HM Government

United Kingdom Labour Market Enforcement Strategy 2019/20

Director of Labour Market Enforcement

David Metcalf

July 2019

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Foreword

This is my second full Labour Market Enforcement (LME) Strategy. The first, for 2018/19, was published in May 2018, receiving a response from the Government in December 2018.

The 2018/19 Strategy covered:

- compliance and awareness-raising;
- deterrence and the resources/penalty trade-off;
- possible improvements to the enforcement approach regarding supply chains and licensing; and
- enforcement gaps, such as holiday pay and payroll intermediaries.

There were 37 recommendations. I am very pleased that the Government accepted 29, partially accepted two, committed to consult on another three and rejected only three.

This second LME Strategy for 2019/20 is more technical than the first. It sets out the most at-risk sectors determined by information from the three enforcement bodies and beyond. They are: hand car washes; agriculture; care; construction; hospitality; shellfish gathering; nail bars; poultry and eggs; and warehouses and distribution centres. This list of sectors is largely consistent with those identified in my previous Strategy.

Car washes and nail bars were examined intensely in the 2018/19 Strategy; agriculture, shellfish gathering, and poultry and eggs are discussed in both the 2018/19 Strategy and in this one; and hospitality and warehousing are the subject of detailed sector-based consideration in this Strategy. This leaves care and construction to be covered in future iterations.

Three cross-cutting themes form the core of this Strategy. First, how are the enforcement resources being used? Second, how can we achieve fuller compliance before invoking deterrence? Third, what progress is being made on joint working among the enforcement bodies and with other partners? Such joint working comprises both information sharing and joint operations.

One theme across this Strategy is the need for the enforcement bodies to evaluate their considerable efforts. It is all well and good to say, for example, that 1,600 cases were closed in 2018 covering ‘X’ number of workers and ‘Y’ amount of wage arrears. The evaluation required is to ask what impact did these cases have on wider compliance? I well recognise that such evaluations are not necessarily straightforward, but I hope we can collectively make some incremental progress during 2019/20.

Another core message running throughout this Strategy is that much more should be done to research the scale and nature of non-compliance (one of my obligations under the Immigration Act 2016) and the impact of enforcement efforts. The scoping studies that I commissioned in 2018 suggest a way forward here and I now look to Government to support further work. Building the evidence base in this way can facilitate better decision making at both a policy and enforcement level and, ultimately, lead to a strengthening of protections for workers in the UK.

In December 2018, the Government announced that it intends to consult to consider the case for a single labour market enforcement body. My position has always been that, if you were starting with a blank piece of paper, we would indeed have a single inspectorate, as advocated by the International Labour Organization. There will be numerous issues to address. These include:

- What is the single body trying to achieve?
- What is its scope, structure and remit; for example, is it to be a merger of the existing bodies or a new legal entity?
- Would joint working and information-sharing be improved via a single body?
- How can we ensure that there is no negative impact on enforcement during a transition?

The intention is that my Office will formally respond to the public consultation once it is published.

I wish to pay tribute to my wonderful small secretariat: Mark Birch, Emily Eisenstein, Michael Flynn, Tim Harrison, Bethan Hunt, Victoria Jepson, Ellie-May Leigh, Jacadi Nicholas, Kelly Scott, Christine Stone and Jenna Teasdale. They interact very constructively with stakeholders, officials and the three bodies in my remit. Their drafting is speedy and elegant. The administration of my Office is particularly smooth. Their analytical bite is sharp and to the point. Over the last two-plus years, the Secretariat has provided a Rolls-Royce service: thank you!

Professor Sir David Metcalf CBE

This Strategy was first submitted to the Home Secretary and the Secretary of State for Business, Energy and Industrial Strategy on 28 March 2019.

Contents

Summary of recommendations

Listed below are the 12 broad recommendations that I am making for the 2019/20 Strategy, alongside the indicative timeframes for implementation for the bodies and/or departments responsible for taking these forward.

Indicative implementation timeframes for 2019/20 recommendations					
Body	**Recommendation**	**Delivery: 1 year**	**Delivery: 2 years**	**Delivery: 3+ years**	**Relevant to single body?**
Prioritisation of enforcement resources to protect the most vulnerable workers					
1. All three bodies should develop a better understanding of existing and emerging labour market non-compliance threats and better align their resourcing to tackle these.					
BEIS/Home Office	a. I recommend that Government support me in meeting my obligations under the Immigration Act 2016 by providing the necessary investment to undertake robust research in 2019/20 into measuring the scale and nature of non-compliance in the labour market.				Yes – fundamentally
HMRC NMW/BEIS	b. I recommend that, regarding HMRC NMW's prioritisation of cases, HMRC NMW/BEIS focus their enforcement efforts further along the non-compliance spectrum, thereby seeking to tackle more serious cases.				Yes
HMRC NMW	c. I recommend that HMRC NMW review the role and effectiveness of its strategic intelligence functions with a view to integrating with, and thereby strengthening, its risk modelling and hence improving the effectiveness of targeted enforcement.				Yes
GLAA	d. In time for my 2020/21 Strategy, I recommend that GLAA provide stronger evidence of managing risk in the shellfish gathering and agriculture sectors. GLAA should also undertake more unannounced visits of labour providers across the regulated sectors as a whole to identify unlicensed operators.				No
BEIS/EAS	e. I recommend that BEIS lead a comprehensive review of the threat to labour hire compliance from online and app-based recruitment. This should build on the work carried out to date by EAS and SAFERjobs, but involve other partners (for instance drawing on data analytics expertise and wider government interests in online policy). This review should be completed by the end of 2019 with findings to feed into my 2020/21 Strategy.				No
2. All three bodies need to better understand how their interventions impact on reducing labour market non-compliance.					
All bodies with DLME	a. Following this first phase of work to evaluate the impact of the work of the labour market enforcement bodies, I recommend that all three bodies commence a programme of evaluation work, beginning with discrete evaluation of specific compliance and enforcement interventions in the short term, with a view to considering wider impact evaluation in the longer term once better measures of labour market non-compliance have been developed.				Yes

Indicative implementation timeframes for 2019/20 recommendations					
Body	**Recommendation**	**Delivery: 1 year**	**Delivery: 2 years**	**Delivery: 3+ years**	**Relevant to single body?**
BEIS	b. The deterrent effect of the current NMW penalty multiplier should be assessed and I recommend that BEIS commission an independent evaluation to report by the end of 2019. This could potentially lead to a reconsideration of the case for supporting the raising of penalties in the future and/or increasing enforcement resources across all three labour market enforcement bodies.				Yes
3. In terms of resourcing for the three bodies:					
BEIS	a) I recommend that EAS resourcing in 2019/20 be at least doubled from its current staffing levels: • to effectively carry out its business-as-usual work; • to provide a dedicated analysis resource to maximise the benefits of its new case and intelligence management system; and • to properly undertake the additional enforcement work given the expansion of EAS's remit to enforce umbrella companies.				No
HMRC NMW	b) I recommend that HMRC's funding for NMW enforcement be increased in line with inflation and that, from 2019/20, HMRC NMW better demonstrate the cost-effectiveness of its suite of triaging interventions.				No
GLAA	c) I recommend that funding for GLAA also be increased in line with inflation. Furthermore, GLAA should achieve financial self-sufficiency for its licensing scheme by the end of 2022.				No
4. I recommend that the enforcement bodies continue to improve awareness of worker rights and complaints channels.					
All bodies	a. I recommend that the three bodies further develop strategies to target and improve the awareness of employment rights, particularly for vulnerable, at-risk and hard-to-reach communities.				No
BEIS/HMRC NMW	b. I recommend that BEIS and HMRC establish and promote an information-sharing protocol for third-party information.				No
BEIS	c. I recommend that Acas (the Advisory, Conciliation and Arbitration Service) may wish to review the statutory Code of Practice on grievance procedures, in consultation with key stakeholders, to create practical guidance for collective as well as individual grievance processes.				No
Helping employers get it right					
5. The three bodies should conduct a full review of the guidance to clarify the regulations and improve the support offered to employers, labour providers and employment businesses.					
All bodies	a. I recommend that the three enforcement bodies look to produce and update their guidance in closer collaboration with trade associations and trade unions.				No

Indicative implementation timeframes for 2019/20 recommendations					
Body	**Recommendation**	**Delivery: 1 year**	**Delivery: 2 years**	**Delivery: 3+ years**	**Relevant to single body?**
All bodies	b. I recommend that the three bodies do more to coordinate the guidance and subsequent messaging between themselves, where there is overlap of issues.				No
All bodies	c. I recommend that the three enforcement bodies draw upon examples of good practice beyond their remits to consider introducing a toolkit of interactive online compliance tools and additional guidance resources.				No
BEIS	d. I recommend that BEIS review and consolidate guidance on NMW/NLW with HMRC enforcement to create a single, comprehensive and overarching guidance document. An evaluation of the impact of this guidance should be undertaken two years from its introduction.				No
HMRC NMW/BEIS	e. I recommend that HMRC and BEIS focus on sector-specific naming rounds coupled with an education campaign to maximise the impact of naming and to raise awareness. At the same time, in order to expose the most serious NMW/NLW infringements, the cut-off for naming should be on the basis of average arrears per worker per employer and the threshold set at average arrears in excess of £500.				No
HMRC NMW/BEIS	f. I recommend that BEIS, with input from HMRC enforcement, produce supplementary sector-specific advice booklets for those sectors where trends of certain types of breaches emerge or where the regulatory landscape is particularly complex (i.e. such as issues around uniform deductions within retail and hospitality, pay averaging, salary sacrifice, etc.).				No
6. HMRC NMW should improve the consistency of its caseworkers' interpretation and application of the NMW regulations by:					
HMRC NMW	a. Providing additional training on how to interpret and apply the legislation, particularly for emerging problem areas for underpayment, such as uniform deductions.				No
HMRC NMW	b. Reviewing and improving the internal operational guidance offered to caseworkers by the Professionalism, Learning and Guidance team (PLG) as the first point of contact to clarify the regulations and operational application. This should be carried out in tandem with the review of external guidance for employers.				No
HMRC NMW	c. Conducting independent audits of a sample of enforcement activity to ensure that application of the regulations and outcomes are consistent. This could build upon the PLG's current work to conduct quarterly moderation on Key Stage Indicators for the NMW Management Board. Audit findings should be used to inform and improve internal operational guidance.				No
HMRC NMW	d. Assigning caseloads to inspectors by specialism to develop sector- and issue-specific expertise, as far as is practicably possible within resourcing constraints, to improve the quality of interactions and achieve better consistency.				No

Indicative implementation timeframes for 2019/20 recommendations					
Body	**Recommendation**	**Delivery: 1 year**	**Delivery: 2 years**	**Delivery: 3+ years**	**Relevant to single body?**
7. I recommend that BEIS review and consult on the following sections of the NMW regulations, to consider issues regarding their practical application and operation.					
BEIS	a. Record-keeping requirements: to set out the minimum requirements needed to keep sufficient records and to extend the time period for which employer records must be kept, to align with the period of liability under the National Minimum Wage Act 1998.				No
BEIS	b. Deductions for the benefit of workers: to review the regulations underpinning deductions from pay, to consider how best to enable low-paid workers to access genuine, non-cash workplace benefits within the scope of the NMW provisions.				No
BEIS	c. Pay averaging: under current regulations pay can be averaged in some circumstances but not others, but there is no clear policy rationale for this.				No
BEIS	d. Clarifying issues around uniform payments, working time and time recording, salary sacrifice and pension schemes.				No
8. To promote compliance with the regulations, I recommend that the enforcement bodies increase the volume of awareness-raising campaigns and improve the targeting of educational messaging aimed at employers.					
All bodies	a. I recommend that the bodies promote and advertise all changes to the regulations and guidance, to set clear expectations against which to enforce. I appreciate that this activity should be proportionate to the scale and impact of the changes.				No
All bodies	b. I recommend that the bodies, particularly GLAA and EAS, consider how to promote and insert their messaging across wider government communications, such as through GOV.UK's 'step by step' guide for new employers.				No
All bodies	c. I recommend that the bodies look to use The Pensions Regulator's approach to distributing educational material as an example of best practice, such as by producing similar newsletters and bulletins for employers on a regular basis. In particular, more use should be made of case study examples to highlight both good and bad employer behaviour as a practical guide to compliance.				No
Using joint working to tackle more serious and persistent non-compliance in the labour market					
9. I recommend that the three enforcement bodies review existing intelligence processes and legal gateways in order to adopt a more proactive approach to intelligence-sharing and to improve the efficiency of their joint operational activity.					
All bodies	a. I recommend that the three bodies and sponsor departments review the joint working Memoranda of Understanding as a priority to ensure that the intelligence flow and subsequent tasking processes are operating as effectively as possible.				No

Indicative implementation timeframes for 2019/20 recommendations					
Body	**Recommendation**	**Delivery: 1 year**	**Delivery: 2 years**	**Delivery: 3+ years**	**Relevant to single body?**
GLAA/EAS	b. I recommend that intelligence-sharing between GLAA and EAS is improved as a matter of priority.				No
HMRC NMW	c. I recommend that HMRC consider how to better identify relevant intelligence at the start of the intelligence triage process in order to optimise opportunities for targeted enforcement.				No
All bodies	d. I recommend that three bodies develop an understanding of the extent to which offences within their remit occur alongside other violations and where non-compliance is deliberate. This will involve further developing of relationships with law enforcement and other government departments in order to identify and access relevant data sources.				Yes – partially
All bodies	e. I recommend that the bodies proactively share information on Labour Market Enforcement Undertakings/Orders with the Insolvency Service in order to inform their targeting decisions and potentially streamline their investigations.				No
10. The three enforcement bodies and sponsor departments should work with my Office to align activity within the DLME-defined priority sectors, consider how best to use shared powers and improve strategic understanding of threat, risk and harm.					
All bodies	a. I recommend that the bodies and my Office consider how to use the Evidence and Analysis Group, Labour Market Enforcement Board and Strategic Coordination Group respectively, to identify, agree and facilitate joint activity in the sectors on which the Director recommends the bodies focus. This process should, of course, allow for the fact that not all sectors will be relevant to all bodies.				No
All bodies	b. I recommend that the bodies establish how best to utilise Labour Market Enforcement Undertaking/Order powers jointly, in order to address non-compliance across the whole spectrum of offences.				No
11. The three enforcement bodies should consider how they can engage further in joint working with wider partners, with particular focus on recidivists and deliberate non-compliance.					
All bodies	a. I recommend that the three bodies engage with strategic partnerships and anti-slavery networks.				No
All bodies	b. I recommend that the three bodies explore how different agency powers can be used collectively to support sustained and long-term disruption of non-compliance, with a focus on recidivists and deliberate offenders.				No
All bodies	c. I recommend that the three bodies further engage with local authorities to ensure that their inspectors have the necessary information to identify the signs of non-compliance and the channels through which to share actionable information in return.				No

Indicative implementation timeframes for 2019/20 recommendations					
Body	**Recommendation**	**Delivery: 1 year**	**Delivery: 2 years**	**Delivery: 3+ years**	**Relevant to single body?**
All bodies	d. I recommend that the three bodies work more closely with local authorities to tackle labour market non-compliance and exploitation, particularly in those sectors not within HSE's enforcement remit, such as warehousing.				No
12. I recommend that the three enforcement bodies conduct robust evaluation of joint working in order to understand the value of such initiatives and where intelligence and operational resources can best be utilised in further work.					
All bodies	a. I recommend a full evaluation of the Leicester pilot in order to understand what works and whether this is a good model for elsewhere.				No
All bodies	b. I recommend that the three bodies establish success criteria at the start of operational activity, evaluating immediate outcomes through processes such as multi-agency debriefs as well as monitoring of the longer-term disruption effect.				No
All bodies	c. I recommend that the three bodies conduct ongoing evaluation of the impact of Labour Market Enforcement Undertakings/Orders, both in terms of immediate outcomes and the longer-term disruption effect.				No

Figure 1: Timeline of Labour Market Enforcement Strategy milestones

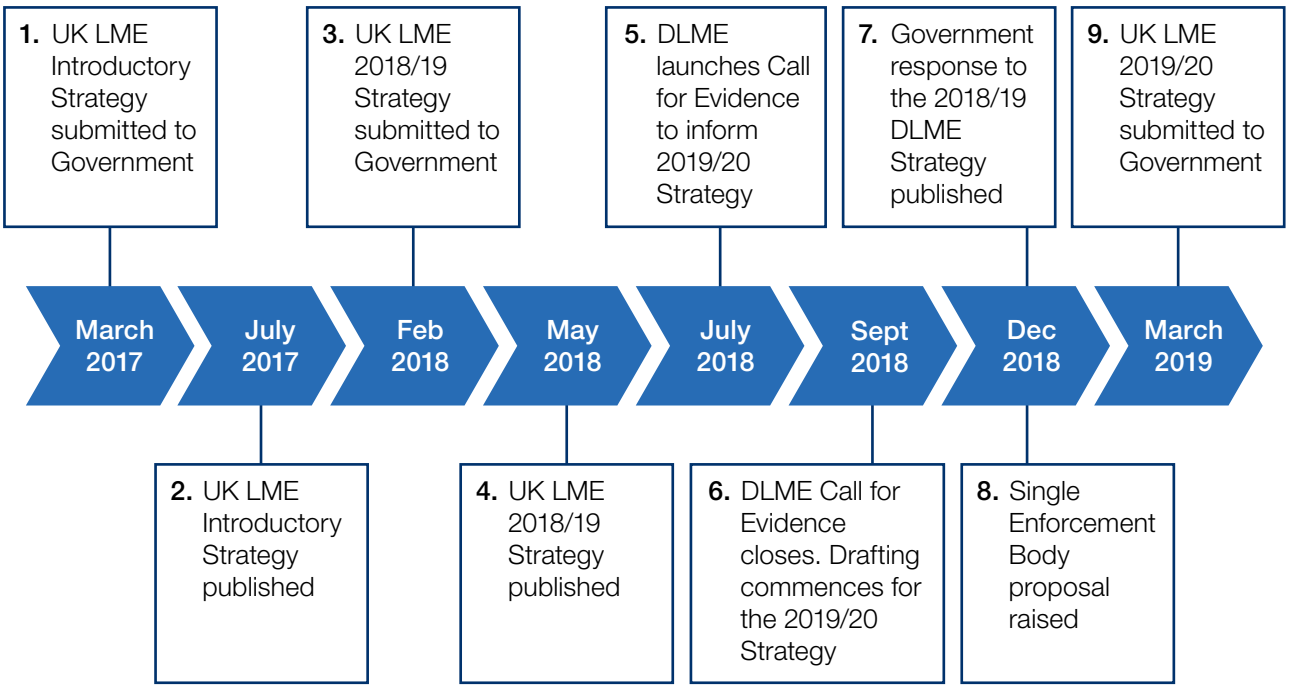


Figure 2: Content of Labour Market Enforcement Strategies to date

UK LME Introductory Report	UK LME 2018/19 Strategy	UK LME 2019/20 Strategy
Assessment of the enforcement landscape. Scoping exercise to inform the DLME's first full LME Strategy.	The **scale and nature** of non-compliance **Deterrence approach** to enforcement **Compliance approach** to enforcement **Improving enforcement** including addressing enforcement gaps	**Use of resources:** assessing the prioritisation of resources in light of the scale and nature of non-compliance **Compliance approach:** to have a sustainable impact on employers behaviours. **Joint working:** to improve enforcement and address enforcement gaps.

Key principles of enforcement:

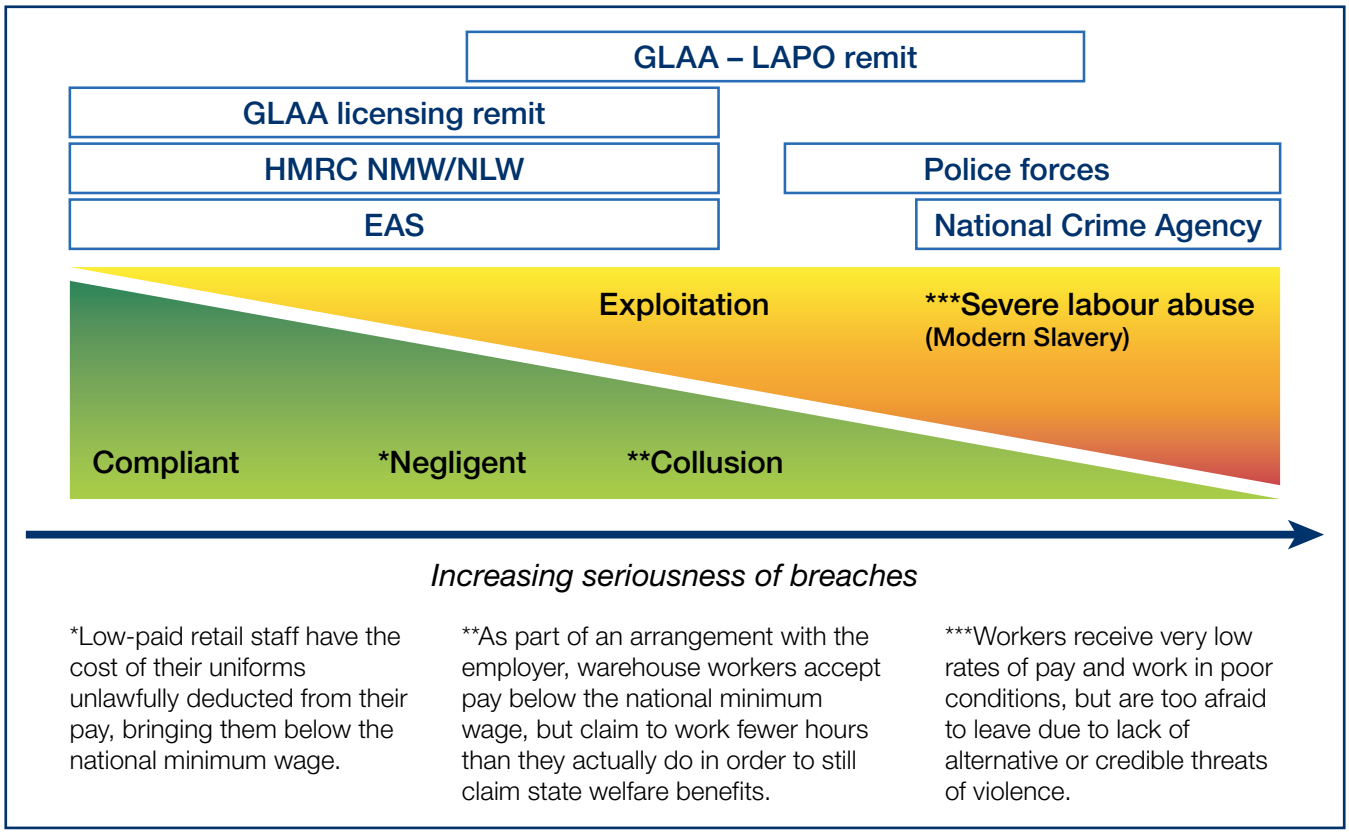
- **Prioritisation:** the scale and nature of non-compliance and allocation of enforcement activity
- **Deterrence:** to proactively encourage employer compliance
- **Sustainability:** to have a long-term effect on behaviour
- **System-wide effects:** each layer of an industry must be affected by enforcement activity

1. Introduction and context

1.1 The role of the Director of Labour Market Enforcement

The Immigration Act 2016 provided for my appointment as the Director of Labour Market Enforcement (DLME), to bring together a coherent assessment of the extent of labour market exploitation, identifying routes to tackle exploitation and harnessing the strength of the three main enforcement bodies: HM Revenue and Customs National Minimum Wage (HMRC NMW), the Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agency Standards (EAS) Inspectorate. Figure 3 sets out how my remit spans the compliance spectrum.

Figure 3: The compliance spectrum



*Low-paid retail staff have the cost of their uniforms unlawfully deducted from their pay, bringing them below the national minimum wage.

**As part of an arrangement with the employer, warehouse workers accept pay below the national minimum wage, but claim to work fewer hours than they actually do in order to still claim state welfare benefits.

***Workers receive very low rates of pay and work in poor conditions, but are too afraid to leave due to lack of alternative or credible threats of violence.

1.2 United Kingdom Labour Market Enforcement Strategy 2018/19: Government response

My main obligation under the Immigration Act 2016 is to produce an annual Labour Market Enforcement Strategy and to deliver this to the Home and Business Secretaries by the end of March each year. I submitted my 2018/19 Strategy in February 2018.

In December 2018, the Government responded to that Strategy's 37 recommendations, accepting 29, partially accepting two, committing to consult on three and rejecting three outright. My Office is also required to produce an annual report to assess the extent to which my recommendations from the previous year's Strategy have been implemented and are helping to tackle non-compliance in the labour market. As such, I will be reporting fully later this year on the implementation of those 2018/19 recommendations that were accepted by Government.

However, I wish to comment briefly here on some of the recommendations that I made last year and how the Government has responded.

First, recognising the threats to those working in the hand car wash sector, I had recommended that licensing pilots be undertaken initially in a number of local authorities. Although the Government partially accepted my recommendation, I believe that its response in fact fell short of the intervention that I had deemed necessary. The industry-led Responsible Car Wash Scheme is a step in the right direction to tackle non-compliance in this sector, but I do not agree that this is a substitute for compulsory licensing. Due to the voluntary nature of the scheme, which is primarily targeted at car washes on supermarket sites, I believe it will be insufficient to identify what appears to be a long tail of deliberately non-compliant companies, often operating on disused petrol forecourts. This view is shared by the Environmental Audit Committee, which has reiterated my call for licensing in the hand car wash sector (EAC, 2018).[1]

Second, I welcome the decision by the Government to consult on my proposals for joint responsibility and 'hot goods' to help tackle non-compliance with labour laws throughout the supply chain. I look forward to engaging in these discussions in due course.

Third, of the three rejected recommendations, and in particular the Government's reluctance to increase penalties, I do view the resources versus penalties trade-off to be crucial to enforcing employment law. I therefore consider the issue of civil penalties further in this Strategy.

Finally, as part of its response, the Government also announced it would be consulting on options for creating a new single labour market enforcement body. The idea of a single body is not a new one, indeed the issue was raised in stakeholder submissions to my 2018/19 Strategy Call for Evidence. As such this report will also consider briefly how a single body might aid some of the recommendations made in this Strategy, alongside wider issues the Government may wish to consider as part of the consultation on the issue.

1.3 The 2019/20 Strategy

As the timeline in Figure 1 of this report highlights, the Call for Evidence to inform this 2019/20 Strategy was launched in summer 2018. The Call for Evidence elicited 32 written submissions to my Office. I also held around 50 stakeholder meetings and four sector- or issue-specific roundtables to further garner expertise and insight, before sifting all of this evidence in autumn 2018 to inform the recommendations for this Strategy.

