

# Overview & Scrutiny Committee

Monday 15 June 2015  
7.00 pm

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## Membership

Councillor Gavin Edwards (Chair)  
Councillor Rosie Shimell (Vice-Chair)  
Councillor Anood Al-Samerai  
Councillor Jasmine Ali  
Councillor Maisie Anderson  
Councillor Catherine Dale  
Councillor Paul Fleming  
Councillor Tom Flynn  
Councillor Rebecca Lury  
Councillor Hamish McCallum  
Councillor Johnson Situ

## Reserves

Councillor Evelyn Akoto  
Councillor James Barber  
Councillor Helen Dennis  
Councillor Nick Dolezal  
Councillor Eleanor Kerlake  
Councillor Sunny Lambe  
Councillor Adele Morris  
Councillor David Noakes  
Councillor Martin Seaton  
Councillor Bill Williams

## Education representatives

Martin Brecknell, Church of England Diocese  
Lynette Murphy-O'Dwyer, Archdiocese of Southwark  
Abdul Raheem Musa, Parent Governor Representative  
George Ogbonna, Parent Governor Representative

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**Contact** Shelley Burke 020 7525 7344 on or email: [Shelley.burke@southwark.gov.uk](mailto:Shelley.burke@southwark.gov.uk)

Members of the committee are summoned to attend this meeting

**Eleanor Kelly**

Chief Executive

Date: 5 June 2015



# Overview & Scrutiny Committee

Monday 15 June 2015  
7.00 pm

## Order of Business

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Proposed work programme following discussion at May meeting

**DISCUSSION OF ANY OTHER OPEN ITEMS AS NOTIFIED AT THE START OF THE MEETING.**

**PART B - CLOSED BUSINESS**

**DISCUSSION OF ANY CLOSED ITEMS AS NOTIFIED AT THE START OF THE MEETING AND ACCEPTED BY THE CHAIR AS URGENT.**

**DISTRIBUTIONLIST201516**

Date: 5 June 2015



## OVERVIEW & SCRUTINY COMMITTEE

MINUTES of the Overview & Scrutiny Committee held on Wednesday 20 May 2015 at 7.00 pm at Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

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**PRESENT:** Councillor Gavin Edwards (Chair)  
Councillor Rosie Shimell  
Councillor Jasmine Ali  
Councillor Maisie Anderson  
Councillor Catherine Dale  
Councillor Paul Fleming  
Councillor Tom Flynn  
Councillor Rebecca Lury  
Councillor Johnson Situ  
Martin Brecknell

**EDUCATION REPRESENTATIVES:** Martin Brecknell, Church of England Diocese

**OTHER MEMBERS PRESENT:**

**OFFICER SUPPORT:** Shelley Burke, scrutiny officer team  
Norman Coombe, legal service  
Fitzroy Williams, scrutiny officer team

### 1. APOLOGIES

1.1 Apologies for absence were received from Councillors Anood Al-Samerai and Hamish McCallum

### 2. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

2.1 There were no urgent items

### 3. DISCLOSURE OF INTERESTS AND DISPENSATIONS

3.1 There were no disclosures of interests or dispensations.

#### 4. **MINUTES- 27.04.2015**

The minutes were approved

#### 5. **SCRUTINY ARRANGEMENTS - 2015/16**

The committee considered the arrangements for overview & scrutiny over the coming year

##### **Resolved:**

That the following three scrutiny sub-committees be constituted for 2015/16, each composed of five Labour and two Liberal Democrat members

**Education & Children's Services Scrutiny Sub-Committee (Chair: Councillor Jasmine Ali)** – membership to include four voting education representatives and one non-voting head teachers' representative

**Healthy Communities Scrutiny Sub-Committee (Chair: Councillor Rebecca Lury)**

**Housing & Community Safety Scrutiny Sub-Committee (Chair: Councillor Tom Flynn)** – committee has responsibility for crime and disorder. Membership to include one representative and reserve from Tenants' Council and Homeowners' Council respectively

#### 6. **WORK PROGRAMMING 2015/16**

The committee discussed suggestions and the chair agreed to bring forward a proposed work programme to the next meeting

#### 7. **NARROWING THE ACHIEVEMENT GAP**

Councillor Ali presented her sub-committee's draft report and the committee discussed the findings and recommendations.

##### **Resolved:**

Cllr Ali to draft an additional recommendation in respect of the Lewisham Southwark College Camberwell campus

## 8. SOUTHWARK'S ADOPTION SERVICE

Councillor Ali presented her sub-committee's draft report and the committee discussed the findings and recommendations.

### **Resolved:**

Councillor Ali agreed to consider the committee's suggestions

to redraft paragraphs 7.4 and 7.5 to make them clearer  
an additional recommendation wrapping the principles up into a charter  
a reiteration that the views of children and young people must sit at the heart of the process

## 9. RENT FOR COUNCIL PREMISES

Councillor Edwards explained that the information requested from officers in respect of rents charged for council premises had not yet been provided. He was pursuing this and hoped to be able to report to the next meeting

The meeting ended at 9.15 pm

## **SCRUTINY SUB-COMMITTEES**

### **VICE-CHAIRS FOR 2015-16**

The Overview & Scrutiny Committee are asked to appoint vice-chairs of the scrutiny sub-committees for 2015-16 as follows:

1. Education & Children's Services Scrutiny Sub-Committee – Councillor Lisa Rajan.
2. Healthy Communities Scrutiny Sub-Committee – Councillor David Noakes.
3. Housing & Community Safety Scrutiny Sub-Committee – Councillor Ben Johnson.

**SETTLE FOR  
NOTHING LESS:  
ENHANCING  
NATIONAL  
MINIMUM  
WAGE  
COMPLIANCE  
AND  
ENFORCEMENT**

*Andy Hull*



**SETTLE FOR NOTHING LESS:  
ENHANCING NATIONAL MINIMUM WAGE  
COMPLIANCE AND ENFORCEMENT**

*Andy Hull*

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**Centre for London** is a politically independent, not-for-profit think tank focused on the big challenges facing London. It aims to help London build on its long history as a centre of economic, social, and intellectual innovation and exchange, and create a fairer, more inclusive and sustainable city. Its interests range across economic, environmental, governmental and social issues.

Through its research and events, the Centre acts as a critical friend to London's leaders and policymakers, promotes a wider understanding of the challenges facing London, and develops long-term, rigorous and radical solutions for the capital. It is supported by private, voluntary and public sector funders and works collaboratively with its supporters, drawing on their experience and expertise.

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Annually it provides over £7 million in grants and at any one point is supporting some 400 voluntary and community organisations. Established in 1891, it was formerly known as City Parochial Foundation.

## FOREWORD

When the national minimum wage was introduced, 15 years ago, debate focused on one question: would it cause employers to lay off workers, as its detractors argued, or would it put an end to the most flagrant exploitation without causing job losses, as its defenders claimed?

Fifteen years on, there is broad cross-party consensus that the minimum wage has done a lot more good than harm. But, as the old controversies have been settled, new issues have arisen. Despite the positive gains achieved through the introduction of the minimum wage, in too many parts of the workforce the system is not working. Instances of home carers not being paid for their travel time, interns doing proper jobs but not being paid, and vulnerable migrants being exploited have all been well documented.

At least 300,000 workers in the UK are being cheated out of their right to the minimum wage. This research highlights the groups and sectors particularly affected and explains why current measures cannot deal with this problem, which we believe is particularly acute in the capital.

Andy Hull identifies a number of ways that non-compliance with the minimum wage could be tackled, including: closing loopholes that allow employers to pay care workers less than they are due; abolishing the first-year rate for apprentices; and giving local authorities a bigger role in ensuring employers play by the rules.

This is the second report we have published on the minimum wage. The first, *London Rising* by Kitty Ussher, showed that the capital could bear a higher minimum wage without a negative impact on jobs. We believe that, if implemented, the recommendations in both of these reports would make a significant contribution to ensuring that low-paid workers get a fairer deal.

Bharat Mehta      Ben Rogers  
*Chief Executive*      *Director*  
*Trust for London*      *Centre for London*

## ADVISORY GROUP

Our thanks to the project advisory group which met on 24 June and 19 September 2013.

Matthew Bolton, *Citizens UK*  
Andrew Collinge, *Greater London Authority*  
John Dickie, *London First*  
Mike Dixon, *Citizens' Advice*  
Mubin Haq, *Trust for London*  
Matthew Jaffa, *Federation of Small Businesses*  
Professor Ken Mayhew, *Oxford University*  
Dianna Neal, *London Councils*  
John Philpott, *Consultant*  
James Plunkett, *Resolution Foundation*  
Kieran Read, *Newham Council*  
Nicola Smith, *TUC*  
Jane Wills, *Queen Mary University of London*

## BIOGRAPHY

Cllr Andy Hull is the Executive Member for Finance and Performance at the London Borough of Islington. He is also an Associate at the Local Government Information Unit and the Institute for Public Policy Research.

Andy's work to tackle low pay has included co-chairing the Islington Fairness Commission and making Islington Council the first accredited Living Wage local authority in the UK. He is also a leading activist on Citizens UK's national Living Wage campaign.

Andy previously worked as a Senior Research Fellow at IPPR, where he led the institute's influential fundamental review of housing policy. He has published widely and provides regular media commentary on issues of security, poverty and inequality.

## ACKNOWLEDGEMENTS

We would like to thank all the individuals and organisations who have kindly given up their time to help us with this research. Our special thanks go to the low-paid workers who agreed to be interviewed anonymously so that we could share their lived experience of working in London for less than the national minimum wage.

At Centre for London, we would like to thank Kat Hanna for performing much of the fieldwork, Abigail Malortie for managing the project, Ed Hickey for helping to publicise it, Kitty Ussher for her insight and camaraderie along the way, and Ben Rogers for his encouragement and oversight throughout. At Trust for London, who have generously funded the project, we thank Mubin Haq, who has been a keen supporter of the project since its inception and a trusted advisor to the team. Finally, we would like to thank all the members of the project's advisory board for their constructive criticism and helpful steer.

Any errors or omissions in this report, however, remain solely those of the author.

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## EXECUTIVE SUMMARY

### **The national minimum wage**

The national minimum wage (NMW), now 15 years old, is one of the most significant institutional innovations in Britain's political economy in a generation. It has established a baseline for earnings that no worker should ever have to fall below. Yet too many people in the UK today – 300,000 at least – still do not receive the bare minimum to which they are entitled for their work. This is not good enough in 21st century Britain: no-one here should have to work for less than the legal minimum.

### **Enforcing compliance**

Compliance with the NMW is enforced centrally by Her Majesty's Revenue and Customs (HMRC) on behalf of the Department for Business, Innovation and Skills (BIS). This arrangement costs about £8 million per year and identifies roughly £4 million each year of arrears owed to workers who have been paid below the NMW. As well as securing the return of these arrears, it imposes fines on non-compliant employers and, on rare occasions, pursues them further in the courts. In selecting its investigations, HMRC both reacts to incoming complaints via the Pay and Work Rights Helpline and does proactive work to target sectors and areas that are considered high-risk.

### **Obstacles remaining**

In too many parts of the workforce, the system is not working. The phenomenon of home carers, doing some of the most important work in our society, not getting paid for their travel time is now well documented. Apprenticeships are part of the answer for the million young people in our country now out of work, but their abuse in sectors such as hairdressing is endemic. Internships too often amount to proper work yet remain unpaid. Migrant workers are particularly vulnerable to exploitation, especially when their employer also provides the roof over their heads. General awareness regarding the level of basic entitlements is low and the

current regime of sanctions for non-compliance is weak. Moreover, there is ample reason to believe that workers who are being exploited are unlikely to pick up the phone to report their employers to a remote and distant helpline.

### **The London picture**

Despite higher average wages, London is no exception. In fact, the few statistics there are, combined with testimony from HMRC and low-paid Londoners themselves, lead us to believe that the capital fares worse than most places. The low proportion of NMW work in London overall masks what the Low Pay Commission (LPC) believes are seven London boroughs in which the proportion of workers paid the NMW or less rises above five per cent. London plays host to a disproportionate concentration of certain industries where the risk of NMW non-compliance is high, most notably hotels. London workers are also much more likely to be migrants than elsewhere, and migrants are more likely to be paid less than the NMW.

### **Recommendations for change**

We believe it does not have to be this way. Our recommendations for change address systemic challenges to NMW compliance, specific concerns about migration, low levels of awareness and negligible sanctions, and an institutional framework for the delivery of NMW enforcement that we think can be improved.

### **Systemic challenges**

#### *Social care*

To crack down on the exploitation of domiciliary carers, we recommend that, as the main commissioners of adult social care, **local authorities should build a schedule into their home care contracts specifically requiring contractors to pay all their carers at least the NMW**, including for time spent travelling. In the capital, London councils could broker agreements between London boroughs to adopt a consistent contracting approach.

### *Apprenticeships*

The NMW rules are particularly complex and confusing when it comes to apprenticeships. Many employers have developed workarounds to avoid increasing wages after the first year of an apprenticeship. For the sake of simplicity and efficacy, we recommend that **government abolish the first-year rate for apprentices**, who should instead be paid the normal NMW rates for their age. The London Mayor, a champion of apprenticeships in the capital, could lobby government for this change.

### *Internships*

Unpaid internships both violate the NMW and inhibit social mobility. In response, **it should be made illegal to advertise non-voluntary work at less than the NMW**. Where an employer believes a role should be exempt from the NMW, he should cite the specific exemption he is invoking in the NMW legislation so that it can readily be challenged. The Greater London Authority could usefully lend its weight to this demand, given that such internships are heavily concentrated in the capital.

### **Migration factors**

#### *Irregular migrants*

To the extent that NMW compliance investigations may uncover them, **underpaid irregular immigrants should still receive the arrears they are owed**. With a much higher proportion of immigrant labour in the capital than elsewhere, this would prevent London employers being let off the hook in terms of arrears for employing irregular migrants at exploitative rates.

#### *Accommodation*

To prevent the abuse of substandard accommodation to avoid compliance with the NMW, **existing legislation on Houses in Multiple Occupation and regulation of the private rental sector equivalent of the Decent Homes Standard should be more rigorously enforced with employer-landlords**. London boroughs have it within their power to tighten this enforcement now.

## **Awareness and sanctions**

### *Awareness*

To raise awareness of a primary source of advice and action on the full range of employment rights, including NMW entitlements, **employers should be required to print the Pay and Work Rights Helpline number on payslips.** London boroughs could also mount public awareness campaigns to raise awareness of the NMW, as the London Borough of Hackney has.

### *Arrears*

At the moment, it is difficult to guarantee that a worker for whom arrears are identified ever receives them in full. So, in the future, **arrears should be paid back to workers by employers via an official third party**, such as HMRC, to ensure they do actually reach the workers they are meant for. If NMW enforcement were partially devolved to local authorities, as we later propose, the role of third party through whom arrears are repaid in the capital would be played by the London boroughs.

### *Fines*

The current limit on the fines that can be levied on employers who break NMW law is so low as to render the penalty negligible in too many cases. **The limit on fines for NMW non-compliance should be removed altogether.** Under the partially-devolved model we propose later, in the case of the capital it would be the London boroughs that keep the fines to finance their enforcement work.

