cases	Closed cases with arrears	Strike-rate	Arrears (£)	Workers	No. of jobs paid at or below relevant NMW rate
73	<i>Advertising and market research</i>	11	4	36%	8,115	30	2,110
74	<i>Other professional, scientific and technical activities</i>	16	3	19%	20,927	42	4,599
75	<i>Veterinary activities</i>	6	4	67%	96,987	26	2,458
N	ADMINISTRATIVE AND SUPPORT SERVICE ACTIVITIES	336	126	38%	382,699	8,435	241,214
77	<i>Rental and leasing activities</i>	6	2	33%	5,791	4	7,266
78	<i>Employment activities</i>	82	19	23%	84,148	5,276	89,871
79	<i>Travel agency, tour operator and other reservation service and related activities</i>	9	1	11%	282	1	1,894
80	<i>Security and investigation activities</i>	32	9	28%	10,079	52	9,910
81	<i>Services to buildings and landscape activities</i>	137	62	45%	131,154	1,963	111,657
82	<i>Office administrative, office support and other business support activities</i>	70	33	47%	151,245	1,139	20,616
O	PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY	5	2	40%	5,982	314	8,270
P	EDUCATION	57	27	47%	44,502	138	59,946
Q	HUMAN HEALTH AND SOCIAL WORK ACTIVITIES	228	120	53%	915,515	3,313	187,413
86	<i>Human health activities</i>	69	40	58%	164,934	1,760	33,049
87	<i>Residential care activities</i>	90	51	57%	615,652	1,324	81,166
88	<i>Social work activities without accommodation</i>	69	29	42%	134,929	229	73,198

SIC Division	Sic Division and / or Group Name	Closed cases	Closed cases with arrears	Strike-rate	Arrears (£)	Workers	No. of jobs paid at or below relevant NMW rate
R	ARTS, ENTERTAINMENT AND RECREATION	141	58	41%	192,475	1,567	58,770
S	OTHER SERVICE ACTIVITIES	227	118	52%	441,012	937	69,638
94	<i>Activities of membership organisations</i>	6	2	33%	4,876	4	11,738
95	<i>Repair of computers and personal and household goods</i>	4	1	25%	1,065	2	1,867
96	<i>Other personal service activities</i>	217	115	53%	435,071	931	56,033
T	ACTIVITIES OF HOUSEHOLDS AS EMPLOYERS; UNDIFFERENTIATED GOODS- AND SERVICES-PRODUCING ACTIVITIES OF HOUSEHOLDS FOR OWN USE	2	2	100%	5,626	3	*
U	ACTIVITIES OF EXTRATERRITORIAL ORGANISATIONS AND BODIES	*	*	*	*	*	*
Total		4388	1877	43%	29,014,882	399,255	1,698,529

Annex B: NMW enforcement by workplace region, 2017/18 (financial year)

Region	Closed cases	Closed cases with arrears	Strike rate	No. of jobs paid at or below relevant NMW rate
North East	90	44	49%	87,831
North West	286	142	50%	216,992
Yorkshire and The Humber	221	92	42%	162,037
East Midlands	220	82	37%	147,881
West Midlands	223	93	42%	182,021
East of England	171	77	45%	145,620
London	366	141	39%	156,821
South East	218	87	40%	161,618
South West	144	70	49%	134,538
Wales	122	53	43%	85,413
Scotland	222	84	38%	128,970
Northern Ireland	89	41	46%	*
Total	2372	1006	41%	1,698,513

Source: BEIS / HMRC enforcement data and BEIS analysis of Annual Survey of Hours and Earnings 2017

Notes:

1. Data for the number of jobs paid below the relevant NMW rate in Northern Ireland has not been included due to small sample sizes. The total number of jobs paid below the relevant NMW rate also excludes Northern Ireland.
2. Regional trends may be the result of differences in the concentration of employers across the UK or in the sector composition within a region - for example a region with a large number of employers in low-pay sectors will drive investigations in that region. Furthermore, these figures combine complaint-led and targeted enforcement work and there may be a different pattern when these breakdowns are considered separately.
3. The estimated percentage of employee jobs paid at or below NMW / NLW is based on ASHE 2017 and uses those paid within 5 pence of the NMW / NLW rates.
4. Caution is advised in making direct comparisons between ASHE data and HMRC enforcement statistics. ASHE data is based on a snapshot of pay and hours in April 2017 and assesses pay for a single pay reference period. HMRC enforcement statistics refer to arrears and workers identified across the entire reporting year and may refer to underpaid wages dating back 7 years.
5. The closed cases with arrears column excludes 30 cases which were originally closed in 2016/16 but the employer notified HMRC of additional arrears in 2016/17. These arrears have been included in the 2017/18 total.
6. Geography information is based on employer address postcode (trading address). In some cases, this may be where the NMW underpayment occurred. BEIS have subsequently linked postcodes to the National Statistics Postcode Lookup file for February 2017 to identify Government Office Regions.

Annex C: NMW Prosecutions, 2007/8 to 2017/18

Name of employer	Trading Name	Area	Offence	Fine	Costs	Compensation	Date
1 T Aguda	Rascals Day Nursery Ltd	Walthamstow	31 (5) (a)	£2,500	£500	Nil	28/08/2007
2 Torbay Council		Torquay	31 (5) (b)	£1,000	£500	Nil	01/10/2007
3 R Singh	Pound Mania	Nottingham	31 (5) (b)	£500	£150	Nil	30/04/2008
4 David Jackson	Jackson's Butchers	Sheffield	31 (1); 31 (2); 31 (3); 31 (4).	£700	£100	£9,065.85	02/07/2008
5 Pauline Smout	Jackson's Butchers	Sheffield	31 (1); 31 (2); 31 (3); 31 (4)	£100	£100	£2,009.74	02/07/2008
6 Zaheer Ibrahim	The Jewel in the Crown	Nottingham	31 (5) (b)	£3,500	£100	Nil	21/07/2008
7 Ahmed Yassine	The Phoenix Hotel	Rotherham	31 (2); 31 (5) (b)	£2,250	£500	Nil	13/02/2009
8 B G Optical		Manchester	31(1); 31(2); 31(3); 31(4); 31(5)(a); 31(5)(b)	£3,696	£820	Nil	23/06/2010
9 Widescope Security		London	31(1); 31(5)(b)	£1,000	£1,000	Nil	26/02/2013
10 Amanda Barrett	Amanda's Precious Bubbles Day Nursery Ltd	Birmingham	31(1); 31(2)			£3,247	11/05/2016
11 Richard Hunt	The Rock Hotel (Weymouth) Ltd	Weymouth	31(5)(a); 31(5)(b)	£500		Nil	13/05/2016
12 L.UK/Euro (Brighton) Ltd	3D Telecon	Oldham	31(1); 31(5)(a)	£5,000	£1,860	£9,300	04/08/2016

Name of employer	Trading Name	Area	Offence	Fine	Costs	Compensation	Date
13 Dida Brothers Car Wash		Southampton	31(1); 31(2)	£14,000 or face possible 12-month jail term	£2,000	£4,403	08/12/2016
14 Brialyn Limited		Birmingham	31(5)(a); 31(5)(b)	£2,977	£633	Nil	17/08/2017

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