1 The Committee recommended that there should be "more prosecutions for offences such as non-payment of the minimum wage to send out a stronger deterrence message" and that "to make enforcement easier, the Government should trial a licensing scheme for hand car washes that brings together all of the major compliance issues, including on environmental pollution, into a single, more easily enforceable, legal requirement" (paragraph 99).

The Government responded to my 2018/19 Strategy in December 2018, announcing its intention to consult on the idea of a single enforcement body in 2019. Due to the compressed timeframes between this announcement and the submission of this Strategy, which is dictated by the Immigration Act 2016, this report considers enforcement within the context of the current system as opposed to considering a single enforcement body in any detail.

The requirement to deliver an annual Labour Market Enforcement Strategy is both a challenge and an opportunity. It is important to be able to set out a direction of travel that is broadly consistent across consecutive years. Equally, an annual strategy allows me to address new and emerging issues in a timely fashion.

Figure 2 above summarises the approach I have been taking since my Introductory Strategy in July 2017 and highlights the themes covered since then. This 2019/20 Strategy builds on my previous work and considers in greater detail three of these cross-cutting themes: use of resources; compliance approach to enforcement; and the role of joint working between the enforcement bodies.

1.4 Structure of the 2019/20 Strategy

Part One of this report will consider the nature of non-compliance in the UK and the challenges the enforcement bodies will face over 2019/20 and beyond. In this part of the report I will also consider three cross-cutting themes, which form the core of this Strategy, as follows:

- **how resources should be prioritised to ensure that vulnerable workers are protected;**
- **how best to support employers to be compliant;** and
- **how joint working can be maximised to support both aims** (for the purpose of this report joint working will be deemed as both intelligence sharing and joint operational activity between the three bodies within my remit and their external partners).

This report argues, in the context of current resource allocations and utilisation, that as the Government has not accepted my recommendation to strengthen the deterrent approach by increasing civil penalties, **the enforcement bodies must consider instead how best to support those businesses who seek to be compliant.** This includes how the enforcement bodies might tackle what I will refer to as 'technical breaches'.[2]

In doing so, **this approach should reduce the burden on resources at the 'lower-harm' end of the spectrum and allow the bodies to focus enforcement efforts on the remainder of the compliance spectrum, referred to as the 'middle' or 'deliberately non-compliant' end of the spectrum (see the compliance spectrum in Figure 3 above)**. In order to focus on this end of the enforcement spectrum, this report will argue that **wider partnerships are essential** in terms of both identifying and accessing this element of non-compliance. Partnerships at the 'high-harm' end of the spectrum (modern slavery) often provide opportunities to identify a wider variety of non-compliance, thereby providing an efficient and intelligent form of enforcement.

Part Two of this report will consider the warehousing and hospitality sectors in greater detail and will echo many of the issues highlighted in Part One. Importantly, it will argue that, in order to tackle labour market exploitation in both of these sectors, attention must be paid to my recommendations regarding the prioritisation of resources to protect vulnerable workers, effective support to help employers be compliant, and the effective utilisation of the enforcement bodies' variety of intelligence sources and powers to tackle labour market exploitation across the spectrum of non-compliance.

2 While I recognise that employment regulations make no distinction between types of breaches, I will refer to infringements relating to errors in accounting for, interpreting and calculating the more technical and complex aspects of the NMW regulations (e.g. deductions from pay, accommodation offset, uniform payments, etc.) as 'technical breaches'. Often, but not always, these types of breaches will be unintentional.

Part Three will outline the workplan for my Office in 2019/20 including the Government's intention to consult on options for a single labour market enforcement body, which at the time of writing has not yet been published. As highlighted in my 2017/18 Strategy, **the current system is complex and fragmented and is clearly sub-optimal for workers needing employment protection. If one were starting from scratch, it is unlikely that one would design state labour market enforcement along its current lines. I am therefore supportive of the Government's proposal to consult on this matter.** I will use this part of the report to set out areas requiring careful consideration, such **as the practicalities, time and resources required to bring together the three organisations. The government must therefore first make a thorough assessment of the potential benefits of a single enforcement body and evaluate if, and how, this option could improve the current system.**

Finally, one theme across this Strategy is the need for the enforcement bodies to evaluate their efforts in terms of the impact they have on wider compliance. I recognise that such evaluations are not necessarily straightforward, but this report will put forward recommendations to make progress in this area during 2019/20.

Part One

2. Strategic intelligence assessment

2.1 Background

The role of the Information Hub, as set out in the Immigration Act 2016, is to *"gather, store, process, analyse and disseminate information relating to non-compliance in the labour market".*[3] As in my 2018/19 Strategy, the Information Hub has produced a strategic intelligence assessment providing an overview of current labour market enforcement issues and potential future threats. The assessment is based on information shared by the enforcement bodies, stakeholders and partners, providing a holistic view across the spectrum of non-compliance and exploitation. This ranges from non-payment of the National Minimum Wage (NMW) resulting from technical errors or misinterpretation of guidance to deliberate non-compliance and, in the most severe cases, modern slavery.

As part of this exercise, the Information Hub has reviewed findings from the Management of Risk in Law Enforcement (MoRiLE) dashboard produced for my last assessment. This is a structured methodology used by law enforcement to understand the interdependencies between threat, risk and/or harm and a range of organisational factors. It assesses the anticipated impact of a thematic area on individuals, communities, the environment, the organisation and the economy. It also allows assessment of a range of thematic issues, in this case within labour market sectors, alongside each other (Dowden, 2018). In this way, MoRiLE scoring provides a gauge of the relative severity of each threat, establishing a ranked list of priorities. These have been ranked in order of decreasing severity, and those identified as sectors with the greatest risks are included in Table 1. The most severe threats are categorised as instances where there is high harm to the individuals or to the UK. This 'High harm' is often characterised by modern slavery and labour exploitation but may also be where, for example, there is a danger to members of the public.

3 Section 8(1) of the Immigration Act 2016.

Table 1: Sectors identified as key risks of labour exploitation

Sector	Threat description
Car washes	Vulnerable workers are being exploited, in some cases indicative of modern slavery. Many more in the sector are also not receiving NMW.
Agriculture	Vulnerable workers are being exploited, in some cases indicative of modern slavery. Many more in the sector are also not receiving NMW.
Care	Many workers in the sector are not receiving NMW.
Construction	Vulnerable workers are being exploited, in some cases indicative of modern slavery. Workers in informal construction, such as home improvement projects, are also not receiving NMW.
Hospitality	Vulnerable workers are being exploited, in some cases indicative of modern slavery. Many more in the sector are also not receiving NMW.
Shellfish gathering	Unlicensed activity and illicit gathering from closed beds present opportunities for exploitation to occur.
Nail bars	Vulnerable adults, and in some cases children, are being exploited. In some cases, this is indicative of modern slavery.
Poultry and eggs	Some workers in the sector are not receiving NMW. Two major poultry suppliers have had licences revoked by GLAA during the past year.
Warehouses and distribution centres	Vulnerable workers are being exploited, in some cases indicative of modern slavery. Many more workers in the sector are not receiving NMW.

The sectors contained within this year's strategic intelligence assessment are largely consistent with those identified as key risks in the 2018/19 Strategy. There have, however, been a few notable changes to how we have assessed the threat:

- Hospitality covers a range of service sectors, most prominently hotels, restaurants and cafés. The latter two were previously assessed separately alongside fast food. However, the threats are now assessed to be more in line with those seen in the wider hospitality industry.
- Intelligence assessments during the year indicate that the threat linked to warehouses and distribution centres is inherently different from that seen in factories. The latter has therefore been removed and assessed separately.

Each of these sectors has either already been addressed in an LME Strategy or will be addressed in future iterations of the Strategy. My 2018/19 Strategy recommended the introduction of a pilot licensing scheme for hand car washes and nail bars to tackle non-compliance within these sectors. The three licensed sectors (agriculture, shellfish gathering, and poultry and eggs) were also examined in my 2018/19 Strategy and will be considered further in section 3 (Prioritisation of enforcement resources) of this Strategy.

Hospitality (food services and hotels) and warehousing are examined in depth in Part Two of this Strategy in the sector-specific deep-dives. These have been further informed by research on the sectors commissioned by my Office in 2018.

Due to the complexity and scale of the issues within the remaining sectors to be addressed (care and construction), these shall be considered thoroughly in later iterations of the UK Labour Marker Enforcement Strategy if they remain key threats. Noting the size of my small team, key considerations include legal challenges in the care sector and the sheer size of the construction industry. However, enforcement and partnership activities are already being undertaken in these sectors, some of which are discussed in this Strategy.

2.2 Key findings

While the MoRiLE assessment provides an indication of key sectors, it is not an exhaustive list and findings should be interpreted with caution:

- The assessment is based on the **known** intelligence picture and does not account for under-reporting of breaches. It, therefore, cannot be a wholly accurate representation of labour market non-compliance.
- In addition to the presence of ongoing threat, risk and/or harm, established reporting mechanisms may result in higher levels of intelligence and therefore higher MoRiLE scores. This is reflected in the scores seen for sectors licensed by the Gangmasters and Labour Abuse Authority (GLAA) (agriculture, shellfish gathering, and poultry and eggs). Conversely, a lower MoRiLE score may result from lack of intelligence rather than the confirmed absence of threat, risk or harm.
- Some sectors are considered a priority for one or more of the enforcement bodies due to historical data collected and/or a high volume of complaints about low-harm breaches, such as hairdressing for the HMRC NMW team. In this case, the sector would not necessarily score highly on MoRiLE but should still remain an operational focus through complaint-led investigations.

Nevertheless, findings from the MoRiLE assessment, combined with those from the wider strategic assessment, provide an interesting insight into non-compliance and exploitation in the UK labour market:

- We assess that local, regional and national strategic partnerships have contributed to improved intelligence reporting, operational activity and increased awareness. This has, in turn, resulted in increased identification of victims of labour exploitation across mainly low-skilled sectors. While this may constitute modern slavery, many instances either do not meet the threshold or such offences cannot be proven. Such cases often involve deliberate non-compliance with UK labour market regulations.
- Rather than absorbing rising costs, deliberately non-compliant employers maintain (or increase) their margins by intentionally exploiting their workforce and, in some instances, the Government through offences such as illegal non-payment or underpayment of tax. In this way, deliberately non-compliant employers are able to undercut those businesses that are compliant in their legal duties and responsibilities.
- Deliberately non-compliant businesses and the individuals operating them commit offences both within and beyond the Director's remit. This includes exploitation of workers, non-payment of NMW and not paying the correct taxes. Although my focus is on the exploitation of labour, one should not ignore the wider non-compliance that these business models may present, such as health and safety issues, tax evasion and fraud. The shared understanding of intelligence on such employers should lead to marked improvements in enforcement efforts across government.

Under-reporting of breaches is explored in a 2017 Low Pay Commission (LPC) report on non-compliance with the NMW (LPC, 2017b). Reasons for under-reporting range from fear of not being able to find a new job to not knowing the mechanisms for complaining. The report also indicated that a significant amount of non-compliance likely occurs in the informal economy, of which the most serious cases may involve organised crime and forced labour, but these breaches are not captured by official data sources. As a result of under-reporting, the true scale and nature of non-compliance is not known.

I discuss in the next section my proposals for how such information gaps might be filled and make a recommendation for Government to provide the necessary investment for this. Assessing the scale and nature of non-compliance in the labour market is a key requirement of this role and, without the tools in place to measure this adequately, our understanding of the labour market threat and the effectiveness of efforts to deal with this will be hampered.

Beyond this, I anticipate that the intelligence picture around a number of sectors will develop during the next year. Two particularly pertinent sectors in this respect are construction, and waste management and recycling. Both sectors have received increased attention during the past year, and so associated reporting is likely to increase. Signatories of the GLAA Construction Protocol (GLAA, 2017b) commit to sharing information to help stop or prevent worker exploitation where possible; increased reporting may influence future threat assessments of this sector. A recent independent review into serious and organised crime in the waste sector cited analysis conducted by the charity Hope for Justice on the waste management and recycling sector (Defra, 2018). This analysis provides anecdotal illustration of the scale of exploitation in the sector (Hope for Justice, 2018). However, the intelligence picture is currently too poor to assess the level of threat, risk and/or harm. In line with this, the Environment Agency (EA) has announced its work with the charity to train over 100 waste and regulation officers to spot the signs of exploitative work practices during site inspections (Environment Agency, 2018). The enforcement bodies are also already undertaking work in these sectors; for example, GLAA is conducting initial work to identify and understand how to tackle problems in the waste management and recycling sector. Any changes in threat will be monitored by the Information Hub.

Other sectors I anticipate requiring further enforcement attention in the coming year are care and supply teachers. Both sectors were raised during discussion with stakeholders in my Call for Evidence. The care sector has received a substantial amount of attention since my last Strategy, particularly in relation to pay for sleep-in carers. There has been a significant increase in the volume of intelligence received directly from work-seekers in the supply teaching sector regarding issues ranging from non-payment of wages to serious contractual concerns. As with construction and waste management, I will consider the enforcement activity already undertaken by the bodies and any changes in threat over the coming year.

3. Prioritisation of enforcement resources to protect the most vulnerable workers

3.1 Introduction

All three labour market enforcement bodies for which I have oversight share a common purpose: to protect workers by ensuring employers and labour providers are being compliant with the law within their own areas of legislation.

The aim of this section therefore is to examine how enforcement resources are being utilised to meet the objective of protecting workers. Indeed, one of the obligations under the Immigration Act 2016 is for my annual strategy to consider the allocation of funding across the three bodies for carrying out their labour market enforcement functions.[4]

As is the case across the public sector, resources are limited so I am particularly keen to ensure that enforcement efforts are being directed towards those workers who need the most protection. That said, at the time my post was established in early 2017, there had been a significant commitment by the Government to expand resources for the three enforcement bodies. Overall, some £33 million was spent on labour market enforcement in 2017/18, up from £25 million the year before and from around £18 million the year before that. See Table 2 for an overview of the responsibilities and resourcing of the three bodies.

But at the same time the workforce has grown significantly: there are now almost 32.6 million people aged 16 and over in work in the UK (ONS, 2019). Over the past five years, total employment has increased by over 2.25 million.[5] The scope of workers who should benefit from these labour market protections has increased too, particularly following the introduction of the National Living Wage (NLW) in April 2016 and the expansion a year later of the Gangmasters and Labour Abuse Authority's (GLAA) remit to cover labour exploitation across the whole of the UK labour market.

I stated in my first full Strategy, published in May 2018, that it was too soon to comment then on how the bodies were utilising their resources – both existing and new – as I wanted to allow these resources, and in some cases additions to the remits of the three bodies, to begin to take effect. Admittedly, it is still early days for evaluating how effective the recent funding increases have been, but this section will at least begin to ask these questions.

4 Section 2 of the Immigration Act 2016.

5 Comparing total employment in Oct–Dec 2013 with that in Oct–Dec 2018.

Table 2: Overview of the resourcing and scope of the three enforcement bodies

Enforcement body (responsible department)	Funding (£m)	FTE staff	Focus and scope	Key sectors covered	Geographic locations covered
HMRC NMW/ NLW **(BEIS)**	2018/19: 26.3 2017/18: 25.3	2018/19: 412* 2017/18: 389	All employers and workers in scope, covering around 2m workers in low-paid jobs**	All sectors	UK
GLAA **(Home Office)**	2018/19: 7.1 2017/18: 7.2	2018/19: 122 2017/18: 104	Over 1,000 licensed labour providers, supplying around 0.5m workers Modern slavery: estimated 10,000–13,000 potential victims***	Agriculture; horticulture; shellfish gathering; food processing and packaging	Licensing: England, Scotland, Wales and by order in Northern Ireland LAPO coverage: England and Wales
EAS **(BEIS)**	2018/19: 0.725 2017/18: 0.725	2018/19: 15 2017/18: 12	Approximately 28,000 employment agencies, covering 1.1m workers	Employment agencies	England, Wales, Scotland

Source: National Minimum Wage/National Living Wage (NMW/NLW): BEIS (2017b); GLAA: management information; Employment Agency Standards: EAS (2017b).

* Full-time equivalent (FTE) staff as of 1 April 2018.

** Low-paid jobs refers to those paying up to 5 pence above the relevant NMW/NLW rate based on ASHE 2016 estimates (ONS, 2018a).

*** Based on the Home Office estimate in 2014 that there were between 10,000 and 13,000 potential victims of modern slavery in the UK (Silverman, 2014). To note: GLAA can only investigate modern slavery offences related to labour exploitation, whereas the estimate presented includes all types of modern slavery.

The effective use of resources was therefore one of the three cross-cutting themes in my Call for Evidence to help inform this current 2019/20 Strategy. Specifically, I sought input from stakeholders on the following:

- their assessment of the use and effectiveness of the resource increases received by each of the three enforcement bodies; and
- how, possibly, could enforcement resources be allocated and deployed more effectively.

Related to these were themes focusing on **compliance approaches to enforcement** and the **potential for joint working** both between the three labour market bodies and other enforcement agencies. The following sections (4 and 5) will deal with each of those in turn. However, some degree of overlap is inevitable. Hence, information relating to the awareness-raising or training activities of the bodies, as well as the use of resources for joint working operations, will be covered in the compliance and joint working sections (4 and 5). Enforcement prioritisation by sector will also be covered in section 5 on joint working, not least to assess whether the focus of the three bodies aligns with the key sector threats identified by the Director of Labour Market Enforcement (DLME) Information Hub.

This section is therefore structured as follows. Taking each of the bodies in turn, I set out their overall remit, their strategic priorities to deliver against this remit and any stated targets or benchmarks used to measure success. In doing so, I draw on historical information for the bodies to demonstrate trends and performance over time. Equally, this section will trace the evolution of resourcing for each of the bodies and the challenges – both now and in the future – they face in enforcing their individual obligations in the labour market. Stakeholder comments and feedback are given where this provides supporting evidence.

To conclude, I provide an assessment of their relative success as far as the data allow. Finally, I make recommendations for where the bodies should focus their efforts going forward.

3.2 HMRC: National Minimum Wage enforcement

According to the Department for Business, Energy and Industrial Strategy (BEIS), the *"Government's vision is that everyone who is entitled to the NMW/NLW should receive it"* (BEIS, 2018d).

While BEIS sets the policy and strategic direction for the National Minimum Wage and National Living Wage (NMW/NLW), it contracts HM Revenue and Customs (HMRC) to carry out enforcement of the NMW/NLW by means of a Service Level Agreement (SLA). This SLA is reviewed and revised periodically. This partnership has been in place since 1999 when the NMW was first introduced in the UK. HMRC's main role as set out in the SLA is to:

1. **enforce the NMW/NLW in line with the National Minimum Wage Act**, associated secondary legislation and NMW/NLW enforcement policy, which may be reviewed periodically and refreshed where appropriate, in consultation with the DLME and HMRC on the operational impact of any changes;
2. **raise the profile of NMW/NLW enforcement with stakeholders, and promote compliance** alongside enforcement work; and
3. **support BEIS in carrying out their responsibilities under the SLA.**

The SLA sets out greater detail of the activities it expects HMRC NMW to undertake in the year and any associated targets and measures. Progress against these targets are measured and communicated to BEIS on a monthly basis.

At the time of writing (March 2019) the latest SLA agreed between BEIS and HMRC NMW had been in effect since July 2017. Beyond overall NMW budget management and management information reporting requirements, HMRC NMW interventions stipulated by the SLA are essentially directed at three areas: a compliance approach to help employers understand and comply with the NMW regulations; ensuring HMRC NMW deals with every NMW complaint received (reactive enforcement); and carrying out proactive enforcement in sectors highlighted through risk modelling and intelligence and in sectors deemed to be priorities by BEIS Ministers (see Table 3a).

Table 3a: Summary of BEIS/HMRC NMW SLA currently in effect

Area	Description
Promoting compliance	Advancing employers' compliance with NMW legislation by: a) reaching employers, workers and their intermediaries; and b) delivering a programme of employer-orientated webinars
Investigating complaints	Ensuring every NMW/NLW complaint is considered and any identified arrears are recovered; setting expected complaint investigation times
Targeted enforcement	Targeting sectors for proactive enforcement using HMRC NMW risk model information and intelligence, while taking into consideration BEIS priorities and DLME Strategy. Half of new targeted cases to focus on BEIS ministerial priority 'sectors': social care, retail/commercial warehouses, apprentices, employment agencies, migrant workers and the gig economy

In addition to this, HMRC NMW also monitored and reported on the Social Care Compliance Scheme (SCCS), which was open to employers between 1 November 2017 and 31 December 2018. The SCCS was a time-limited scheme allowing eligible employers in the care sector up to 12 months to carry out self-reviews to ensure correct NMW payments for sleep-in shifts for care workers.[6]

6 See Box 3 (page 38) in my 2018/19 Strategy for more detail on the SCCS.

BEIS and HMRC NMW have been working to revise the SLA for the 2019/20 financial year. The new SLA encompasses seven broad areas (see Table 3b). Some – following up on all complaints, undertaking 'Promote' activity and pursuing targeted enforcement – are carried over from the previous iteration and rightly reiterate the importance of these core types of intervention.

What is new is: a greater focus on pursuing and publicising prosecutions; a stronger consideration of the role of third-party intelligence; the use of NMW campaigns to target particular sectors or workers identified as being particularly at risk of NMW non-compliance; and the recognition that HMRC NMW will need to trial new approaches to compliance and enforcement and new risks for investigation. All of these new interventions reflect issues I had highlighted in my 2018/19 Strategy and therefore I am encouraged that these have been taken on board. Similarly, I am pleased to see greater recognition of the role my Strategy plays in helping to determine which sectors should be prioritised to tackle non-compliance.

Table 3b: Summary of revised BEIS/HMRC NMW SLA for 2019/20

Category	Description
1. Complaints	Ensuring commitment to responding to every NMW complaint and recovering identified arrears; sets out expected timescales for investigating and closing cases
2. Campaigns	Targeting specified areas of non-compliance agreed between BEIS and HMRC NMW* (e.g. by sector, demographic, type of work). Campaigns may last up to two years
3. Flexible response	Targeted enforcement activity by sector* and use of third-party intelligence to target employers
4. Serious non-compliance	Focusing on undertaking and publicising prosecution referrals
5. Large business	Recognising the complexity of investigating these employers and hence associated performance measures
6. Promoting compliance	Advance employer compliance with NMW through early stage contact with employers
7. Test and learn	Trialling investigation of new risks of non-compliance or new methods for promotion or enforcement activities

* Informed in part by my annual Strategy

The direction of travel for NMW enforcement is encouraging (although as I discuss later in this Strategy, there remain further opportunities to draw on the work of my Office). A fundamental part of the revised SLA will be how performance is monitored and measured. I have, as yet, not seen any detail on performance metrics for this new SLA, but hope that progress is being made here too by focusing fully on the core challenges and measures highlighted later in this section. In particular, HMRC NMW will need to be able to demonstrate how its distribution and use of resources across these interventions represents an effective use of its funding to improve compliance with the NMW. Further below, I highlight that HMRC NMW does not currently have a sufficient understanding of the respective costs and benefits and, accordingly, I make recommendations here.

I understand that the new SLA will be reviewed six months after its introduction. This is important to gauge how effectively this new approach is working, while also allowing flexibility to make changes where necessary. There may also be areas that, at the moment, may not be adequately covered. One such area could be around recidivism and deliberate non-compliance and how HMRC NMW could bear down more on those types of non-compliance.

I look forward to seeing how the workstreams under the new SLA progress and am keen to work closely with both BEIS and HMRC NMW to review and refresh the SLA where necessary.

Approach

In March 2010, the Department for Business, Innovation and Skills (BIS; now BEIS) began to steer a new direction for NMW compliance and enforcement with the publication of the *National Minimum Wage Compliance Strategy* (BIS, 2010b). This highlighted the importance of both workers and employers being clear about their rights and obligations, as well as where to go for help. It also emphasised: an increased focus on the role of intelligence in order to best direct enforcement resources; piloting new ways to focus resources better (e.g. using more experienced officers on complex cases); focusing more on educating and informing employers, both through the media and via stronger stakeholder engagement on a sectoral and regional basis; and the optimal use of the legal regime, including using prosecutions, introducing penalties and giving HMRC NMW officers greater inspection powers. There was also a commitment to improve measures of success for compliance and enforcement.

A fundamental point resulting from the 2010 Compliance Strategy was the recognition that a 'one-size-fits-all' approach was not the most effective way of achieving NMW compliance and enforcement. Up to this time, HMRC NMW was required to investigate all complaints in full. This meant that all employers who were the subject of a minimum wage complaint would receive a visit from a compliance officer.

This recognition helped to pave the way for the changes HMRC NMW introduced in 2016, and its approach is now characterised by:

- continuing to ensure that all NMW complaints are dealt with;
- using a triaging system to sort complaints by severity and allocate the appropriate HMRC NMW intervention, ranging from 'letter intervention' (nudge letters) through to employing Serious Non-Compliance teams to tackle the more serious NMW cases;
- a greater focus on targeted enforcement, including the identification of priority sectors; and
- greater up-front investment in 'Promote' work to help employers get it right in the first place.

Scale of challenge

There currently exist five separate rates of hourly minimum wage in the UK. From April 2019, when the rates increase, these will range from a NLW of £8.21 for workers aged 25 and over, to the NMW of £3.90 for apprentices.

When I was on the Low Pay Commission (LPC) between 1997 and 2007, there were essentially only two rates of NMW: adult and youth.[7] I am concerned that the proliferation of rates, driven in part by political interference, is a contributory factor in lack of awareness around NMW rates.

In the absence of a comprehensive and robust source, the LPC provides estimates of the number of workers at risk of **underpayment of NLW** using data from the Annual Survey of Hours and Earnings (ASHE) from the Office for National Statistics (ONS). As such, this measure provides the best available indication of non-compliance with the NLW.

The LPC uses a number of measures when considering jobs paid at or under the NLW. As well as providing estimates of NLW/NMW payment and underpayment overall, equivalent estimates can also be made based on other factors such as underpayment by gender, age, sector, size of firm etc. Box 1 below sets out how each of these is defined.