### *Prosecutions*

There have only ever been nine prosecutions of employers in breach of the NMW. **Repeat NMW offenders should be pursued more often for prosecution.** Under the partially-devolved model for NMW enforcement we advocate in this paper, responsibility for pursuing prosecution for NMW non-compliance would continue to rest with HMRC, rather than local authorities and London boroughs.

### *Naming*

Only one NMW non-compliant employer has ever been named and shamed. Since public naming is now to be the BIS default, **all employers found to be in breach of the NMW should be publicly named.** Where a London employer has been named in this way, the individual London borough where it is situated may wish to publicise the fact in their local media to amplify the deterrent effect.

## **Machinery of government**

### *Resources*

While the budget allocated for NMW enforcement has remained steady in recent years, the budget for NMW publicity has been slashed. **The NMW publicity budget should be increased to raise awareness of the NMW rates and the Pay and Work Rights Helpline.** The Greater London Authority could make its advertising space, particularly on Transport for London, available for such publicity.

### *Collaboration*

In order to enable intra-agency and inter-agency information-sharing and collaboration, **HMRC's overly restrictive confidentiality requirements should be reviewed.** Under a partially-devolved enforcement model, new information-sharing protocols would need to include the capital's boroughs.

### *Localisation*

Finally, and most importantly, we argue that NMW enforcement is currently excessively centralised and **responsibility for NMW enforcement should be partially devolved to local authority level.** In the capital, primary power and responsibility for NMW enforcement would then sit with the individual London boroughs, sharing good practice at London Councils and supported in this effort by the London Mayor.



CASE STUDY: **Jess**

Jess took on a waitressing job at a restaurant paying below the minimum wage when she moved back home while studying for a Masters degree at a London university. Although living with her parents meant not having to pay rent, the prospect of a period of unpaid internships after graduation prompted her to seek some income. She settled for the job because she could fit it around her studies and it was near enough to home for her not to have to worry about going to work early in the morning or late at night. Jess worked at the restaurant for six months, averaging around 20 hours' work there each week.

*It's quite difficult to find properly paid work when you are studying. Although my course was full time, I found myself with enough spare time to work and I was desperate to earn some money.*

Jess worked in an Italian restaurant doing a range of shifts. Wages were £5.00 per hour and tips were pooled and shared between all the staff, including the cooks and kitchen porters. These tips were distributed every couple of weeks, but did not seem to reflect the number of hours staff worked or the number of tables served. She tried raising the question of pay with the manager but was told that there was a whole address book full of potential waitresses, implying that if staff did not like the pay, they could leave. Hours were uncertain, with Jess being sent home on days when the restaurant was quiet.

*A lot of my friends thought I was mad for working for so little, but at the end of the day I needed money and I didn't have the time or experience to find anything better. I didn't really see it as being exploited at the time – there was just a lack of choice when it came to flexible, part-time work. Although I knew about the national minimum wage, I did not know about the helpline. Whether I'd have used it to shop my employer is another matter. I don't know if I would want to make a call that could see nearly 20 other people risk losing their jobs, especially as most of the other staff would have been unable to pay their rent without the money they earned at the restaurant.*

# 1 INTRODUCTION

Two thirds of children now growing up in poverty in the UK are in families where at least one person works: in-work poverty is a major and growing problem (CPAG, 2013). The national minimum wage (NMW) was introduced 15 years ago by the then Labour government to put a floor under wages and thereby curb working poverty without causing significant job losses. Now, all three main political parties champion the NMW as an important institutional innovation. Indeed, the Conservative (Stratton, 2013), Labour (Gant and Legge, 2013) and Liberal Democrat parties (Sky News, 2013) are all now actively contemplating raising the NMW more rapidly than recommended by the Low Pay Commission (LPC). This is now the fifth year in a row that the NMW has fallen in real terms (Chalabi, 2013), and it is now worth £1,000 less than it was in 2008 (Milburn, 2013). Had it kept pace with FTSE 100 top pay, it would now be three times higher than it is, at almost £19 an hour (Riddell and Ross, 2013). All three parties also agree that for the full effect of the NMW to be felt it must be more effectively enforced – more than a paper promise. As the Low Pay Commission has observed, “the NMW is the wage floor in practice, as well as statute, only if it is widely observed by employers” (LPC, 2013). Conservative Minister Matthew Hancock MP (Wintour, 2013), Liberal Democrat Secretary of State Vince Cable MP (Helm, 2013) and Labour Leader Ed Miliband MP (Travis, 2013) have all stated their intention to increase compliance with the NMW and strengthen its enforcement. This report explores how they might go about it.

We have assessed the many published analyses of the problems associated with NMW compliance and enforcement and sought additional insight by performing some limited primary research. But our primary focus, as befits a think tank, is on developing practical policy solutions. If implemented, we believe they would help to level the playing field in the marketplace and protect some of the most vulnerable workers in our society from exploitation when doing their often vital work. While the excellent campaign for a voluntary Living

Wage continues to gather momentum, it is crucial (and by no means contradictory) that we also ensure that our backstop is working – that no-one is getting less than the statutory minimum they are owed. After all, the NMW is supposed to be a right, not a nice-to-have (Kelly, 2011).

In this report we therefore take a deliberate series of steps. First, we introduce the NMW and its operation. Next, we describe the existing enforcement arrangements that accompany it. Then, we itemise the significant enforcement challenges which remain. We consider the specific situation in London when it comes to NMW compliance. Finally, we propose a suite of recommendations for change which we believe would make for enhanced enforcement and increased compliance with the NMW.

#### CASE STUDY: **Victor and Adrienne**

Victor and Adrienne, Spanish citizens born in Argentina, have been living in London for a year. Upon arriving in the capital, Victor and Adrienne found work through an agency as cleaners in a hotel in Kings Cross. Each received £1.44 for each room they cleaned, despite their contract stating that they earned £6.19 an hour. For over six months, the couple worked at the hotel, where they were expected to clean four rooms an hour.

*We suffered emotional abuse the whole time we worked there. If the manager thought we had missed just one thing, we wouldn't get paid for the entire room. We were living in a hostel, as we were not earning enough to rent a room anywhere. We could not afford food either. Some days we would buy a bag of donuts from Tesco to last us the day, drinking coffee when we felt hungry. Other days we would take food from the rubbish bins at the hotel.*

They stayed in their cleaning jobs for lack of any other employment. Feeling tricked by their contract, both said they felt guilty that they could not send enough money home to their two children whom they had left behind in Spain. Victor regularly asked their employer for more money. The response was that if they did not like the job, they could go back to where they came from. Such requests would be punished by Victor being

given the worst jobs in the hotel, such as emptying the bins. The job was only meant to be temporary, but with both Adrienne and Victor working seven days a week, it was six months before Victor had a chance to find alternative employment. He asked around at a central London university, where a Columbian member of the cleaning staff helped him make inquiries. It turned out that both the hotel and university used the same agency, and their contracts could be transferred over.

Adrienne is now working at the university where she earns the London Living Wage. “I feel respected there. I feel like I know what my rights are, like taking a sick day if I am feeling very unwell.”

Victor left his cleaning job at the university and has been working as a builder in south west London for the past five months. He earns £35 a day – less than the minimum wage – and works six or seven days a week. He has a contract with his private employer, although it states that he works part-time.

*I know that this job pays less than the cleaning job at the university, but it is part of my plan. I trained as a builder in Argentina, but I know that if I want to work in England, I need to learn how things work here. I need to learn English, and I was not learning it as a cleaner. Working on the building site, I ask lots of questions and make sure I get to try all the different types of work. I did once ask my boss for more money, but he told me I am lucky to be getting experience.*

Both Victor and Adrienne had heard of the national minimum wage and knew how much it was. Neither had heard of the Pay and Work Rights Helpline and said they had no idea what to do about reporting employers failing to comply with the NMW.

*You need to have something really visible, like leaflets and posters. You really need to put it on trains and buses. It's hard to think how to help people, because everyone has their own situation. I know people who have been working at that hotel in Kings Cross for five years because they are too scared to leave.*

# 2 THE NATIONAL MINIMUM WAGE

We begin this report with a basic introduction to the origins and operation of the NMW.

Fifteen years ago, on 31 July 1998, Parliament passed the National Minimum Wage Act. The NMW was then introduced in April 1999 to prohibit unduly low pay and allow employers to compete on a more equal footing. Each year since, the independent Low Pay Commission (LPC) has been charged by Government with calculating a rate for the NMW that is as high as possible without having an adverse effect on levels of employment. Fears were voiced at the outset that the introduction of the NMW would have negative consequences for employment. Those fears proved unfounded. Now, there is a broad political consensus behind the NMW, with opposition to it confined to the fringes of political debate. The Employment Act 2008 amended some of the ways that NMW compliance is enforced.

The NMW rate per hour is currently:

- £6.31 for those aged 21 and over;
- £5.03 for 18–20 year-olds;
- £3.72 for 16–17 year-olds (above the school leaving age);
- £2.68 for apprentices who are either under 19 or in the first year of their apprenticeship.

The NMW is an hourly rate which must be paid for each working hour across a certain period of time. If a worker is paid weekly, this period of time (known as the pay reference period) is a week. If a worker is paid monthly, the period is a month. The NMW is based on gross pay, before tax and National Insurance are deducted. When calculating gross pay for minimum wage purposes, the employer can include incentive, merit, bonus or performance payments. They cannot include loans, advances, pensions, lump sums upon

retirement, redundancy payments, a reward under a staff suggestion scheme, expenses or allowances (eg for clothing, travel or subsistence), a car, any benefits in kind (besides the official accommodation offset), vouchers, shares, insurance, union subscriptions or tips paid directly by a customer to the worker.

Working hours which count for the NMW will only include time spent 'on call' or time spent overnight at the workplace if the worker is actually awake and working during those hours. For example, if they have to perform duties through the night, such as a night watchman or night sleeper at a care home. A worker is considered to be working when they are at work and required to be at work; on standby or on call at or near their place of work; kept at work; travelling on business during normal working hours; or training or travelling to training during normal working hours. A worker is not considered to be working when they are on standby or on call at home.

The vast majority of workers in the UK above the compulsory school age are entitled to the NMW, regardless of whether they have a written or oral contract, from the beginning of their employment. This includes agency workers, homeworkers, piece workers, temporary and casual employees, and those on fixed-term or freelance contracts working temporarily in the UK.

Exceptions include:

- workers who are under the compulsory school age;
- family members in a family business;
- people living and working within their employer's home with free accommodation and meals who share in the activities of the household (e.g. au pairs);
- friends and neighbours helping each other out informally under no obligations;

- some trainees on government-funded schemes;
- workers on work experience who are not trainees with a contract of employment;
- some students in higher education on work placements lasting up to one year;
- the armed forces and reservists, prisoners and share fishermen;
- some mariners and offshore workers;
- voluntary workers receiving only expenses;
- genuinely self-employed people;
- company directors, unless they also do work under an employment contract with their company.

Employers who provide their employees with accommodation free of charge – schools or hotels, for instance – can count an additional amount (the accommodation offset) towards their payment of the NMW. The maximum amount for the accommodation offset is currently £4.91 a day. No other type of benefit in kind counts towards the NMW.

The NMW confers workers with the entitlement to:

- be paid at least the NMW for each hour worked;
- see and copy their pay records within 14 days of making a written request (and to be accompanied when doing so, if preferred);
- not be dismissed or suffer detriment for a reason connected with the NMW, such as asserting their rights to the NMW or reporting non-compliance with it to HMRC.

A worker himself can enforce these rights in an Employment Tribunal, where the burden of proof in all cases of suspected underpayment rests with the employer. If the tribunal finds that the worker has been underpaid, the employer will be instructed to repay the arrears. If the tribunal finds the employer has withheld relevant pay records from the worker, it can order him to pay the worker a sum equivalent to up to 80 times the current adult NMW rate (BIS website; TUC, 2008; Unison, 2012; CAB, 2012; Ipsos MORI and Community Links, 2012; Le Roux et al., 2013).

CASE STUDY: **Anusha**

Anusha, aged 42, is from Goa in India. Illiterate and without qualifications, she took a job as a domestic worker with a Kuwaiti family. When the family decided to move from the Gulf to Knightsbridge, they brought Anusha with them on an overseas domestic worker visa, paying her £200 per month. The family did not allow Anusha to leave the house unless it was with the children, and they would lock her inside to prevent her from going out. Her passport was confiscated. Anusha heard about Kalayaan, a charity for migrant domestic workers, from a Filipino domestic worker whom she met in a park while looking after the children. It was after this conversation that she decided to leave the family in Knightsbridge, running away and leaving most of her possessions and passport behind.

For the past 18 months, Anusha has been working for a family in Buckinghamshire. She found the job through a friend and decided to take it as she was near the end of her overseas domestic worker visa. The job is better paid, at £600 a month. She sends most of the money she makes home to support her son in Goa, so that he can continue his education.

Anusha is grateful both to the Filipino woman who told her about Kalayaan, who is still a close friend, and to Kalayaan, for supporting her when she left her first employer. She would tell a friend stuck in a similar position to contact Kalayaan, and she says that trusted friends are critical to improving awareness of the national minimum wage and what to do about it if it is being breached.

# 3

# ENFORCING COMPLIANCE

Having introduced the national minimum wage, we now describe the current arrangements in place for enforcing compliance with it.

The Department for Business, Innovation and Skills (BIS) is the government department responsible for the NMW and is committed to enforcing it through the implementation of its 2010 NMW Compliance Strategy (BIS, 2010b). BIS intends that employers who want to comply should have the information and tools to enable them to do so; that there should be effective deterrents to encourage compliance among employers who may be tempted to fail to comply; and that there should be sanctions for those who are determined to operate outside the law (BIS, 2010a).

BIS has a service level agreement (SLA) with Her Majesty's Revenue and Customs (HMRC) to enforce compliance with the NMW. To this end, HMRC, according to its Assistant Director for NMW, Michelle Wyer, employs 10 regional teams across 17 locations and a central team of 20 staff. So far this decade, HMRC has been allocated a budget of just over £8 million each year for its NMW enforcement work, nominally steady, but falling in real terms.

Performance indicators for NMW enforcement work include: total arrears identified; number of workers who have been helped; percentage of cases where non-compliance has been identified (strike rate); and various qualitative measures, such as customer waiting time.

Investigations by HMRC into possible NMW non-compliance can be either reactive or proactive.

## **Reactive**

Reactive investigations (which constitute about 60% of the total) arise as a result of workers (or, more usually, ex-workers) themselves reporting suspected NMW non-compliance. Reporting can be by telephone, post or online, primarily through the Pay and Work Rights Helpline, which was launched in September 2009. The helpline is operated by six advisors from not-for-profit firm BSS on behalf of BIS. It is open 8.00am to

8.00pm Monday to Friday and from 9.00am to 1.00pm on Saturdays. Language Line translation facilities in over a hundred languages are available. The average length of a call to the helpline is roughly six and a half minutes (BIS, 2010c) and 17,775 calls were received last year (HMRC, 2013b). Every complaint is investigated and a complaint from one worker can lead to thousands of workers receiving arrears, as the investigation will look at the employer's payroll practices across their workforce (BIS, 2011a). An evaluation of the helpline suggests almost 90% of callers are satisfied with the service they receive and the same proportion would recommend it to a friend (BIS, 2010a and BIS, 2010c).

