



National Audit Office

Report

by the Comptroller
and Auditor General

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

Ensuring employers comply with National Minimum Wage regulations

Key facts

209,000

estimated number of jobs which pay less than the National Minimum Wage held by employees aged 16 and over in April 2015¹

£20m

2016-17 budget for HMRC compliance and enforcement activities

£68m

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

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

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.² This constitutes 0.8% of UK employee jobs.³ 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.

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

² 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.

³ 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

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%.⁴ 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).

⁴ 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 2013-14.⁵ 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).

⁵ *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