7 A third rate for 16- and 17-year-olds was introduced in October 2004.

Box 1: Measures of NMW/NLW underpayment: overall and by sector

Using the ONS Annual Survey on Hours and Earnings (ASHE), the Low Pay Commission (LPC) produces estimates for various measures of jobs paid at or below the NLW or NMW. These measures are defined as follows:

1. **Jobs paying at or below the NLW/NMW:** LPC considers the respective NLW or NMW plus 5 pence as the ceiling below which jobs are assumed to be paid either at or below the minimum wage. So, for instance, for the NLW (workers aged 25 and over), this would include all jobs paying below £7.88, i.e. the NLW rate in 2018 (£7.83) plus 5 pence. In 2018, the LPC estimated that around 1.6 million workers aged 25 and over were paid at or below this amount.
2. **Coverage of the NLW/NMW:** This represents the share of all workers (either overall or by group) who are paid at or below the NLW/NMW. In 2018, it is estimated that around 6.5 per cent of workers aged 25 and over were paid at or below NLW.
3. **NLW/NMW Underpayment:** Jobs that pay below the age-specific minimum wage are considered as underpayment of NLW/NMW. In 2018, LPC estimated that some 369,000 workers were paid below the NLW rate of £7.83.
4. **Underpayment as a share of coverage:** This measures all underpaid workers as a proportion of all workers paid at or below the NLW/NMW. For NLW, this would be those workers aged 25 and over paid less than £7.83 as a percentage of all workers aged 25 and over paid £7.88 or less.

Table 4 below sets out LPC estimates for all those paid at and below the relevant age-specific minimum wage in 2018. Almost 2 million workers were either paid at or below minimum wage, with around 439,000 estimated to be underpaid. In volume terms, those paid at or below National Living Wage dominate: there were around 1.6 million jobs **paying the National Living Wage** in 2018. This has been stable since 2016, although increased from around 1 million in 2015 due to the introduction of the NLW. What this does demonstrate is an increase in the numbers of workers who may be affected by non-compliance of the minimum wage and hence the scale of the enforcement challenge facing HMRC NMW.

Table 4: Minimum wage underpayment by rate, 2018, UK

Rate	Coverage	Total underpayment		Underpayment excluding ASHE survey timing cases	
		Number	As a share of coverage (%)	Number	As a share of coverage (%)
NLW	1,604,000	493,000	30.7	369,000	23.0
21–24	167,000	47,000	28.3	35,000	21.1
18–20	119,000	28,000	23.4	23,000	19.3
16–17	40,000	5,000	13.2	4,000	9.0
AR	32,000	9,000	28.5	8,000	25.4
Total	**1,961,000**	**582,000**	**29.7**	**439,000**	**22.4**

Source: LPC (2019).

In terms of **coverage**, around 6.5 per cent of all workers are paid at or below NLW/NMW and of these over a fifth (22 per cent) are considered underpaid.

NLW/NMW coverage varies considerably by sector. In volume terms, retail, hospitality, and cleaning and maintenance between them account for 780,000 jobs paid at NLW in 2018. But in relative terms, a third of all jobs in the hair and beauty sector, around 30 per cent in cleaning and maintenance, and hospitality, and around 20 per cent in food processing, textiles, and retail are paid at NLW.

Considering potential non-compliance at the sector level, on this measure retail (55,000), hospitality (45,000), and cleaning and maintenance (40,000) – the three largest low-paying sectors – have the most underpaid workers. Expressed as a proportion of coverage – that is, all those workers in a particular sector who are paid below the NLW – childcare has by far the highest rate of underpayment (43 per cent) in 2018 (see Figure 2.19 in LPC, 2018).

Resourcing

To meet this challenge, the HMRC NMW enforcement team has seen its resourcing effectively double from £13 million to £25.3 million between 2015/16 and 2017/18. Between 2009/10 and 2014/15, funding for NMW enforcement had been broadly flat at around £8 million a year. HMRC NMW's current budget for 2018/19 is £26.3 million.

Staff numbers have also increased in line with funding. Between 2008/09 and 2012/13, HMRC NMW had around 140 staff (measured on a full-time equivalent (FTE) basis). This increased to 183 in 2014/15, then to 257 in 2015/16 and to 389 in 2017/18. NMW told us that plans are in place to increase staff numbers (headcount) to 470 by the end of the 2018/19 financial year.

The recent increase in resourcing has happened in two tranches:

1. The NMW enforcement budget was raised by £7 million to £20 million in 2016/17, which allowed for the recruitment of over 200 new NMW enforcement staff to handle the increased coverage of the NLW from April 2016. By 2017/18, there were 389 FTE staff, which in turn enabled a greater focus on targeted enforcement.
2. NMW enforcement then received an additional £5.3 million in the following year, which has enabled funding of new specialist enforcement teams to proactively review complex employers (including their supply chains) considered most at risk of non-compliance with the NMW. In the first quarter of the financial year 2017/18, some 68 large businesses in priority sectors were identified for investigation as a result of greater use of risk modelling (using data from a number of sources including PAYE and tax credits information). Currently, in total, there are over 400 ongoing investigations into large and complex businesses across a range of sectors in the UK.

Faced with a potential increase in the numbers of at-risk workers arising from the introduction of the NLW, yet needing to continue to fulfil the requirement to consider all NMW complaints, HMRC introduced a new risk-based triaging system to determine the best method of handling each complaint and developed different intervention approaches (BEIS, 2017b).

Performance

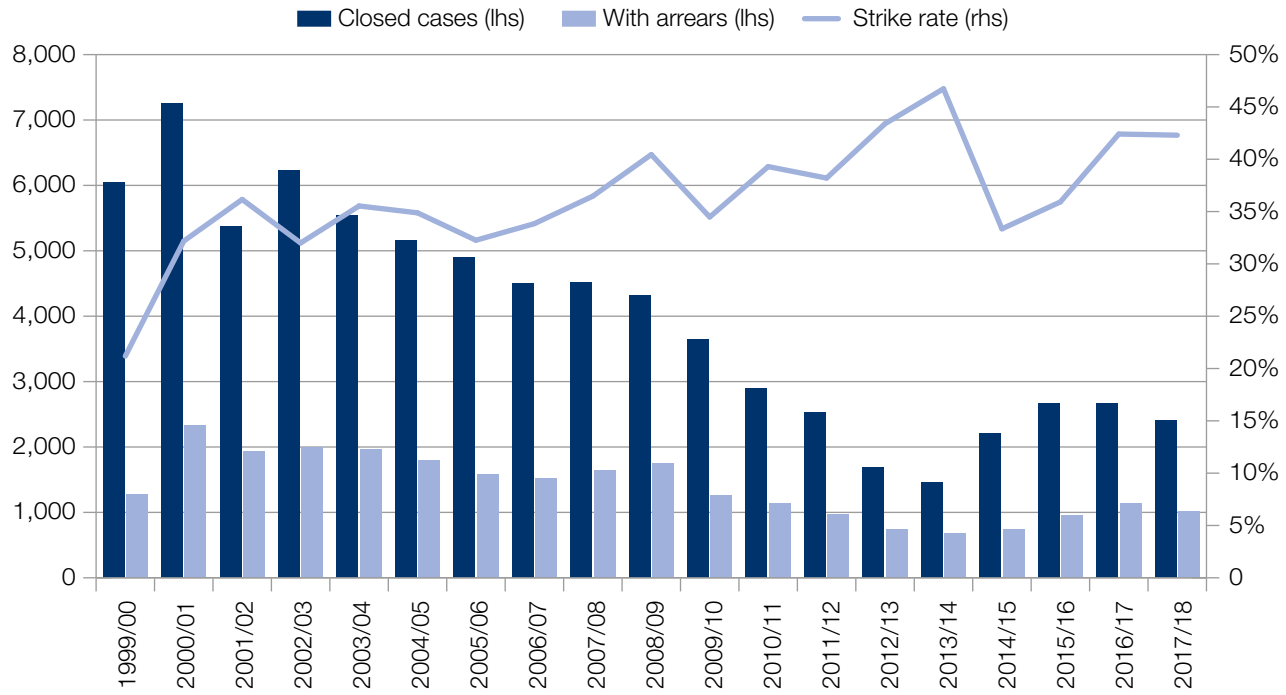
HMRC NMW currently closes around 2,500 cases a year, with around 1,000 resulting in the identification of arrears. This has been broadly the pattern for the last three financial years.

However, the current volume of total closed cases is considerably lower than it was when the NMW was first introduced. In 2000/01, there were more than 7,000 closed cases, followed by over a decade of decline, such that by 2013/14 the number was down to 1,500, before rising again to current levels (Figure 4).

Similarly, the volume of closed cases with arrears was higher in the past, generally above 1,500 a year up to 2008/09.

Historically, between a third and a half of closed cases resulted in arrears being identified (strike rate). Over the last two years, the **strike rate** has been towards the upper end of this range. This suggests that HMRC NMW is performing efficiently in identifying and following up on cases that will result in workers getting paid NLW/NMW. Given the shift towards targeted enforcement, where employers who are potentially underpaying their staff are identified using intelligence and risk modelling, this is encouraging.

Figure 4: Total HMRC NMW closed cases, cases with arrears and strike rate, 1999/00 to 2017/18

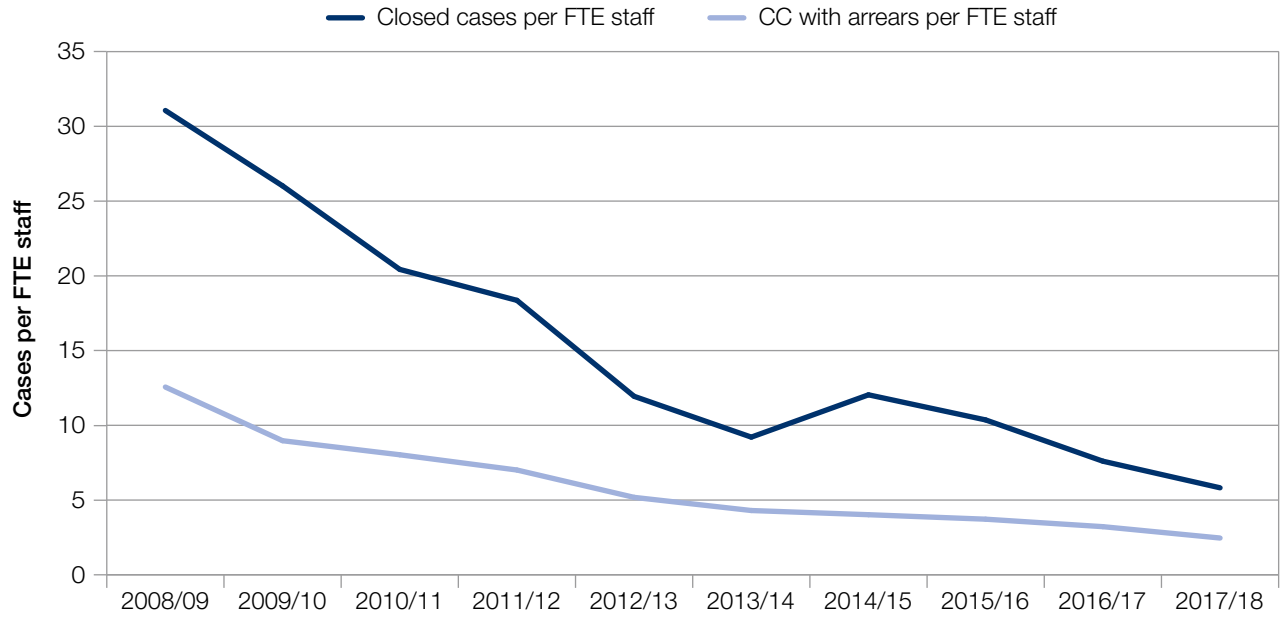


Source: HMRC management information taken from government evidence to the LPC reports (various years 2003–2018).

At first sight, the volume of cases closed in 2017/18, particularly considering the recent significant increase in HMRC NMW resourcing, appears low. Expressed as cases per member of staff (measured on an FTE basis), these have also fallen over time, from over 30 closed cases per staff member in 2008/09 to around six in 2017/18 (Figure 5).

HMRC NMW told us that over time the nature of a 'case' has changed: in 2000 the legislation was new, and visits to employers were partly presented as educational enforcement, in both nature and content (arrears letters were issued instead of Notices of Underpayment (NoUs)). These visits were quicker to complete than the current approach to investigations, which now involve the review/investigation of six years of payroll records, the completion of enforcement documentation (e.g. the Notice of Underpayment and schedules) and management of a penalty regime that did not exist in previous years. Plus, until recently, enforcement activity was focused on the individual worker for complaints-led cases, whereas the whole workforce is now considered, particularly in large and complex cases which often have multiple risks.

Figure 5: HMRC NMW cases closed and cases closed with arrears per FTE, 2008/09 to 2017/18



Source: HMRC NMW management information.

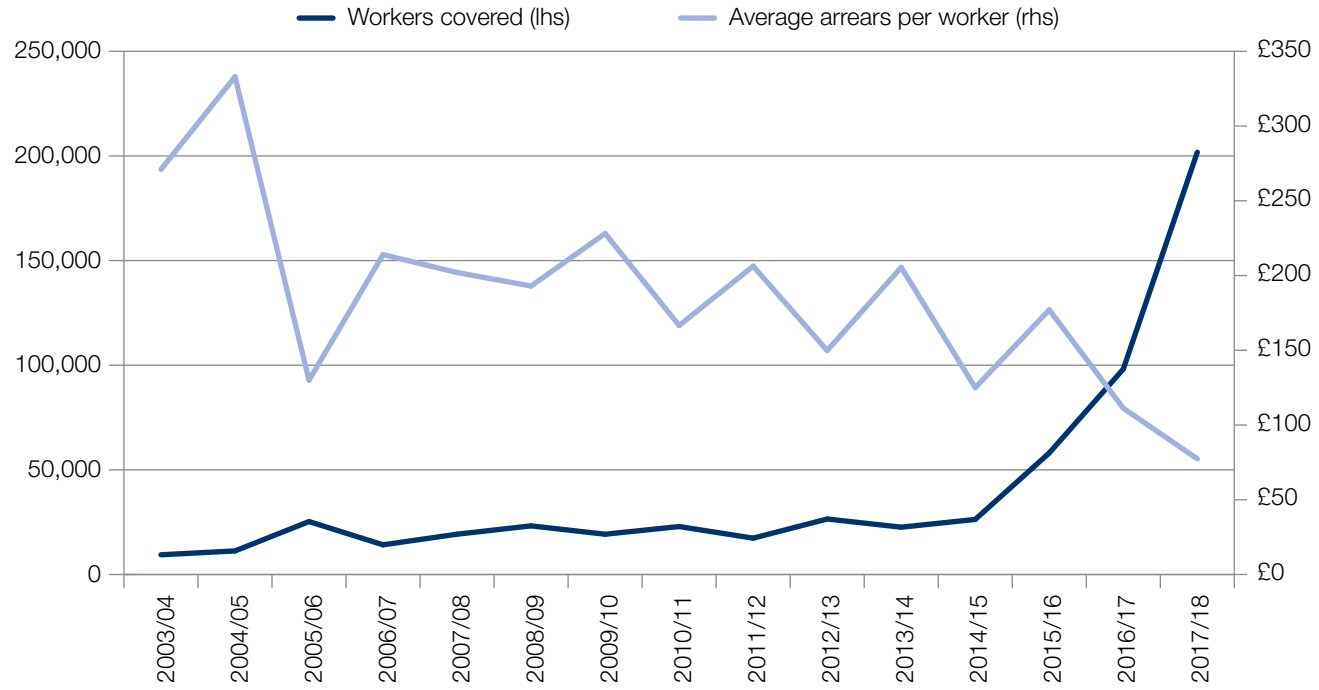
Viewed from a different perspective (Figure 6 below), there has been a clear shift in focus and results after 2014/15, which saw a dramatic increase in workers for whom arrears were identified (up from 26,000 in 2014/15 to 202,000 in 2017/18). In 2017/18, 72 per cent of the total value of identified arrears – £11.1 million out of £15.6 million – resulted from the 10 largest cases HMRC NMW handled, and accounted for 86 per cent of all the workers for whom arrears were identified in that year (174,000 out of 202,000 workers) (BEIS, 2018d).

At the same time, however, as the volume of both identified arrears and workers covered has risen (to record levels in 2017/18), there has been a clear downward trend in **average arrears per worker**. In 2017/18, this averaged £78 per worker. A decade ago, it was more than £200 per worker. Furthermore, average arrears per worker in the 10 largest cases in 2017/18 were only £64[8] (BEIS, 2018d). (Table 14 in section 4 on compliance suggests infringements in these cases were often more 'technical' in nature.) In medium-sized cases (defined by total arrears per employer), average arrears per worker were generally twice or three times this amount.

These results therefore suggest a focus on smaller or arguably less important infringements. Indeed, BEIS evidence to LPC (BEIS, 2018d) explicitly reports on 'big cases' where *"HMRC have additional funding for 2017/18 to investigate large employers"*. Also, "*large arrears tend to be found in cases where a small amount of NMW underpayment affects a large number of workers"*. While it is important that all underpaid workers receive their arrears, this does raise the question as to where along the enforcement spectrum HMRC NMW should be focusing its efforts. For example, should there perhaps be a greater focus on those workers who experience much larger underpayment? This is an issue I return to below.

8 Of course, there will be instances where individual workers will have been owed far greater arrears. HMRC NMW told us that one worker was owed £4,519 and that the 15 highest yielding cases over the period 2016–18 averaged £2,268 per worker. By definition, the remaining workers affected in these larger cases will on average have been owed less than the £64 average identified overall for these cases.

Figure 6: Workers for whom arrears identified and average arrears per worker, 2003/04 to 2017/18



Source: BEIS government evidence to LPC (various years).

Performance by type of intervention

Since the introduction of the NMW in 1999, a number of tools and interventions have been used in an effort to achieve greater compliance and enforcement. These are summarised in Table 5 and then discussed in greater detail in turn below, in chronological order of their introduction.

Table 5: BEIS/HMRC NMW – Suite of interventions introduced since 1999 to encourage greater compliance

Introduced	Nature of intervention	Description
1999	Complaint-led investigations (reactive enforcement)	HMRC must consider every complaint made
2005	Targeted enforcement (proactive enforcement)	Sector-focused compliance and enforcement activity with initially one sector targeted each year
2005	Prosecutions	Criminal prosecutions strategy agreed with HMRC (DTI, 2006b)
April 2009	Automatic penalties	Initially set at 50% of arrears, raised to 100% in March 2014 and then to 200% from April 2016
2011 & 2013	Minimum Wage Naming Scheme	Initially introduced in 2011; revised scheme introduced in Aug/ Oct 2013. All employers owing £100 or more in total arrears are named in BEIS press release
2014/15	Self-correction	At HMRC NMW's discretion employers may be permitted to self-review and correct any identified arrears
2016	Labour Market Enforcement Undertakings & Orders (LMEU/Os)	Introduced following Immigration Act 2016, LMEU/Os are intended to tackle serious and persistent non-compliance where existing penalties are failing to stop recidivism. A breach of an LMEO is punishable by a custodial penalty of up to two years
2016/17	Triaging	Designed to make NMW caseload management more efficient and to focus resource more effectively across different levels of risk of non-compliance

Source: Compiled by DLME Office.

a) Targeted enforcement (priority sectors)

As HMRC NMW is committed under its SLA with BEIS to consider all complaints, this means that its enforcement resources will inevitably be prioritised here. Therefore, in practice, the scale of the targeted enforcement programme will be affected by the volume of complaints received and the enforcement resources available. **Targeted enforcement is in effect a residual activity for HMRC NMW** in the sense that the commitment to deal with every complaint first will mean that targeted enforcement activity can only be undertaken with the remainder of their budget.

It is widely recognised that better compliance and enforcement will not be achieved based on worker complaints alone. Neither should the volume of worker complaints be taken as a measure of the extent of employer non-compliance.

In order to ensure that those workers who do not make complaints (for example, because of fear of retaliation from their employer, a lack of awareness of employment rights, and/or a lack of confidence in the system of remedies; or because workers may just prefer to move to a different employer) are protected, enforcement bodies need to adopt a more proactive approach in the form of targeted enforcement.

Following a recommendation from the LPC, the Government first introduced targeted sector enforcement in 2005 (LPC, 2005). According to the LPC, *"the aim of this strategy is to improve compliance by raising the profile of the minimum wage in each sector in turn and by addressing sector-specific minimum wage concerns, followed by an enforcement drive, encouraging workers paid below the minimum wage to come forward"* (LPC, 2007: para. 6.39).

One sector was identified for targeting each year from 2006 onwards,[9] beginning with hairdressing and followed by hospitality, social care, and cleaning.

Although the data from this targeted activity have been reported, there is no indication of whether the outcomes lead to any improvement in tackling non-compliance in these sectors or what was learnt to effect lasting improvements in compliance.[10] This is important as there is a risk that non-compliance issues in the same low-paid sectors remain unchecked over time. Indeed, later on in this Strategy, I report on our own research and stakeholder engagement with the hospitality industry (hotels and restaurants). Revisiting a previously targeted sector raises the question therefore as to how effective earlier compliance and enforcement interventions were.

HMRC NMW told us that it has carried out 'risk-assessed' as well as complaint-led cases since they began enforcing the minimum wage in 1999. Currently, through the annual SLA with HMRC NMW, BEIS agrees a number of 'priority sectors' for targeted enforcement and stipulates that a certain proportion of HMRC NMW investigations take place in these sectors. In part, the choice of sectors (or, sometimes, different cohorts of the workforce) reflects 'ministerial priorities'.

From 2017/18, the 'ministerial priority' sectors have been: social care; retail/commercial warehouses; apprentices; employment agencies; migrant workers; and the gig economy.

Results from this targeted activity show that, combined, these sectors accounted for 818 opened cases in the year, out of 1,603 targeted cases in total. Equally, they accounted for 293 of 994 closed cases and 95 of 392 closed cases with arrears.[11]

There has been a clear improvement in pursuing targeted enforcement cases generally since 2014/15. Only 7 per cent of closed cases (151) were targeted in 2014/15, with the rest being complaint-led. By 2015/16, this had risen to 1,091 closed cases (41 per cent of total) and then to 1,473 (55 per cent of all cases) in 2016/17.

9 No target sector identified in 2008/09 due to passage of 2008 Employment Bill.

10 The LPC did undertake its own research – see Croucher and White (2007).

11 HMRC NMW information: BEIS (2018d).

Measured on the basis of cases closed, there was a sharp decline in targeted enforcement in 2017/18 (by almost a third to 994 closed cases), and, with it, a fall in the share of all cases (41 per cent).[12] However, there was a corresponding increase in complaint-led cases, from just over 1,200 in 2016/17 to 1,400 in 2017/18. At the same time, in terms of open cases, these increased markedly over the year, by over 50 per cent for complaint-led and over 25 per cent for targeted. On this basis, I would expect to see the number of targeted cases rising again from 2018/19, although their share of overall cases will likely remain well below half.

As one might expect, the strike rate for complaint-led cases is higher than it is for targeted cases. Over the last three years, this has averaged 48 per cent for complaint-led cases, but just 31 per cent for targeted cases. Results for the most recent reporting year show that the gap narrowed with strike rates of 44 per cent and 39 per cent respectively.

Targeted enforcement: risk modelling and intelligence

During the evidence-gathering period for this strategy, I met with HMRC officials to better understand their approach to **risk-based modelling**. It was clear not only that HMRC NMW had made a considerable investment in this area, but that this investment was already paying dividends, as evidenced by the encouraging trend in strike rates for targeted enforcement. What was impressive was the team's ability to handle significant volumes of data to derive meaningful risk profiles for low-paid workers and potentially non-compliant businesses. There is also a clear focus on testing, learning and improving, with the aim of achieving even better results and, with it, more efficient use of compliance officer resources.

I believe this risk-based modelling approach could be further strengthened by **integrating other sources of compliance information**. For instance, by using data and intelligence on non-compliant employers from other related enforcement areas such as health and safety, food standards etc. Legal gateways would need to be established to achieve this, but I firmly believe this is a direction in which HMRC NMW should be headed.

By contrast, HMRC NMW's use of **strategic intelligence** appears to be limited and should be strengthened considerably. HMRC's overall intelligence function is centralised and is used more at an operational level but produces very little NMW-specific strategic intelligence reporting. Indeed, the one NMW-focused intelligence analyst HMRC now has is part-funded by my Office.

There should already exist a lot of information, for instance from the stock of complaint cases HMRC NMW already handles, and intelligence within HMRC itself. These sources could potentially supplement the risk-modelling work already in place. Indeed, I was somewhat surprised to learn that HMRC NMW does not currently make greater use of this information by, for instance, taking a strategic view of the nature of non-compliance and risk; for example, on a sector-by-sector basis. Greater investment in this area to bolster the volume and value of labour market intelligence would surely be a benefit not only to HMRC NMW, but to my own Information Hub too.

b) Use of prosecutions

As I highlighted in my 2018/19 Strategy, the introduction of the Labour Market Enforcement Undertakings and Orders (LMEUs/Os) power is a welcome addition to the enforcement armoury. I will discuss LMEUs further in section 5 on joint working, focusing here on the use of prosecutions.

Although available as a deterrence tool since the introduction of the NMW, criminal prosecutions only began to be actively taken forward from 2005/06 onwards (DTI, 2006b). The first NMW prosecution came in 2007 and since then there have been a further 13 employer prosecutions. Like the LPC, I consider this an under-used intervention.

12 This decline may partly be explained by the redeployment of three operational teams (up to 30 FTE staff) to administer the Social Care Compliance Scheme in the second half of 2017/18.

BEIS enforcement policy was revised in 2017 to lower the bar for HMRC NMW to refer cases for criminal prosecution. As a result, more cases have been referred for possible prosecution, with the Crown Prosecution Service (CPS) ultimately deciding which cases are taken forward. In their written evidence to us, HMRC stated that, since 1 April 2017, investigation began on 14 employers for potential criminal offences. Seven of these were passed on to the CPS for prosecutorial consideration. Of these, two have not been taken forward by CPS, three are still awaiting a CPS decision, one has progressed to the Court process, and one case has been successfully prosecuted.