When someone calls the Pay and Work Rights Helpline, if the call is about suspected NMW non-compliance, it gets transferred to HMRC's NMW Central Information Unit in Longbenton who then pass it on to the relevant area-based team of HMRC COS for investigation. HMRC then asks some questions of the worker to establish some basic facts (i.e. name, address, telephone number, age, timings, pay reference period, rates, hours, accommodation, deductions, date of leaving work, if applicable, and so on) and assigns the case a reference number. Next, HMRC will call the employer or send them a letter to arrange to visit them, without divulging that the visit is as a result of a complaint. In the meantime, the Compliance Officer may try to find out more information from the worker or from their adviser or union representative where they believe that this will further the investigation. The law gives HMRC the right to ask questions of the employer and relevant staff regarding pay, and to require answers, enter premises and inspect, copy and remove pay records. It is a prosecutable criminal offence for an employer not to keep pay records, or to falsify records, or not to admit an HMRC inspector. The new requirement this year for employers to provide real time information (RTI) for PAYE should not affect NMW enforcement, as RTI records of "hours worked are not being used for minimum wage purposes by HMRC" (CPAA, 2013).

It is also possible for third parties to report NMW non-compliance on a worker's behalf, as Paul Sellers at the TUC told us he sometimes does, although such calls are

Figure 1: Advertisement for the NMW and Pay and Work Rights Helpline (2013)  
Source: HMRC

## The National Minimum Wage rates will change from 1 October 2013 to:

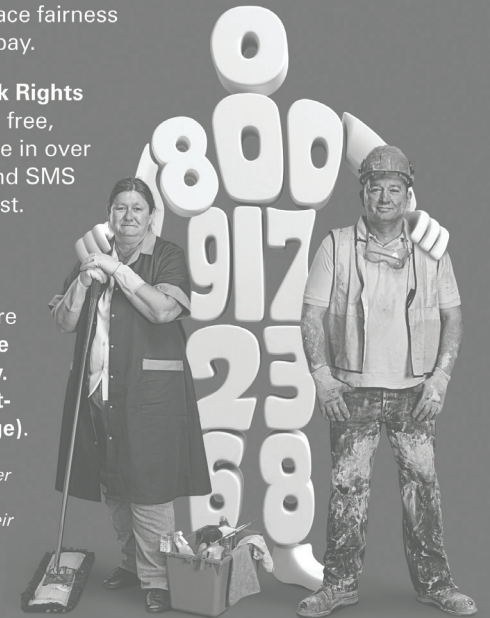
- Workers aged 21 and over – **£6.31** (increasing from £6.19)
- Workers aged at least 18 but not yet 21 – **£5.03** (increasing from £4.98)
- Workers under 18 but above compulsory school leaving age – **£3.72** (increasing from £3.68)
- Apprentice Rate\* – **£2.68** (increasing from £2.65).

The National Minimum Wage promotes workplace fairness and makes work pay.

The Pay and Work Rights Helpline provides free, confidential advice in over 100 languages, and SMS updates on request. You can call on **0800 917 2368** (call charges may apply) or find more information **online at GOV.UK** ([www.gov.uk/your-right-to-minimum-wage](http://www.gov.uk/your-right-to-minimum-wage)).

\* For Apprentices under 19, or 19 or over and in the first year of their apprenticeship.

 [www.facebook.com/nmwage](http://www.facebook.com/nmwage)





considered lower priority by HMRC than workers' own calls to the Pay and Work Rights Helpline and HMRC is not under the same legal obligation to investigate third party complaints as it is first person calls. Moreover, third party reporters can "feel information provided to HMRC falls into a 'black hole'" (LPC, 2010), as confidentiality requirements mean that little or no feedback is received by the third party reporter as to any subsequent investigation or action taken by HMRC as a result of their report.

### **Proactive**

HMRC also investigates employers about whom no complaints have been made, identified through cyclical risk-profiling (TUC, 2007). Such investigations make up around 40% of the total volume of HMRC NMW investigations each year (TUC, 2008; Scottish Affairs Committee, 2009). In the past they have included, for example, investigations into hairdressing, childcare, hospitality and hotels, camp sites, catering and social care (TUC, 2007). This process of risk assessment is led by HMRC's Risk Governance Board which filters intelligence gleaned from a variety of sources to identify employers who are at risk of being non-compliant. HMRC also draws on information provided by its other teams, such as those who work on tax compliance, in performing these risk assessments.

A virtual and geographically flexible Dynamic Response Team also exists within HMRC to address hot spots, fast-tracked complaints and high profile cases, including in 2012 targeting London Fashion Week and parts of East London in the run-up to the Olympic and Paralympic Games (HMRC, 2013a).

### **Sanctions**

If HMRC finds an NMW breach, as a result of reactive or proactive investigation, it will serve a Notice of Underpayment on the employer which will require them to pay arrears to the short-changed worker(s). HMRC will also impose a civil penalty (fine), except in

unusual circumstances, such as when a case is taken up for prosecution instead or when there is no point pursuing a company that is undergoing liquidation.

### *Arrears*

HMRC will instruct the employer to pay arrears to the worker(s) at the current NMW rates for up to 6 years (in England) of non-compliance. Where a worker changes age bands, the rate of NMW to be used in the calculation of arrears is the current rate for the band that applied to the worker at the time the arrears were accrued. The arrears are to be paid in full at the next pay day (Croucher and White, 2004).

Over the past 15 years, HMRC has identified more than £50 million arrears which should have been paid as wages, and returned them to over 200,000 workers (HMRC, 2013a). In 2012/13 HMRC identified £4 million in arrears.

### *Fines*

HMRC will also serve the employer with a notice to pay a civil penalty (or 'fine'). The fine is equivalent to half of the arrears owed, above a minimum fine of £100 and up to a maximum fine of £5,000, with a 50% discount for payment within 14 days. The proceeds of these fines go to the government.

Where an employer complies fully with the terms of the Notice of Underpayment, HMRC enforcement action comes to an end. Where an employer fails to comply with either the requirement to repay arrears and/or the requirement to pay the fine, HMRC will take further action to enforce these requirements. An employer can choose to dispute a Notice of Underpayment at tribunal, where HMRC has a 90% success rate at defending the notices it has served (BIS, 2013a).

### *Tribunals and courts*

Compliance Officers can pursue payment on behalf of the underpaid worker(s) through a case in the civil courts or in an employment tribunal. By taking this action,

HMRC compliance officers establish a debt that is enforceable in law. Where the debt to the workers remains unpaid following judgement, HMRC can use distraint or other measures available to the Court or tribunal to enforce the judgement (BIS, 2012a).

An example of HMRC resorting to Employment Tribunal is the case of Axis Telecom and Servizon, two telecommunication companies found to be flouting the NMW. They were ordered to pay almost £100,000 of arrears to 197 of their call centre telesales workers who they had wrongly treated as apprentices, and a £5,000 fine in respect of each (Newcombe, 2013).

#### *Prosecution*

HMRC can also refer employers to the CPS for criminal prosecution for offences associated with NMW non-compliance, including refusing or wilfully neglecting to pay the NMW, failing to keep or preserve pay records, falsifying pay records, delaying or obstructing an HMRC officer, providing him with false information or refusing to answer his questions or supply records (Croucher and White, 2004).

A prosecution in this context, according to HMRC Assistant Director Michelle Wyer, costs a minimum of £50,000, as opposed to a standard investigation, which she says costs on average £1,850. Needing to strike a balance between effectiveness and value for money in their NMW enforcement work, HMRC investigators therefore prioritise for prosecution those cases that will do most to promote compliance and deter non-compliance with the NMW. The more extensive and substantial the alleged arrears, the more likely it is that HMRC will wish to investigate with a view to prosecution by the CPS. HMRC's approach to prosecutions is therefore selective (reserved for the most serious cases and repeat offenders) and exemplary (i.e. used across the full range of available offences and in a range of sectors to provide a deterrent example) (BIS, 2012a). HMRC is planning over 20 operations for 2013/14 to target 'rule breakers' for prosecution (BIS, 2013a). Random sampling of

organisations previously served with a Notice of Underpayment suggests around 15% remain non-compliant with the NMW a year or two later (BIS, 2010a).

#### *Naming*

As of 1 January 2011, a scheme has existed under which employers flouting the NMW can be publicly named, causing reputational damage, as a deterrent to others. The naming scheme has the potential to enable the public, including workers, prospective workers, customers and others to make informed choices about who they work for and where they buy their goods and services.

HMRC refers employers to BIS for naming. Before an employer is named they will be given the opportunity to make representations to BIS.

Naming has not been seen as an alternative to prosecutions, but rather as an accompaniment. It does not take place while a prosecution is ongoing.

Until recently, the criteria for naming (which were not the same as the criteria for prosecution) were evidence of: the employer deliberately failing to comply with NMW obligations; ignoring HMRC advice on how to become compliant with the NMW; failing to keep or preserve NMW records; delaying or obstructing an HMRC officer; refusing or neglecting to answer questions put to them by an HMRC officer; refusing or neglecting to provide relevant information or produce relevant documents to an HMRC officer; or refusing or neglecting to pay arrears under a Notice of Underpayment. HMRC only referred to BIS for naming purposes cases where the total arrears owed were at least £2,000 and the average arrears per worker at least £500 (BIS, 2012a).

To the documented disappointment of both the LPC and the TUC, despite numerous referrals by HMRC to BIS for naming purposes (BIS, 2011a), only one employer, Rita Patel of Treena Professional Hair and Beauty in Leicester, has been named to date for non-compliance with the NMW (Morris, 2013). No employers have been named in London. The lack of naming and

shaming is a result of the criteria for naming non-compliant employers having been too stringent.

As of October 2013, however, at the urging of the likes of Vince Cable MP (Helm, 2013) and the Scottish Affairs Select Committee (Scottish Affairs Committee, 2009), the bar has been lowered, and the previous criteria abolished, so that every offender will now, 'in all but exceptional circumstances', be named by BIS (Sweet, 2013 and Swinson, 2013). This should also help to address the counter-productive experience of those third parties who pass cases of suspected NMW non-compliance on to HMRC feeling like their reports have gone into a 'black hole', with no prospect of feedback. Table 1 summarises the performance of HMRC and BIS on NMW enforcement over the past four years.

### Awareness

For the NMW to be successful, workers and employers need to know about it and employers need to believe they may be caught if they flout it. This means it is important for BIS and HMRC to raise public awareness of the NMW and its enforcement.

To this end, BIS launched a £6 million, three-year campaign in September 2009 to raise vulnerable

workers' awareness of the NMW and promote the Pay and Work Rights Helpline. It has also spoken with trade bodies such as the CBI, Chambers of Commerce, National Federation of Hairdressers and National Day Nurseries Association, as it is often to such associations that employers turn for advice on pay (BIS, 2013a). HMRC has mounted high profile compliance activity to draw attention to its enforcement of the NMW, including sweeps for unpaid interns, supported by top designer Stella McCartney, at London Fashion Week 2012 (Malik, 2011), and action on football clubs' mascots (Malik, 2013b). Behaviour change is the name of HMRC's game. It now publicises tribunal outcomes where it has successfully defended a Notice of Underpayment against an employer's appeal or obtained a judgement against an employer who has failed to pay their workers the arrears due upon receipt of a Notice of Underpayment. HMRC also has an NMW Facebook page ([www.facebook.com/nmwage](http://www.facebook.com/nmwage)) and tweets about NMW enforcement from its corporate Twitter feed (<https://twitter.com/HMRCgovuk>). It is now also sending updates on NMW compliance as SMS messages to interested parties who sign up for this service (BIS, 2013b).

### Collaboration

HMRC collaborates with a number of other agencies in its NMW enforcement work. Some examples include (BIS, 2013a):

- Working with the United Kingdom Borders Agency (UKBA), Trading Standards and the police to tackle non-compliance with NMW, immigration and tax laws in Leicester's textile industry and retail businesses in the East Midlands;
- Working with local authority enforcement officers in the London Borough of Newham to target market traders, butchers, fast food outlets, mobile phone shops and minicab offices;

**Table 1: NMW enforcement statistics (UK) 2009–2013**

Sources: BIS, 2011b; BIS, 2013a; LPC, 2011; LPC, 2012; LPC, 2013; HMRC, 2013b; Correspondence with HMRC. Answers by David Gauke MP and Jo Swinson MP to Parliamentary Questions by David Lammy MP and Catherine McKinnell MP (2013) / Notes: (1) Number of Investigations closed; (2) Proportion of investigations resulting in enforcement; (3) Number of notices of underpayment served; (4) Number of workers for whom arrears were identified; (5) Total amount of arrears identified; (6) Average arrears per worker; (7) Number of penalty fines imposed; (8) Value of penalty fines imposed; (9) Number of offenders prosecuted; (10) Number of offenders officially named.

	Investigations (#) <sup>1</sup>	Strike rate (%) <sup>2</sup>	NoUs (#) <sup>3</sup>	Arrears (#) <sup>4</sup>	Arrears (£) <sup>5</sup>	Avg arrears (£) <sup>6</sup>	Fines (#) <sup>7</sup>	Fines (£) <sup>8</sup>	Prosecutions (#) <sup>9</sup>	Named (#) <sup>10</sup>
2009/10	3,643	34	591	19,245	4,390,023	228	381	111,183	0	N/A
2010/11	2,904	39	1,128	22,919	3,818,396	167	934	520,568	1	0
2011/12	2,534	35	879	17,371	3,582,685	206	906	766,807	0	0
2012/13	1,696	43	708	26,519	3,974,008	150	647	709,136	1	1

- Working with the UK Home Care Association, the Care Quality Commission (CQC) and Unison to better understand the specific issues for care workers and collaborate on advice to raise awareness of best practice.

HMRC also collaborates with the Health and Safety Executive (HSE), the Security Industry Authority (SIA), the Employment Agency Standards Inspectorate (EASI) and the Gangmasters Licensing Authority (GLA).

Where barriers to agencies sharing relevant information exist, steps have been taken to remove them, such as amendments to the Employment Act 2008 to open up information-sharing gateways between HMRC and EASI (BIS, 2013b).

#### CASE STUDY: **Aliur**

Aliur, aged 49, is originally from Bangladesh and has been living in the London Borough of Tower Hamlets for the past nine years. Despite having a Masters degree in Management from Bangladesh, he has spent his life in London working as a waiter in a number of restaurants on east London's Brick Lane. Most of his restaurant jobs have paid £5.00 per hour. Aliur recently found a job through a friend at a restaurant that was paying dead on the minimum wage (at the time) of £6.19 an hour. However, bad business has meant that Aliur has gone from working 40 hours per week to just 24. The wages that Aliur earns must support his wife and two children, one of whom is about to start college.

Aliur knows about the NMW and knows that it has recently increased (on 1 October 2013). Having friends who are involved in local politics, Aliur keeps up to date with such issues and found out about the changing NMW rate by searching on the internet. He suggests that if he had a problem with his wages, he would either speak to his friends or go to the Citizens Advice Bureau, but he had not heard of the Pay and Work Rights Helpline. When asked, the restaurant owner has said he is not going to pay Aliur any more now, even though the NMW rate has recently risen. Aliur had been a member of a union, although he left when he felt unable to pay the necessary subscription fees.

