



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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**Department for Business, Innovation & Skills  
and HM Revenue & Customs**

# Ensuring employers comply with National Minimum Wage regulations

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Department for Business, Innovation & Skills  
and HM Revenue & Customs

# Ensuring employers comply with National Minimum Wage regulations

Report by the Comptroller and Auditor General

Ordered by the House of Commons  
to be printed on 9 May 2016

This report has been prepared under Section 6 of the  
National Audit Act 1983 for presentation to the House of  
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB  
Comptroller and Auditor General  
National Audit Office

6 May 2016

This briefing examines the government's processes for investigating complaints about employers not complying with National Minimum Wage regulations.

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## Key facts

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**209,000**

estimated number of jobs which pay less than the National Minimum Wage held by employees aged 16 and over in April 2015<sup>1</sup>

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**£20m**

2016-17 budget for HMRC compliance and enforcement activities

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**£68m**

the amount HMRC has identified in underpayments of the minimum wage, covering some 313,000 workers, since enforcement began in April 1999

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<b>469</b>	cases closed by HMRC between 1 April 2015 and 31 March 2016 taking longer than 240 days (17% of caseload)
<b>61%</b>	proportion of cases arising from worker complaints closed within 179 days 1 April 2015 and 31 March 2016
<b>£5.6 million</b>	in penalties levied on employers between 2009-10 to 2015-16
<b>490</b>	employers named and shamed so far
<b>269</b>	full-time equivalent HMRC staff working on compliance and enforcement as of March 2016
<b>11%</b>	one available estimate of the proportion of workers in the care sector being underpaid the National Minimum Wage
<b>141</b>	current HMRC investigations into complaints of non-compliance with the National Minimum Wage in the social care sector as of March 2016

**Note**

1 Office for National Statistics, Statistical bulletin: *Low Pay*: April 2015, 18 November 2015.

# What this briefing is about

**1** This briefing examines the government's processes for investigating complaints about employers not complying with National Minimum Wage regulations. This issue is important as underpayments can cause significant hardship to low-paid workers, who may have to wait a long time before they receive arrears. Also, correspondents have raised concerns with us about the time it takes for the government to investigate and conclude on individual cases and the prevalence of non-compliance in the social care sector.

**2** Compliance and enforcement with the National Minimum Wage has also been raised in Parliament and in the media. Most recently, the Committee of Public Accounts, citing evidence from Unison and concerns about home care workers, heard evidence from HMRC on 13 January 2016 on the National Minimum Wage. The Committee also raised questions on how complaints from third parties are investigated, the support and protection offered to people making complaints and the penalties for non-compliance.<sup>1</sup>

**3** In November 2015, the Office for National Statistics published its latest Annual Survey of Hours and Earnings which showed that around 209,000 workers (aged 16 and over) were paid less than the rate of the National Minimum Wage.<sup>2</sup> This constitutes 0.8% of UK employee jobs.<sup>3</sup> The number has been largely unchanged since 2011.

**4** We therefore decided to review the concerns raised by correspondents and considered:

- the government's oversight and management of investigations (Part Two);
- the time it takes for the government to respond to complaints of non-compliance and, where appropriate, to issue notices of underpayment so that arrears for individuals can be recovered (Part Three); and
- enforcement of the National Minimum Wage in the care sector (Part Four).

**5** Our review does not cover government policy. It focuses only on how the government ensures that employers comply with the policy and related regulations.

<sup>1</sup> HC Committee of Public Accounts, *Tackling Tax Fraud*, oral evidence – 13 January 2016, HC 674, questions 2–14.

<sup>2</sup> Non-compliance can be estimated through the Annual Survey of Hours and Earnings (ASHE). ASHE is a survey of employees completed by employers which can be used to identify jobs paid below the NMW rate. However, it does not offer a direct measure of non-compliance in the population as there are legitimate reasons for a job to be paid below the NMW, for example where accommodation is provided by the employer. In addition, as results from ASHE are based on a sample of employee jobs in Pay-As-You-Earn income tax schemes, it does not include all workers who earn below the Lower Earnings Limit. The government considers ASHE to be an accurate measure of pay information in the formal economy; however an evidence gap remains in reliable earnings data in the grey economy.

<sup>3</sup> Statistical bulletin: *Low Pay*: April 2015, 18 November 2015, Office for National Statistics. Available at: [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/april2015](http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/april2015)

# Summary

**6** The National Minimum Wage is the minimum pay per hour almost all workers are entitled to by law. It is intended to protect as many low-paid workers as possible without reducing jobs or damaging the economy. The National Living Wage came into force on 1 April 2016. The Department for Business, Innovation & Skills (BIS) is responsible for policy and strategy and HM Revenue & Customs (HMRC) carries out compliance and enforcement activity on BIS's behalf. Investigations arise from two key sources: direct contact from people making a complaint; or targeted enforcement campaigns launched by the government based on its own risk assessment.