I do recognise too that there is a risk of perverse outcomes following a prosecution. For instance, I have been told by HMRC NMW that the financial penalties imposed following a criminal case involving NMW can sometimes be lower than the arrears that would otherwise have been payable under a civil action. This is not only inconsistent but may also act to disincentivise HMRC NMW from pursuing prosecutions.

c) Use of financial penalties

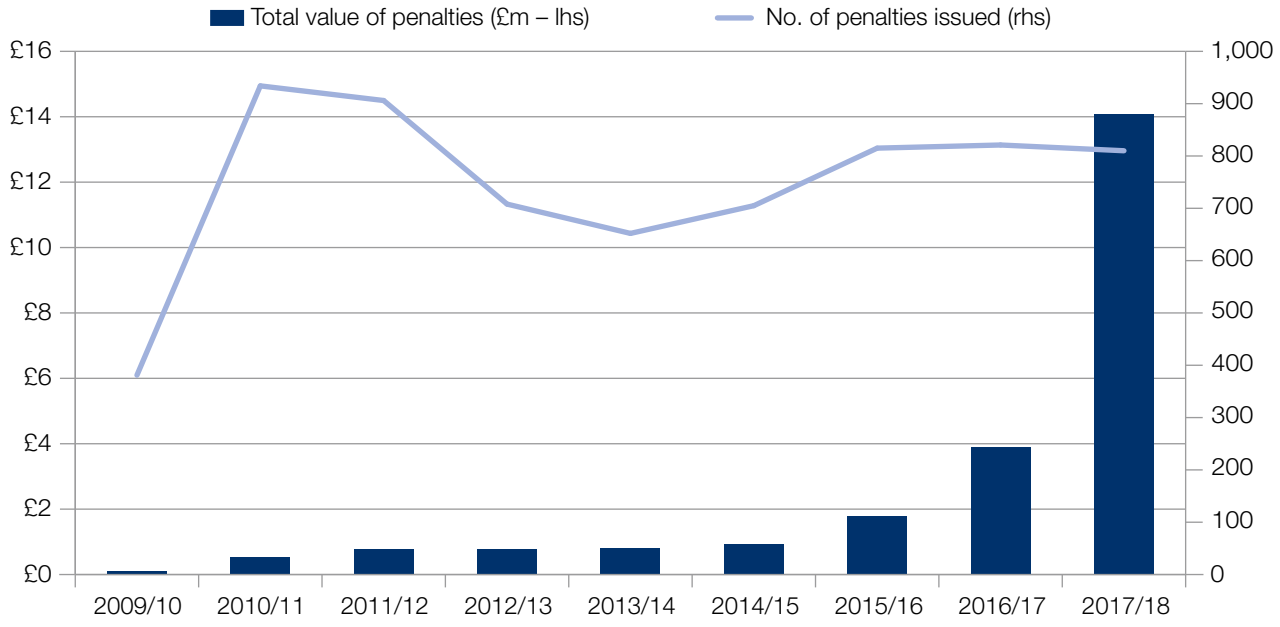
Automatic penalties for employers found to be underpaying NMW were introduced in April 2009. The penalty was originally set at 50 per cent of the workers' arrears (up to a maximum of £5,000 per notice of underpayment, i.e. covering all workers affected within a firm). To incentivise prompt payment and correction of arrears, this could be reduced by half if paid within 14 days.

The penalty was then increased to 100 per cent of arrears in March 2014, along with raising the ceiling to £20,000 per notice of underpayment. The financial penalty for non-compliant employers has since been raised further, first with a change in May 2015 to applying the penalty (up to a maximum of £20,000) **per worker affected** rather than one penalty **per firm** and, second, by raising the penalty multiplier to 200 per cent from April 2016. The data suggest that over half of identified employers pay within 14 days.

The effect of the changes is reflected in Figure 7. For the past three reporting years, the number of penalties issued has remained stable at just over 800 per year. This compares with over 900 penalties each year soon after the introduction of this policy.

By contrast, the total value of penalties has increased significantly – from less than £1 million in the years up to 2014/15, to £3.9 million in 2016/17 and then to £14 million in 2017/18.

Figure 7: NMW penalties issued and total value of penalty revenues



Source: Government evidence to the LPC (various years).

Consequently, income from penalty notices (ultimately for HM Treasury) has risen sharply even if the number of penalties issued has not changed, likely reflecting the impact of the increase in the penalty multiplier over time.

As I argued in my 2018/19 Strategy, **enforcement will essentially turn on the trade-off between resources** (e.g. the number of inspectors or compliance officers) **and the deterrent effect of the sanctions** imposed for non-compliant employers. Recognising that tight public-sector finances may constrain a significant increase in enforcement resources, I was therefore keen to see a substantial increase in the level of penalties to strengthen the deterrent effect.

BEIS argues that the 200 per cent penalty multiplier has only been in effect since April 2016 and hence it is too early to assess its deterrent effect (not least because arrears can be identified for the previous six years) and consequently too soon to argue for penalties to be raised further. I agree that we need to understand what effect the new penalty regime is having in terms of deterring non-compliance.

At the same time, however, I note that no evaluations have been undertaken to assess the impact of the penalty at the 100 per cent level. At face value, the increase in penalty multiplier does not seem to date to have resulted in a decline in the number of penalties issued, suggesting the deterrence effect is weak currently.

Indeed, an evaluation, carried out by BIS in 2014, of the changes to the civil penalty regime introduced in April 2009 found that *"the penalty regime [50 per cent of arrears] did not seem to have a deterrent effect on non-compliance"* (BIS, 2014c). The research highlighted that, not only was there a lack of awareness of the new penalty regime, but a wider lack of understanding of the NMW and its various rates as well.

It was also found that *"the £5,000 maximum penalty was not seen as an effective deterrent to larger businesses by employers and compliance officers as they could make significant savings or gain other cash flow advantages by not paying or delaying payment of the NMW"* (BIS, 2014c).

As stated above, the maximum penalty has also increased since then, so again it would be helpful to better understand the deterrence impact of this.

d) Reputational penalties: Naming and shaming

The Minimum Wage Naming Scheme was first introduced in 2011, later revised in 2013. Since the revised scheme has been in operation, almost 2,000 employers have been named, identifying almost £11 million in arrears for around 90,000 workers. From mid-2017, naming rounds have taken place roughly every quarter, with over 900 employers named between August 2017 and July 2018, covering over 60,000 workers.

In my 2018/19 Strategy, I wanted to see reputational penalties tailored to have a greater effect. Currently, non-compliant employers who owe more than £100 in arrears (across all affected workers in an organisation) are named in a list published by BEIS. Furthermore, the list of employers is presented in descending order by total value of arrears per employer. I set out my concerns last year that this risked sending out a distorted message, where large employers – often brand names – were more likely to be singled out, even though the amounts they owed to each of their workers was on average relatively small (often £50 or less per worker – see also Table 6). BEIS did highlight to us that, while a large employer might be named for a comparatively small amount of average arrears per worker, this still has a reputational and precedent-setting impact, which can encourage compliance across the sector.

I stress that the priority remains that workers who are underpaid NLW/NMW should have this corrected as quickly as possible. This is non-negotiable and respects the core objective of the NMW enforcement policy set out earlier.

But what I am also keen to see are adjustments to the way the scheme is currently implemented to maximise its effect and achieve greater compliance.

During my recent Call for Evidence, my Office received feedback from stakeholders that the number of employers now being named each quarter – of the order of 250 – risked diluting the impact of this enforcement tool. Equally, though, in our own engagement with large employers in particular, it is clear that they remain fearful of reputational damage and, as such, we conclude this intervention still entails a considerable degree of efficacy in promoting compliance with the minimum wage.

At the same time, I do believe some changes to the presentation – and hence impact – of the list may be warranted.

First, the current £100 aggregate arrears threshold per employer is too low. Raising the threshold would, I believe, help to focus attention on the worst perpetrators of NMW/NLW infringements.

Second, from a presentational perspective, naming and shaming could have a more powerful effect by highlighting the more serious cases of NMW/NLW non-compliance. Therefore, instead of considering total arrears per employer, which in any case may disproportionately affect larger employers, I would recommend the list is ordered in terms of **average arrears per worker affected** for each employer and that the threshold for naming be determined on this basis.

Whether accidental or done with intent, workers can lose out significantly: in the four naming rounds since August 2017, 29 workers were owed an average of over £5,000 each. By contrast, almost two-thirds of all workers covered by the naming scheme (some 39,500) were owed an average of £33.

Taken together, and using data from the naming rounds between August 2017 and July 2018 as examples, would produce the statistics in Table 6.

Table 6: Summary statistics for BEIS naming rounds Aug 2017–July 2018

Average value of arrears per worker	Employers named	Workers affected	Total arrears
Less than £100*	158	39,548	£1,315,488
£101–£250	201	18,327	£2,607,211
£251–£500	189	2,166	£719,243
£501–£1,000	155	713	£465,846
£1001–£2,500	134	362	£554,931
£2501–£5,000	54	86	£299,461
More than £5,000	20	29	£304,152
Total	**911**	**61,231**	**£6,266,333**

* This includes 35 employers with 15,363 affected workers where average arrears per worker was less than £25.

As is clear from Table 6, setting the arrears per worker threshold at different points will significantly affect the number of employers who are ultimately named. For example, a threshold of £500 per worker would have seen only 364 of the 911 employers named over this period, while setting it at £2,500 per worker would reduce this to just 74.

e) Self-correction

Self-correction was first introduced in 2014/15 as a function of HMRC's 'Focused Intervention' approach to compliance, whereby HMRC NMW investigated the complaint of a single complainant worker and then, upon case closure, instructed the employer to carry out a self-review of the rest of their at-risk workers and report the findings back to HMRC. This was

almost always done after HMRC had completed their investigation and closed the case. In this context, self-correction could be best described as a light-touch approach to enforcement. While it could be argued that this was an efficient means of ensuring compliance, subsequent investigations, where HMRC NMW revisited employers who undertook self-correction have raised some concerns as to the accuracy of their work.

Since 2016, self-correction has been used differently in NMW enforcement cases. HMRC has comprehensive operational guidance on this subject and expects all of its compliance officers to follow that guidance when considering its use. Employers are no longer asked to carry out self-review after case closure: it is now always when the case is live. This is to place responsibility for compliance where it belongs (with the employer) but also to recognise that often an employer is best equipped to review its own payroll data and calculate provisional arrears.

Whether HMRC NMW allows any element of self-correction is dependent on the individual facts of each case. But typically, self-correction might be offered to an employer where it is found that a significant number of workers due arrears are no longer working for the employer. In these circumstances it might be unreasonable to put these workers on an NoU and expect an employer to trace and pay those workers within the 14 days required to take advantage of the 50 per cent penalty reduction or 28 days allowed for discharging an NoU.

There are certain efficiencies here because delays in payment to current workers are avoided and HMRC does not have to expend resource in tracing former workers on behalf of the employer.

In the period 2016 to 2018, arrears identified through self-correction were almost £12 million (Table 7). This represented 45 per cent of both total arrears and workers identified by HMRC NMW overall as being underpaid. While arrears per worker were the same using both approaches, arrears per case and workers benefiting are significantly greater via self-correction. On the face of it, this suggests that self-correction is a more efficient means of ensuring NMW underpayments are tackled.

Table 7: HMRC-assessed and self-corrected arrears, 2016–18

	Closed cases with arrears	Arrears identified	Workers	Arrears per case	Workers per case	Arrears per worker
HMRC-assessed arrears	1,815	£14.58m	163,698	£8,034	90	£89
Self-corrected arrears	604	£11.95m	136,237	£19,788	226	£88
Total arrears	2,419	£26.53m	299,935	£10,969	124	£88

Source: BEIS (2017b and 2018d).

However, HMRC officials told us that self-correction cases still require considerable input from compliance officers, as the employers undergoing this process will need HMRC support to get it right. Without specific information on time spent by HMRC compliance officers on these cases relative to other HMRC-assessed cases, I cannot at this stage draw any firm conclusions regarding the efficiency of self-correction.

f) Triaging complaint cases

Triaging was introduced in April 2016 to make NMW caseload management more efficient and to focus resource more effectively across different levels of risk of non-compliance.

The interventions resulting from this triage process include:

- **Nudge letter interventions:** HMRC writes to the employer setting out what corrective action is required to be compliant. Employers are asked to report back once done.

- **Desk-based interventions:** This involves telephone contact with employers and workers to discuss payroll practices, review business records remotely and take formal action to recover any arrears owed.
- **Face-to-face meetings with employers and workers:** As above, but via a visit to the business premises.
- **Serious non-compliance (SNC):** Face-to-face visits with employers, which are sometimes unannounced, particularly where there is evidence of exploitation or modern slavery.

In its evidence to us, HMRC provided a breakdown of case volumes and outcomes by different stage of triage. This is summarised in Table 8.

Table 8: HMRC NMW complaint case volumes and outcomes by triage intervention, 2017/18

	Nudge letter	Desk-based	Face-to-face	SNC	Total
Cases closed	180	555	652	14	**1,401**
Closed cases with arrears	106	261	249	8	**624**
Strike rate	59%	47%	38%	57%	**45%**
Arrears	£109,493	£1,722,509	£9,747,394	£71,488	**£11,650,884**
Workers	835	3,394	132,132	444	**136,805**
Average workers per case	8	13	531	56	**219**
Average arrears per case	£1,033	£6,600	£39,146	£8,936	**£18,671**
Average arrears per worker	£131	£508	£74	£161	**£85**

Source: HMRC NMW response to the DLME's Call for Evidence.

The vast majority of complaint cases closed, and those closed with arrears, were either by telephone or via face-to-face visits to the employer (see Table 8). Almost all (97 per cent) of the arrears identified and 84 per cent of the workers covered resulted from face-to-face intervention alone. But of all the interventions used, face-to-face methods resulted in the lowest strike rate (38 per cent) – the proportion of closed cases where arrears were identified. This lower strike rate may be partly explained by the fact that this approach is used in larger, more complex cases.

As these are just data for one year, it is too early to reach any firm conclusions on the effectiveness of each method. My Office will continue to monitor this in future.

HMRC NMW does not record information on the numbers of staff or financial resourcing used for each type of intervention. This would have been helpful to get a sense of unit cost per case or per worker and hence the benefit–cost ratio of different types of enforcement approach. Instead, HMRC NMW told us that measures of success within their SLA are geared to the customer journey – how long they take to reach a conclusion in a case – and not the direct cost of each case. I accept that identifying arrears and reimbursing workers quickly is a key aspect of HMRC NMW's enforcement work, but it is difficult to see how value for money from state enforcement activity can be achieved without a clearer understanding of the costs and benefits of enforcement.

Stakeholder feedback

A number of stakeholders commented on the increase in HMRC resources and how this has been used. Some were very positive but noted that further additional resourcing is not justified at the current time:

> *"FCSA members who have experienced a NMW compliance audit have reported that it is extremely thorough, and despite being disruptive and time-consuming has overall been a positive for the business involved. FCSA is very supportive of the increase in NMW enforcement, which is resulting in improved awareness and greater compliance. We don't believe that a further increase in resources is necessary."* Freelancer & Contractor Services Association (FCSA) response to the DLME's Call for Evidence

Other respondents, including the Trades Union Congress (TUC), wanted to see yet further increases in resources. Drawing on the rise in complaints and record arrears identified, the TUC expressed concern that this itself will attract even more complaints and in so doing squeeze out proactive enforcement, particularly in target sectors.

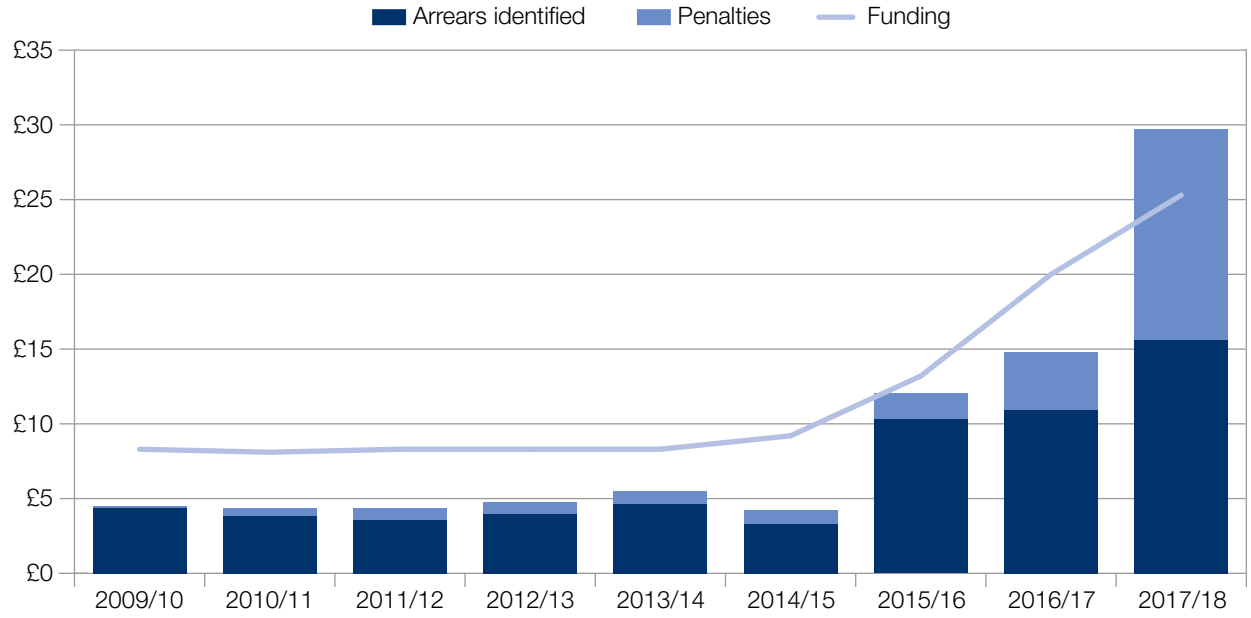
The response from business (Confederation of British Industry (CBI), British Retail Consortium (BRC), UKHospitality) recognised HMRC's 'Promote, Prevent and Respond' strategy, but wanted to see the extra resource allocated more effectively towards educating and helping employers get it right, and ensuring compliance officers were well trained to carry out their work. Both BRC and UKHospitality wanted to see greater consistency and a reduction in unpredictability.

> *"The industry has witnessed inconsistency in decisions between case workers, limited technical knowledge during investigations and a lack of cross-industry sharing to prevent similar errors being made by multiple employers. The industry recommends a greater proportion of HMRC's annual budget is directed towards Promote activities and on training case workers to better understand individual sectors and how pay practices in those sectors operate."* BRC response to the DLME's Call for Evidence

HMRC NMW: assessment and recommendations

The overall value of arrears has increased markedly in the last decade from around £4.5 million to £15.6 million by 2017/18. Coupled with the expansion of – and increased revenues from – the penalty regime, for the first time in 2017/18 the **direct** financial benefit of HMRC's interventions (value of arrears plus value of penalties) exceeded the overall cost of providing NMW enforcement[13] (Figure 8).

Figure 8: HMRC NMW funding and value of arrears and penalties, 2009/10 to 2017/18



Source: Government evidence to the LPC (various years).

13 Strictly, these may be considered transfers in the economic sense, i.e. workers being reimbursed by employers for wages they were due in the first place and non-compliant employers paying fines to the Exchequer.

Of course, such a calculation neglects the value and importance of indirect effects (e.g. the return on media campaigns that result in more employers being compliant and thereby fewer workers at risk of being underpaid the minimum wage). Inevitably, these can be more difficult to identify and monetise but they will still provide a great deal of value over and above the directly measurable effects. Compliance and awareness-raising activity is discussed in section 4 (Helping employers get it right).

From an overall perspective, HMRC has certainly been successful in identifying more arrears and helping to ensure more workers are reimbursed for the pay they are owed. Much of this stems from a focus on large retailers, which are complex and resource-intensive cases. The effect has been that, on average, NMW staff close fewer cases each year and average arrears per worker have fallen, which suggests that the nature of the infringements is arguably less serious. It is debatable just where the balance, and hence HMRC NMW's focus, should be between less and more serious cases. I discuss this further below.

Resourcing and demonstrating cost-effectiveness

Linked to the above is a question around incentives structures both for HMRC NMW overall and for NMW compliance officers individually. Former minimum wage compliance staff told me that performance of individual compliance officers are effectively based on metrics such as the number of workers for whom they identify arrears or the value of overall arrears they succeed in identifying. These then feed into the broader organisational key performance indicators (KPIs) to measure the relative success of NMW enforcement against the SLA. HMRC NMW disputes this, but I have concerns that even if such targets are expressed informally this may skew individual and organisational priorities. This, in turn, may mean that enforcement resources are not always directed towards those vulnerable workers who need them the most.

Nonetheless, the introduction of triaging has helped to target resources, such that relatively easy and minor cases can be dealt with more efficiently, although again the dominance of large cases may give an unrepresentative picture over time, especially if BEIS signals a shift away from targeting large business. On the basis of the evidence we have seen (and having spent time shadowing Serious Non-Compliance officers), I believe that resourcing for the Serious Non-Compliance function is below where it should be. I recognise that the team is growing (with 10 new Serious Non-Compliance officers in Scotland) but I would urge HMRC NMW to monitor the threat at the more serious end of the non-compliance spectrum and to steer more of its resources in that direction.

Regarding the level and distribution of resources, **I recommend that HMRC's funding for NMW enforcement be increased in line with inflation and that, from 2019/20, HMRC NMW better demonstrate the cost-effectiveness of its suite of triaging interventions.**

On the face of it, **self-correction** seems to be working, although – contrary to the impression its name suggests – this intervention still requires considerable input and assistance from HMRC NMW compliance officers. Importantly, self-correction is still in its infancy and so will need to be reviewed further in due course.

Targeted enforcement seems to be improving, although this can vary widely by sector. One concern I have is that the underlying risk modelling and intelligence support both need to be sufficiently robust and take a more strategic view of compliance challenges at the sector level. **I recommend that HMRC NMW review the role and effectiveness of its strategic intelligence functions with a view to integrating with, and thereby strengthening, its risk modelling and hence improving the effectiveness of targeted enforcement.**

Prioritisation of NMW cases – greater focus on more serious NMW violations

An important issue I highlighted in my 2018/19 Strategy was around accidental versus intentional breaches of the NMW regulations. This was often raised by stakeholders who felt that they were being penalised for 'technical' errors, where often the financial impact on the worker (in terms of pay arrears) was relatively small. I do have some sympathy with this argument but recognise too that 'technical errors' are not always accidental and may, especially for larger companies, mean that small arrears per worker accumulate into a considerable cost saving. Therefore, care needs to be taken when considering this.

HMRC NMW states correctly that the NMW regulations do not differentiate on such a basis and that underpayment of NMW/NLW is still a contravention of the law and therefore that employers should be penalised as a result.

But what does concern me, based on the evidence presented above and indeed the feedback from stakeholders, is that the balance between smaller and more serious breaches is currently not right. On the assumption that the financial amount of arrears per worker signals the severity of any given NMW breach, then it seems to me that too much resource and focus is being directed at the lower end of non-compliance. As the journalist Sarah O'Connor recently stated in *Prospect Magazine*:

> *"It is easier for HMRC to go after these national companies for small errors than to bang on doors in places like Leicester, where the average garment factory employs nine people and record-keeping can be sketchy. Of course, the big employers should get it right. But what matters more to us as citizens: that a Primark worker is reimbursed £24, or that a sewing machine operator is reimbursed – and their employer punished – for years of deliberate and drastic underpayment."* (O'Connor, 2019)

At the end of the day, HMRC NMW will have finite resources at its disposal but it does have a degree of choice as to where along the NMW non-compliance spectrum it targets these resources. My concern therefore is that workers experiencing infringements further along the NMW non-compliance spectrum are not as protected as they should be.

I recommend that, regarding HMRC NMW's prioritisation of cases, HMRC NMW/BEIS focus its enforcement efforts further along the non-compliance spectrum, thereby seeking to tackle more serious cases.

My new Labour Market Enforcement Board could play a key role in helping to determine sectors and areas for state enforcement intervention and I discuss this further in section 5 on joint working.

A similar argument could be applied to the interventions that BEIS and HMRC NMW can use in terms of deterrence. Here, I focus on the naming and shaming rounds and the size of financial penalties for recalcitrant employers.

The **naming scheme** has now matured since the revised approach was implemented six years ago. Damage to reputation still appears to be a powerful incentive to comply, especially for larger household names.

Although naming rounds were operating on a quarterly basis up to mid-2018, there have been no further rounds since. I would like to see continued use of this intervention and, on the basis that it is run frequently in the future, would want to see more of a shift towards potential compliance opportunities that the naming rounds could provide.

I have therefore suggested some changes in section 4 on compliance, which reflect this, but which should also improve the efficacy of the scheme and strengthen the 'fear factor' associated with being publicly named.

Although the revenue from **NMW penalties** has risen recently, the number of employers penalised has remained the same. It would be helpful to understand what deterrence effect this penalty regime is having. As I stated in my 2018/19 Strategy, the trade-off between enforcement resources and magnitude of penalties is critical here. The Government has not accepted my 2018/19 recommendation that penalties be increased significantly to act as an even greater deterrent. The argument presented in its response to my Strategy is that penalty revenues have increased significantly over the past year.

However, discussions with BEIS have highlighted that there may be a legal obstacle to raising penalty levels further. Neither I nor my Office have been party to this legal advice.

The deterrent effect of the current NMW penalty multiplier should be assessed and **I recommend that BEIS commission an independent evaluation to report by the end of 2019. This could potentially lead to a reconsideration of the case for supporting the raising of penalties in the future and/or increasing enforcement resources across all three labour market enforcement bodies**.

I noted in my last Strategy that **prosecutions** have been an under-used tool by HMRC. The situation has not changed since then and so I reiterate my belief that prosecutions and the publicity surrounding them could be used to greater effect. I welcome the change made to the BEIS/HMRC NMW SLA to give greater prominence to pursuing prosecutions for serious non-compliance.

With the introduction of LMEUs and LMEOs in 2016, HMRC NMW and the other two labour market enforcement bodies now have an additional, powerful tool to use against more seriously non-compliant employers. All three bodies have issued LMEUs in the past year and an initial assessment of this new regime is presented in section 5 on joint working.

3.3 Gangmasters and Labour Abuse Authority

The overarching aim of the Gangmasters and Labour Abuse Authority (GLAA) focuses on *"working in partnership to protect vulnerable and exploited workers"*.

GLAA seeks to achieve this via three strategic priorities based on the 'Prevent, Protect, Pursue' approach:[14]

- preventing worker exploitation;
- protecting vulnerable people; and
- pursuing those who exploit others for their work either financially, physically and/or through coercion and control.

In its evidence, GLAA set out its strategic priorities for 2018/19 indicating how they intend to achieve these three priorities and how they will measure success (Table 9).