*Most people working in the restaurants do not know about the national minimum wage. When tips are good, it's OK, but when business is bad, it's really hard to survive on less than the minimum wage. Whenever staff ask management for more money, they are told they can leave if they don't like their job. Most restaurant owners don't know about the national minimum wage either, let alone how much it is or that it has recently increased.*

# 4 OBSTACLES REMAINING

Notwithstanding the wealth of enforcement activity that we have just described, significant obstacles and challenges for NMW compliance remain.

There are no official data that indicate reliably the level of non-compliance with the NMW (LPC, 2013). The Annual Survey of Hours and Earnings (ASHE) low pay estimates for April 2012 show that there were then 287,000 jobs held by people aged 16 and over which were paid below the adult rate of the NMW. This constitutes about 1% of all employee jobs in the UK labour market (ONS, 2012), or around 6% of the bottom decile of adult earners (LPC, 2013). This figure, on the one hand, includes some workers who are not entitled to the full adult NMW (such as young apprentices, genuine volunteers or those with an accommodation offset) but, on the other hand, does not include some workers who are in high-risk categories (such as unpaid interns or people working in the informal economy) because it depends on PAYE returns (BIS, 2010b). Overall, given the numbers thought to be paid below the NMW in social care alone (see estimates below), this ONS estimate of 287,000 is likely to be much lower than the actual number of people paid less than the NMW in the UK today.

Worryingly, according to Labour Force Survey (LFS) data, the baseline NMW non-compliance rate was relatively stable between 2000 and 2004, after which it has increased, year on year, with the exception of 2010 (Le Roux et al., 2013). The number of companies found by HMRC to be failing to pay the minimum wage in the UK dropped from 968 in 2011–12 to 736 in 2012–13 (Maddox, 2013).

HMRC biennial closed case reviews suggest that around 15% of employers previously investigated by HMRC for NMW non-compliance are still not compliant with the 1998 Act (BIS, 2012a).

There are a number of reasons why employers pay less than the NMW and why workers accept it, detailed in Table 2.

For these reasons, collusive workers are often “actively complicit in hiding their employers’

malpractice” (Gentleman, 2012) and a worker’s “relationship with an informal employer may be at once exploitative and supportive” (Katungi et al., 2006).

The risk of NMW non-compliance is considered greater in the private sector and among small businesses, family businesses, recent start-ups, organisations with no HR or Personnel department and with low levels of unionisation, organisations with a history of infringements of employment law, and those in the informal economy. Payment by results and by cash-in-hand also heightens the risk. There are higher levels of non-compliance with the NMW in urban areas than in rural ones, among women than men, and among part-

**Table 2: Reasons for sub-NMW pay and its acceptance**

Sources: Ipsos MORI and Community Links, 2012a; Patel, 2011; TUC, 2007; Ram et al., 2004; BIS, 2011b; and BIS, 2013a.

Reasons employers pay less than the NMW	Reasons workers accept less than the NMW
Avoidance of Income Tax and National Insurance	Avoidance of Income Tax and National Insurance
Minimise wage costs to maximise profits	Access to benefits
Low likelihood of being caught	Fear of reprisals for complaining
No shortage of demand for such work	Limited alternative options for work
Exploiting concerns re irregular immigration status	Concerns re irregular immigration status
The need to be competitive	Needing the flexibility of informal work
Belief that unskilled, cash-in-hand or part-time work does not constitute a 'proper job' and therefore does not carry an entitlement to the NMW	Belief that unskilled, cash-in-hand or part-time work does not constitute a 'proper job' and therefore does not carry an entitlement to the NMW
Deductions for other benefits, such as travel, uniforms, equipment, accommodation, meals and non-allowable bonuses	Dependence on employer for accommodation and/or loans
Lack of awareness or understanding of the rules, especially re apprentice rates	Lack of awareness or understanding of the rules and how to enforce them
Poor or non-existent record-keeping	Poor or non-existent record-keeping
Mistaken volunteer status	Viewing informal work as a gateway to formal work
Failure to implement annual NMW rate rise or rise due to birthdays of young workers	Failure to recognise annual NMW rate rise or rise due to birthdays of young workers
Unpaid hours at work, including via unfair piece-rates	Desire to develop networks and skills

time workers than full-time workers (Scottish Affairs Committee, 2009; TUC, 2007; Croucher and White, 2004).

**Table 3: Sectors in which NMW non-compliance is most common**

Agriculture	Where systematic sub-NMW exploitation of migrant workers is commonplace (French & Mährke, 2006 and Taylor, 2013).
Catering	Downward pressure on prices from intense competition in catering can lead to using sub-NMW wages to reduce costs (Ram et al., 2004).
Childcare	Informal child-minding rarely guarantees the NMW.
Cleaning	Where unfair piece-rates are often applied.
Clothing	Packers, sewers and cutters (Ram et al., 2004), often working at home.
Construction	With its concentration of migrant labour (Fitzgerald, 2006), construction accounts for 47% of informal economic activity in the UK (Buehn and Schneider, 2007) and, as such, is a high-risk industry for NMW non-compliance.
Creatives	As BECTU, among others, have shown, the media industry features a proliferation of runners, interns and assistants who do not receive the NMW to which they are entitled.
Domestic work	Kalayaan report that migrant domestic workers in private households recount working an average of 17 hours a day on arrival in the UK (Anderson and Rogaly, 2009). The Centre for Social Justice observes that the changes made to the overseas domestic worker visa in April 2012 risk 'disempowering workers through restricting their freedom to leave an abusive employer and fostering increased cases of modern slavery' (CSJ, 2013).
Food processing	Operation Shark, led by the DWP, raided all the main fish processors in Scotland in December 2002 and found that half the workforce was illegally employed (EHRC, 2010). Subcontracting in the food manufacturing sector is extensive and includes a range of degrees of abusive employment relations, including debt-bondage, illegal deductions from pay, and breaches of NMW law (Anderson and Rogaly, 2009).
Hairdressing	Heavy reliance on and frequent underpayment of apprentices.
Hospitality	The hospitality industry is characterised by a large number of very small firms and a high proportion of workers on Minimum Wage. Hospitality was particularly badly hit in the recent recession, with output contracting by eight per cent from its 2009 peak. This led to some businesses taking staff 'off the books' and reducing wages below the NMW (Ipsos MORI and Community Links, 2012a).
Leisure	Low-paid young people doing casual work in leisure centres and gyms are vulnerable to NMW non-compliance.
Retail	A labour intensive sector operating on relatively thin margins and employing large numbers of young people where NMW rates vary according to age.
Security	Security guards are frequently asked to work more hours than they are paid for (whether awake or asleep) or required to pay for their own equipment from their wage.
Social care	Under-payment of at-work travel time is commonplace in a sector where any hour's pay dropping below the minimum wage is likely to drag the average pay below it too.

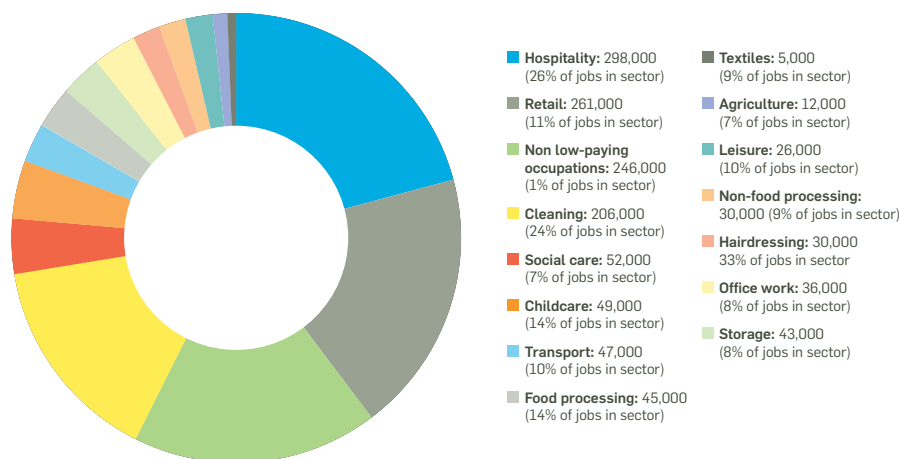
Sectors in which non-compliance is most common are listed in Table 3. Meanwhile, Figure 2 shows the breakdown of NMW jobs by occupation.

There is a host of scams that employers use to avoid paying the NMW. They include inadequate piece-rate pay (eg hotel cleaners paid per room cleaned, cinema ushers per film, bricklayers per brick or sewers per garment); bogus self-employment; unpaid internships; mandated uniform, transport, food and accommodation costs; restaurants assuming staff will receive a certain sum in tips and deducting that cash from their pay packets; employees being wrongly classified as volunteers; underpayment of travel time; under-recording of hours worked; and paying cash-in-hand so that hours and wages go unrecorded (Morris, 2013 and Pennycook, 2011).

We now describe four particular problem areas for which we later make recommendations. First, the systemic challenges currently posed to the NMW

**Figure 2: Number and proportion of NMW jobs by low-paying occupation in the UK in 2012**

Source: LPC, 2013, using estimates based on ASHE, 2010 methodology, low-pay weights, including those not on adult rates of pay, UK, April 2012. / Notes: a. Minimum wage jobs defined as adults (aged 21 and over) earning less than £6.13, youths (aged 18–20) earning less than £5.03, and 16–17 year olds earning less than £3.73 in April 2012. b. Percentages in parentheses are the proportion of jobs in each occupation that are minimum wage jobs. c. ONS data is crown copyright



compliance and enforcement regime by social care, apprentices and interns. In each of these areas, system-wide problems exist which are less to do with individual employers and more to do with the dominant business models in certain industries. Second, problems predominantly experienced by or associated with migrant labour. NMW enforcement is often raised in public debate alongside the challenges presented by migration, not least because migrants are more likely to be paid at or below the NMW. Third, problems concerned with public awareness and the sanctions that can drive it. The NMW is much easier to enforce if it is widely understood what a worker is entitled to and how they can pursue it, and if the sanctions for non-compliance do act as an effective deterrent. And fourth, problems with how the machinery of government is set up for NMW enforcement. The institutional arrangements for any enforcement effort must be fit for purpose if that effort is to deliver maximum compliance.

#### 4.1 Systemic challenges

Certain sectors of the economy exhibit system-wide problems with NMW compliance that are not confined to the malpractice of individual employers. Three of these areas, of specific concern, are examined here.

##### *Social care*

Carers provide one of the most important services in our society, looking after our parents or children when they are unable to look after themselves. At the moment, they do so for little return. Three quarters of the social care workforce works in the private sector (Hussein, 2010), 84% is female and one in five is foreign-born (Pennycook, 2013). According to the LPC, the social care workforce is one of the least well remunerated (Hussein, 2012). The TUC regards the provision of adult social care as the single biggest sector where evasion of the NMW occurs (LPC, 2013).

Social care is also an industry where the prevalence of atypical forms of employment, particularly zero-hours

contracts, is growing rapidly. 307,000 social care workers are now employed on a zero-hours basis, comprising 20% of the entire social care workforce (Grice, 2013). Recent research for the LPC suggests that over half of domiciliary care workers are on zero-hours contracts, increasing to 80% among private employers, who are increasingly becoming the dominant players in domiciliary care, and where the wage distribution is narrowest and lowest in both mean and median (Bessa et al., 2013).

It is almost certainly easier to avoid NMW compliance issues related to travel time and cost when employing carers on zero-hour contracts. The NMW does not cover situations where zero-hours contract workers are waiting at home for a call to come in to work. Researchers have found that, in the period October 2011 – April 2012, 70% of domiciliary care workers paid at or below the NMW were on zero-hours contracts – up from 30% in 2008 (LPC, 2013).

In keeping with a wider fragmentation and intensification of working time in our economy (Pennycook, 2013), carers are often now assigned short, 15-minute slots for their appointment with a client, having to bleep when they arrive at the client's house and bleep when they leave, so their employer can keep track. According to the Local Government Information Unit, one in ten local authorities now pays for social care by the minute and only a quarter pay for it by the hour (Lucas and Carr-West, 2012). For the majority of carers, who are not in it for the money, such limited contact time is not enough for them to do their job properly, eroding their good will, on which the whole system rests.

It has been robustly yet conservatively estimated that up to 220,000 direct adult care workers (not including ancillary staff, such as cleaners in care homes), or 13% of the total care workforce, are paid less than the NMW (Hussein, 2011). Dr Shereen Hussein, Senior Research Fellow in the Social Care Workforce Research Unit at King's College London, explained to us that this figure does not factor in carers having to pay for their own uniforms, CRB checks and locker keys, as many do.

The main driver of the phenomenon is domiciliary carers not getting paid the NMW for the time they have to spend travelling between clients. The law clearly states that all travel time for the purposes of work (after the initial journey to work and before the final journey home) should count when it comes to the NMW. Unison found that 58% of its members working in home care were not paid for their travel time (Unison, 2012). Standardly, this takes the form of workers being paid an 'enhanced rate' for the contact time they do spend with a client, supposedly to cover the time spent travelling to them from the previous client. But, upon closer inspection, it becomes apparent that, while the 'enhanced rate' is above the NMW, once one factors in the actual time spent travelling, it drops below it.

The breach is then disguised by 'labyrinthine' payslips detailing pay for every minute worked (Ramesh, 2013b). Research by Professor Jane Wills at Queen Mary University found that "very few of the [23 London-based] carers interviewed understood their payslips" (Wills, 2003). Failure properly to remunerate travel time also occurs as a result of 'call cramming', when a provider requires a carer to carry out too many short visits too close together, forcing them to travel in their own time. When the base rate of pay is so close to the NMW – the median hourly wage for carers is only 15% above it (Pennycook, 2013) – any failure to pay travel time takes such workers below their legal entitlement: there is next to no room for manoeuvre. The growth of direct payments in the sector under the banner of personalisation of care, shifting the responsibilities of employment to individual clients and their families, and, with it, the increase in self-employment in a sector that is not ready for it, makes it even harder to know what carers are actually being paid.

All this threatens to compromise the quality of service in a sector that comprises over two million workers, or seven per cent of the total number of people in work in the UK (Skills for Care, 2010; ONS, 2011; Hussein, 2012).



The Equality and Human Rights Commission has observed that “the low pay and status of care workers, coupled with high workforce turnover rates, [is] a significant factor exacerbating threats to the human rights of older people” (EHRC, 2013), and Norman Lamb MP, the Care Services Minister, has said, “If you don’t pay your staff properly then the risk of poor care cannot be far behind” (Ramesh, 2013a and Ross, 2013). Yet with our society ageing, the demands placed on carers are only likely to grow.

#### *Apprentices*

Apprenticeships are seen by the government as a vital way of tackling unemployment, particularly among young people, so NMW enforcement when it comes to apprentices is a priority. Around 30% of NMW cases investigated involve apprentices. Non-payment of NMW to apprentices is increasing. The problem is thought to be at its most acute in hairdressing, where, in 2012, around 64% of 16- and 17-year-old apprentices and 70% of 18–20 year-old apprentices were paid below their entitlements – a proportion over half as large again as in any other sector (BIS, 2013a; LPC, 2013).

With 29% of apprentices paid below the NMW last year, rising to 69% in hairdressing, and with four per cent

**Table 4: Percentage of apprentices not being paid the NMW (worst five industries), 2011–2012**

Sources: BIS, 2013c

Industry	2011 (%)	2012 (%)
Hairdressing	48	69
Children’s care	26	43
Electrotechnical	19	31
Business administration	14	31
Construction	33	42
<b>All sector average</b>	<b>20</b>	<b>29</b>

of apprentices reportedly receiving no pay at all, the General Secretary of the Trades Union Congress, Frances O’Grady, may be right to observe that, “apprentices are currently seen as little more than cheap labour... in some industries, such as hairdressing, abuse has become endemic” (BIS, 2013c and TUC, 2013b).