## Key findings

Oversight of compliance and enforcement

**7** **There is no accurate overall measure of non-compliance with the National Minimum Wage regulations and, as a result, it has been difficult to assess the effectiveness of HMRC enforcement activities over time.** BIS continues to undertake work to obtain a more accurate assessment of the level of non-compliance in the social care sector but, after a decade of compliance and enforcement programmes, there is insufficient evidence that such programmes have led to a sustained reduction in non-compliance (paragraphs 2.3 and 2.4).

**8** **The government has increased the resources available for compliance and enforcement with the National Minimum Wage.** For 2016-17, the government has increased the budget to £20.0 million compared to £13.2 million in 2015-16 and £9.2 million in 2014-15. The additional funding has led to a substantial increase in the number of HMRC staff employed to tackle non-compliance (paragraphs 2.11, 2.12 and Figure 1).

**9** **The number of referrals passed to HMRC from the helpline has reduced significantly in the period April to December 2015.** HMRC received 1,340 referrals (covering complaints from individual workers and intelligence received from third party information) compared to 2,327 a year ago, a 42% reduction. BIS changed the administrator of the helpline in April 2015 and is currently assessing how this change, alongside other factors, may have affected the number of calls (paragraphs 2.6 and 2.7).



**10 Both BIS and HMRC have strengthened the sanctions which they are able to apply to non-compliant employers.** Since October 2013, BIS has regularly named and shamed non-compliant employers. Between October 2013 and February 2016, it has published the details of 490 employers who failed to pay their workers the National Minimum Wage. Between 2009-10 to 2015-16, HMRC has imposed penalties of £5.6 million on non-compliant employers. The government has increased the penalties from 100% to 200% of the amounts employers found to have underpaid their workers. This applies to underpayments from 1 April 2016. Between 1999 and February 2016, HMRC has prosecuted nine employers who fit the criteria set by BIS. One further court case was heard on 5 February 2016 and sentencing is pending (paragraphs 3.7 to 3.10).

### Investigating complaints

**11 Since the government began enforcing the National Minimum Wage in April 1999, HMRC has identified £68 million in arrears for over 313,000 workers.** In 2015-16, HMRC identified £10.3 million in arrears for just over 58,000 workers compared to £3.3 million in arrears for just over 26,000 workers in 2014-15. In 2015-16, it carried out checks to ensure that 98% of directly identified arrears have been repaid to workers (paragraph 3.7).

**12 HMRC has significantly reduced the average time taken to investigate complaints.** As of October 2015, HMRC reported that it had reduced the average time it takes to close cases. Of cases opened and closed within the same financial year, average time had reduced from 170 calendar days (in 2013-14) to 82 calendar days (in 2014-15) – an overall reduction of 52%.<sup>4</sup> Our analysis of HMRC's current caseload (as at December 2015) shows that 72% of open cases are aged less than 120 days compared to 61% of open cases in December 2014 and 42% in December 2013. A number of factors are likely to have contributed to the speeding up of investigations, such as increases in resources and a greater focus on timeliness through the service level agreement. It may take time before the relative importance of these factors is fully understood (paragraphs 3.2 and 3.3 and Figure 3).

**13 Some complainants still have to wait over 240 days to get their case resolved by HMRC.** Between 1 April 2015 and 31 March 2016 HMRC closed 469 cases (17% of caseload) which had exceeded 240 days in duration. Arrears at the end of December 2015 averaged at £164 per worker (paragraph 3.3 and Figure 3).

**14 The time taken to investigate complaints varies considerably and depends on a number of factors such as the complexity of cases and the cooperation of the employer.** One of the main reasons for lengthy investigations is the quality of the employer's business records and their reliability as evidence to support compliance with the regulations. Employers may have to construct worker pay records so that HMRC can check compliance (paragraph 3.5 and 3.6).

<sup>4</sup> Interim Evidence to the Low Pay Commission, October 2015.

The social care sector

**15 Non-compliance with the National Minimum Wage in the social care sector remains a concern.** The Low Pay Commission continues to assess this sector as high risk but accurately estimating the level of non-compliance in social care has so far proved difficult because of differences in data sources. Current estimates range from 0.8% to 12.9% of care workers who may not be paid the National Minimum Wage. In its report on *The scale of minimum wage underpayment in social care*, the Resolution Foundation estimated the prevalence of non-compliance to be 11%, equivalent to 160,000 direct care jobs paying below the minimum wage in 2013-14.<sup>5</sup> It further estimated the average underpayment as £815 per worker considerably more than the average arrears across all sectors. BIS continues to undertake work to obtain a more accurate assessment of non-compliance in the social care sector. (paragraphs 4.4 and 4.5).