14 See, for instance, GLAA (2017c).

Table 9: GLAA strategic objectives 2018/19

	Achieved by….	Measure
Disrupt criminal activity within the labour market	Enhancing stakeholders' awareness of enforcement activity undertaken by the GLAA, either as the agency lead or in a supportive capacity with partners	The design and delivery of monthly bulletins/ updates to the GLAA's high influence/ high interest stakeholders along with other dynamic engagement activity (GLAA Brief, attendance at events, presentations etc)
	Encouraging the reporting of labour exploitation/ modern slavery concerns to the GLAA, thereby increasing the flow of intelligence	The number of calls made to the GLAA
Engage with stakeholders to minimise and manage risk	Delivering training to businesses and other organisations to help them better understand labour exploitation and help them develop mechanisms to drive it out of their supply chains	The number of training sessions and programmes delivered, capturing attendance at seminars and conferences
	Enhancing the GLAA's delivery of information to the public about labour exploitation/modern slavery issues tailored to their specific need	Media monitoring, number of calls to the GLAA, requests for awareness/education materials
	Making the most effective use of communications channels (including social and digital channels) to promote the work of the GLAA and all issues relating to labour exploitation/modern slavery	Social media analytics and website traffic measuring followers, tone, etc
Support compliant business	Providing an accurate picture of the way the GLAA operates and what the compliant businesses can expect from the Gangmasters and Labour Abuse Authority	Design and delivery of a guidance handbook for licensing standards, regular engagement through the GLAA Brief
	Enhancing the GLAA's provision of information to compliant businesses about labour exploitation/ modern slavery issues tailored to their specific need and ensuring regular, ongoing dialogue is maintained	Increased use of website for signposting to relevant information, face to face engagement by GLAA colleagues through compliance inspections and other meetings
Work in partnership to protect workers' rights and prevent labour exploitation	Increasing awareness of workers' rights, spotting the signs and preventative materials aimed at educating businesses, workers and the public to be able to recognise labour exploitation	Quantities of materials distributed and requests for awareness/education literature
	Working collaboratively with strategic partners to help raise awareness of labour exploitation/modern slavery issues and the part organisations and individuals can play in helping tackle it	Tracking and capturing level of joint comms and engagement activity with strategic partners
Maintain credible licensing scheme, create a level playing field and promoting growth	Enhancing confidence in the capability of the GLAA to ensure businesses within the regulated sector are compliant	Capturing level of face to face engagement by GLAA colleagues through compliance inspections, customer satisfaction via surveys
	Increasing awareness and understanding of the importance of compliance within the regulated sector and the sanction/implications for those businesses that fail to comply	Increased use of website for signposting to relevant information, face to face engagement by GLAA colleagues through compliance inspections and other meetings, production and delivery of the GLAA Brief
Identify and support victims of labour exploitation	Encouraging the reporting of labour exploitation/ modern slavery concerns to the GLAA, thereby increasing the flow of intelligence	Number of calls made to the GLAA
	Increasing awareness of workers' rights, spotting the signs and preventative materials aimed at educating businesses, workers and the public to be able to recognise labour exploitation	Quantities of materials distributed and requests for awareness/education literature, increased signposting using GLAA website and social media platforms
	Working collaboratively with strategic partners to help raise awareness of labour exploitation/modern slavery issues and the part organisations and individuals can play in helping tackle it	Tracking joint comms and engagement activity with strategic partners

Source: GLAA response to the DLME Call for Evidence.

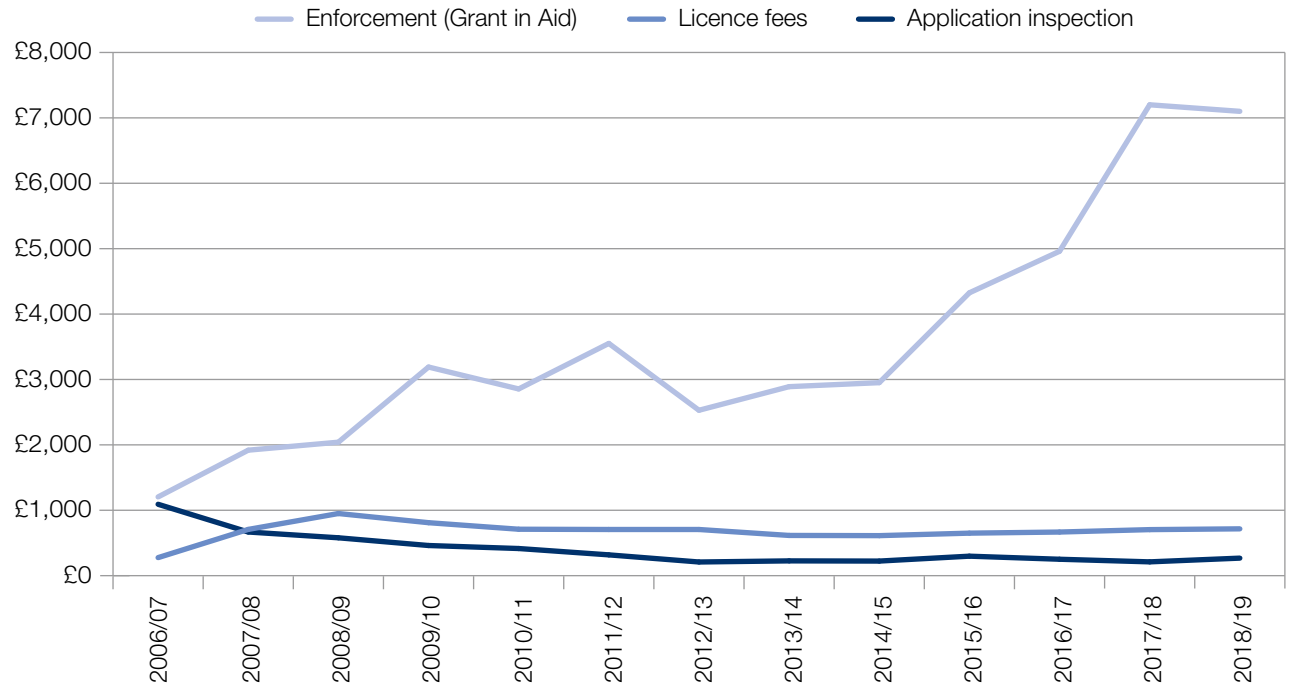
Resources

Funding

GLAA currently receives £7.1 million each year from the Home Office to undertake its duties. This has risen considerably in the last two years, largely to accommodate the additional staffing required to fulfil the expanded remit resulting from the Immigration Act 2016, to tackle serious labour exploitation, including modern slavery offences (Figure 9).

In addition to this, GLAA generates around £1 million each year through its licensing scheme via both licence fees and application inspection fees (discussed further below).

Figure 9: Sources of GLA/GLAA income 2006/07 to 2018/19 (£000)



Sources: GLA/GLAA published Annual Reports and Accounts, 2006/07 to 2017/18; GLAA Business Plans 2017/18 (GLAA, 2017a) and 2018/19 (GLAA, 2018b). Note: licensing fee income for 2018/19 is a projection

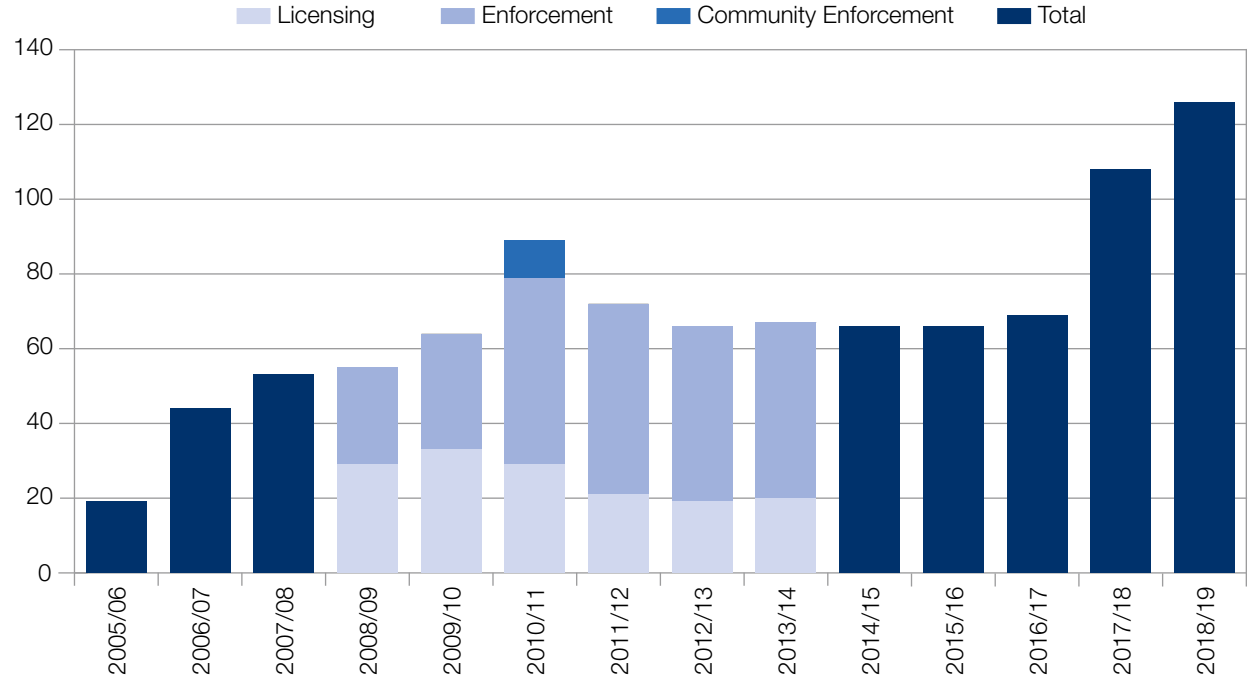
Staffing

Staff numbers at the then-called Gangmasters Licensing Authority (GLA) peaked at 89 in 2010/11 but fell significantly to 72 in 2011/12 and then further to 66 in subsequent years. According to GLA annual reporting much of this decline occurred on the licensing side, falling from 33 staff in 2009/10 to 21 by 2011/12. Over the same period, enforcement staff increased from 31 to 51.

The recent expansion of GLAA's remit has seen a marked increase in staffing levels. In 2017/18, the average GLAA headcount was 108 staff (including 16 compliance officers). By September 2018, total staffing stood at 126. This consists of 97 operational staff and 29 support staff. Estimated average headcount for 2018/19 is 126 (Figure 10).

Expansion of staffing has been mainly due to the recruitment of Labour Abuse Prevention Officers (LAPOs) to tackle labour exploitation. Just under half of GLAA's staff are based at the headquarters in Nottingham, with compliance officers and LAPOs based around the country.

Figure 10: GLA staff volumes 2005/06 to 2018/19 (average employed in year)



Source: GLA/GLAA Annual Reports (various years); GLAA Business Plans 2017/18 (GLAA, 2017a) and 2018/19 (GLAA, 2018b).

To consider GLAA's use of resources, I will examine in turn the two broad areas of its remit: the gangmasters' licensing scheme introduced in 2005 and the extension of its remit in 2017/18 with the introduction of LAPOs to tackle more serious labour exploitation.

Licensing

The rationale for establishing the then GLA in 2005 was the Morecambe Bay tragedy, when in February 2004, 23 Chinese cockle pickers were drowned. Following this, the GLA was tasked with operating a licensing scheme for labour suppliers to four 'regulated' sectors: agriculture, forestry, shellfish gathering, and food processing and packaging. Up to this point, the Employment Agency Standards (EAS) Inspectorate held responsibility for compliance and enforcement in these sectors insofar as the providers of labour were defined as employment agencies.

Labour suppliers – or gangmasters – are required to obtain a licence from GLAA, for which they are charged based on their gross annual turnover within the sector. Fees for new licence applications range from £2,250 to £5,500. Licences are valid for 12 months, with licence renewal fees ranging from £400 to £2,600. In addition to this, there are fees of between £1,850 and £2,900 for application inspections.

Over time, the stock of licences has fallen by a third from around 1,500 in 2009/10 to around 1,000 in 2018. GLAA told us that there were two principal reasons for this: (i) the fact that since October 2013 labour suppliers in forestry in England, Wales and Scotland were no longer required to hold a licence; and (ii) the result of a significant degree of consolidation in the sector into fewer and larger labour supply firms (Figure 11).

A direct consequence of this has been a fall in licence fee income from around £1.5 million in 2009/10, down to around £1 million projected for 2018/19.[15] This has been further compounded by licence fee levels being frozen since 2012. GLAA licensing should operate on a full cost recovery basis, but it has been agreed with HM Treasury that only part of the licensing cost will

15 This is made up of £0.72 million from licence fees and £0.23 million from application inspection fees.

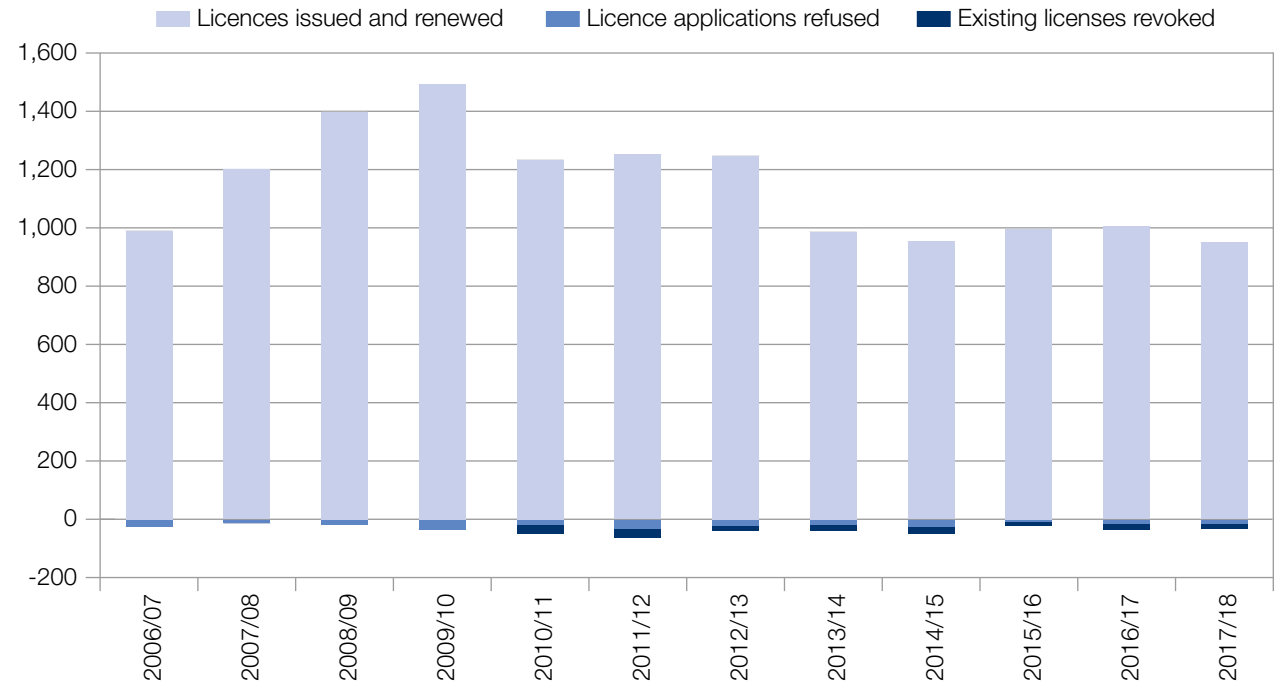
be recovered. Considering staff costs and other operating expenditure for licensing (together amounting to £1.9 million in 2016/17), currently less than half of these costs are being recovered by licence income. The remainder is covered by the taxpayer.

In 2017/18, GLAA processed 133 new licence applications, 96 of which were full licences with a further 22 being issued with additional licensing conditions. GLAA refused 15 new licence applications. Some 832 existing licences were renewed, while 17 licences were revoked.

GLAA carried out 170 licensing inspections of gangmasters in 2017/18, mostly upon application for a licence but also where compliance checks are required following receipt of a worker complaint and/or intelligence. **This equates to around one inspection per compliance officer per month.**

Discussions I had with a former GLAA licensing compliance officer appeared to corroborate this. Compliance officers were apparently under-utilised, as evidenced by the considerable reduction in compliance inspections and licence revocations over time.[16] Under the current approach, it was felt that it was too easy for rogue gangmasters to evade the necessary scrutiny. Even where licences are revoked there is often evidence of phoenixing.[17] A more effective way of assessing compliance would be to undertake unannounced visits.

Figure 11: GLA/GLAA licensing volumes, regulated sectors,[18] 2006/07 to 2017/18



Source: GLA/GLAA Annual Reports and Accounts 2006/07 to 2016/17. The 2017/18 data was provided to DLME by GLAA

Prosecutions

The Gangmasters (Licensing) Act 2004 includes a number of criminal offences that apply to both labour providers and labour users:

- operating as a gangmaster without a licence – section 12(1);
- possession of documentation – either false, improperly obtained or belonging to someone else – with intent to appear licensed – section 12(2);

16 Between 2011 and 2014, GLAA averaged over 100 compliance inspections and 25 licence revocations a year. Between 2015 and 2018, this had fallen to 65 and 18 respectively.

17 The practice of carrying on the same business or trade successively through a series of companies where each becomes insolvent in turn (The Insolvency Service, 2017).

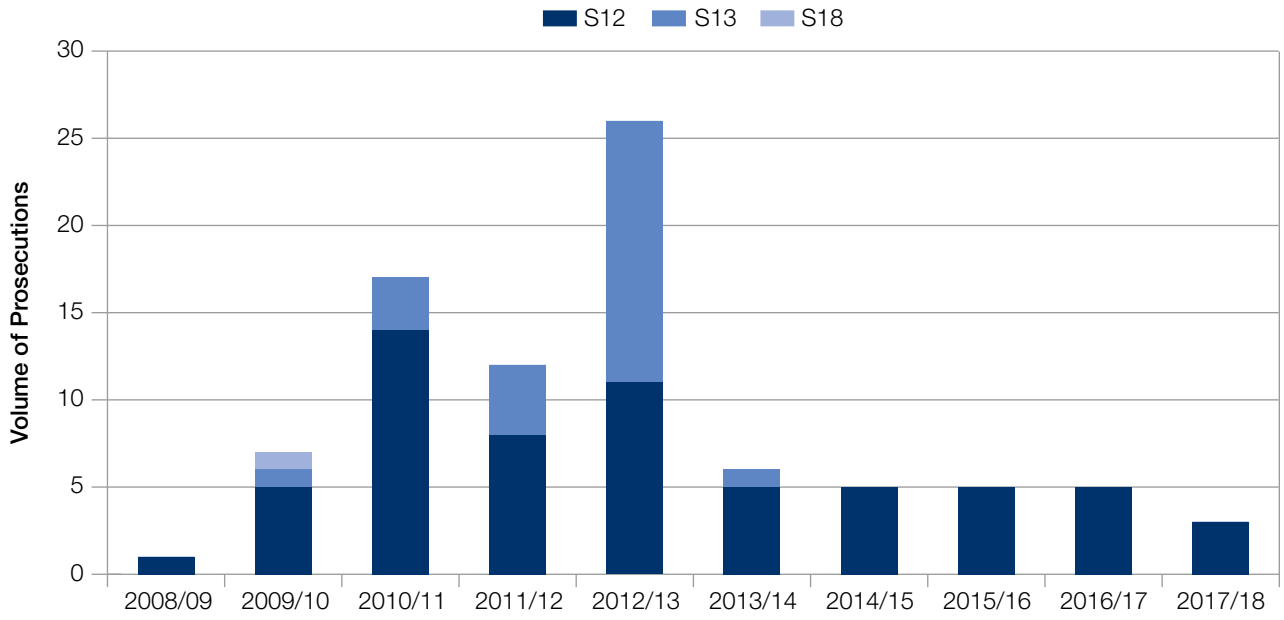
18 Since October 2013 there is no longer a requirement to hold a licence to supply labour in the forestry sector

- entering into arrangements with an unlicensed gangmaster – section 13; and
- obstructing a GLAA officer – section 18.

The maximum penalty for offences under section 12 is 10 years' imprisonment and/or a fine. Offences under sections 13 and 18 can result in a maximum six months in prison and/or a fine.

Between 2008/09 and 2017/18, GLA/GLAA had secured 91 convictions under these three sections, mostly against gangmasters operating without a licence (Figure 12). Although there have been five or fewer convictions per year over the past three years, it remains the case that GLAA makes greater use than both HMRC NMW and EAS of criminal prosecutions.

Figure 12: GLAA prosecutions by type of offence



Source: GLAA website (GLAA, 2018f).

Recent GLAA prosecutions in the regulated sectors (see Box 2 below) suggest that actual penalties incurred for operating as an unlicensed gangmaster fall well below the maximum available (in these cases ranging from a fine of £500 to three months' imprisonment). Again, a former GLAA enforcement officer I spoke to highlighted that prosecutions are minimal and, where prosecutions were successful, the sentences were too light. I question therefore the deterrence effect of the penalties. I am, however, pleased to see GLAA publicising these prosecutions, something that I stated in my 2018/19 Strategy I would like to see HMRC NMW do more of.

Box 2: Examples of recent GLAA prosecutions in the regulated sectors

Three Lithuanian men have been convicted of gangmaster offences in Northern Ireland following investigations carried out by the Gangmasters and Labour Abuse Authority (GLAA)

Rolandas Linkevicius, 39, of Mountain View Drive, Newry, County Down, and Aurimas Andrijauskas, 37, of Maple Grove, also in Newry, were each fined £750, plus offender levies of £15 after pleading guilty to acting as unlicensed gangmasters.

Their company Coastal Seafoods Ltd was found to have been operating a business with eight workers out picking shellfish across Northern Ireland without a GLAA licence between October 2016 and May 2017.

Also prosecuted was Airidas Grabausks, 34, and of Clonmore, Newry, County Down.

Grabausks, a director of A&A Seafood Ltd in the city, admitted acting as an unlicensed gangmaster between November 2016 and May 2017 by similarly employing workers to pick shellfish across Northern Ireland.

He was fined £500 plus an offender levy of £15.

Speaking at Newry Magistrates' Court on Monday 20 August, District Judge Eamonn King said that in both cases there was a degree of enterprise to make money but nothing more sinister.

A Romanian man has been jailed after being convicted of gangmaster offences in Northern Ireland

Laurentiu Ciurar, 29, and of Tirmacrannon Road, Loughgall, County Armagh, was sentenced to three months in prison when he appeared before Craigavon Magistrates' Court on Wednesday 22 August.

Ciurar was convicted of acting as an unlicensed gangmaster under Section 12(1) of the Gangmasters (Licensing) Act 2004.

He supplied workers into the agricultural, food processing and packaging industries in the County Armagh area without a GLAA licence between October 2013 and September 2014.

Ciurar failed to attend court on two separate occasions in June and July of this year before a warrant was served for his arrest.

In addition to the custodial sentence, he was handed an offender levy of £25.

Judge Bernie Kelly in sentencing Ciurar said that he made money from some of the most vulnerable people in society.

She added that she wanted to "send a public message" that this sort of offending would not be tolerated.

Source: GLAA press releases (GLAA, 2018d and 2018e).

Licensing in the shellfish gathering and agriculture sectors

The Strategic Intelligence Assessment carried out for my 2018/19 LME Strategy identified two of GLAA's four licensed sectors as being at risk of labour exploitation: shellfish gathering and agriculture. I identified the nature of the threat as follows:

- **Agriculture:** Organised crime groups are exploiting workers with threats, debt bondage and withholding travel documents to control workers. Many more in the sector are also not receiving NMW.
- **Shellfish gathering:** Workers forced to gather in dangerous conditions, with particular hazards around unlicensed activities at unclassified beds. Some evidence of workers also not receiving NMW.

This was a real cause for concern for me. Therefore, as part of my Call for Evidence this year, I was keen to investigate this further and understand just how these risks are still present.

There are currently only 13 licence holders in shellfish gathering across the whole of the UK (seven in England, five in Wales and one in Scotland). This seems a relatively small number and suggests incomplete licensing coverage and therefore unlicensed operators at work. GLAA has not provided any estimates as to how many there may be, but it does accept there will be some. GLAA did provide us with evidence on gangmaster prosecutions in train, where a number were in the shellfish gathering sector.[19]

In its evidence to us, GLAA recognised that this sector itself would necessitate joint working (for instance with the local Inshore Fisheries and Conservation Authorities (IFCAs), the Food Standards Agency, local authorities and the police). However, it detailed neither current nor future plans to demonstrate that non-compliance – and hence the risks to workers in this industry – was being effectively tackled. GLAA stated that enforcement of this sector was difficult, but my concern is the risks identified in this sector (see section 2, Strategic intelligence assessment) are even greater this year than they were in my 2018/19 Strategy.

Similarly, in agriculture, where there are far more licensed gangmasters (over 600), there remains a concern that enforcement needs to be strengthened here. GLAA accepts that unlicensed activity occurs in this sector: up to 30 per cent of allegations of unlicensed trading concerned the agricultural sector. In its earlier days, the then GLA used to provide such estimates and, while it is recognised that these will involve a considerable degree of uncertainty, I would urge GLAA to provide greater reassurance to the licensed sectors that it is bearing down on such non-compliance.

The fact that the strategic intelligence assessment carried out for this current LME strategy continues to rank these licensed sectors as being at higher risk of labour exploitation only serves to reinforce my concern that more needs to be done here. I make recommendations in the section on stakeholder feedback.

Combating labour exploitation

Since May 2017, GLAA has been able to use police powers under the Police and Criminal Evidence Act 1984 to combat high-harm labour exploitation within modern slavery.

The Home Office estimated that there were between 10,000 and 13,000 potential victims of modern slavery in the UK in 2013 (Silverman, 2014). The social and economic costs of labour exploitation alone were estimated to be between £1.4 billion and £1.8 billion in 2016/17 (Reed et al., 2018).

Data from the National Referral Mechanism (NRM[20]) shows that labour exploitation is now the most prevalent form of modern slavery, accounting for 57 per cent of the almost 7,000 potential modern slavery victims referred in 2018 (NCA, 2019). Two years earlier, labour exploitation accounted for 41 per cent of the 3,805 potential victims referred at the time (NCA, 2017).