There are estimated to be around 35,000 hairdressing and barbers’ salons in the UK with almost 250,000 employees and an annual turnover of more than £6 billion (NHF, 2013). The workforce in the sector is disproportionately young, female and white. The industry contains very few large businesses like Vidal Sassoon and Toni & Guy, with small-scale operations predominant: 43% of hairdressing outlets employ five or fewer people (Casebourne et al., 2006).

Hairdressing staff have low awareness of the different rates of the NMW by age and apprentice status, which is particularly significant in an industry where many start out as teenagers on trainee schemes (Ipsos MORI and Community Links, 2012a). But the LPC has said:

*We think it difficult to avoid the conclusion that in much of the industry there is a culture of non-compliance, in which paying the apprentice minimum wage is regarded by some as somehow optional... Non-compliance is so extensive that the Apprentice Rate is not in fact functioning as the floor under apprentice pay. (LPC, 2013)*

Researchers have found hairdressers are concerned that if the NMW were fully enforced, the industry’s business model would fail (Lawton and Norris, 2010).

#### *Interns*

The fundamental problem with internships *vis-à-vis* the NMW is when someone is required to act as a worker and yet remains unpaid or is paid below the NMW. Many interns should be classed as workers or employees.

An employer cannot avoid paying the NMW simply by stating that it does not apply or by pretending a worker is a volunteer. Internships that may not carry entitlement to the NMW include students required to do an internship for less than a year as part of a UK-based further or higher education course, school work experience placements or work shadowing.

In some otherwise-glamorous professions, notably politics, think tanks and the media, internships have become an essential stepping stone into work. That many of these internships are unpaid constitutes a structural inequality. As Gus Baker, Co-Director of Intern Aware, has observed:

*Unpaid internships impede social mobility, leaving thousands of school leavers and graduates in a Catch-22 situation, unable to get a job because they can't get experience, and unable to get experience because they can't afford to work for free.* (Intern Aware, 2013b)

This is a particular issue in London, due to the concentration of these sectors in the capital and the high cost of living and travel. Young people with connections in and access to these industries enjoy an advantage in terms of gaining internships and being financially supported during them. The LPC has recognised this problem and recommended government action on it. Frances O'Grady, General Secretary of the TUC, has complained that “many abuses are still going unpunished, with interns and apprentices particularly at risk of being underpaid” (TUC, 2013a). The Prime Minister recently stated, “unpaid interns should not be employed instead of workers to avoid the national minimum wage” (Milburn, 2013).

Still, advertisements for unlawful internships, specifying set hours and tasks but no pay, proliferate online (Intern Aware, 2013a). BECTU research last year showed that of 110 jobs advertised in film and TV on www.mandy.com, 46 (almost half) were explicit

about the work being unpaid or paid below the NMW (BECTU, 2012). A recent YouGov survey of 2,794 adults found that

*the take-up of unpaid internships may have grown tenfold in the last two decades. The survey, commissioned by the National Union of Students, found that 20% of 18–24-year-olds had done an unpaid internship, compared with 2–3% of those aged over 40.* (Malik, 2012)

The number of people living in London who had undertaken internships was twice as high as in any other region – 12% as compared to 5–7% elsewhere (YouGov, 2012). The TUC has said that work experience and internships remain the fastest growing source of abuse of the NMW (LPC, 2013).

Unpaid internships that are really proper work – and so should be paid as such – have been the subject of much political and media commentary in recent years (Malik, 2012 and Malik, 2013a). As a result, HMRC now fast-tracks any complaints it receives via the Pay and Work Rights Helpline about unpaid internships, and has investigated 40 cases of companies hiring unpaid interns in the last tax year and taken action against nine, leading to fines and repayment of arrears to 167 individuals, totalling £192,808 (Ramesh, 2013b). BIS says that over the coming year it will launch a social media and poster campaign, publish a student handout and work with Channel 4 to encourage people to name those employing unpaid interns for investigation (Malik, 2013a and Intern Aware, 2013b). Nonetheless,

*Despite the targeted enforcement of unlawful internships which breach the NMW, [the LPC] continues to receive evidence of widespread non-payment of the minimum wage for positions that appear to be work. The longer this continues the greater is the risk that extracting work from unpaid interns becomes a 'new normal'.* (LPC, 2013)

## 4.2 Migration factors

### *Migrant workers*

Trades union research suggests that as many as 37% of migrant workers may be paid less than the NMW (TUC, 2007). New arrivals, particularly those with poor English and those without the right to work, are thought to comprise a significant proportion of NMW non-compliant workers (Ipsos MORI and Community Links, 2012a). Examples include a Ukrainian woman collecting glasses in a pub for £1 an hour, an Indian construction worker earning £20 for a nine hour day and migrants picking cabbages in Littlehampton for £20 a day, coriander in Norfolk for £10.35 a day, or daffodils near Plymouth for £1 an hour (Anderson and Rogaly, 2009).

A significant problem when it comes to migrant labour and the NMW is the role played by employment agencies. The Commission on Vulnerable Employment found agencies refusing to pay workers for work completed, denying them breaks and making unlawful deductions from their NMW pay for badges and training (TUC, 2007). 81% of law centres report frequently assisting agency workers with complaints of underpayment (TUC, 2009).

The Gangmasters Licensing Authority (GLA) is a regulatory body for regulating businesses such as employment agencies, labour providers and gangmasters that supply contract labour to the agricultural and food industries. It falls under the remit of the Department for the Environment, Food and Rural Affairs (DEFRA). Among its other responsibilities, it used to police the implementation of the decisions of the Agricultural Wages Boards, which used to set a separate agricultural minimum wage until the boards were abolished on 1 October 2013. Prior to this, the GLA had a good reputation for its own agricultural minimum wage enforcement among those working in agriculture, horticulture, forestry, shellfish gathering and food and drink processing and packaging. Indeed, a Home Affairs Select Committee Report on Human Trafficking stated that “outside the GLA’s sectors, enforcement is at best

patchy and at worst non-existent” (HOC, 2009). This suggests that a sectoral approach to NMW compliance and enforcement may have particular merits. NMW compliance encounters particular challenges with the (at least) two million vulnerable workers – many of them migrants – working in the informal economy, which is equivalent to 12.3% of GDP or around £120 billion (TUC, 2008). These include the absence of employment contracts and prevalence of cash-in-hand payment. ‘Ubiquitous informalisation’ as a result of both globalisation and austerity has made NMW enforcement much more difficult (Evans et al., 2006). Yet there is a danger in this area that simplistic attempts at stricter enforcement of the NMW could drive informal work deeper underground, and further away from other legal employment practices such as health and safety (Ram et al., 2004). On the other hand, support with formalisation, as we heard from Maeve McGoldrick at Community Links, can have a domino effect and can legitimately be framed as enterprise growth.

As Tim Harrison at the Migration Advisory Committee observed to us, there is a concentration of immigrant labour in the sectors where NMW non-compliance is of greatest concern. Hence, NMW non-compliance is often raised as an issue in a migration context (eg Miliband, 2012; Cooper, 2013 and Bennett, 2013). As was the case in the recent raids on chicken shops in Newham, investigation of breaches of NMW can also uncover cases of irregular migration (Gentleman, 2012).

### *Accommodation*

The accommodation offset built into the NMW allows employers, within limits, to offset the value of the accommodation they provide for their workers against the NMW. In principle, this is worth preserving. In practice, however, it can prove problematic for both employers and workers. For employers, it can be hard to offer decent accommodation at the low offset levels. For workers, accommodation is often used to exert

control, for instance by denying them work if they do not take the accommodation up, by preventing them from changing employers or by forcing workers to work excessive hours (Anderson and Rogaly, 2009). Some employers and agencies overcrowd workers, cramming them into small quarters, sometimes via hot-bedding arrangements. Ed Miliband MP has spoken of experiences in his Doncaster constituency “where Eastern European migrants undercut pay and conditions at a local chicken factory by working for less than the minimum wage for long hours, while sleeping 19 or 20 to a house” (Murphy, 2012). The TUC has found that

*low-paid workers in receipt of wages above the minimum still routinely receive large deductions from their pay for accommodation, and much of the housing they are provided with is substandard and places them at health and safety risk. (TUC, 2007)*

In multi-agency raids performed recently in Newham, a number of fried chicken shops were found to have used mattresses and camp beds in the kitchens and store rooms (Gentleman, 2012).

The accommodation offset as part of a worker’s pay package can be important for workers who need an inexpensive roof over their head. However, there is evidence to suggest it is being abused to underpay and overcrowd (Anderson and Rogaly, 2009).

#### 4.3 Awareness and Sanctions

##### *Awareness*

Research suggests that general awareness of the existence of the NMW is good, at 93% (TUC, 2007), but that knowledge of its main adult rate is patchy and knowledge of its other rates is low (White and Croucher, 2007). Basic awareness of the NMW also drops among black and minority ethnic groups (TUC, 2007).

Research suggests that general awareness of the existence of an NMW is less of a problem than specific

knowledge of its rates, which, of course, change over time. Some employers therefore become non-compliant with the NMW as they do not realise it has been updated. A primary source of information on the NMW and people’s entitlements to it is the government’s website [www.gov.uk/national-minimum-wage](http://www.gov.uk/national-minimum-wage). However, as the TUC General Secretary pointed out in a letter to Cabinet Office Minister Francis Maude MP in February 2012, the content of the site remains incomplete and in places misleading.

#### **Sanctions**

##### *Tribunals*

While it is possible for a worker not to go via HMRC but instead to go direct to an Employment Tribunal to secure any arrears they believe they are owed by their employer on the basis of NMW non-compliance, that option is now a costly one. Earlier this year, the government scrapped Legal Aid for employment advice and people will now have to pay a listing fee at an Employment Tribunal to have their case heard, with no guarantee that they will get their fees back if they win (Jackson, 2013).

##### *Arrears*

When an employer is found to be in breach of the NMW he or she is required to pay back arrears to the worker(s) affected. HMRC say that most but not all arrears are paid in full. The Exchequer Secretary to the Treasury, David Gauke MP, told us that

*HMRC contacts every employer whom they find has paid workers below the NMW to confirm that they have paid the identified arrears to the workers. In addition, where it has found arrears for five or fewer workers it will contact all the workers to confirm payment by the employer. In cases involving arrears for more than five workers it will contact a minimum sample of five workers to confirm payment by the employer. (Gauke, 2013)*

Beyond this, it is largely left to workers to complain if they are not repaid. Workers, however, may not be prepared to report any subsequent non-payment or under-payment of arrears, for some of the same reasons that they might not report underpayment of wages in the first place. Chasing employers for arrears can be harder still if the business folds or disappears in the meantime.

#### *Fines*

The current limit on fines of £5,000 is too low, undermining their deterrent effect. This is apparent when comparison is drawn with fines for other offences. For example, a sweatshop producing counterfeit shirts can be fined up to £75,000, the maximum fine for fly-tipping is £50,000 and over-claiming benefits is an imprisonable offence. In contrast, fines for fraudulent NMW non-compliance, one stakeholder told us, “are not even a slap on the wrist”. Ed Miliband MP has called for the maximum fine to be raised to £50,000 – a ten-fold increase (ITV, 2013). It is worth noting, in this context, that the civil financial penalty for non-compliance with the NMW will not be affected by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 which, when it comes into force, will only lift the limit on fines for criminal offences which can be imposed by a magistrates’ court.

#### *Prosecution*

Prosecutions are unlikely ever to be HMRC’s preferred enforcement option, given the relatively high resource implications and the relatively low penalties prosecuted employers have incurred. For example, a care home in London that would not allow HMRC to enter the premises was fined £2,500, while a Sheffield butcher who owed workers £10,000 in arrears was fined just £800 for keeping false records (TUC, 2009). Over-reliance on civil penalties, however, is also problematic, since they must remain confidential and data on them can only be published at the aggregate level, limiting their deterrent effect. Since May 2006, when prosecution first became an option for NMW offenders, nine prosecutions in total

have taken place, including that of Kenneth Ikerunawa in London in 2013 (Dunstan, 2013).

#### **4.4 Machinery of government**

##### *Resources*

Despite increases in funding for HMRC’s NMW enforcement work 2007 to 2011, the financial and therefore human resources allocated to HMRC for NMW enforcement are currently either inadequate to the task or not deployed effectively on it. For example, Birmingham, a city of over a million people, has an NMW compliance team of just eight officers (Pennycook, 2011). Research in the USA has shown a link between levels of non-compliance with the minimum wage and the number of inspectors (TUC, 2007).

##### *Collaboration*

HMRC have sought to build links with other enforcement bodies, including the Insolvency Service, EASI, the GLA and UKBA (BIS, 2010a). However, communication between these agencies can still be stilted by overly restrictive HMRC confidentiality rules.

#### **CASE STUDY: Faith**

Originally from Nigeria, 31 year-old Faith moved to London five years ago. She first came to the UK on an overseas domestic worker visa to work with a family she had been working for in Nigeria. Faith spent over three years as a domestic worker in Mill Hill, looking after the family’s six children.

As the children grew older, Faith moved on to work for a second Nigerian family, this time in Edgware. There she earns £140 a week, working full-time, Monday to Friday. She lives in the family’s house and is responsible for cleaning it as well as looking after the two children. She is not aware of the national minimum wage.

*I came to London as a domestic worker because I had no real opportunities at home in Nigeria. I did not finish school. But I found I was good at childcare, and that, through this job, I could have a better life, and maybe even study more.*

# 5 THE LONDON PICTURE

Most of what we have said so far about the NMW and its enforcement relates to the UK as a whole. We now turn to some specific considerations to apply when viewing this subject through a London lens.

It is difficult to establish an accurate picture of NMW compliance and enforcement in London because HMRC does not record either at the regional level. As David Gauke MP, Exchequer Secretary to the Treasury, told us:

*HMRC does not capture complaints or the outcomes of its investigations by reference to government regions or countries. Its management information relates to the work of teams who are multi-located. Additionally, because it resources to risk, work relating to a specific geographical area is not always done by the NMW team based in that area... HM Revenue and Customs does not capture complaints at constituency level and, since April 2011, no longer captures complaints or the outcomes of its investigations by reference to government regions or countries. (Gauke, 2013)*

Nevertheless, there are some snippets of relevant data available which suggest London is a hotspot for NMW non-compliance. The LPC annual report this year tells us that ten per cent of calls to the Pay and Work Rights Helpline are in London – the highest of any English region – of which 70% relate to the NMW (LPC, 2013). Previously, the LPC observed that far more complaints were received about NMW non-compliance in London in 2007/08–2010/11 than in any other UK region (LPC, 2011b). The very limited data we have been able to ascertain on NMW enforcement in London suggests that roughly ten per cent of the total arrears identified nationally in 2009/10 and 2010/11 were identified in the capital (FOI request to HMRC).