**16 BIS re-classified the social care sector as a high priority sector for 2015-16.** BIS allocates areas for HMRC to focus on when it revises its service level agreement each year, based on available evidence and HMRC's historic activity in particular sectors. In 2014-15, BIS did not classify the care sector as a priority although HMRC continued to investigate cases in this sector. Between 2011 and 2013, HMRC undertook targeted enforcement work in the social care sector, some of which continued in 2014-15. From April 2015 BIS classified social care as a priority area. This means that care sector complaints are fast tracked. In the period from 1 April 2015 to December 2015, HMRC closed 172 investigations into the care sector, 91 of which were aged less than 120 working days, and is currently investigating a further 141 employers comprising 107 complaints and 34 proactive risk-based investigations (paragraphs 4.7 to 4.9).

<sup>5</sup> *The scale of minimum wage underpayment in social care*, Resolution Foundation, February 2015: estimates based on research from Dr Shereen Hussein. Available at: [www.kcl.ac.uk/sspp/policy-institute/scwru/pubs/periodical/2011/issue16.aspx](http://www.kcl.ac.uk/sspp/policy-institute/scwru/pubs/periodical/2011/issue16.aspx)

# Part One

## Background

### The National Minimum Wage

**1.1** The National Minimum Wage is the minimum pay per hour almost all workers are entitled to by law. It is intended to protect as many low-paid workers as possible without reducing jobs or damaging the economy.

**1.2** In its annual report for 2016, the Low Pay Commission estimated that there were 1.4 million (5.2%) jobs paid at or below the minimum wage in the UK as of April 2015.<sup>6</sup> The Office for National Statistics estimates that there 209,000 jobs with pay less than the National Minimum Wage (NMW) held by employees aged 16 and over in April 2015, which constituted 0.8% of UK employee jobs.<sup>7</sup> This was down from 222,000 (0.8%) in April 2014.

**1.3** The adult National Minimum Wage is currently £6.70 per hour. From 1 April 2016, the new National Living Wage came in to effect and is set initially at £7.20, with future increases recommended by the Low Pay Commission. The National Minimum Wage will continue to apply for those aged under 25.

**1.4** This part outlines how the government ensures employers comply with National Minimum Wage regulations.

### Roles and responsibilities

**1.5** The Department for Business, Innovation & Skills (BIS) is responsible for the policy on National Minimum Wage, including enforcement and compliance and setting National Minimum Wage rates. It also provides employer education and guidance. The Secretary of State for Business, Innovation & Skills appointed HM Revenue & Customs (HMRC) to act as the enforcement body for the National Minimum Wage.

<sup>6</sup> Low Pay Commission, *National Minimum Wage: Low Pay Commission Report 2016*, March 2016. Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/507455/10493-TSO-Low\\_Pay-ACCESSIBLE\\_05.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507455/10493-TSO-Low_Pay-ACCESSIBLE_05.pdf)

<sup>7</sup> Statistical bulletin: *Low Pay*: April 2015, 18 November 2015, Office for National Statistics. Available at: [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/april2015](http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/april2015)

## **Investigations and sanctions**

**1.6** Since the introduction of the National Minimum Wage in April 1999, HMRC has identified £68 million in arrears for over 313,000 workers. Investigations into possible non-compliance with the National Minimum Wage can be either reactive or proactive. Reactive investigations start in response to complaints from workers or intelligence received from third parties, either by telephone, post or online. HMRC also intervenes more proactively, based on its risk-profiling exercises – for example, it is currently investigating the social care, hairdressing and retail sectors.

**1.7** Where HMRC concludes that the National Minimum Wage has not been paid to a worker or group of workers, it can issue a Notice of Underpayment to the employer which sets out the arrears to be paid together with a penalty imposed on the non-compliant employer. The government has increased the scale of penalties twice in the last two years: firstly from 50% to 100% of the underpayment in March 2014; and secondly, since 1 April 2016, from 100% to 200% of underpayments. In March 2014, the maximum penalty that HMRC could impose increased from £5,000 per employer to £20,000 per worker (paid below the minimum wage).

**1.8** In 2015, HMRC also introduced 'self correction' where, following an intervention from HMRC, employers are required to self-correct underpayments of the National Minimum Wage. Since 1 April 2015, 177 employers have notified self-corrected arrears, identifying £4,614,929 for 22,607 workers. The employers are in the process of repaying this money to workers and ex-workers. HMRC is also responsible for checking that these arrears have been paid.

**1.9** From 1 January 2011, BIS has had the option to publish the name of employers who do not comply with National Minimum Wage regulations. However, the criteria for 'naming and shaming' was extensive and, only after this was simplified from 1 October 2013, did BIS begin to regularly publish details of non-compliant employers.