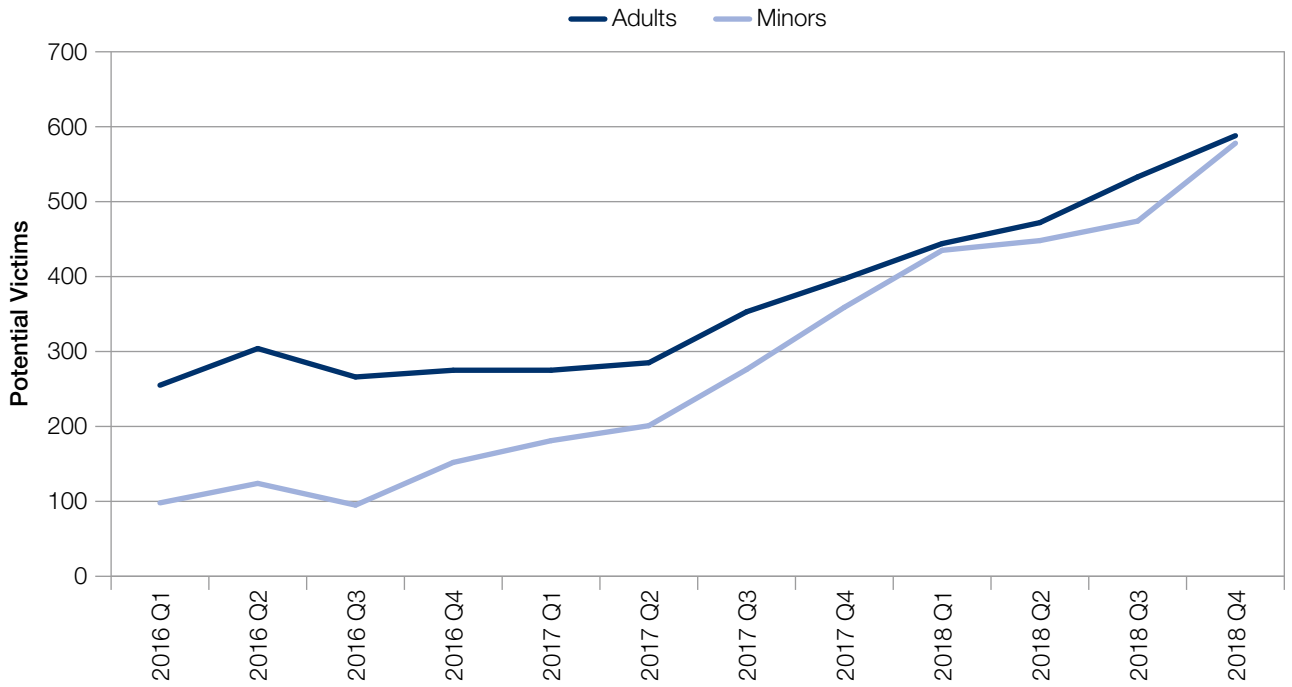
19 In its response to our Call for Evidence GLAA told us that three of the 14 cases at the time with the Crown Prosecution Service (CPS) for consideration for prosecution were for unlicensed gangmasters operating in the shellfish gathering sector: one in each of Scotland, Wales and Northern Ireland.

20 The NRM is the UK's identification and support system for potential victims of modern slavery.

The rise in labour exploitation has occurred among both adults and minors, although with a faster increase in the latter group (Figure 13a). Minors now constitute almost half of all labour exploitation potential victims: two years ago this was just over a quarter. The majority of the recent increase in labour exploitation of minors has been among UK nationals (Figure 13b).

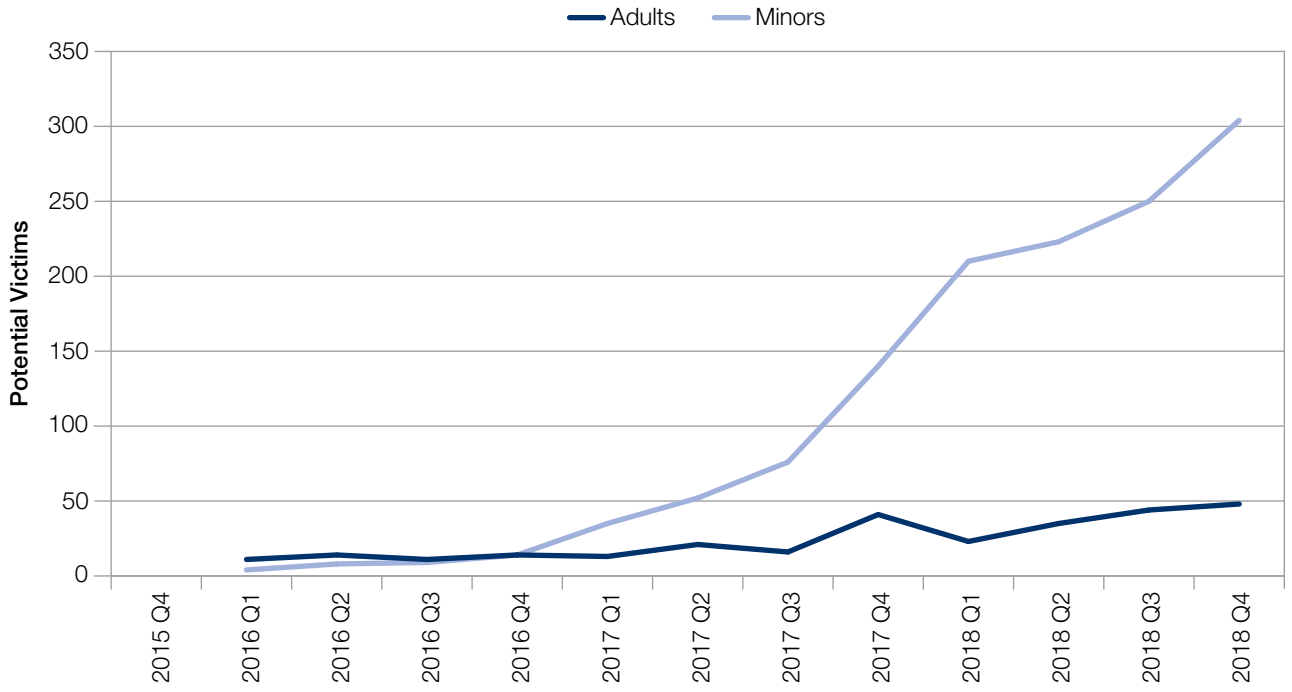
In the past year, there were 1,134 UK nationals who were referred to the NRM as potential victims of labour exploitation in 2018. By comparison, there were 484 Vietnamese nationals, with around 300 or more from each of Sudan, Albania and Romania (NCA, 2019).

Figure 13a: Labour exploitation potential victims (all nationalities), Q1 2016 to Q4 2018



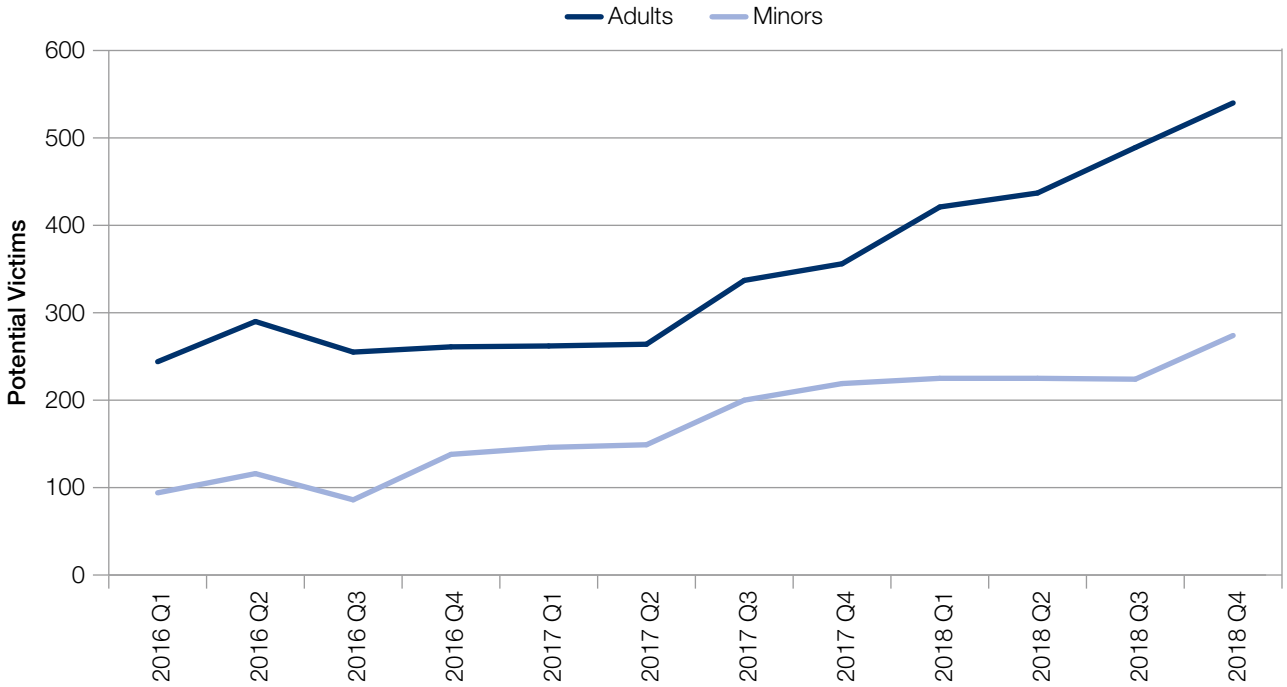
Source: NCA (2017, 2018 and 2019).

Figure 13b: Labour exploitation potential victims (UK nationals), Q1 2016 to Q4 2018



Source: NCA (2017, 2018 and 2019).

Figure 13c: Labour exploitation potential victims (non-UK nationals), Q1 2016 to Q4 2018



Source: NCA (2017, 2018 and 2019).

These data give an indication of the (growing) scale of the challenge facing GLAA and other organisations in this particular area of modern slavery. However, from the perspective of UK labour market enforcement, two important caveats should be noted:

- First of all, much of labour exploitation among minors is related to 'county lines'.[21] Most of the increase in the last two years has occurred among minors who are UK nationals. This group does not fall within my remit for tackling non-compliance in the labour market and the Home Office/National Crime Agency (NCA) will want to consider how such offences are categorised.
- Second, among adults the rise in labour exploitation since mid-2017 has been almost completely among non-UK nationals. Moreover, a significant proportion (around a quarter in 2018) suffer exploitation overseas before they arrive in the UK. Only where a human trafficking offence (e.g. by a UK national overseas) has been committed under section 2 of the Modern Slavery Act 2015 can it be investigated under UK law, although agencies such as GLAA do undertake Prevent work with other countries in an effort to tackle this before potential victims of labour exploitation arrive in the UK.

But, even accounting for this, it remains the case that labour exploitation is a serious and growing issue within the UK. The powers and resources now at GLAA's disposal to tackle this are therefore timely.

LAPO resourcing and initial results

The introduction of new LAPO powers significantly extends the scope of GLAA's target working population. Whereas its licensing regime covers sectors employing up to around half a million workers, GLAA estimates that with these new powers up to 10 million workers across the UK are now in scope.

Over the past year, GLAA has been building this capability to investigate serious cases of labour exploitation. By autumn 2018, 36 LAPOs had been recruited and trained.

21 According to the NCA, 'county lines' is a term used when drug gangs from big cities expand their operations to smaller towns, often using violence to drive out local dealers and exploiting children and vulnerable people to sell drugs: https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/drug-trafficking/county-lines

I am encouraged that GLAA has successfully undertaken the recruitment and training of this complement of LAPOs. In terms of assessing the impact of LAPOs and GLAA's wider work to combat labour exploitation, it is inevitably early days to draw any firm conclusions. GLAA has reported that in 2017/18 it conducted over 100 operations, with more than 80 of those across sectors outside of the traditional agriculture sector. As a result, GLAA arrested 107 people for suspected labour market offences, of which 58 were outside of licensed sectors.

According to the NCA statistics, GLAA referred 32 potential victims of modern slavery to the NRM in 2018, up from 22 the year before. Over and above this, GLAA will also be involved in joint operations where other enforcement agencies lead with respect to any NRM referrals. In the wider scheme of things, GLAA referrals are a small proportion of overall referrals. In 2018, there were almost 7,000 across all modern slavery categories and, of these, around 2,800 referrals came from government agencies, mainly UK Visas and Immigration and UK Immigration Enforcement, both within the Home Office.

GLAA underwent a voluntary inspection of its LAPO operation by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) in the second half of 2018. HMICFRS examined five areas: volume and training of LAPOs; GLAA's systems and processes to enable the use of LAPO powers; GLAA's recourse to specialist capabilities to make use of these powers; whether GLAA was using these powers appropriately; and whether GLAA had in place the necessary internal governance and supervisory powers.

HMICFRS praised GLAA in recruiting, training and deploying sufficient numbers of LAPOs in a short space of time (HMICFRS, 2019). Given that GLAA had recruited experienced former police officers as LAPOs, they were judged to be acting confidently and fairly. Some issues relating to GLAA's internal processes and systems, and their access to capabilities, were identified by HMICFRS as needing further attention and improvement.

As I also recognise, HMICFRS noted that it was difficult to judge LAPO performance at this stage, given that their work commenced only in April 2017, there is a lack of suitable benchmarks to compare against, and there are long lead times between arrest and prosecution due to the complexity of offences under investigation. When HMICFRS undertook its inspection, there had not been any applications for Slavery and Trafficking Prevention Orders (STPOs)[22] and only six LAPO convictions. It was noted that there were 135 live investigations, from which HMICFRS expected to see more cases progressing to court in the near future.

HMICFRS also highlighted that organisational learning was more focused on the quality of partnership working than on reviewing the effectiveness of LAPOs' activities. They recommended an organisational development action plan be established by the end of May 2019, with performance regularly scrutinised by the GLAA Board.

Stakeholder feedback

Stakeholder responses mostly focused on how GLAA carries out its 'dual' role – licensing gangmasters and tackling modern slavery – and the issues this raises.

> *"The GLAA has seen its remit expanded but there is concern across the retail industry that the resource available to the GLAA does not match its new remit. It is important the GLAA focus on monitoring as well as enforcement. We would welcome additional resource to increase effectiveness, capacity and power for police-style investigations."*
> BRC response to the DLME's Call for Evidence

Both Unite and the TUC expressed concern that GLAA's licensing activity was being displaced by too great a focus on modern slavery.

22 For more information on STPOs, see: https://www.gov.uk/government/publications/slavery-and-trafficking-prevention-and-risk-orders

> *"The TUC is concerned that the GLAA has focused too many resources on modern slavery investigations – at the risk of overlooking wider labour market offences … . Whilst the TUC welcomes the important work being done to stamp out the abhorrent practice of modern slavery, this shouldn't detract from the GLAA's primary responsibility of tackling exploitation in the labour market … . There is evidence that focus has shifted from tackling breaches of licensing standards to other areas such as modern slavery."* TUC response to the DLME's Call for Evidence

The TUC was concerned that resources devoted to training new LAPOs was yet to demonstrate a meaningful impact on tackling offences across the whole labour market. It asked that DLME and the Home Office clarify the strategic priorities of GLAA. If, it argues, the extra funding is linked with tackling modern slavery, then this should be more clearly communicated. However, the TUC voiced caution about linking too closely with immigration enforcement, as this might act to deter workers from making complaints.

Furthermore, the TUC noted the strong focus on modern slavery in GLAA media communications, which, the TUC argues, risks causing misunderstanding among labour users and providers – as well as workers – as to GLAA's role.

Indeed, according to a survey by the Association of Labour Providers, the gangmasters licensing scheme is viewed very positively by licence holders. Some stakeholders (again, predominantly the unions) repeated their wish discussed in my previous Strategy for licensing to be extended to other sectors.

GLAA: assessment and recommendations

Like HMRC NMW, GLAA has seen a considerable boost to its budget in recent years. Arguably though, the transformation to take on a significantly different additional role – tackling labour exploitation and modern slavery – has been an even bigger challenge. The true scale of modern slavery generally in the UK is still poorly understood, and this applies as much to labour exploitation specifically. As I document later, properly understanding the scale of the challenge each body is facing is difficult.

Beyond the high-level data reported above, I am limited in making a full assessment of the effectiveness of GLAA's resourcing. GLAA has recently introduced a new performance framework, which, with over 200 indicators, should help inform this. These indicators will be used to measure performance against the strategic objectives set out above. On their own, however, those overall measurement objectives are relatively weak in determining the actual success GLAA may be having in delivering its core remit.

I am, however, encouraged that GLAA has identified five higher-level performance questions (GLAA, 2018b), which go over and above the performance indicators discussed above and begin to address the wider impact and evaluation issues I raise below. These are:

1. How comprehensive is the GLAA's understanding of the scale and threat of labour exploitation in the UK?
2. How effective is the GLAA's response to the identified threats of labour exploitation and modern slavery?
3. How effective is the GLAA at working with partners to tackle labour exploitation and modern slavery?
4. How effective is the GLAA at working with businesses, labour users and providers to drive up standards, preventing and tackling labour exploitation and modern slavery?
5. How effective is the GLAA at managing its resources?

GLAA told us that work on these will commence in 2019. I look forward to seeing what progress is made here.

In terms of its specific remit, the new LAPOs have only been in existence since May 2017. GLAA has worked hard to build up this cadre of personnel since then and by September 2018 had 36 LAPOs in post. Allowing for time to train these recruits, again it is still too soon to properly assess their impact.

GLAA's recent focus on the labour exploitation aspect of modern slavery is understandable given the profile this issue now has. However, I, along with several stakeholders I spoke to, have **concerns around whether this part of its remit is now beginning to crowd out their licensing work**. This stems from two areas. First, does this function still receive the support required to run a credible licensing scheme, as one of GLAA's strategic priorities aspires to do? Second, GLAA's communications activity (which we note is far more developed than for the other two bodies) is almost exclusively focused on its modern slavery remit. This risks presenting an incorrect impression of GLAA's focus and work and, as a result, might be confusing to stakeholders and the very workers they are seeking to protect through licensing the regulated sectors.

Following the work that went into my 2018/19 strategic intelligence assessment, I wanted to ensure that the apparent heightened risks identified in the shellfish gathering and agriculture sectors could be better understood and tackled. Both are licensed by GLAA and therefore present a real cause for concern. I would have liked to see a stronger demonstration from GLAA in its evidence to us that the necessary activity is taking place to ensure that such risks are minimised. As such, I would like to see a clear plan for the year ahead, which seeks to address these concerns and demonstrates that the necessary joint working with other bodies is taking place. **In time for my 2020/21 Strategy, I recommend that GLAA provide stronger evidence of managing risk in the shellfish gathering and agriculture sectors. GLAA should also undertake more unannounced visits of labour providers across the regulated sectors as a whole to identify unlicensed operators**. This latter recommendation would entail revisiting the current regulatory principle of no inspection of labour users without reason.

Beyond this, GLAA has already signalled its intention to review its licensing fees, noting these have remained unchanged since 2012 (GLAA, 2018b). I support this and believe this presents a good opportunity to update its licensing fee levels and structure**. I recommend that funding for GLAA be increased in line with inflation. Furthermore, GLAA should achieve financial self-sufficiency for its licensing scheme by the end of 2022**.

There will inevitably be concerns that, with likely cost pressures resulting from tighter labour supply in these sectors (due mainly to Brexit), these are financial challenges the labour providers and labour users can ill afford. But equally, we are told that there has been much consolidation in the labour supply sector and, as licence fees are tied to turnover, there is an opportunity to restructure fees accordingly. Plus, we are told that sectors such as shellfish gathering are in fact highly lucrative, so here at least affordability should not be an issue. It does not seem appropriate for the taxpayer to be subsidising this activity.

3.4 Employment Agency Standards Inspectorate

According to its 2017/18 Annual Report (EAS, 2018), EAS has two strategic drivers:

1. **ensuring effective enforcement of and compliance with the law on employment agencies and businesses; and**
2. **delivering efficient customer service.**

For the current year, EAS is seeking to achieve these overarching aims through the strategic priorities detailed in Table 10.

Table 10: EAS strategic priorities 2018/19

	Activity
Strategic Direction	1. Support delivery of DLME Strategy and Matthew Taylor follow-up consultations 2. Share intel and do joint ops with DLME Information Hub
Closer Partnership Working	1. Continued close working with GLAA and HMRC NMW 2. Support and work with industry and trade associations
Strategic Awareness-Raising	1. Continue to raise awareness and compliance with all relevant stakeholders 2. Ensure EAS is part of wider enforcement landscape – continued engagement with police, local gov and DAs 3. Present to rep bodies/businesses to promote good practice and highlight most common compliance issues 4. EAS industry event (April 2019)
Continuous Improvement	Ensure EAS remains efficient and fit for purpose, via IT, streamlining processes, org change
Enforcement Approach	Make full use of existing and new (LMEU/Os) powers

Source: EAS (2018).

Scale of the challenge in the recruitment sector

The EAS Inspectorate has been in operation since 1976, and until 1994 operated a licensing scheme for all employment agencies. In the mid-1990s, there were only 8,000 agencies operating, but by 2017 the ONS estimates that there were almost 31,000 employment placement agencies (Annual Business Survey: ONS, 2018a) (Figure 14).

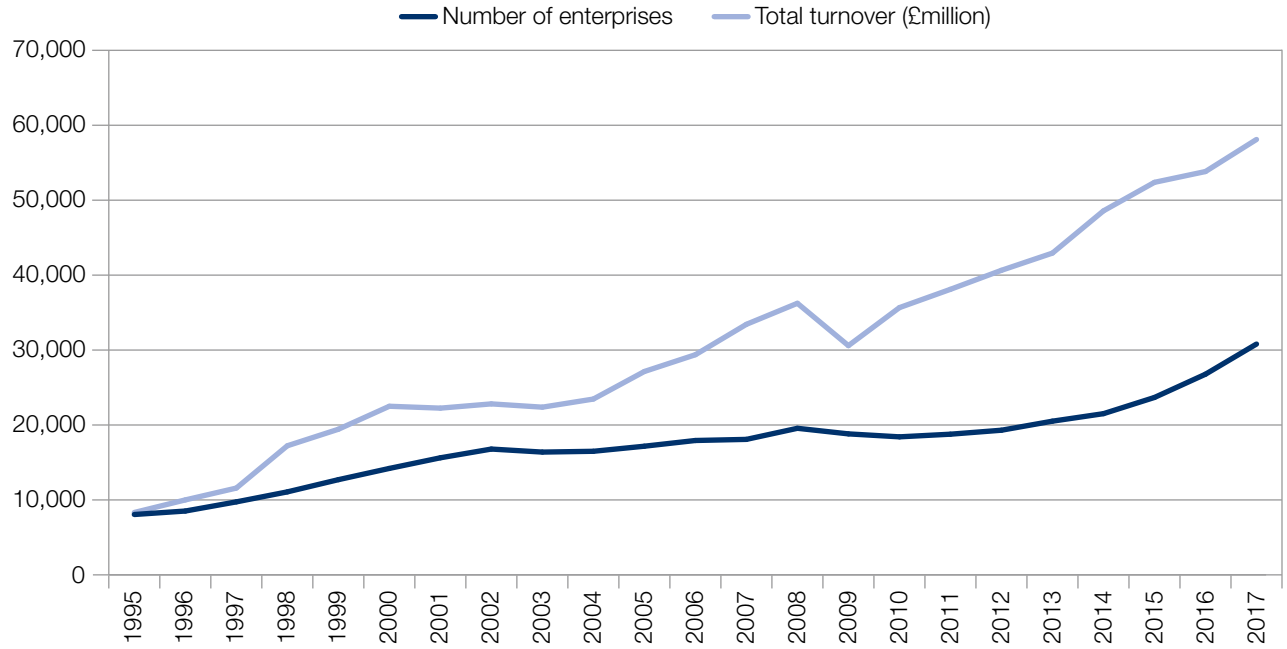
Using the Office for National Statistics' (ONS) Standard Industrial Classification (SIC) coding (ONS, n.d.), these employment placement agencies can be further sub-divided into:

1. Activities of employment placement agencies (SIC Code 78.1);
2. Temporary employment agency activities (SIC Code 78.2); and
3. Other human resources provision (SIC Code 78.3).

Our focus is on the first two of these, which together amounted to 28,364 employment agencies in 2017. Over this period, their combined turnover grew from £8.3 billion to £58 billion (not adjusted for inflation) (Figure 14).

There have been recent calls to re-introduce licensing to all employment agencies (see DLME, 2018a for a summary of this evidence), but the near four-fold increase in agencies since the mid-1990s at the very least would require careful consideration in terms of its practicality. Ultimately, any licensing scheme for this sector would need to be adequately resourced (for comparison, GLAA has around 20 staff to effectively manage licensing and enforcement for 1,000 labour providers in its designated sectors). It would also need to secure effective enforcement to ensure the sector as a whole achieves high levels of compliance.

Figure 14: Number of employment placement agencies and total turnover, 1995 to 2017



Source: ONS (2018b).

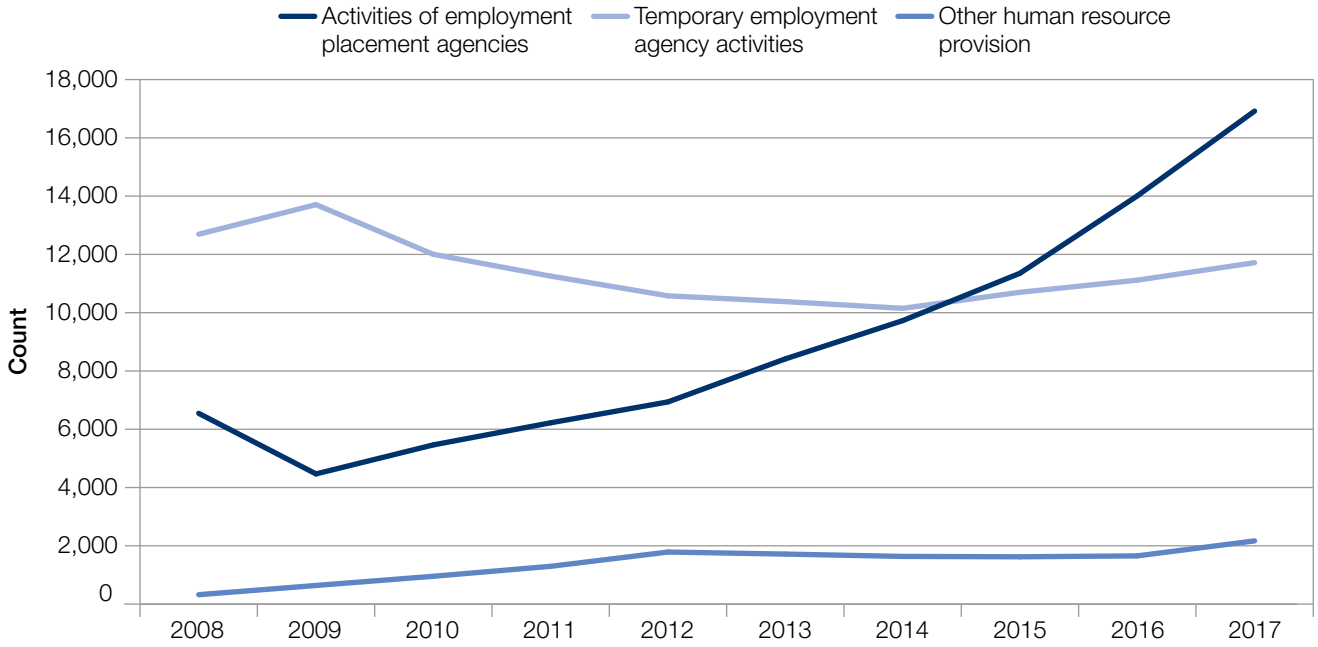
ONS estimates that the number of agency workers has increased from 620,000 in the late 1990s to over a million by 2017 (ONS, 2018b).