Economic activity in certain sectors where the risk of NMW non-compliance is high – such as construction, retail and hospitality (BIS, 2013a) – is disproportionately concentrated in London. Nationally, there are significantly

more complaints received from people working in the hospitality sector than in any other trade, and as much as ten per cent of the total stock of hotel rooms is located in London, which is the hub of the hotel industry in the UK (LPC, 2011b and Evans et al., 2007). Average wages in this sector are the lowest in the economy and it has the lowest union density, at about five per cent (Evans et al., 2007). The LPC commented this year, “We have also received accounts of underpayment of hotel cleaners, engaged through agency and contract cleaning companies, and paid on a ‘per-room’ basis, particularly in London” (LPC, 2013).

London also has a very high proportion of migrant labour, statistically more likely to be underpaid. For example, in 2004/5, 62% of catering assistants, 56% of care assistants and 69% of cleaners in London were foreign-born (Wills et al., 2009). There are 49,000 carers working in London (Ussher, 2013). According to Dr Shereen Hussein of King’s College London, 40% of them are migrants, with three-quarters of those from outside the European Union. Of 341 low-paid cleaners, domiciliary carers, food processing workers and hospitality workers interviewed in London by Queen Mary University, a huge 90% were migrants, half of them having moved to the UK in the last five years, and half of them from sub-Saharan Africa (predominantly Ghana and Nigeria). Half of them also had tertiary level qualifications before coming to the UK. Twelve of these interviewees reported earning below the NMW, ten of them in hospitality, mostly chambermaids paid per room cleaned (Evans et al., 2005). In another study, by Community Links and Toynbee Hall, three quarters of the twenty Brick Lane restaurant workers interviewed were paid significantly below the NMW. Most had no contract, paid no tax and worked between 50 and 65 hours each six-day week (Elliott, 2009).

The LPC observes (see Table 5) that in seven London local authorities (Lewisham, Newham, Sutton, Ealing, Hackney, Haringey and Waltham Forest) the proportion of workers working at or below the NMW rises above five per cent.

**Table 5: Proportion of workers paid at or below the NMW, by London Borough, 2012** / Sources: LPC private presentation 2012

Work London Borough	Workers at or below the NMW (%)
City of London	0.4
Tower Hamlets	1.8
Islington	1.9
Camden	2.0
Hillingdon	2.0
City of Westminster	2.0
Southwark	2.3
Hammersmith and Fulham	2.4
Kingston upon Thames	2.7
Hounslow	2.8
Lambeth	2.8
Kensington and Chelsea	2.9
Merton	3.1
Greenwich	3.2
Havering	3.2
Barnet	3.3
Richmond upon Thames	3.3
Bromley	3.5
Croydon	3.6
Wandsworth	3.6
Harrow	4.0
Barking and Dagenham	4.3
Brent	4.5
Redbridge	4.6
Enfield	4.8
Bexley	5.0
Lewisham	5.2
Newham	5.4
Sutton	5.9
Ealing	6.0
Hackney	6.1
Haringey	6.3
Waltham Forest	6.5
<b>London</b>	<b>2.9</b>

So, there is reason to believe that although London has the lowest proportion of NMW jobs of any UK region (LPC, 2013), it is nonetheless a trouble spot for NMW non-compliance. Michelle Wyer, the Assistant Director responsible for NMW enforcement at HMRC, confirmed that, at present, London is the region of the country (along with the North West) where there appears to be the highest risk of NMW non-compliance.

To summarise, there are three main reasons why London is a hot spot for NMW non-compliance:

- Sheer volume of low-paid work;
- High proportion of immigrant labour;
- Concentration of high-risk industries, eg construction, retail and hospitality.

#### CASE STUDY: **Maria**

Maria, aged 46, originally from the Dominican Republic, arrived in the UK just 10 months ago. Living in Waltham Forest, she has been working as a hotel cleaner in South Kensington since arriving in the capital. Despite securing her job via an agency, Maria never received any form of contract.

She works full-time at a rate of £3.08 per room, despite having been told she would be paid £6.19 an hour. The amount she takes home depends on the hotel's occupancy rate. Maria receives no money for the time taken to clean the hotel corridors and to prepare her cleaning equipment at the beginning of each shift. In her words, the money she takes home is simply not enough to provide for her four children and her partner, who is himself looking for work.

Maria feels humiliated and cheated by this arrangement, although she fears that with no knowledge of English, she has no chance of finding alternative employment. She once asked her employer for more money, but she was told her salary was 'correct'. She and the other cleaners are under pressure to clean as many rooms as possible, often under scrutiny from hotel management who inspect the rooms as she cleans. Maria has seen a number of cleaners leave the hotel in tears after being shouted at by the management.

Maria has not heard of the Pay and Work Rights Helpline and feels that it would not be any help as she does not speak English. Since coming into contact with the Latin American Women's Rights Service, Maria would recommend that people in similar situations to her should speak to this advocacy charity for help. She suggested that employers should have to let their employees know about the national minimum wage when they sign their contract.



# 6 RECOMMENDATIONS FOR CHANGE

On the basis of this analysis, we offer a suite of recommendations for change which, if implemented, we believe would make for enhanced enforcement of and increased compliance with the NMW, both in London and across the UK.

We have grouped our proposed solutions in the same four categories we used to group the problems they address: systemic challenges that are less to do with individual employers than with the business models that operate in certain industries; problems predominantly experienced by or associated with migrant labour; difficulties concerned with public awareness and the sanctions that can help raise it; and issues with how the machinery of government itself is set up to deliver NMW enforcement.

## 6.1 Systemic challenges

### *Social care*

#### Recommendation 1

Commissioners of care services should build a schedule into contracts with care providers requiring that they pay all their carers at least the NMW.

The primary problem facing social care *vis-à-vis* the NMW is the failure of private providers of adult social care delivering local authority contracts to pay their home care staff the NMW for the time they spend travelling between appointments. Therefore the main step towards NMW compliance in adult social care, already taken by some local authorities (BIS, 2010a), would be for commissioners of care services to build a schedule into contracts with care providers requiring that they pay all their carers at least the NMW, including for time spent travelling, and that they prove that they indeed do so. While, of course, payment of at least the NMW is already required by statute, the threat of losing a multi-million pound contract if caught paying below the NMW is likely to be more persuasive than the risk of

paying a negligible fine. In its recent report, *Close to Home – recommendations review*, the EHRC helpfully offered a template NMW schedule for addition to local authorities' adult social care contracts to precisely this end (EHRC, 2013).

In this way, commissioners are in a powerful position to secure disempowered workers' rights. This same principle could be extended across a range of contracts for other services that local authorities procure where the risk of NMW non-compliance is real. The contracting power of the state could then be harnessed to bolster NMW compliance. In the capital, London Councils could broker agreements between London boroughs to adopt a consistent contracting approach.

It does, however, seem fair to say that the system we have for funding social care in this country is now dysfunctional and in need of a radical overhaul. As Matthew Pennycook of the Resolution Foundation has put it:

*The result has been the emergence of a sizeable gap between rising needs and available resources that determines the context in which the commissioning decisions of local authorities are made. (Pennycook, 2013)*

Indeed, HMRC is now investigating the claim that 120 care providers are being forced by increasing workloads and decreasing council funding to bid for local authority work at prices so low that they make full payment of the NMW to their carers impossible (Ramesh, 2013c).

#### *Apprentices*

##### [Recommendation 2](#)

[The first-year apprentice rate should be abolished, meaning all apprentices aged 19 and over receive the full NMW for their age.](#)

HMRC is currently prioritising apprenticeships as an area for special attention, at the urging of a concerned LPC.

If apprenticeships are seen as key to tackling the scourge of youth unemployment, with the Mayor of London enhancing the incentives for employers to take them on, then it is imperative that the NMW for apprentices is properly enforced. Given that apprentices are entitled to a higher wage after completing the first year of their apprenticeship, two unfortunate workarounds have developed: apprenticeships offered for only 11 months and apprenticeships where progressing to the next level is cast as commencing a new apprenticeship altogether. Both of these evasive tactics have been reported to us by Henry Morgan at the National Apprenticeship Scheme (NAS).

In order to address these sleights of hand, and in order to simplify the complicated NMW rules in this area, the first-year apprentice rate should be abolished, meaning all apprentices aged 19 and over receive the full NMW for their age. The London Mayor, a champion of apprenticeships in the capital, could lobby government for this change.

#### *Interns*

##### [Recommendation 3](#)

[The government should make the advertising of unpaid or sub-NMW non-voluntary work an offence.](#)

Although advertising for jobs is governed by discrimination laws, promoting unpaid internships is not currently unlawful and so is commonplace (Malik, 2012). The parliamentary jobs website w4MP (<http://www.w4mpjobs.org/>) helpfully adds this note on adverts for roles which are advertised as voluntary:

*The role being advertised is a voluntary one. As such, there are no set hours and responsibilities and you should be free to come and go as you wish. If the post demands set hours and/or has a specific job description you may be deemed to be a 'worker' and be covered by national minimum wage legislation.*

A step forward, as promoted by Hazel Blears MP, would be to make the advertising of unpaid or sub-NMW non-voluntary work an offence. This would put the onus on the employer to demonstrate that the role advertised does not constitute proper work and to cite for scrutiny the NMW exemption that they assert applies. The Greater London Authority could usefully lend its weight to this demand, given that such internships are heavily concentrated in the capital.

## 6.2 Migration factors

### *Migrant workers*

#### [Recommendation 4](#)

Irregular migrants should receive any arrears that they are owed as a result of their employers' NMW non-compliance.

We have mentioned above the likelihood that certain NMW compliance investigations have and will reveal workers who are in the country illegally. Where an irregular migrant is uncovered as a result of investigation into NMW compliance, he or she should be offered a place on a scheme of Assisted Voluntary Return (AVR) to his or her country of origin, if return is necessary, safe and possible. Such schemes, supported by the International Organisation for Migration, aid reintegration in a migrant's home country. Irregular migrants should also receive any arrears that they are owed as a result of their employers' NMW non-compliance. With a much higher proportion of immigrant labour in the capital than elsewhere, this would prevent London employers being let off the hook in terms of arrears for employing irregular migrants at exploitative rates.

### *Accommodation*

#### [Recommendation 5](#)

Legislation governing Houses in Multiple Occupation and regulation through the private rental sector's equivalent of the Decent Homes

[Standard should be more rigorously enforced with employer-landlords.](#)

Given that the accommodation offset available to employers is low, some of them resort to placing (often migrant) workers in cramped accommodation unfit for human habitation. Existing legislation governing Houses in Multiple Occupation and regulation through the private rental sector's equivalent of the Decent Homes Standard should be more rigorously enforced against employer-landlords who play the system by providing unsuitable and unreasonable accommodation (Travis, 2013). London boroughs have it within their power to tighten this enforcement now.

## 6.3 Awareness and sanctions

### *Awareness*

#### [Recommendation 6](#)

The Pay and Work Rights Helpline number should be printed on all payslips.

Awareness of the existence of an NMW is relatively high among workers but awareness of the Pay and Work Rights Helpline and its offer of confidentiality is much less widespread. More information on the confidential nature of the Helpline and HMRC investigations should be posted at [www.gov.uk/national-minimum-wage](http://www.gov.uk/national-minimum-wage). The Pay and Work Rights Helpline number should be printed on all payslips, as the helpline can assist with problems across the full range of employment rights, including but not limited to NMW matters. London boroughs could also mount public awareness campaigns to raise awareness of the NMW, as the London Borough of Hackney has.

### *Sanctions*

#### *Arrears*

#### [Recommendation 7](#)

Arrears should be paid to worker(s) by the employer via HMRC.

As Croucher and White have observed, “relying on payment by the employer to the worker appears fraught with problems and payment via a third party might be more reliable” (Croucher and White, 2004). Arrears should be paid to worker(s) by the employer via HMRC (or the local authority under a devolved model – see proposal below), to ensure prompt and full repayment. If NMW enforcement were partially-devolved to local authorities, as we later argue, the role of the third party through whom arrears are repaid in the capital would be played by the London boroughs.

#### *Fines*

##### [Recommendation 8](#)

The maximum limit on fines for NMW non-compliance should be removed altogether.

At the moment, HMRC must choose between small fines or costly prosecutions. There is therefore a case for increasing the maximum fine, as Ed Miliband MP and others have suggested (Helm, 2013). We believe the maximum limit on fines for NMW non-compliance should be removed altogether. Given the fine is only half the total arrears identified and is then halved again for rapid repayment, it would take circumstances where an employer was responsible for a massive amount of arrears – over £200,000 – before the fine went over the £50,000 limit to which the Labour Party is committed. Under the partially-devolved model we propose later, in the case of the capital it would be the London boroughs that keep the fines to finance their enforcement work.

#### *Prosecution*

##### [Recommendation 9](#)

Prosecutions should be reserved for repeat offenders but all of them should be pursued, as a high-profile deterrent.

Prosecutions are time-consuming and resource-intensive, and there have only been nine prosecutions of non-

compliant NMW employers since the NMW was introduced. Prosecutions should be reserved for repeat offenders, but all offenders should be pursued as a high-profile deterrent. Under the partially-devolved model for NMW enforcement we advocate in this paper, responsibility for pursuing prosecution for NMW non-compliance would continue to rest with HMRC, rather than local authorities and London boroughs.

#### *Naming*

##### [Recommendation 10](#)

All employers found to be in breach of the NMW should be publicly named.

Only one NMW non-compliant employer has been officially named at the time of writing. The new regime which came into force in October 2013 whereby the default is that employers found to have breached the NMW are to be publicly named is a welcome development. Where a London employer has been named in this way, the borough in which it is situated may wish to publicise the fact in the local media to amplify the deterrent effect.

The next level for this approach could be to engage with peer-to-peer networks online and offline to spread the word about employers who do not pay the NMW. HMRC could employ a member of staff whose job description includes, among other things, disseminating information on NMW breaches via peer-to-peer networks, for instance by updating the likes of Trip Advisor, Money Saving Expert, Rate Your Tradesman and Which? with information on organisations found to be in breach of the NMW.

#### **6.4 Machinery of government**

#### *Resources*

##### [Recommendation 11](#)

BIS should increase the NMW publicity budget.

The NMW publicity budget at BIS has been cut drastically in recent years. BIS should increase it again, and should gear more of its publicity effort on the NMW towards publicising its annual uprating. The Greater London Authority could make its advertising space, particularly on Transport for London, available for such publicity.

#### *Collaboration*

##### [Recommendation 12](#)

[HMRC confidentiality rules that prevent intra-agency and inter-agency information-sharing should be relaxed.](#)

Trades unions and others have told us of the problems different parts of HMRC have talking to one another and to other relevant agencies due to outmoded information-sharing protocols (TUC, 2009). Where possible, overly restrictive HMRC confidentiality rules that prevent intra-agency and inter-agency information-sharing should be relaxed. Under a partially-devolved enforcement model, new information-sharing protocols would need to include the capital's boroughs.

#### *Localising NMW enforcement*

##### [Recommendation 13](#)

[Government should partially devolve responsibility for NMW enforcement to local authorities.](#)

The big question is whether the institutional architecture for NMW enforcement is fit for purpose. We believe it is not geared up to the task. The current arrangements for NMW compliance and enforcement are compromised by their excessive centralisation. HMRC has neither the resources nor the relationships with employers and workers on the ground to enforce the NMW as effectively as is needed. In keeping with the principle of subsidiarity, whereby activity should be devolved to the lowest level appropriate, we recommend that the government should partially devolve responsibility for NMW enforcement to local authorities. We propose such local enforcement sits alongside and

complements central functions that should be retained and reshaped. Local authorities should have primary but not sole responsibility for NMW enforcement. We propose a new multi-layered architecture for NMW enforcement.