**1.10** HMRC also considers whether to refer employers to the Crown Prosecution Service for prosecution where the cases meet the prosecution policy set out by BIS and where they consider that it would 'do most to promote compliance with the law by deterring employers who deliberately disregard the [National Minimum Wage] 1998 Act'. In September 2015, the government announced it was to set up a new HMRC specialist enforcement team to investigate serious non-compliance and identify the worst offenders for possible criminal investigation. The team will also work closely with other agencies to tackle labour market abuse and serious exploitation.

# Part Two

## Oversight and monitoring

### Summary

**2.1** The Department for Business, Innovation & Skills (BIS) has overall responsibility for National Minimum Wage policy and oversees compliance and enforcement work. It also operates, through a third party (the Advisory, Conciliation and Arbitration Service – ACAS), a helpline for callers to make a complaint about underpayment. BIS also manages its relationship with HMRC through a service level agreement and measures compliance with the service level agreement through a set of performance indicators and monthly meetings.

**2.2** This part considers the role of BIS and oversight and monitoring arrangements for the government's compliance and enforcement activities.

### The Facts

#### Estimating non-compliance

**2.3** There is currently no accurate estimate of an employees' non-compliance with the minimum wage regulations and obtaining such an estimate has been problematic. The Low Pay Commission's Annual Report for 2016 refers to the difficulties of obtaining an accurate measure of non-compliance. The best single source of official data available is the Office for National Statistics' latest Annual Survey of Hours and Earnings (ASHE) which showed that around 209,000 workers (aged 16 and over) were paid less than the minimum wage, representing around 0.8% of UK employee jobs.<sup>8</sup> BIS continues to undertake an analysis of its own to estimate overall compliance levels in the social care sector.

**2.4** One measure BIS uses to assess the success of HMRC's activities is 'strike rates'. This is the proportion of cases HMRC investigates where it finds non-compliance. Increasing strike rates is not necessarily a positive outcome because, while they illustrate that HMRC is targeting compliance and enforcement in the right areas, they can be an indicator of increasing employer non-compliance. HMRC also provides BIS with a suite of input and output indicators as part of its performance reporting, in the form of a scorecard. However, in the absence of a continuously measured estimate of overall compliance it is difficult to assess whether interventions are successfully minimising the levels of non-compliance in the longer term.

<sup>8</sup> Statistical bulletin: *Low Pay*: April 2015, 18 November 2015, Office for National Statistics. Available at: [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/april2015](http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/april2015)

## The ACAS helpline

**2.5** The ACAS helpline provides free and confidential advice to employers, employees and their representatives on employment rights – including enquiries about the National Minimum Wage. Where an individual or third party wishes to make a complaint, ACAS will transfer their call to HMRC. Individuals and third parties continue to be able to complain directly online to HMRC should they wish to do so. From 1 April 2015, the ACAS helpline took over responsibilities for National Minimum Wage enquiries from the Pay and Work Rights Helpline which previously handled these calls. The helpline number and website are included on promotional material for workers and employers. Ministers give details of the helpline in response to parliamentary questions and correspondence, encouraging workers and employers to access the free and confidential advice. The number is also publicised when the government issues press notices.

**2.6** Until recently, the number of calls which the helpline referred to HMRC had been increasing. In 2014-15, HMRC received 3,180 referrals (worker complaints and third party intelligence), a 40% increase from 2013-14. However, for the period April to December 2015, this trend has reversed with 1,340 referrals compared to 2,327 for April to December 2014, a 42% reduction. The volume of intelligence from third parties has also reduced by the same proportion from 485 to 281. Third party calls are 21% of the total number of referrals.

**2.7** BIS has analysed the pattern of calls made to the helpline throughout the year, and reports notable spikes around the time of the October rate changes and 'naming' announcements. There were two more peaks in enquiries in July 2015, likely to be a result of the National Living Wage announcement and another naming announcement. However, these increases in enquiries have not resulted in the number of referrals returning to 2013-14 and 2014-15 levels. BIS is working with HMRC and ACAS to understand more about the fall in referrals and to agree any steps necessary to ensure calls are being handled appropriately.

**2.8** Where an employee is willing to be named, HMRC can investigate a case more quickly but it can also investigate cases where the worker wishes to be anonymous.<sup>9</sup> BIS told us, for example, that between April 2014 and November 2014, the helpline received 1,590 calls from workers in the care sector but a further 2,630 were not prepared to provide details of their employment sector.

**2.9** In early 2014-15, BIS amended its service level agreement with HMRC to include a key performance indicator that HMRC should attempt to contact 100% of complainants within 10 days of their call to the helpline. This measure identified delays in the time taken to respond to calls (6 to 8 weeks) and, in response, HMRC changed its processes. In April 2015, BIS revised this target to 100% within five days. For the period April to December 2015, 100% of cases have met this target.