Since 2007, ONS has been able to report on the different types of employment agency operation to provide a more granular picture of the sector.

From this, there has been a clear difference in growth patterns between the permanent agency and temporary agency markets over the last decade or so (Figures 15a and 15b):

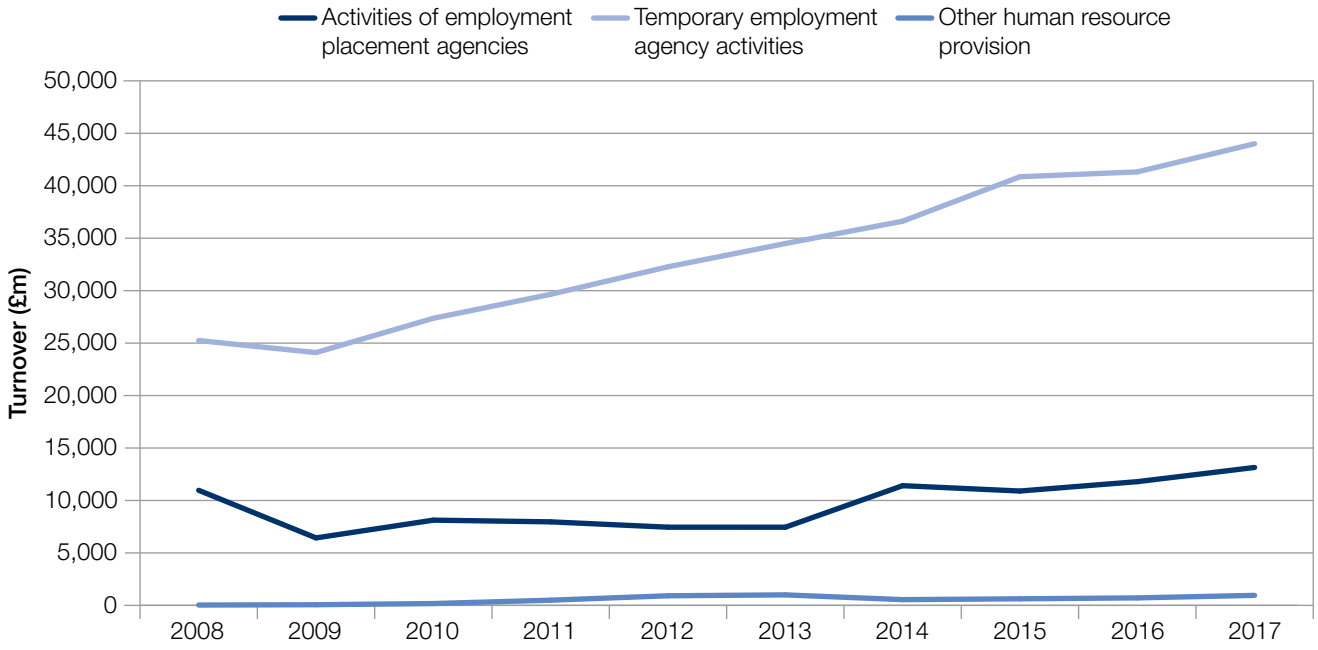
- The number of **employment placement agencies** (including, for instance, Reed Online Ltd) has quadrupled since 2009. However, this category includes online recruitment agencies, although it is not possible from the data to separate out this sub-group. Turnover among employment placement agencies has doubled from £6.4 billion in 2008 to £13 billion in 2017, meaning that average turnover by agency has halved over this period.
- The number of **temporary employment agencies** (including, for instance, Adecco and Robert Walters) is no higher now than it was in 2010 (around 12,000), but turnover has increased from £25 billion to £45 billion in the last decade. Average turnover by temporary agency is now around £3.8 million, which, although steady for the last four years, is twice what it was a decade ago. This is mostly explained by an increase, by a third, in the volume of temporary agency workers.

Figure 15a: Number of employment agencies by type, 2008 to 2017



Source: ONS (2018b).

Figure 15b: Turnover of employment agencies by type (£m), 2008 to 2017



Source: ONS (2018b).

Box 3: Standard Industry Classification definitions of employment agencies

78.1 Activities of employment placement agencies

78.10 Activities of employment placement agencies

78.10/1 Motion picture, television and other theatrical casting

This sub-class includes: activities of casting agencies and bureaus, such as theatrical casting agencies.

This sub-class excludes: activities of personal theatrical or artistic agents or agencies, see 74.90.

78.10/9 Activities of employment placement agencies (other than motion picture, television and other theatrical casting) n.e.c.

This sub-class includes listing employment vacancies and referring or placing applicants for employment, where the individuals referred or placed are not employees of the employment agencies.

This sub-class includes:

- personnel search, selection referral and placement activities, including executive placement and search activities; and
- activities of online employment placement agencies.

This sub-class excludes: activities of personal theatrical or artistic agents or agencies, see 74.90.

78.2 Temporary employment agency activities

78.20 Temporary employment agency activities

This class includes the activities of supplying workers to clients' businesses for limited periods of time to temporarily replace or supplement the workforce of the client, where the individuals provided are employees of the temporary help service unit. However, units classified here do not provide direct supervision of their employees at the clients' work sites.

78.3 Other human resources provision

78.30 Human resources provision

This class includes the activities of providing human resources for client businesses. The units classified here represent the employer of record for the employees on matters relating to payroll, taxes, and other fiscal and human resource issues, but they are not responsible for direction and supervision of employees.

The provision of human resources is typically done on a long-term or permanent basis and the units classified here provide a wide range of human resource and personnel management duties associated with this provision.

This class excludes:

- provision of human resources functions together with supervision or running of the business, see the class in the respective economic activity of that business
- provision of human resources to temporarily replace or supplement the workforce of a client, see 78.20

Source: ONS (n.d.).

Resources

In my 2018/19 Strategy, I concluded that EAS was under-resourced, with 12 staff at the time, of whom nine were inspectors. In 2009, EAS had a budget of £1.056 million and a total staff of 31, of whom 24 were inspectors (BIS, 2009a). The EAS budget is now £0.725 million. Furthermore, between 2012/13 and 2014/15, 9 out of 11 EAS staff were transferred to HMRC as the majority of cases that EAS was dealing with were related to wage issues. This was later reversed.

Put simply, as the sector has expanded over time, EAS resources – in both money and staff terms – have shrunk. As a result, EAS resources are being severely stretched and, although it is clear that the EAS has an experienced and dedicated staff, I believe this situation is unsustainable.

I therefore welcome the commitment in the Government's response to my 2018/19 Strategy to increase EAS inspector resources by 50 per cent, or by five additional staff. To be clear, my recommendation here related to EAS's business-as-usual activities. EAS faces further challenges – discussed below – that will in themselves have resourcing implications.

For financial year 2017/18, EAS received £0.25 million in addition to its core funding of £0.5 million. This was for capital investment in a new case management system that is due to come on stream fully in early 2019. This system should contribute to making EAS's enforcement effort more efficient. We will continue to monitor progress here and report on derived benefits in future LME strategies and annual reports.

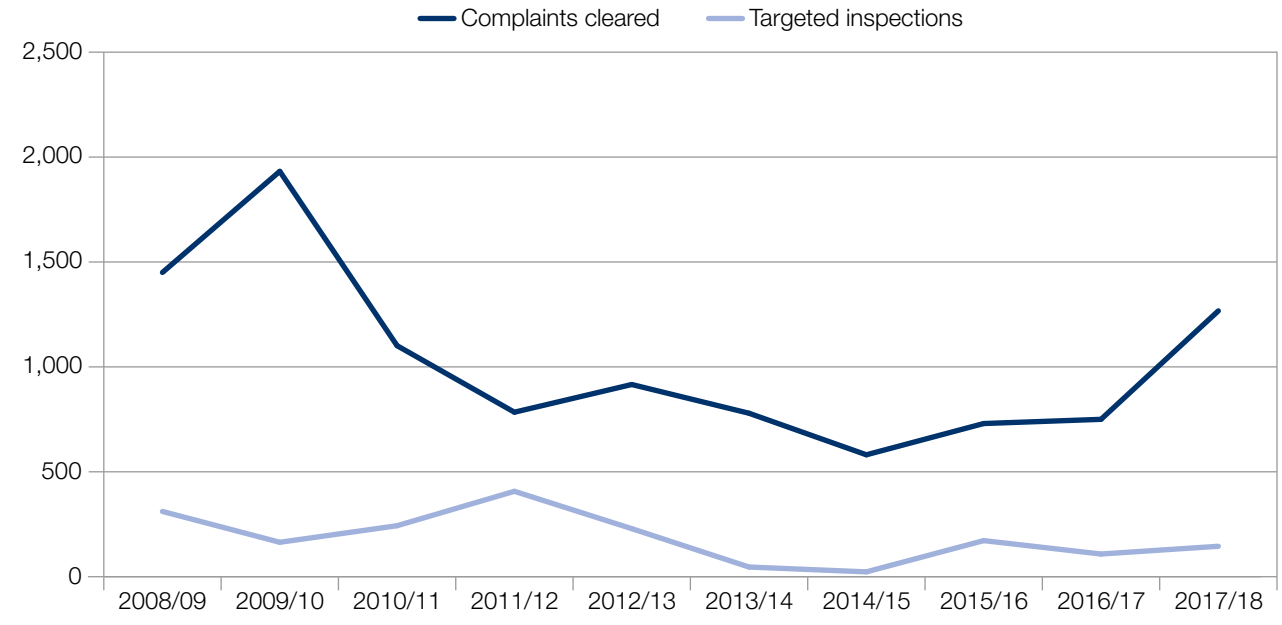
EAS's overall budget has been maintained at £0.725 million for financial year 2018/19, which should cover the costs of additional enforcement personnel mentioned above.

Performance

Generally, the trends in EAS resourcing outlined above are reflected in the principal performance measures (Figures 16 and 17). That is, as resources have declined so has the volume of complaints cleared, infringements found, targeted inspections carried out and warning letters issued.

Inevitably, this was most clearly demonstrated in the period from 2012/13 to 2014/15. However, since then, even with relatively limited resource, EAS is handling and resolving a greater volume of cases.

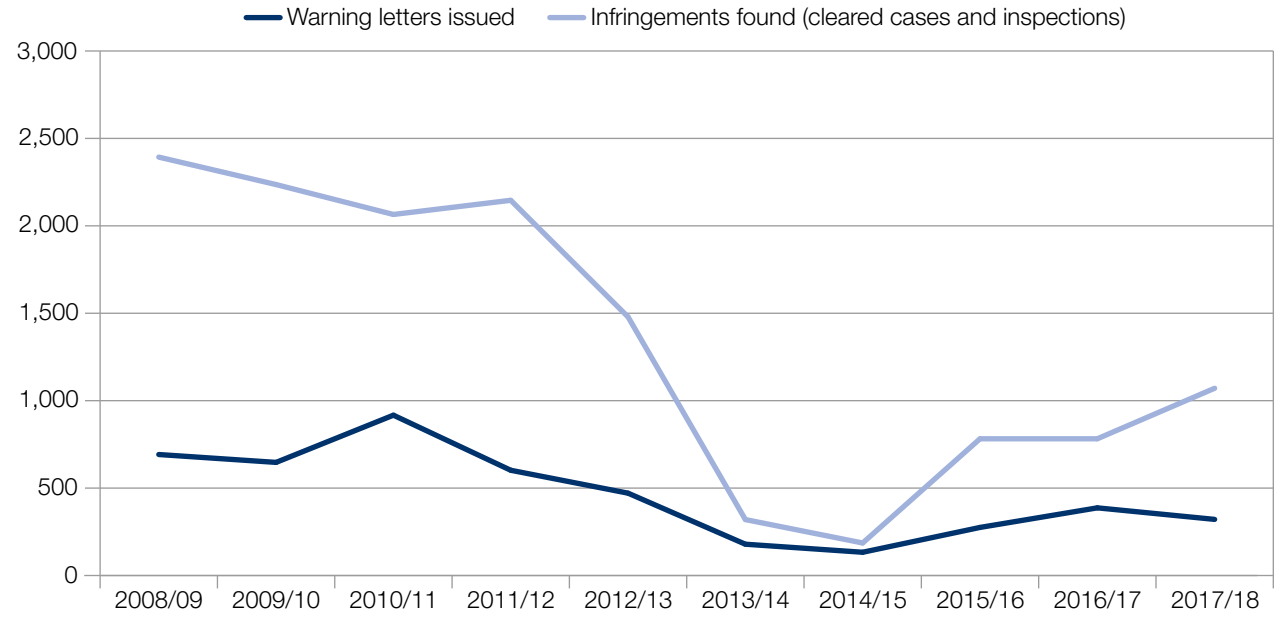
Figure 16: EAS: targeted inspections and cleared complaints, 2008/09 to 2017/18



Source: EAS annual reports (various years).

Of the 1,261 cases EAS handled in 2017/18, half were complaints that EAS actively followed up on. The remainder were calls received by EAS, which were then either re-directed to the appropriate agency or where callers were only seeking advice. The volume of cases handled by EAS has increased by over 50 per cent since 2016/17. Although three-quarters of the additional cases were calls, EAS still saw actual complaints rise by a quarter over the year.

Figure 17: EAS: warning letters issued and infringements found, 2008/09 to 2017/18



Source: EAS annual reports (various years).

Although overall volumes of outcomes across all four areas are below what they were a decade ago, in terms of efficiency and effectiveness the performance per EAS inspector has improved on every measure (see Table 11).

Table 11: Outcomes per FTE member of EAS staff

	2008/09	2017/18
Cases cleared	50	106
Targeted inspections	11	12
Infringements found	83	89
Warning letters issued	24	27

Source: DLME Office calculations based on EAS data.

In addition to this, EAS has succeeded in recovering around £1.5 million for agency workers over the last decade.

EAS also has powers to prosecute and prohibit individuals from running employment agencies. According to its latest annual report (EAS, 2018), EAS investigated 11 potential cases over the last reporting year. Only one prosecution case has been taken forward, but consideration is being given to using the new Labour Market Enforcement Undertakings (LMEU) in some of these cases.

Stakeholder feedback

Stakeholders – and the unions in particular – voiced concern that EAS is under-resourced. In part, this recognised the growing volume of recruitment agencies and temporary agency workers in the marketplace and the relatively sparse resources currently available to the EAS.

> *"I am not in a position to comment on how current resources should be better used. However, I would note that a budget of £750,000 for the EAS and (I believe) £4,000,000 for the GLAA are not sums that are anywhere near adequate to properly police a £35[23] billion industry."* Extraman Recruitment response to the DLME's Call for Evidence

There were also calls for EAS to be resourced sufficiently in response to the extension of its remit to cover regulation of **umbrella companies**, following the Taylor Review (BEIS, 2017a). The TUC cited HMRC evidence that some 430,000 people work through umbrella companies. It also suggests that this is likely to be an underestimate as employers in logistics, supply teaching, construction and pharmaceuticals are increasingly using this form of employment. By paying umbrella workers in the form of reimbursed expenses, employers can avoid paying national insurance contributions on the umbrella worker's wage.

> *"We strongly recommend that funding for the Employment Agency Standards Inspectorate (EASI) must be significantly increased if they are to be responsible for regulating umbrellas. Their resources must already be over-stretched with the status quo role of regulating recruitment agencies, and it would be very unrealistic to broaden their remit without commensurate additional resources."* FCSA response to the DLME's Call for Evidence

In my 2018/19 Strategy I had also highlighted the extra EAS resource that might be needed to properly enforce the Swedish Derogation – pay between assignments (PBA). In fact, the recent government response to the Taylor follow-up consultations announced that the Swedish Derogation would be scrapped.

Beyond this, EAS also faces the challenge of regulating **online and app-based recruitment companies**. These relate to EAS's legal scope. First, whether this form of labour supply qualifies as falling under the Employment Agencies Act (1973) has been contested. EAS is clear, though, that the 1973 Act does cover online labour supply agencies. Second, there are an increasing number of online recruitment agencies that are based overseas and therefore out of reach of the EAS regulations, but can still offer a work-matching function for employers in the UK.

EAS has been working closely with SAFERjobs, with the latter providing a valuable source of intelligence in this area. Both EAS and SAFERjobs view the growth in online recruitment as the biggest risk the sector is currently facing (see case study in Box 4):

> *"SAFERjobs receives intelligence on a daily and weekly basis about online recruitment scams. This is either limited to full online scam (fake recruiters), or as a vehicle to defraud (and even modern slavery).*
>
> *The prevalence of 'job scraping' or 'aggregating' in the sector and the focus from many job boards to have the most jobs and the most CVs results in a large volume of jobs advertised online which:*
>
> *(a) No longer exist;*
> *(b) Legitimate employers have not given permission to be advertised;*
> *(c) Are fake for the purpose of defrauding;*
> *(d) Are criminal scams (for instance in 2017 4000 applied to a boiler room job on a leading job board);*
> *(e) Are advertised at below minimum wage.*
>
> *This is a recruitment 'wild west' which makes it very difficult for work seekers to recognise legitimate jobs."* SAFERjobs response to the DLME's Call for Evidence

23 As we set out above, the current estimated turnover for the sector is £58 billion.

Box 4: Case study – SAFERjobs

The victim applied to a number of HR Assistant positions via various job boards such as **Indeed, LinkedIn, and Monster**, and was consequently contacted by a company called **Quality Management International LTD**. She is not sure whether she applied to the position or whether her details were lifted from a job board website, but was contacted via phone, asked some standard questions, and invited to an interview.

The interview took place in central London. It appeared to be a rented meeting room, as on both occasions she met with 'employees', the meetings were in the same building but in different meeting rooms, with the reception being unfamiliar with the company at first both times.

On the day of her initial meeting, she also met another candidate who was there to sign a contract, demonstrating that the scope of this scam may be larger than currently reported. She discussed the job with him, and he told her that he was moving from retail management to HR, so therefore he was required to complete a **CIPD qualification**. In her meeting, she saw a plastic wallet with money inside, so presumed that this other individual had paid the **CIPD** accreditation fees and thus signed a contract.

On the day of her interview, there was another interviewee present, also suggesting a wider scope for this scam. For this interview, the victim received a text message from the company asking her to bring identification, NI number and **CIPD** accreditation fees. She provided them a copy of her passport, bank details, and NI number. Interestingly, all telephone communications from the company were from mobile phone numbers, with no landline communication, and no indication of this being an option on their website, only a web form.

She was offered the position and her start date was meant to be the 15th October 2018. This was however dependent on her paying £280 for **CIPD** Accreditation fees, and obtaining a book called **'Resourcing and Talent Management' by Stephen Taylor**. She paid £100 and was meant to pay back a further £180 on the 25th of September, and agreed to buy the book, although was misled as to the price of the book (advised £11 rather than the actual £36, which was also inclusive of '20% CIPD discount'). The company said they would provide no equipment or stationery, and that she would need to use her own laptop for the first 30 days. According to the employee handbook which she received, their policy is: 'you pay, we repay'.

She was provided with a copy of her contract, of which some details were handwritten. They also provided a job description but provided no further detail as to what she would be doing, other than that she would be working in a 'business lounge' in the **Kings Cross** area. It also appears that they operate from different locations, as locations differed on signatures of staff, such as **Victoria**, and **High Wycombe**. They said they employ **9 members of staff**.

The victim began to suspect this was a scam, and consequently raised this with CIPD, who confirmed they had no links with the company, meaning the company had been fraudulently taking Accreditation fees. She received a further text message stating they had found out she cancelled the contract, and that the company would not receive commission from her placement and asked what they did wrong. She ignored a further telephone call and text message which she still has record of.

Due to this scam, the victim lost a genuine job within the NHS.

Source: SAFERjobs response to the DLME's Call for Evidence.

EAS: assessment and recommendations

The stark message from the data and information considered above is that EAS resources remain well below where they should be, even to carry out its business-as-usual work.

Although there remains a lack of evidence on the scale of non-compliance in this sector, the mere fact that the sector has grown significantly in recent years would suggest the enforcement challenge here is becoming greater rather than lesser. I am concerned that current resourcing – even allowing for the recent expansion – remains out of synch with the risks and the threat the employment agency sector is facing.

I recommend that EAS resourcing in 2019/20 be at least doubled from its current staffing levels:

- to effectively carry out its business-as-usual work;
- to provide a dedicated analysis resource to maximise the benefits of its new case and intelligence management system; and
- to properly undertake the additional enforcement work given the expansion of EAS's remit to enforce umbrella companies.

As identified above, the challenge of properly enforcing online recruitment poses an emerging threat to EAS. There is already good work being taken forward here between EAS and SAFERjobs, but I am keen that this threat is better understood.

I recommend that BEIS lead a comprehensive review of the threat to labour hire compliance from online and app-based recruitment. This should build on the work carried out to date by EAS and SAFERjobs, but also involve other partners (for instance, drawing on data analytics expertise and wider government interests in online policy). **This review should be completed by the end of 2019 with findings to feed into my 2020/21 Strategy**.

3.5 Measuring impact

Although each of the three bodies appears to be performing well against the key performance indicators agreed and set at the beginning of each year or triennial period, it is less clear how successful they have been in addressing their fundamental objectives (see Table 12).

Table 12: Recap of overarching aims of each of the three bodies

HMRC NMW	*Government's vision is that everyone who is entitled to the NMW/NLW should receive it*
GLAA	*Working in partnership to protect vulnerable and exploited workers*
EAS	*Ensuring effective enforcement of and compliance with the law on employment agencies and businesses; delivering efficient customer service*

As an example, in terms of measuring overall effectiveness of the increase in HMRC NMW funding, it is unclear whether this is due to HMRC NMW getting better at their enforcement role or rather reflects a general rise in employer non-compliance, or indeed is a function of both.

> *"With regards to HMRC's minimum wage team, although on the face of it, the 2017/18 year seems to have been a 'record' year all round, the information released publicly does not really allow us to do any proper analysis and evaluation as to their effectiveness.*
>
> *For example, it is not clear if the increased figures are because HMRC are getting better at catching employers or because there are more non-compliant employers …*

> *… We are also not able to tell how far the figures comprise rogue employers vs accidental non-compliance or what the team's deterrent effect might be. Similarly it would be good to understand if HMRC were still largely focused on 'low-hanging fruit' within an employment setting or whether they have turned their attention to the arguably more complex and serious breaches of minimum wage rules that tend to go hand-in-hand with false self-employment. There are lots of different ways of measuring effectiveness, and in our view, all of these elements are key."* Low Incomes Tax Reform Group (LITRG) response to the DLME's Call for Evidence

This view has also been reflected previously by the LPC:

> *"Historically, the Government's performance on enforcement has been measured in terms of outputs: the number of cases closed; the number of workers for which arrears are identified; and the total value of arrears. These measures give a good indication of year-on-year activity carried out. But they do not tell us what outcomes have resulted from this activity: for example, whether the Government is moving towards ensuring that everyone who is entitled to receive the minimum wage does so."* (LPC, 2011: 109)

These are valid observations to which I return below.

One of the Government's commitments when launching the 2010 NMW Compliance Strategy (BIS, 2010b) was to improve measures of success for compliance and enforcement. An evaluation and review of the Compliance Strategy was planned for mid-2014. In the event, BIS (now BEIS) instead updated policy documents to reflect changes in the law (LPC, 2016: 200).

Attempting to measure impact of interventions in the wider labour market is not straightforward. Equally, evaluations of enforcement interventions by the bodies or their sponsoring departments have been few and far between. Following my 2018/19 Strategy, I am pleased that BEIS is currently undertaking scoping work to understand the evaluation work that could be undertaken around NMW.

The risk is that performance metrics gravitate towards a situation of *"what gets measured, gets managed"*.[24] As the quotes above highlight, success may be measured on the basis of more cases, more arrears identified or more workers assisted. While helpful, this does not tell us anything about whether non-compliance overall is being tackled or indeed what the contribution the work of each body is making to achieve such a result.

There have been numerous reports produced in the UK and internationally highlighting the importance of proper performance measurement and policy evaluation (Macrory, 2006; Hampton, 2005; NAO, 2013 and 2016). These emphasised the identification and separation of various elements of work into inputs, outputs and outcomes, and gave examples of good practice from elsewhere in government.

In 2014, the Organisation for Economic Co-operation and Development (OECD) set out very clearly the best practice principles for regulatory policy with a specific focus on regulatory enforcement and inspections. The 11 principles they put forward (see Box 5) were designed to apply in any enforcement context, not just for labour markets. The very first principle they set out relates to **evidence-based enforcement**.

24 Often attributed to organisational theorist Peter Drucker.

Box 5: OECD Best Practice Principles for Regulatory Policy

Principle 1. Evidence-based enforcement: Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.

Principle 2. Selectivity: Promoting compliance and enforcing rules should be left to market forces, private sector, civil society actions and courts where it is possible and efficient: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulatory objectives.

Principle 3. Risk-focus and proportionality: Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.

Principle 4. Responsive regulation: Enforcement should be based on "responsive regulation" principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.

Principle 5. Long-term vision: Governments should adopt policies and institutional mechanisms on regulatory enforcement and inspections with clear objectives and a long-term road-map.

Principle 6. Co-ordination and consolidation: Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.

Principle 7. Transparent governance: Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.

Principle 8. Information integration: Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.

Principle 9. Clear and fair process: Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.

Principle 10. Compliance promotion: Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.

Principle 11. Professionalism: Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: OECD (2014).

To complement this work, OECD published a *Regulatory Enforcement and Inspections Toolkit* in 2018 providing criteria to help regulators and others identify the strengths and weakness of their own systems and highlight potential areas for improvement (OECD, 2018).

For evidence-based enforcement, OECD suggests a number of sub-criteria:

1. Enforcement and inspection aspects are reviewed during the Impact Assessment process for new regulation – and evidence-based enforcement is 'anchored' as a key aspect to be checked during both design and ex post review of regulations.
2. The mandates of institutions in charge of regulatory enforcement and inspections reflect goals in terms of risk reduction and pursuing public interest.
3. Do the indicators and data used to assess the performance of regulatory enforcement and inspections institutions similarly focus on outcomes such as risk reduction, economic growth, social well-being etc.?
4. Effectiveness evaluations are implemented in practice, and really inform choices in terms of inspection and enforcement structures, methods, resources and tools.