#### Relationships

Closer to the ground than HMRC, local authority staff are more likely to know and be known to workers in their area. This closer relationship would make reporting NMW non-compliance more likely. Local authorities may not be used to enforcing employment rights, but they do deal with employers in their area on a number of other fronts already. These include Business Rates, Town Centre Management, Planning, Licensing, Trading Standards, Trade Waste, Street Trading, Food Registration, Food Safety, Environmental Health, Pollution, Health and Safety, Antisocial Behaviour and Noise. Many of these roles include an enforcement element. This means council staff are visiting and in touch with businesses in their local authority area regularly. Newham Council has demonstrated that those employers who flout the NMW often flout these other rules and regulations too, meaning they are more likely to come to the attention of the local authority:

*Our enforcement officers know that a business which isn't disposing of its rubbish is more likely to be avoiding business rates and less likely to be paying its employees properly. (Wales, 2012)*

The local authority also has a relationship with the local Chamber of Commerce, where one exists, at which good businesses come together with a vested interest in reporting bad businesses who are undercutting them by flouting the NMW. However, as Jules Pipe, the Mayor of Hackney, who has proactively been promoting the NMW in his borough, has said, "In the past, [HMRC] enforcement work has failed to take advantage of councils' experience in this area and the intelligence and local knowledge they have at their disposal" (Pipe, 2013a and Pipe, 2013b).

### Precedents

Precedents for devolved enforcement exist, including for parking and moving traffic offences, just as they do for responsibility split between the local and national, as in health and safety, where both local authorities and the Health and Safety Executive (HSE) have powers, and legal guidance sets out the distinction in roles; or pollution and waste, where local authorities share responsibility with the Environment Agency (EA). But for the devolution of responsibility we propose to work, local authorities would need the relevant powers, skills and finance.

### Finance

We propose that a suite of NMW enforcement powers be devolved in legislation to local authorities, so they can enter premises, require records and perform wage checks. If investigation reveals non-compliance with the NMW, they should be able to serve a notice of underpayment demanding the repayment of arrears and imposing a fine, as HMRC does now. While the arrears would be paid back to the worker(s) in question, via the local authority, the fines should be paid to the local authority itself, rather than the government, as already happens with Fixed Penalty Notices for parking, littering, dog-fouling, noise and fly-tipping. These fines could then be channelled back into the local authority's NMW enforcement work. The primary funding mechanism for this work would then be the fines collected.

Looking at London-specific data for 2007/08–2009/10, the average level of arrears identified per NMW enforcement was £11,961 (FOI request of HMRC). If we remember that the fine is for half the value of the arrears up to a maximum of £5,000, factor in an investigation strike rate of 50% (HMRC's stated aim), and assume the same proportion – two thirds, nationally, last year (BIS, 2013a) – of offenders take advantage of the 50% discount for rapid payment of the fines, then the average fine per investigation in London would be £1,667. This is close to the cost of a standard investigation, as reported

to us by Michelle Wyer (see chapter three), so even if the limit on fines remained where it is, which it should not, the fines generated should be sufficient to cover the basic operation of NMW enforcement by local authorities. Clearly some initial investment in set-up and back-office would be necessary, and this is where some of the £8 million per annum currently tied up in HMRC NMW activity could be disbursed.

### Contested cases

Where employers recognise their breach and agree to pay arrears, this arrangement should suffice. It is where employers decide to argue the case in court that costs could become untenable for local authorities without additional funding from central government. We suggest that responsibility for assuming and pursuing these contentious cases in court could remain with HMRC, picking up and running with information gathered locally. This would be analogous to local police officers in a London borough investigating a case until it becomes clear that it could be related to serious organised crime and then handing it over to specialist police at New Scotland Yard to take further.

### Skills

Local authorities do not currently employ officers trained to investigate non-compliance with the NMW, although they do employ significant numbers of enforcement officers to enforce that legislation for which they are responsible, as detailed above. Some upskilling – and potentially additional staff – would therefore be needed to enable local authorities to perform this new role effectively. During transition, they could be trained by current HMRC Compliance Officers, many of whom could be disseminated among the country's local authorities for this purpose on a clustered basis. Some cases of suspected breach of the NMW would require highly skilled investigation, but others would by no means require forensic accountancy, for instance where observation of hours worked and hours recorded shows a clear discrepancy.

Chains

The question arises of how to deal with regional, national and international employers with outfits in more than one local authority. A ‘lead authority’ approach could be adopted, as is currently the case with Health and Safety regulation. Currently, large businesses pay for one local authority to be their single point of contact on health and safety matters. Yo! Sushi, for example, have the London Borough of Islington as their lead authority, and, where health and safety concerns arise with their operations elsewhere in the country, it is Islington Council they speak with about it. According to Michelle Wyer, when a national employer breaches the NMW it is frequently limited to an individual rogue franchise or branch.

Pilots

Local authorities have many regulatory powers, but they do not all use all their powers all the time. Some powers are more relevant in some local authorities than others. Devolving responsibility for NMW enforcement in this way would mean that local authorities with a problem with NMW non-compliance in their area could act on it. Before embarking upon such a programme of localisation, the concept could be piloted in practice in a handful of local authorities. Senior council members in Newham, Hackney, Islington and Haringey councils have all expressed an interest to us in their respective boroughs being locations for such pilot schemes.

Implications

The NMW function within HMRC is currently relatively discrete, and so its part-devolution ought not to cause widespread disruption elsewhere in HMRC or among other agencies, although mechanisms would need to be found for efficient liaison between local authorities and the likes of EASI and the GLA. It will be necessary to retain a central HMRC NMW compliance function to formulate policy, liaise with other HMRC departments (for instance on suspected tax evasion), prosecute court

cases and potentially continue some investigations at a sectoral level – an approach that has worked well for the Gangmasters Licensing Authority. Statistics on NMW compliance and enforcement would still need to be collated nationally as well. In the capital, primary power and responsibility for NMW enforcement would sit with the individual London boroughs, with good practice shared at London Councils and support provided by the London Mayor.

Table 6: Devolving NMW enforcement – risks and responses

Risk	Response
Lack of a viable funding model	Initial investment would be required and could be funded by transferring to local government some of the £8 million per annum that HMRC currently struggles to spend. Thereafter, investigations should be self-financing, provided local authorities are allowed to keep the fines and pass contentious cases to HMRC to pursue at tribunal or in court.
Lack of necessary powers at local level	Legislation would be necessary to arm local authority officers with a suite of NMW investigation and enforcement powers.
Lack of relevant expertise at local level	Most of the Compliance Officers currently working centrally at HMRC could be disseminated throughout the country's local authorities on a clustered basis to upskill local staff who should also undergo some of the year-long training HMRC's Compliance Officers currently undergo.
Suspected NMW breach by national or international operators	According to HMRC, most such breaches are down to rogue franchises rather than widespread malpractice. A 'lead authority' way of working could be adopted for (inter)national organisations, as it is currently for Health and Safety.
Postcode lottery in levels of enforcement	Localism brings a degree of variation, but the centralised status quo exhibits profound geographical variation too. If the problem varies geographically in intensity, as it does, then so will the solution. If local authorities can investigate efficiently and if the limit on fines is raised, then the funding model proposed would provide an incentive to discharge these new responsibilities rigorously to swell starved council coffers.
Disruption to HMRC and others	The NMW enforcement function with HMRC is relatively discrete: sowing some of its resource locally should not overly disrupt the rest of HMRC. Those national organisations with which HMRC collaborates on NMW enforcement, such as the GLA, EASI and the Home Office would need to develop channels to communicate and share information effectively with local authorities, as was necessary, for instance, with the Prevent aspect of the CONTEST national counter-terrorism strategy which forced ACPO, the Metropolitan Police and other central organisations to develop ways of working in a sensitive environment with local authority partners on the ground.

Table 6 seeks to summarise the potential risks of devolving some responsibility for NMW enforcement to local authorities and our proposed mitigations.

Whatever the challenges posed by localising responsibility for NMW compliance and enforcement, it must be preferable to the status quo, predicated as it is on workers picking up the phone to a remote and distant helpline. Yvette Cooper MP has said “local councils should be given the power to take enforcement action over the minimum wage” (Cooper, 2013); Chris Bryant MP has said “because local authorities are far better at knowing what is going on locally, we will give them the power to enforce the minimum wage” (Bryant, 2013); and the Labour Party has published a pre-manifesto policy document that states the party will give “local authorities as well as the HMRC a role in enforcement” (Labour Party, 2013). Conservative Minister of State for Skills and Enterprise Matthew Hancock MP has also expressed interest in councils being given powers to help enforce the NMW (Wintour, 2013). We recommend that senior politicians of all parties now take forward the idea of partially localising NMW enforcement in developing their manifestos for the General Election in 2015.

This report should assist them in figuring out how. We believe it could be a game-changing move in favour of some of those who work hardest for least in our society and against those who, by accident or design, exploit them.

#### CASE STUDY: Anya

Anya, aged 25, is from Belarus and has been living in the UK for just over a year. She lives in Brent and for the past four months has been working as a part-time waitress in Harrow. She started on just £3.00 an hour. After she complained to her employer, her hourly wage was increased to £3.50. When she started the job, they deducted some of her pay to cover the cost of her uniform. She is charged for any mistakes she makes at work, such as breaking a glass or forgetting to charge an item to a customer. Anya holds a Bachelor’s degree in linguistics and is continuing to study in London. As a student, she has permission to work just ten hours a week.

*It’s pretty much impossible to find a job with a limit on hours. Nobody wants to take and teach a new employee for just ten hours a week. I want to work more, so the situation sucks.*

*I suppose it’s not a lack of awareness among workers that is the problem. The problem is that foreigners who do not have any documents or the permission to work are ready and willing to work for any payment. I have heard of the Pay and Work Rights Helpline. I know that the national minimum wage is about £6.10 an hour. But rather than reporting any employer, I would just quit the job.*



# 7 CONCLUSION

The national minimum wage has changed the lives of millions of low-paid workers since it was introduced 15 years ago. Yet still some hundreds of thousands of workers today are not benefiting from its protection. Regardless of the level at which the NMW is set, it must be better enforced.

HMRC, on behalf of BIS, has had some success in ensuring compliance with the NMW, but serious obstacles remain. Social care, apprenticeships and internships present systemic challenges. Migrant labour is particularly vulnerable to exploitation. Detailed awareness of NMW rules and entitlements is low. The sanctions for those who do not comply are inadequate. The machinery of government is not well configured for the task.

In London, these challenges are compounded by the sheer volume of low-paid work, the high proportion of migrant workers and a concentration of high-risk industries.

We have read widely, interviewed low-paid Londoners, spoken extensively with stakeholders and probed relevant authorities and MPs. On this basis, we have offered thirteen recommendations for change which we believe would make a real difference, improving compliance and enhancing enforcement of the NMW.

We hope that policy makers in Westminster, Whitehall, City Hall and town halls both in London and across the UK will find this report useful. In it, we have sought to highlight the plight of the many people in the capital and elsewhere in modern Britain who work for less than the legal minimum, and to show that, if we choose to, we can do something about it.

# 8 APPENDICES

## APPENDIX A: BIBLIOGRAPHY

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## APPENDIX B: METHODOLOGY

In researching this report, we employed the following methodology:

- wide-ranging, desk-based literature review including data collation from an array of academic, policy-oriented, journalistic and other sources (see Appendix A);
- conversations with thirty-six stakeholder organisations (see Appendix C);
- anonymous, one-to-one interviews with eight workers paid below the NMW (see Appendix D). Interviewees were spread across north, south, east and west London; men and women; of different ages; from different countries; in different professions. Their names have been substituted with aliases in the case studies in this report;
- Freedom of Information request to HMRC;
- eight Parliamentary Questions to relevant ministers in BIS and HM Treasury;
- two advisory group meetings and remote feedback from our advisors;
- analysis of findings and report writing;
- publication, dissemination and advocacy.

## APPENDIX C: STAKEHOLDERS CONSULTED

**Gus Baker**, Co-Director, Intern Aware  
**Mark Boleat**, Chairman of Policy and Resources, City of London Corporation  
**Matthew Bolton**, Deputy Director, Citizens UK  
**Ian Brinkley**, Director, Work Foundation  
**Alan Buckle**, Deputy Chair, KPMG  
**Ramani Chelliah**, Chief Contracts Lawyer, London Borough of Islington  
**Sotez Chowdhury**, Community Organiser, Citizens UK  
**Sue Coe**, Inquiries & Investigations Manager, Equality & Human Rights Commission  
**Andrew Collinge**, Assistant Director – Intelligence and Analysis, Greater London Authority  
**John Dickie**, Director of Strategy and Policy, London First  
**Mike Dixon**, Deputy Chief Executive, Citizens Advice Bureau  
**Alma Gatica**, Administrator, Latin American Women's Rights Service  
**Joe Goldberg**, Cabinet Member for Finance, London Borough of Haringey  
**Carolina Gottardo**, Director, Latin American Women's Rights Service  
**Lucila Granada**, Advocacy and Campaigns Coordinator, Coalition of Latin Americans in the UK  
**Alex Gyasi**, Pastor, Highway of Holiness Church, London Borough of Haringey  
**Mubin Haq**, Director of Policy and Grants, Trust for London  
**Tim Harrison**, Head of Secretariat, Migration Advisory Committee  
**Jan Hart**, Service Director for Public Protection, London Borough of Islington  
**Peter Horlock**, Head of Strategic Procurement, London Borough of Islington  
**Shereen Hussein**, Senior Research Fellow, King's College London  
**Matthew Jaffa**, Senior Development Manager, Federation of Small Businesses  
**David Lammy MP**, Member of Parliament, House of Commons  
**Kayte Lawton**, Senior Research Fellow, Institute for Public Policy Research  
**Ken Mayhew**, Professor of Education and Economic Performance, University of Oxford  
**Maeve McGoldrick**, Head of Policy and Public Affairs, Community Links  
**Andreja Mesaric**, Women's Project Co-ordinator, Klevis Kola  
**Henry Morgan**, Apprenticeship Development Adviser, National Apprenticeship Service  
**Roger Morgan-Williams**, NMW Governance Team, HMRC  
**Matthew Pennycook**, Senior Analyst, Resolution Foundation  
**John Philpott**, Professor and Chief Economic Adviser, Chartered Institute of Personnel and Development  
**James Plunkett**, Director of Policy and Development, Resolution Foundation  
**Kieran Read**, Head of Policy and Research, London Borough of Newham  
**Kate Roberts**, Community Advocate, Kalayaan  
**Katie Schmuecker**, Programme Manager, Joseph Rowntree Foundation  
**Paul Sellers**, Policy Officer, Trades Union Congress  
**Karan Singh**, Community Advocate, Kalayaan  
**Nicola Smith**, Head of Economic and Social Affairs, Trades Union Congress  
**Mel Steel**, Advice Project Lead, Praxis  
**Bill Wells**, Deputy Director, Department for Business, Innovation and Skills  
**Colin Williams**, Professor of Public Policy, Sheffield University  
**Jane Wills**, Professor of Human Geography, Queen Mary University of London  
**Michelle Wyer**, Assistant Director, Her Majesty's Revenue and Customs

## APPENDIX D: INTERVIEW QUESTIONNAIRE

### Personal

1. Are you male or female?
2. How old are you?
3. Where were you born?
4. How long have you been in the UK?
5. In what London borough do you live?
6. What academic or professional qualifications do you have?