<sup>9</sup> By 'named' we mean to the helpline and HMRC investigating officers only.

## The service level agreement

**2.10** BIS updates a service level agreement with HMRC each year and sets HMRC's priorities and budget for the year ahead. To decide on these, it analyses HMRC's performance and identifies priority areas by analysing results in previous years, as well as considering evidence from other sources (such as from the Low Pay Commission). Since April 2014, the service level agreement has placed greater emphasis on the need to reduce the time taken by HMRC to resolve a complaint. For example, HMRC has to report on the number of cases it closes within specific time frames.

## Allocation of resources

**2.11** The resources available for compliance and enforcement of the National Minimum Wage remained relatively stable until 2015-16 when the government increased the enforcement budget by 43% to £13.2 million (**Figure 1**). The government announced another substantial increase in resources for 2016-17 to £20.0 million. Similarly, the number of full-time equivalent staff employed by HMRC to enforce compliance remained in the range of 139 to 158 from 2008 to 2014. The recent increase in resources has led to a significant increase in staffing numbers which stood at 269 at March 2016. This is set to rise further to nearly 300 early in 2016-17.

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### Figure 1

#### Resources for compliance and enforcement 2006-07 to 2016-17

Year	Funding (£m)	FTE Staff
2006-07	5.8	Not available
2007-08	6.8	Not available
2008-09	7.6	139
2009-10	8.3	140
2010-11	8.1	142
2011-12	8.3	138
2012-13	8.3	142
2013-14	8.3	158
2014-15	9.2	183
2015-16	13.2	269
2016-17 (estimate)	20.0	

Source: PQ 16938 8 December 2015 and departmental data

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**2.12** In the 2015 Budget, the Chancellor announced an additional £1 million of funding (bringing the total to £13.2 million). In September 2015, the government announced the following additional measures:

- increased enforcement budget for future years;
- the establishment of a 'Promote Team', whose role is to increase compliance in employers before enforcement becomes necessary;
- a dedicated team of officers experienced in criminal investigation to take forward cases where there is suspected wilful non-compliance;
- an increased emphasis on director disqualification; and
- an increase in penalties for underpayment to 200% of arrears.

### Balancing reactive and targeted compliance work

**2.13** BIS's 2014-15 and 2015-16 service level agreements with HMRC stipulated that 100% of all complaints made to the helpline must be followed up. Although HMRC complied with this requirement, a substantial increase in the number of complaints received reduced the resources available for pro-active investigations. The government's additional funding for 2015-16 has enabled HMRC to invest more resources on targeted enforcement activity. For example, HMRC is now undertaking a range of risk-based investigations across the hairdressing, social care and retail sectors to gain assurance on employers' compliance with the National Minimum Wage. Of the total number of cases open at 31 December 2015, HMRC had 748 targeted enforcement cases open comprising 50% of the total.

**2.14** In addition to these direct measures, HMRC also undertakes other interventions to ensure employers are aware of their duties. In July 2015, HMRC announced a new campaign to improve compliance in the hairdressing sector and is providing a facility for employers to check that they are paying their employees correctly and ensure any outstanding arrears are paid back to employees.

**2.15** Between April and December 2015, the 'strike rate' (the proportion of cases closed in that period which resulted in arrears for workers) was 42% for worker complaints and 11% for targeted enforcement cases. HMRC has conducted research into the low strike rate for targeted enforcement cases in April to December 2015, and found that it relates to cases opened in the early part of the year based on information from third parties. HMRC told us that certain types of intelligence are not specific enough to provide accurate and effective information on which to base an investigation. Information from third parties now only forms a minority of HMRC's targeted enforcement programme reducing from 88% in May 2015 to 10% in March 2016.



# Part Three

## Investigating complaints

### Summary

**3.1** Correspondents to the National Audit Office criticised the length of time it takes for HMRC to close an investigation into non-compliance with the National Minimum Wage. The time taken to investigate complaints varies depending on the complexity of cases. This part considers investigations into non-compliance with the National Minimum Wage.

### The facts

#### Customer waiting times

**3.2** HMRC has significantly reduced the time taken to investigate complaints reducing the average time it takes to close cases from 170 to 82 calendar days – an overall reduction of 52%. The Department for Business, Innovation & Skills (BIS) and HMRC have developed several indicators to measure the time HMRC takes to investigate complaints (**Figure 2** overleaf). HMRC has a target to complete 80% of all investigations within 240 days and, as of December 2015, it is achieving a rate of 87%.<sup>10</sup> A number of factors are likely to have contributed to HMRC's improving performance in closing cases quicker. For example, increases in resources, a change in the service level agreement to focus on clearance times, and changes to the investigations process. These developments are relatively new and it may take time before the relative importance of the reasons for this improvement in performance is fully understood.

**3.3** We analysed HMRC's caseload as at 31 December 2015 and found that 625 open cases (43%) have been open less than 60 days (compared to 27% in the same period in 2014) (**Figure 3** overleaf). Between 1 April 2015 to 31 March 2016, HMRC closed 469 complaints which had taken in excess of 240 days to complete (17% of all cases closed in in that period). Average arrears at the end of December 2015 were £164 per worker. There are also some cases where the employer takes an appeal to Employment Tribunal or HMRC passes the case to the Crown Prosecution Service to consider prosecution. Ten of the cases open over 240 days at the end of December 2015 fell into these categories, with a further 15 reopened to attach further correspondence.

<sup>10</sup> This target was reduced from 85% to 80% in 2015-16.

**Figure 2**

HMRC performance measures on time taken to investigate complaints April to December 2015

Description	Target	Actual
Percentage of worker complaints considered by HMRC	100	100
Percentage of complaints where HMRC attempts to contact within five days	100	100
Percentage of investigations completed within 240 working days	>80	87
Percentage of open cases over 300 days old	<7	3
Percentage of open cases over 120 days old	<50	30

**Note**

1 Data for the period 1 April to 27 December 2015.

Source: National Minimum Wage Scorecard December 2015

**Figure 3**

Analysis of age of HMRC open cases 2014 and 2015

Days	0–59	60–119	120–179	180–239	240–299	Over 300	Total
December 2015	625	416	215	115	45	35	<b>1,451</b>
	43%	29%	15%	8%	3%	2%	
December 2014	332	421	152	101	52	182	<b>1,240</b>
	27%	34%	12%	8%	4%	15%	

**Note**

1 Data for the period April to December 2014 and April to December 2015.

Source: National Audit Office analysis of Minimum Wage Scorecard, April to December 2015

**3.4** HMRC's strike rate on all cases was 32% for the year ending December 2015. Strike rates vary by sector, for example, in complaint-led cases reported in the period 1 April 2015 to December 2015, HMRC identified arrears in 65% of the cases it investigated for apprentices, 28% for interns, 67% for hairdressing and 16% in the social care sector cases reported in the period 1 April 2015 to December 2015.

## Factors influencing the length of an investigation

**3.5** The time each case takes depends on several factors, such as its complexity, the size of employer, the cooperation of the employer and the enforcement route required. For example, problems may arise when employers have previously not fully understood the requirements of the National Minimum Wage, leading to records not being kept in a format suitable for calculating hourly pay. As a result, employers can often drip-feed information, which can lengthen the investigation process.

**3.6** Other factors include:

- until recently, HMRC's standard approach to resolving complaints from workers was to gain assurance of employers' compliance across all the workforce, not just in respect of the pay of the worker who had lodged the complaint with HMRC;
- delays in the employer producing business records;
- complex payroll records – especially where several smaller companies have been taken over by a larger company and workers have different contracts under TUPE arrangements;
- exchanges of correspondence between HMRC and the employer and the worker(s) to clarify technical issues;
- employers challenging HMRC's initial calculation of arrears and HMRC resolving or clarifying the points of contention;
- delays in employers constructing worker pay records so that HMRC can check that they comply with minimum wage regulations;
- employers appealing against HMRC's assessment of arrears to an employment tribunal;
- employers failing to pay arrears as notified on the notice of underpayment and HMRC preparing case papers for legal recovery of the debt; and
- a criminal investigation of the employer into potential breaches of regulations.

## Underpayments and recovery

**3.7** Since the government began enforcing the National Minimum Wage in April 1999, HMRC has identified £68 million in arrears for over 313,000 workers. In 2015-16, HMRC identified £10.3 million in arrears for just over 58,000 workers compared to £3.3 million arrears for just over 26,000 workers in 2014-15. In 2015-16, it carried out checks to ensure that 98% of directly identified arrears have been repaid to workers.

## Sanctions

**3.8** Civil penalties for non-compliance with the National Minimum Wage were introduced on 6 April 2009. Since then, penalties have increased every year (**Figure 4**). During 2009-10 to 2015-16, HMRC issued penalties totalling nearly £5.6 million (£1.7 million in 2014-15).

### Figure 4

#### Arrears identified and penalties 2009-10 to 2015-16

	Closed cases	Arrears identified (£m)	Workers covered	Average arrears (£)	Penalties (£)
2009-10	3,643	4.39	19,245	228	111,183
2010-11	2,901	3.82	22,919	167	520,568
2011-12	2,534	3.58	17,371	206	766,807
2012-13	1,696	3.97	26,519	150	776,517
2013-14	1,455	4.65	22,610	205	815,269
2014-15	2,204	3.29	26,318	125	934,660
2015-16	2,667	10.3	58,080	177	1,679,240
<b>Total</b>	<b>17,100</b>	<b>34.0</b>	<b>193,062</b>	<b>176</b>	<b>5,604,244</b>

Source: Final government evidence to the Low Pay Commission's 2016 Report

**3.9** Between October 2013 and February 2016, BIS has named 490 employers for non-compliance, with total arrears of over £3 million (**Figure 5**).