### Work

7. In what London borough(s) do you work?
8. In what field or profession do you work?
9. Is your employer in the public sector, private sector or voluntary sector?
10. How long have you worked for them?
11. Do you do more than one job? If so, how many?
12. Do you have a contract with your employer?
13. Do you work full-time or part-time?
14. Are you guaranteed a certain number of hours of work each week?
15. Are you an apprentice or an intern?
16. Are you employed via an agency or directly?
17. Does your organisation have a Human Resources or Personnel department?
18. Is a union active in your workplace?
19. If so, are you a member of it?

### Pay

20. Are you paid per hour worked, or by results?
21. How much are you paid (per hour) for your work (before tax)?
22. Are you paid for any of the time you spend travelling?
23. Do you have any of your pay deducted for accommodation, or uniform, etc?
24. Do you know what the national minimum wage is?
25. How much do you think it is?

### Explanation

26. Why do you work for less than the national minimum wage?
27. What does it feel like earning less than the national minimum wage?
28. Is it enough for you and your family to live on?

### Challenging employers

29. Have you ever asked your employer for more pay?
30. If so, how did they react?
31. Have you ever been threatened by your employer for complaining about pay?

### Reporting non-compliance

32. Have you ever reported being paid less than the national minimum wage to anyone other than your employer?
33. If so, to whom did you report it?
34. What happened as a result of you reporting it?



- 35. If not, to whom might you report it, and how?
- 36. Have you heard of the Pay and Work Rights Helpline?

**Recommendations**

- 37. How can levels of awareness among workers of the national minimum wage be improved?
- 38. What might make you more likely to report national minimum wage non-compliance in the future?
- 39. Would you be more or less likely to report national minimum wage non-compliance to staff from your Local Authority?
- 40. To whom would you feel most comfortable reporting national minimum wage non-compliance?

**Media**

- 41. Would you be willing to be interviewed anonymously by the media about your work and pay?
- 42. Would you be willing to be interviewed and named by the media about your work and pay?

**Incentive**

Please initial here to confirm you have received your £20 cash incentive: \_\_\_\_\_

Since 1999, all employers have been legally required to pay their workers at least the minimum wage. This wage is carefully set to ensure that it does not damage the economy or cause unemployment. But too many employers fail to comply with the law and do not pay their workers what they are due.

As a result, at least 300,000 workers in the UK are being paid below the national minimum wage. This authoritative report surveys the extent and nature of this non-compliance and sets out a series of steps that we could take to tackle it. While the problem of non-compliance is by no means limited to London, it is a particularly significant problem for the capital. Among other reforms, Andy Hull contends that the public sector should do more to ensure the companies it employs, such as care providers, do pay the minimum wage and recommends that local authorities play a greater role in enforcing it.

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# Voluntary and Community Sector Premises in Southwark

April 2015

## Introduction

Finding **available**, **affordable**, and **suitable** premises is a challenge for voluntary and community organisations (VCOs) nationwide. According to the Ethical Property Foundation, [40% of organisations](#) believe their building is the greatest risk facing their charity.

Over the years, CAS has carried out a great deal of work examining the landscape of VCS premises in the borough, and looking at ways that the situation could be improved. This report outlines some of the work we have already done, and outlines recommendations we feel would improve the premises situation for VCOs across Southwark.

### Contents:

1. Premises: Work so Far
2. Challenge and Issues
3. Recommendations

## 1. Premises: Work So Far

The suitability and availability of premises is a longstanding issue for the voluntary and community sector (VCS), and accordingly, there have been various pieces of work over the years to try to address premises issues.

In March 2009, Southwark Council carried out a survey of all council premises occupied by VCOs. CAS then produced a paper entitled '[Report on Southwark VCS Premises Survey](#)'. The results of the survey were telling - 40% of respondents felt their property was not fit for purpose, 60% had issues with the space they occupied, and 51% said they needed more space. Comments included that property was poor condition and needed renovation, was too small, expensive to run, and lacked facilities.

In September 2010, CAS produced '[Foundations for the Future: A Review of Community Premises](#)'. This pointed to a varied picture for VCS premises across the borough. For example, some groups were being supported to maintain their buildings, whilst others were paying for their own repairs, and some groups had access to peppercorn rents whilst others did not. Organisations were concerned that sharing premises would affect their confidentiality, and were concerned about run-down premises.

Recommendations included developing a work plan to demonstrate a 'whole-system' borough wide approach to community premises. This was followed by a move towards market rents on the part of the council, which created a challenging environment for some organisations. CAS supported organisations on case-by-case basis throughout this shift, and over the course of 2012/13, co-ordinated a premises working group, to which officers from Southwark Council's community engagement team contributed.

CAS's premises working group had 5 meetings over 2012/13 - bringing together VCS, statutory agencies and external organisations. One of the undertakings of the group was to map VCS premises across the borough. As part of this work, 104 premises were mapped: 23 community centres, 19 churches, 21 TRAs, 10 arts and cultural spaces, 12 halls, 14 youth and play spaces, two private spaces and three schools.

The issue of premises continues to come up on a regular basis. At our first joint Southwark Forum on 17<sup>th</sup> July 2014, we asked attending organisations to [discuss the challenges they were facing](#). Affordable premises came up as one of the top five issues. Organisations told us that they were being forced to move due to rent increases, resulting in disruption to their services. Vulnerable people using the services struggled to cope with this disruption and had to travel further to reach the support they needed.

In spring 2013, we conducted our Count Us In survey, which culminated in our the [Value the VCS](#) campaign. The survey explored the state of the sector in Southwark, and was sent out to all our members and other local registered charities. 8% of respondents said that they shared premises. 33% said that they received premises in kind, or paid peppercorn rent. 'Office or building space and quality' was the 5<sup>th</sup> most pressing concern for respondents.

We re-ran the Count Us In survey in early spring 2015. The most frequently mentioned shared resource was premises – 22% of respondents said they were either co-locating, renting out a space in a building, leasing out space to others, or gifting or being gifted space. This is very positive; however, worryingly, premises had shifted up the list of pressing concerns for VCOS, and was the 3<sup>rd</sup> most problematic issue for respondents. In particular, one respondent stated that they felt 'persecuted' by increased demands for rent, and were unable to move or develop their premises. They went on to write that their building had no fire escape, which was a hazard, and no disabled access, which was inappropriate and was preventing them from being able to develop their offer.

## 2. Challenges and Issues

CAS often hears anecdotally that there is a real need for community space in the borough and there is a lack of knowledge about lease terms, negotiation and council strategy around community premises.

The VCS estate is very diverse, consisting of a wide range of properly types, locations, states of repair and tenants. Terms of occupation therefore vary – some VCS tenants may be on a very low or peppercorn rent, while some are paying market rents. The council has stated that its general stance is to charge market rent, and support charities through grant aid to subsidise this where necessary.

Through the premises working group, we received large amounts of feedback from groups about the challenges they were facing. Common issues for groups were:

1. **Suitability.** Challenges included a lack of space for storage, buildings being in poor condition, halls and offices not being in close proximity, a lack of private space, and accessibility issues.
2. **Availability.** It has been mentioned that demand for premises is centred around the same peak times, making it difficult for organisations to procure space. Particularly busy times include the weekends and after school (as expected). Finding premises in convenient locations has been an issue for organisations.

3. **Compatibility between organisations sharing a space.** Activities could be incompatible and expectations different, meaning a clash between organisations trying to utilise the same premises.
4. **Management.** Organisations can lack the resources to manage space, including managing bookings of space, managing the risk associated with premises, and managing the **cost** of space in general. Small groups are particularly at risk of this, as they may not have a strong understanding of premises issues.

### 3. Recommendations:

Work on premises has been ongoing for some time. We would like to make three recommendations, which might help to shift forward the discourse on premises across the borough, and how we can improve the operating environment for VCOs:

1. It would be useful if CAS could be provided with a **comprehensive picture** of the VCS estate in Southwark. This should include what organisations are utilising which buildings and for what purpose, and which organisations are paying peppercorn and which market rents. This could help us to better understand what the VCS premises picture looks like, and how we can better support organisations to effectively utilise, and where possible, share premises. It will also allow us to support organisations with the transition to market rent, where this is planned.
2. We would like to see full VCS involvement in the development of any **new council VCS premises strategy**, with extensive consultation. CAS can help to organise this and collate evidence on behalf of the sector. This strategy should be developed with property services, and applied consistently across the VCS (including social enterprises).
3. The council should produce a **clear, easy to read, downloadable document** for their website that outlines policies on **rate relief, lease terms** that will apply to VCS, availability of **rent subsidy, rent free periods** and **asset transfer**, and processes required to nominate **community assets** under the Localism Act. This would help to increase knowledge in the sector about the council's approach to VCS premises. It would be very useful to have all this information in one place, as information about the council's policies on VCS premises can be difficult to locate at present.

If you have any **questions** about anything in this document, or want to discuss VCS premises in more detail, please contact **Rachel Clarkson, Senior Policy Officer** at [rachel@casouthwark.org.uk](mailto:rachel@casouthwark.org.uk)

## Overview & Scrutiny Work Programme 2015-16

At the Overview and Scrutiny meeting held on the 20<sup>th</sup> May 2015 the committee discussed the work programme for the coming year. This paper proposes a work programme for the coming year to be agreed by the committee. The committee may need to respond to issues that arise during the course of the year so the programme will need to be flexible and topics may be moved around accordingly

Below is a list of suggested topics for scrutiny by the committee arising from discussion at OSC on 20th May:

- Right to buy for housing association tenants/forcing councils to sell homes
- Council rents for voluntary and business premises
- Approach to digital
- IT systems - with focus on support for essential services
- Underpayment of National Minimum Wage
- The impact of regeneration schemes - with focus on employment
- Review of delivery of homes on Willow Walk
- Forthcoming cuts to council funding
- Age friendly borough
- The impact of additional welfare cuts
- Review of implementation of 20 mile per hour speed limits
- Living wage across the borough, and low pay more generally
- The council's use of consultants
- Redundancies at the council
- Extension of the Bakerloo Line
- Continue to monitor free swim and gym
- Continue to monitor 11k new council homes

Through this discussion it was identified that subjects for scrutiny fall, in general terms, into three main categories. These are:

1. Longer-term scrutiny topics on which OSC would aim to produce written reports to present to Cabinet
2. Longer-term scrutiny topics on which it would be sensible to work in co-operation with sub-committees and/or Audit & Governance Committee. These would also be concluded by written reports.
3. Shorter-term, more self-contained issues on which OSC can carry out initial scrutiny, and then decide on whether or not to proceed further.

With these different categories in mind, it is proposed that OSC pursue the following topics for scrutiny in the coming year.

### Longer term scrutiny concluded with full written report

1. Council rents for voluntary and business premises (continued from 2014-15)
2. Progress towards making Southwark an age friendly borough
3. The Council's approach to digital communications
4. Underpayment of national minimum wage (and low pay more generally)

### Longer term topics on which OSC would work in co-operation with other committees

1. Right to buy for housing association tenants/forcing councils to sell homes (working with Housing Sub Committee)
2. Forthcoming cuts to council funding (working with Audit and Governance)

**Shorter-term, more self-contained scrutiny**

1. Review of delivery of homes on Willow Walk
2. Review of implementation of 20 mile per hour speed limits
3. Extension of the Bakerloo Line
4. IT systems (working with Audit and Governance)

Below is a draft calendar for agenda items for the coming year. This is based on the assumption that OSC would be in a position to conclude a longer term scrutiny an issue was on our agenda for 3 meetings. This also assumes that we would be able to have no more than 3 items on the agenda for each meeting, taking into account that OSC must also carry out Cabinet Member interviews and hear call-ins. 2 sessions have been allocated to rents for council premises because this is an ongoing scrutiny.

**15<sup>th</sup> Jun 2015 meeting**

Progress towards making Southwark an age friendly borough (1)  
Council rents for voluntary and business premises (1)  
Underpayment of national minimum wage (1)

**7<sup>th</sup> Sep 2015 meeting**

Progress towards making Southwark an age friendly borough (2)  
The Council's approach to digital communications (1)  
Review of implementation of 20 mile per hour speed limits

**20<sup>th</sup> Oct 2015 meeting**

Underpayment of National Minimum Wage (2)  
Right to buy for housing association tenants/forcing councils to sell homes (1)  
Council rents for voluntary and business premises (2)

**30<sup>th</sup> Nov 2015 meeting**

Review of delivery of homes on Willow Walk  
Underpayment of National Minimum Wage (3)  
The Council's approach to digital communications (2)  
Progress towards making Southwark an age friendly borough (3)

**13<sup>th</sup> Jan 2016 meeting**

Right to buy for housing association tenants/forcing councils to sell homes (2)  
The Council's approach to digital communications (3)  
Forthcoming cuts to council funding (1)

**1<sup>st</sup> Feb 2016 meeting**

Budget Scrutiny

**4<sup>th</sup> Apr 2016 meeting**

Right to buy for housing association tenants/forcing councils to sell homes (3)  
Forthcoming cuts to council funding (2)  
Review of implementation of 20 mile per hour speed limits

**25<sup>th</sup> May 2016 meeting**

IT systems  
Forthcoming cuts to council funding (3)  
Extension of the Bakerloo Line

Also arising from the discussion which took place on the 20<sup>th</sup> May, OSC will seek to continue to innovate in the way it carries out scrutiny. This will include:

1. More visits relevant to our subject matter (Getting out of Tooley Street)
2. Going and speaking to select committees about scrutiny techniques
3. More team working with sub-committees
4. Hashtags for meetings to ties in with scrutiny topics and to invite questions via Twitter





**OVERVIEW & SCRUTINY COMMITTEE****MUNICIPAL YEAR 2015-16****AGENDA DISTRIBUTION LIST (OPEN)****NOTE:** Original held by Scrutiny Team; all amendments/queries to Shelley Burke Tel: 020 7525 7344

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Councillor Jasmine Ali	1	Shelley Burke, Head of Overview & Scrutiny	1
Councillor Catherine Dale	1	Norman Coombe, Legal Services	1
Councillor Paul Fleming	1	Aine Gallagher, Political Assistant	1
Councillor Tom Flynn	1	Tom Layfield, Opposition Assistant	1
Councillor Rebecca Lury	1	Niko Baar, Political Assistant	1
Councillor Hamish McCallum	1	Scrutiny Team SPARES	10
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Councillor James Barber	1		
Councillor Helen Dennis	1		
Councillor Nick Dolezal	1		
Councillor Eleanor Kerlake	1		
Councillor Sunny Lambe	1		
Councillor David Noakes	1		
Councillor Adele Morris	1		
Councillor Martin Seaton	1		
Councillor Bill Williams	1		
<b>Education Representatives</b>			
Martin Brecknell	1		
Lynette Murphy-O'Dwyer	1		
Abdul Raheem Musa	1		
George Ogbonna	1		
<b><u>Electronic agenda (no hard copy)</u></b>		<b>Total: 37</b>	
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Councillor Gavin Edwards (Chair)			
Councillor Anood Al-Samerai			
Councillor Maisie Anderson			
Councillor Johnson Situ			