**3.10** Between 1999 and February 2016, HMRC has prosecuted nine employers for non-compliance with the National Minimum Wage, with one further case awaiting sentencing. Both BIS and HMRC are cautious in using prosecutions as a sanction because they believe that criminal sanctions against companies mean that employees, the ultimate beneficiaries, end up waiting longer for their arrears to be paid back, or may not receive the arrears at all if prosecution puts the company out of business. Both Departments question whether prosecutions provide value for money because of the cost of court proceedings.

**Figure 5**  
Employers named for underpayments since October 2013

Date of naming	Employers named	Arrears recovered (£)	Workers covered	Average arrears (£)
February 2014	5	6,866	6	1,144
June 2014	25	43,907	78	563
November 2014	25	89,601	80	1,120
January 2015	37	177,114	806	220
February 2015	70	157,674	405	389
March 2015	48	162,791	4,026	40
July 2015	75	154,964	293	525
November 2015	113	387,504	1,693	229
February 2016	92	1,873,712	3,352	559
<b>Total</b>	<b>490</b>	<b>3,054,133</b>	<b>10,739</b>	

**Note**

1 In October 2013, BIS simplified the criteria for naming and shaming non-compliant employers.

Source: Final government evidence to the Low Pay Commission's 2016 Report

## Part Four

### Enforcement and compliance in the care sector

#### Summary

**4.1** The Low Pay Commission and the Resolution Foundation have separately estimated that around 11% of workers in the social care sector may not be receiving the National Minimum Wage.<sup>11</sup> This may be due in part to complex franchise arrangements and paying for travel time, premium services and training. This can also increase the time it takes to resolve complaints.

**4.2** The Resolution Foundation estimated that front-line care workers across the UK lost out on £130 million in wages during 2013-14 because their employers did not comply with the National Minimum Wage.<sup>12</sup> In its two-year review to 31 March 2013, HMRC found that levels of non-compliance in the care sector were higher than in any previous year since 1 April 2008.<sup>13</sup>

**4.3** This part considers compliance and enforcement activity within the care sector.

#### The facts

**4.4** The Low Pay Commission continues to assess the social care sector as high risk. Estimates vary between 0.8% and 12.9% of workers are not being paid the minimum wage in this sector, depending on the data source. In its report *Adult social care in England*,<sup>14</sup> the Committee of Public Accounts was concerned to learn that up to 220,000 people working in the care system earn less than the minimum wage. However, the government has yet to accurately quantify the level of non-compliance with the National Minimum Wage in the care sector and is currently undertaking further analysis to establish a true picture. The Low Pay Commission notes that current estimates are sensitive to the assumptions made about unpaid hours.<sup>15</sup>

<sup>11</sup> Low Pay Commission, *National Minimum Wage Low Pay Commission Report 2014*, March 2014, paragraph 4.39.

<sup>12</sup> *The scale of minimum wage underpayment in social care*, Resolution Foundation, February 2015: estimates based on research from Dr Shereen Hussein at: [www.kcl.ac.uk/sspp/policy-institute/scwru/pubs/periodical/2011/issue16.aspx](http://www.kcl.ac.uk/sspp/policy-institute/scwru/pubs/periodical/2011/issue16.aspx)

<sup>13</sup> HM Revenue & Customs, *National Minimum Wage compliance in the social care*, November 2013.

<sup>14</sup> HC Committee of Public Accounts, *Adult social care in England*, Sixth Report of Session 2014-15, HC 518, July 2014.

<sup>15</sup> Low Pay Commission Annual Report, March 2016, paragraphs 8.74 to 8.78.

**4.5** In its 2016 report, the Low Pay Commission continued to raise concerns about the social care sector.<sup>16</sup> In its report on *The scale of minimum wage underpayment in social care*, the Resolution Foundation estimated the prevalence of non-compliance to be 11%, equivalent to 160,000 direct care jobs paying below the minimum wage in 2013-14. The Resolution Foundation has also estimated that each non-compliant front-line care job underpaid by an average of £815 over the course of 2013-14. This represented a total of £130 million in wages lost due to non-compliance. It estimated that between 9.2% and 12.9% of front-line care jobs pay below the minimum wage.

### Compliance and enforcement

**4.6** HMRC undertook a two-year evaluation of non-compliance in the care sector between 1 April 2011 and 31 March 2013 and found that the most common causes of non-compliance were deductions from workers' pay and payments by the worker for items deemed to be a business expense.<sup>17</sup> These included unpaid training time, unpaid travel times between appointments and pay being deducted for individual items, for example uniforms (**Figure 6**).

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### Figure 6

#### Causes of non-compliance within the social care sector

	Cause of non-compliance
Domiciliary care	Unpaid training time
	Unpaid travelling time between appointments
	Hourly rate below National Minimum Wage rate
	Incorrect use of apprentice rates
	Localised and franchised contractual arrangements
	Failure to pay workers for all working time
Residential care	Unpaid training time
	Hourly pay rate below National Minimum Wage rate
	A lack of awareness of the accommodation offset rules and their effect on National Minimum Wage pay calculations
	Incorrect use of apprentice rates

Source: HM Revenues & Customs, *National Minimum Wage: Compliance in the social care sector*, November 2013

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<sup>16</sup> Low Pay Commission Annual Report, March 2016.

<sup>17</sup> HM Revenue & Customs, *National Minimum Wage: Compliance in the social care sector*, November 2013.

**4.7** BIS identifies problematic sectors for fast tracking worker complaints and specific targeted enforcement work. For 2014-15, these included complaints from apprentices, interns, and seafarers but not social care. However, HMRC was still investigating 13 social care cases, equivalent to 24% of its targeted enforcement programme as at the end of March 2015. HMRC introduced fast tracking for care workers on 13 May 2015 and BIS now classifies the sector as a priority area.

**4.8** In the period from 1 April 2015 to December 2015, HMRC received 125 complaints from workers about potential non-compliance by employers in the care sector. In this period, HMRC completed 172 investigations into the social care sector, 91 of which were aged less than 120 working days, and identified £331,144 arrears for 1343 workers charging 69 employers a total of £66,189 in penalties. Currently HMRC is investigating 141 employers, comprising 107 complaints from workers and 34 cases from its proactive risk-based work.

**4.9** From October 2013, BIS started to regularly name care sector employers for non-compliance, for example, in February 2015, it named one provider for underpaying 184 employees a total of £37,592 and another for underpaying £4,395.78 to 27 employees. To date, 15 social care providers have been named as part of BIS's naming and shaming scheme, having underpaid a total of £54,627 to 259 employees.



# Appendix One

## Our approach

### Scope

- 1 We investigated three specific concerns:
  - oversight and management of investigations;
  - whether HMRC is reducing the length of time it takes to investigate allegations of non-compliance with the National Minimum Wage; and
  - progress in improving the enforcement of the National Minimum Wage in the care sector.

### Methodology

- 2 In examining these issues, we drew on several sources of evidence.
- 3 **We interviewed officials at the Department for Business, Innovation & Skills (BIS) and HM Revenue & Customs (HMRC).** We conducted interviews and a series of workshops in order to:
  - understand compliance and enforcement activity for the National Minimum Wage and the principal causes of non-compliance;
  - establish how BIS oversees the performance of HMRC in carrying out enforcement activity; and
  - understand the specific challenges of enforcing compliance in the care sector.
- 4 **We interviewed officials at the Low Pay Commission and Citizens Advice.** These interviews were to:
  - assess the latest evidence on how compliance and enforcement arrangements are working; and
  - understand recent developments in the care sector to improve rates of non-compliance.

**5 We examined documentation including:**

- BIS's policy document on HMRC enforcement, prosecutions and naming employers who break National Minimum Wage law;
- Low Pay Commission annual reports 2013, 2014 and 2015;
- BIS and HMRC service level agreement;
- BIS and HMRC scorecard as at 31 March 2015, setting out performance on compliance and enforcement;
- BIS and HMRC self-assessments on progress on compliance and enforcement;
- BIS's naming and shaming publications;
- HMRC's evaluation of the care sector in 2013; and
- parliamentary questions on compliance with, and enforcement of, the National Minimum Wage.

# Appendix Two

## Summary of correspondence

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Date	Issues raised
10 July 2012	The correspondent asked us to look into the funds spent by HM Revenue & Customs (HMRC) on dealing with recouping National Minimum Wage arrears for employees/workers who complained to its helpline. On 28 November 2011, the correspondent had reported to HMRC that 12 employees were not receiving the National Minimum Wage. Despite various phone calls and one meeting with HMRC and the employees, no action was taken 225 days after the correspondent first reported the issues.
24 January 2014	Non-compliance with the National Minimum Wage in the home care sector is high. As a managing director of one of the UK's first accredited Living Wage Employers in the home care sector, the correspondent thought it was unfair for him to have to compete with providers who break the law.
6 March 2014	The correspondent complained that enforcement of the National Minimum Wage by HMRC in the social care sector is weak as the level of National Minimum Wage non-compliance in this sector is high.

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National Audit Office

Design and Production by NAO Communications  
DP Ref: 11037-001

£10.00

ISBN 978-1-78604-049-7



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