The Toolkit also adds another criterion: *"reality check – institutions in charge of inspection and enforcement, and the regulatory enforcement and inspection system overall, should deliver the performance that is expected of them – in terms of stakeholders satisfaction, of efficiency (costs/benefits), and of total effectiveness (safety, health, environmental protection etc.)."*

This latter point begins to get at the wider effectiveness and impact of enforcement. I therefore strongly endorse these OECD criteria and would encourage the Government to build this thinking into its approach to evaluating UK labour market enforcement. Doing so would also likely have implications for the Regulators' Code (BIS, 2014e).

3.6 Evaluation of UK labour market enforcement

I have already highlighted the need for continuous monitoring and improvement across the three bodies (DLME, 2018a). In doing so, I set out my intention to take forward a programme of research that would seek to fill these gaps to some extent.

In summer 2018, following an initial workshop with leading academics and government analytical experts in these matters, my Office commissioned two separate but linked scoping studies to begin to address these questions.

The first focused on proposing how best to carry out an evaluation of the impact of the work of the three bodies, with a view to commissioning further work to undertake a full evaluation of the three bodies to provide results that could feed into my next Strategy. As noted before, there has been insufficient evaluation activity in this area of UK policy. GLAA has carried out the most significant evaluation work, but this was over 10 years ago (GLA, 2007; GLA, 2008; GLA, 2009). In fact, those earlier evaluation exercises were very robust and have helped to inform how similar work should be conducted now.

The findings and recommendations from my evaluation scoping study are presented in Box 6. We will now seek to work with government with a view to implementing a full evaluation exercise that can help to better answer the question regarding the impact of the work of the three bodies.

Box 6: Approaches to evaluate the impact of labour market enforcement

In Autumn 2018, I commissioned the National Centre for Social Research (NatCen) and the Institute for Employment Research (IER) at Warwick to consider suitable evaluation approaches to assess the impact of the work of the three labour market enforcement bodies.

The researchers developed a logic model to set out the relationship between the resources available to the three bodies (inputs), the activities they undertake, the immediate effects of those activities (outputs), the broad goals to which those outputs contribute (outcomes) and the overarching impacts that the bodies are seeking to achieve. This model highlighted the breadth and complexity of labour market enforcement and the overlapping powers and responsibilities of the LME bodies. Therefore, the researchers concluded that **a single evaluation encompassing all aspects of enforcement is not feasible at this time.**

This work also indicated that the optimal research design and available data to assess the success of activities varies between each of the enforcement bodies, and that some outcomes are unsuitable for impact evaluation methods that attempt to make a causal inference. The researchers, therefore, proposed utilising a **"contribution analysis"** – whereby a number of different experiments looking at particular activities or outcomes are combined – in order to best understand the impact of labour market enforcement.

The researchers proposed potential survey methods that could generate insights into non-compliance within discrete subsections of labour market enforcement. A key conclusion from this work, however, was that **establishing a baseline of the scale and nature of non-compliance is essential for evaluating the impact and monitoring the progress of labour market enforcement activities.**

Building upon their rapid literature reviews, the researchers identified a set of key research questions for which robust methodologies could be implemented, providing credible options for future research in this area. These research questions relate to workstreams identified in the logic model: public communications; direct action; and prevention. These proposals include:

- a randomised control trial to assess the impact of public communications (e.g. how 'nudges' and signposting of employers to existing resources may serve to boost voluntary compliance);
- using secondary data analysis from existing surveys (such as Labour Force Survey and ASHE) to assess the impact of targeted enforcement on minimum wage compliance;
- qualitative case study work to explore perceptions of how stakeholder engagement and co-design work (e.g. industry protocols) affect employers' understanding of their responsibilities.

Source: NatCen and IER (2019).

Following this first phase of work to evaluate the impact of the work of the labour market enforcement bodies, **I recommend that all three bodies commence a programme of evaluation work, beginning with discrete evaluation of specific compliance and enforcement interventions in the short term,** with a view to considering wider impact evaluation in the longer term once better measures of labour market non-compliance have been developed.

3.7 Measuring the scale and nature of labour market non-compliance in the UK

The second, related scoping study was around exploring potential methodologies and approaches to begin to measure the **scale and nature of non-compliance in the labour market**. Not only is this one of my central obligations under the 2016 Immigration Act, but the evaluation scoping study discussed above stipulated the need for this very work in order to properly undertake meaningful evaluation of labour market enforcement in the future.

Previously, I have described the inadequacy of existing data and metrics, and set out the size of the challenge here if this information gap is to be even partially filled (DLME, 2017; DLME, 2018a).

I have therefore commissioned a research project looking to address this complex yet critical issue, and it is published alongside this Strategy. Through this scoping study, Cockbain et al. (2019) sought to explore how best to establish the scale and nature of labour market non-compliance in the UK. The study was designed to provide an inclusive, nuanced and rigorous assessment of different approaches to measuring non-compliance and, ultimately, recommend a research method my Office should pursue.

To do this, the researchers analysed and assessed five key approaches against a standardised set of criteria considered within this policy context. Table 13 sets out these five approaches and summarises their strengths and weaknesses.

Table 13: Summary of five approaches for measuring scale and nature of non-compliance in the labour market

Criteria	Systematic review	Existing administrative data	Worker survey	Worker interviews	Stakeholder interviews
Strengths	Few challenges around ethics or access	Good geographic reach, few ethical challenges, clear potential to replicate	Generalisable results, breadth of coverage (on all dimensions), breadth of insights, high-quality and useful data	Depth of insights, ability to identify new issues, minimise bias and generate new knowledge. High-quality data	Breadth of insights, good geographic coverage, few ethical challenges
Limitations	Highly dependent on existing research. Low depth and breadth of insights. Can't identify emergent issues. Low overall utility.	Limited in coverage of themes and worker groups, fairly low data quality, not generalisable	Needs adequate resourcing	Limited coverage of worker groups, not generalisable or replicable, ethical and access-related considerations, needs adequate resourcing	Not generalisable or replicable

Source: Cockbain et al. (2019).

Based on their review of methods, Cockbain et al. (2019) recommended that a worker survey be undertaken as it would offer *"unparalleled insights into how common the various forms of non-compliance are, who they affect and how they concentrate in particular locations, types of employment, industries and occupations".* It was, however, noted that worker surveys tend to have limited ability to explore more complex or emergent trends. To strengthen the survey design and improve interpretation and application of findings, the authors recommended that a worker survey be complemented with in-depth semi-structured interviews and focus group-type engagement.

Given the significant data and information gaps that exist in this area, the need for improved measures to better inform where the enforcement bodies should be directing their efforts and for the impact of these efforts to be properly assessed, and the legal requirement under the Immigration Act 2016 for me to provide an assessment of the scale and nature of non-compliance in the labour market, I am supportive of these research findings. Therefore, following the scoping work undertaken for this Strategy, **I recommend that Government supports me in meeting my obligations under the Immigration Act 2016 by providing the necessary investment to undertake robust research in 2019/20 into measuring the scale and nature of non-compliance in the labour market.**

3.8 Bolstering worker rights and awareness

Thus far the focus of this section has been on the work of the three bodies to use their resources to the best effect to ensure compliance.

Here, I consider a further element to help ensure protection for workers. The three enforcement bodies rely to a varying extent on individual complaints rather than proactive investigations. Coupled with the fact that rates of union membership and collective bargaining have declined considerably in recent decades, this means that the role of the worker is now central to the enforcement of labour laws. There has been a marked shift to a model of employment rights being predominantly enforced on an individual rather than collective basis. In such a landscape, it is paramount that all workers are:

- aware of and up to date with the employment rights and legal protections afforded to them;
- able to recognise where the law has been breached with regard to their own employment; and
- aware of the channels to seek advice and redress for any violations.

The **exit-voice hypothesis** (Hirchman, 1970) suggests that a culture of non-compliance is perpetuated when workers are not empowered to complain and enforce their rights, as highlighted in section 6 (Sector studies) regarding the warehousing and hospitality sectors. Hirchman (1970) found that individuals will respond in one of two ways when faced with a situation of deteriorating quality or benefit: they can **exit** (withdraw from the relationship) or they can **voice** (attempt to repair or improve the relationship through communication). Traditionally, **voice** has been embodied in unionisation and collective bargaining, providing workers with a formal channel to raise concerns without fear of reprisal.

> *"In the job market, voice means discussing with an employer conditions that ought to be changed, rather than quitting the job. In modern industrial economies, and particularly in large enterprises, a trade union is the vehicle for collective voice – that is, providing workers as a group with a means of communicating with management."* (Freeman and Medoff, 1984: 8)

This theory would suggest that workers who do not have sufficient voice to raise grievances in the workplace will often simply change employers rather than address the issue. As a result, unlawful practices remain somewhat hidden, and violations are simply passed on to new incoming staff. López-Andreu, Papadopoulos and Jamalian's (2019) research on the UK hotels sector found that workers with an employment issue will often leave, and the results of their complaints remain unknown:

> *"We have identified that awareness of employment rights in the sector is low and individualised. This means that most grievances are assumed by the worker to be normal in the sector and that leaving the hotel or accepting the situation dominates over voice."* (López-Andreu, Papadopoulos and Jamalian, 2019)

The exit vs voice hypothesis would therefore imply that a large degree of non-compliance may be going unreported and that there may be a significant population of workers who are owed arrears from previous employment, particularly in sectors with high turnover rates and low unionisation, such as hospitality and warehousing.

Promoting worker rights, supporting awareness and access to enforcement were key areas that I addressed in some detail in my 2018/19 Strategy. I am pleased that the Government accepted the majority of my recommendations in December 2018 to bolster workers' awareness of their rights and the routes to complain. These recommendations are, however, yet to be implemented at the time of writing, and evidence gathered during consultation for this 2019/20 Strategy suggests that awareness-raising remains an area of concern for stakeholders. In particular, there is evidence that more can be done to increase awareness among harder-to-reach communities by providing information through innovative ways at key touchstone points:

> *"It's important that staff are made aware of their rights. We have seen from experience that posters are often neglected and have little impact. There are other options for communicating with staff; the DLME suggested the provision of obligatory information on pay slips. There are also apps that provide basic questions directly to staff in their language to ask about their working condition and to signpost to information about their rights. Further exploration on how to engage workers directly is warranted."* Shiva response to the DLME's Call for Evidence

> *"Information should be given to workers at key touch stones. For example, the TUC recommends that information about key maternity and paternity rights should be given to parents at ante-natal appointments."* TUC response to the DLME's Call for Evidence

In September 2018, the BEIS Public Attitudes Tracker found that 7 out of 10 employed respondents claimed to know a lot or a fair amount about their employment rights at work (BEIS, 2018e). Permanent workers (72 per cent) were more likely to be aware of their employment rights than non-permanent workers (58 per cent) and there were also differences between demographic groups, with older respondents being more likely to know a lot or a fair amount about their rights than younger age groups (BEIS, 2018c: 31).

The IFF Research reports on restaurant and warehousing sector studies alongside this Strategy, found evidence of a lack of awareness of worker rights within these particular sectors (IFF, 2019a; IFF, 2019b). Researchers carried out a series of qualitative interviews with workers within these industries and found that, while workers generally felt well informed of their rights, when probed further it became evident that they did not necessarily possess all of the facts.

> *"While there were some workers who admitted they were not confident about knowing their rights, most tended to feel that they had reasonable levels of awareness. However, their actual knowledge of their employment rights did not always reflect this confidence."* (IFF, 2019b)

In particular, the IFF research findings noted gaps in worker awareness for the following areas:

- **NMW/NLW rates:** Workers had commonly heard of the NMW but they were not always sure how much it was. The NLW was less well known (IFF, 2019b).
- **Holiday pay:** Some workers were not aware of whether they were entitled to any holiday or, in some cases, how much. Workers on temporary, part-time or zero-hour contracts were the most unaware of holiday pay entitlement and many were not sure whether they had received holiday pay (IFF, 2019b; IFF, 2019a).

Box 7 summarises IFF's suggestions of how to improve worker awareness of both employment rights and avenues for redress, based upon qualitative interviews with workers.

Box 7: IFF research – summary of stakeholder recommendations for awareness-raising

- Disseminating communications in **different languages** to reach those who do not speak English as a first language
- Targeting **minority communities** where mainstream communication is less prevalent by working with community groups
- Targeted advertising of materials on **social media**
- More responsibility placed on **employers and employment agencies** to carry a message about where to report breaches
- Greater and more **targeted government guidance**, tailored to specific types of workers (e.g. temporary workers, agency workers)

Source: IFF (2019a and 2019b).

There is also some evidence to suggest that mainstream communications to promote awareness may not be as effective at reaching particularly vulnerable populations:

> *"More vulnerable workers, such as those for whom English is a second language and those who are in their first jobs, are often not aware of their rights or may not know where they can go to report issues."* (IFF, 2019b)

> *"A few workers raised concerns around non-UK citizens not being paid for all the hours they had worked and employers intentionally withholding pay. A few of these workers had witnessed first-hand that non-UK workers were being treated differently to UK workers in previous workplaces."* (IFF, 2019a)

Building upon the recommendations made on promoting worker rights in my 2018/19 Strategy, accepted by the Government in December 2018, I believe that more can be done to provide clear and accessible information to the most vulnerable workers. **I recommend that the three bodies further develop strategies to target and improve the awareness of employment rights, particularly for vulnerable, at-risk and hard-to-reach communities.** For HMRC and EAS, this includes the provision of information and communications in a range of prevalent languages for those workers who do not speak English as a first language. This should be targeted at particular sectors or areas where the risk of exploitation is determined to be high, with a strategy for dissemination to relevant populations, including via social media platforms. I note that GLAA already goes to some lengths to translate both its information leaflets and enforcement proceeding letters into up to 20 different languages.

Further to this, there is evidence to suggest that not all breaches experienced are perceived as a problem or a violation by the worker. IFF (2019b) found that most workers in the UK restaurant sector, for example, tended to accept a lack of paid breaks, unpaid hours and a lack of written contract as a characteristic of the industry rather than as a breach of rights to remedy. One key reason found by IFF as to why some workers did not raise a complaint about their working conditions was that some workers are generally content with their role and see labour market violations as being unavoidable within their sector:

> *"Workers accepted not being able to take their breaks, as they felt that this was simply the nature of their job and therefore, they expected not to have them. Although they commonly understood that technically they should be allocated breaks, they felt that across the industry it was standard practice for restaurant workers to be unable to take regular breaks."* (IFF, 2019b)

3.9 Advisory, Conciliation and Arbitration Service (Acas)

I considered the role of Acas as a complaints channel in my 2018/19 Strategy. Acas is intended to be the main portal through which employees and employers seek help and advice on employment issues. Engagement rates through the Acas helpline and website remain high. In 2017/18, Acas answered 783,000 calls. While this is 104,000 fewer calls than the previous reporting year, website visits increased in this time from 11.8 million in 2016/17 to 12 million in 2018/19.

Last year, Acas told me that it raises awareness of its online guidance and services through online campaigns and digital activity, and that they are improving search engine optimisation for their organisation. There is some evidence to suggest, however, that immediate awareness and recall of Acas as a support service is currently low, with workers more commonly engaging other channels in the first instance before being referred to Acas. For example, the BEIS Public Attitudes Tracker for September 2018 (BEIS, 2018e) surveyed a sample of 1,698 employees to ask which sources people use to get information on their employment rights at work. The most common sources used were their employer or human resources department (46 per cent), using a general internet search (21 per cent), a trade union or other professional body (21 per cent) and Citizens Advice (20 per cent). Only 6 per cent of respondents stated Acas as their information source.

If Acas is intended to be the primary route through which workers and employers alike seek advice on employment issues, **more must be done to raise its public profile through digital awareness-raising campaigns**. This issue was addressed in my 2018/19 Strategy, which recommended that Acas both review its own promotional materials to maximise accessibility and build links with the three bodies to further promote the service. I am pleased that the Government has accepted these recommendations and will review how the Acas service can be communicated and promoted more effectively. I look forward to seeing the outcome of this review in due course.

3.10 Third-party complaints

The focus of the bodies should be on ensuring that workers have both the information and opportunity to voice their concerns directly, but it is also important to make provision in the system for complaints and information provided through third-party or anonymous sources. As discussed, the SLA with BEIS commits HMRC NMW to consider every 'worker complaint'. Third-party information, such as information collated by trade union representatives on behalf of workers, will not, however, constitute a 'worker complaint' and will not be considered in the same way.

While there is no requirement for HMRC to pursue cases on the basis of third-party information, the evidence is assessed nonetheless and may be used to inform targeted investigations. HMRC officials have suggested that greater weight is afforded to third-party information provided through established worker representatives such as trade unions. During the consultation period for this Strategy, it became apparent, however, that some trade union representatives are not aware of existing routes for submitting third-party information to HMRC for consideration. It is my view that BEIS/HMRC should do more to promote the existence of this avenue and encourage submissions of third-party intelligence to help build evidence of labour market exploitation. This may best be achieved via the Acas helpline in order to ensure that sufficient information is provided.
I recommend that BEIS and HMRC establish and promote an information-sharing protocol for third-party information.

3.11 Ability to raise a collective grievance

It is essential that workers understand how to seek help if they experience an issue in the workplace and feel empowered to pursue complaints against their employer without fear of reprisal. Prior to the stage at which the enforcement bodies become involved in investigating an offence, or where certain rights are not enforced by the state (e.g. discrimination or unfair dismissal), a mechanism available for resolution is the employer's internal grievance process.

Acas has produced and issued a statutory Code of Practice on disciplinary and grievance procedures. This Code provides basic practical guidance to employers, employees and their representatives on how to handle grievance situations in the workplace (Acas, 2015). The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992, but came into effect by Order on 11 March 2015.

Failure to follow the Acas Code of Practice is not in itself an offence, but failure to take adequate steps to follow this guidance will be taken into account by an employment tribunal when considering a case. Employment tribunals can adjust any financial awards made by up to 25 per cent for unreasonable failure to comply with any provision of the Code, to reflect the behaviour of either the employer or employee.

Workers have a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the worker. For example, in cases where an employer is not honouring the worker's contract or where there is a breach of labour market regulations (Acas, 2015).

During the Call for Evidence, some stakeholders asserted that there is a gap in the statutory Code of Practice on handling grievance processes, as the current terms and processes are individualised. The provisions of the Code do not apply to a common set of issues being pursued collectively by a group of workers (Acas, 2015: 12). Concerns raised jointly by two or more employees are to be handled through the employer's 'collective grievance process', but such a collective process is not currently a statutory requirement in the workplace.

Many good employers will go beyond the statutory Code to also facilitate an internal *collective* grievance process, where the same issue is raised across multiple employees. Without a basis in the Code of Practice, however, little can be done to assure the quality of this process, and there is little punitive incentive to facilitate a collective grievance process. Indeed, some non-compliant employers will seek to utilise any opportunity to dismiss and limit the impact of worker complaints. During consultation, I heard evidence from trade union representatives that the grievance process in its current form can allow rogue employers to abuse the balance of power in their favour by refusing to hear complaints on a collective basis and intimidating the individual workers, resulting in a high percentage of workers dropping their grievance.

Trade union representatives flagged this gap in the grievance process as a key concern, as very often labour market infringements and issues will be collective in nature, affecting a wider pool of staff beyond the single individual who has noticed or complained.

> *"Unite's experience is that what there are minimum wage breaches or labour law infringement allegations these are more likely to affect a large number of employees and highlight a genuine risk of labour market exploitation. It is our experience that workers are much more likely to pursue such allegations collectively than they are individually."* Unite response to the DLME's Call for Evidence

Even where a worker is successful in taking an individual grievance, the prevalent use of non-disclosure agreements will mean that other workers with similar concerns will either not be aware of the outcome or will not be alerted to an opportunity to enforce their own rights and entitlements.

It was highlighted during the Call for Evidence that the current grievance procedure set out by Acas differs with the position taken for other resolution mechanisms, such as the Early Conciliation process, which is a prerequisite for making an employment tribunal claim:

> *"The individualisation of grievances and representation runs contrary to the legal process available to workers whereby they can legitimately register with ACAS for Early Conciliation as multiple claimants with common issue claims and subsequently submit a tribunal claim and be heard as multiple claimants."* Unite response to the DLME's Call for Evidence

It is important that workers are not deterred from raising a grievance with their employers and have adequate support to be able to do so. I believe that it is also important for employers to address multiple grievances where appropriate, to help neutralise the balance of power in the worker–employer relationship and address issues in the most efficient means possible. I therefore **recommend that Acas may wish to review the statutory Code of Practice on grievance procedures, in consultation with key stakeholders, to create practical guidance for collective as well as individual grievance processes.**

3.12 Concluding comments

The aim of this section has been to examine how each of the three labour market enforcement bodies achieve their core objectives. In each case, the main focus is on the **worker and how their rights can be protected under the legislation for which the bodies are there to enforce**.

To assess whether the bodies are delivering on these objectives requires three essential pieces of information:

- **identifying the issue by understanding the degree of non-compliance** and how it manifests itself;
- **prioritising and targeting enforcement resources to those areas** of non-compliance that are **deemed of greatest importance to tackle**; and
- **monitoring and evaluating these enforcement priorities and actions** to understand whether they are successful or not.

Considering the evidence, I conclude that **all three bodies still have some way to go to fully align their activities with their underlying remit**. Success is conveyed in terms of more cases, more workers assisted and more money recovered, with **no sense of how their efforts are contributing more broadly to tackling the fundamental issue at hand of reducing employer non-compliance and thereby improving the lot of workers**. Similarly, there **is little effort to understand whether the interventions the bodies are making are the right ones**.

In section 5 on joint working, I focus more on the sectoral focus of enforcement resources to assess just how this coincides with the most at-risk sectors identified through my own strategic intelligence assessment. Already in this section, I have shown that too much resource is being focused on the lower hanging fruit, with the risk that more serious non-compliance is not being tackled sufficiently. I would therefore like to see greater realignment of resourcing towards these greater risks, coupled with a culture of monitoring and learning to improve enforcement efforts over time.

Box 8: Prioritisation of enforcement resources to protect the most vulnerable workers – summary of recommendations

1. **All three bodies should develop a better understanding of existing and emerging labour market non-compliance threats and better align their resourcing to tackle these:**

    a) I recommend that Government support me in meeting my obligations under the Immigration Act 2016 by providing the necessary investment to undertake robust research in 2019/20 into measuring the scale and nature of non-compliance in the labour market.

    b) I recommend that, regarding HMRC NMW's prioritisation of cases, HMRC NMW/BEIS focus their enforcement efforts further along the non-compliance spectrum, thereby seeking to tackle more serious cases.

    c) I recommend that HMRC NMW review the role and effectiveness of its strategic intelligence functions with a view to integrating with, and thereby strengthening, its risk modelling and hence improving the effectiveness of targeted enforcement.

    d) In time for my 2020/21 Strategy, I recommend that GLAA provide stronger evidence of managing risk in the shellfish gathering and agriculture sectors. GLAA should also undertake more unannounced visits of labour providers across the regulated sectors as a whole to identify unlicensed operators.

    e) I recommend BEIS lead a comprehensive review of the threat to labour hire compliance from online and app-based recruitment. This should build on the work carried out to date by EAS and SAFERjobs, but involve other partners (for instance, drawing on data analytics expertise and wider government interests in online policy). This review should be completed by the end of 2019 with findings to feed into my 2020/21 Strategy.

2. **All three bodies need to better understand how their interventions impact on reducing labour market non-compliance.**

    a) Following this first phase of work to evaluate the impact of the work of the labour market bodies, I recommend that all three bodies commence a programme of evaluation work, beginning with discrete evaluation of specific compliance and enforcement interventions in the short term, with a view to considering wider impact evaluation in the longer term once better measures of labour market non-compliance have been developed.

    b) The deterrent effect of the current NMW penalty multiplier should be assessed and I recommend that BEIS commission an independent evaluation to report by the end of 2019. This could potentially lead to a reconsideration of the case for supporting the raising of penalties in the future and/or increasing enforcement resources across all three labour market enforcement bodies.

3. **In terms of resourcing for the three bodies:**

    a) I recommend that EAS resourcing in 2019/20 is at least doubled from its current staffing levels:

        - to effectively carry out its business-as-usual work;
        - to provide a dedicated analysis resource to maximise the benefits of its new case and intelligence management system; and

- to properly undertake the additional enforcement work given the expansion of EAS's remit to enforce umbrella companies.

b) I recommend that HMRC's funding for NMW enforcement be increased in line with inflation and that, from 2019/20, HMRC NMW better demonstrate the cost-effectiveness of its suite of triaging interventions.

c) I recommend that funding for GLAA also be increased in line with inflation. Furthermore, GLAA should achieve financial self-sufficiency for its licensing scheme by the end of 2022.

4. I recommend that the enforcement bodies continue to improve awareness of worker rights and complaints channels.

a) I recommend that the three bodies further develop strategies to target and improve the awareness of employment rights, particularly for vulnerable, at-risk and hard-to-reach communities.

b) I recommend that BEIS and HMRC establish and promote an information-sharing protocol for third-party information.

c) I recommend that Acas may wish to review the statutory Code of Practice on grievance procedures, in consultation with key stakeholders, to create practical guidance for collective as well as individual grievance processes.

4. Helping employers get it right

4.1 Introduction

I considered the compliance approach as part of my Labour Market Enforcement Strategy for 2018/19, which broadly reflected the concerns of stakeholders regarding guidance and interactions with the three enforcement bodies within my remit. As noted in my Foreword, I am pleased that the majority of these compliance recommendations were accepted by the Government in December 2018. More, however, needs to be done to build upon this.

The delay in the Government's response to my 2018/19 recommendations meant that, both at the time of my Call for Evidence (summer 2018) and at the time of writing (early 2019), little has changed in this area. As a result, many of our stakeholders responded to this year's Call for Evidence, which focused in greater detail on how to support compliance, by expanding upon ongoing issues and concerns. The following section will therefore consider further how the three bodies can better support compliance as one of the three key cross-cutting themes addressed in this Strategy document.

Compliance theory centres on the premise that one primary approach for improving compliance with the law is to educate employers about their legal obligations by providing adequate information and assistance. By clearly communicating expectations and providing detailed advice and guidance on how an employer is to fulfil their duties, it should become almost impossible for an employer to 'accidentally' breach the law.

Eliminating the possibility of inadvertent or 'technical' violations,[25] as I will refer to them within this section, should, in turn, allow the enforcement bodies to focus on truly deliberate and flagrant non-compliance. For more serious and/or repeated violations, the stronger and more punitive sanctions suggested by deterrence theory should apply.

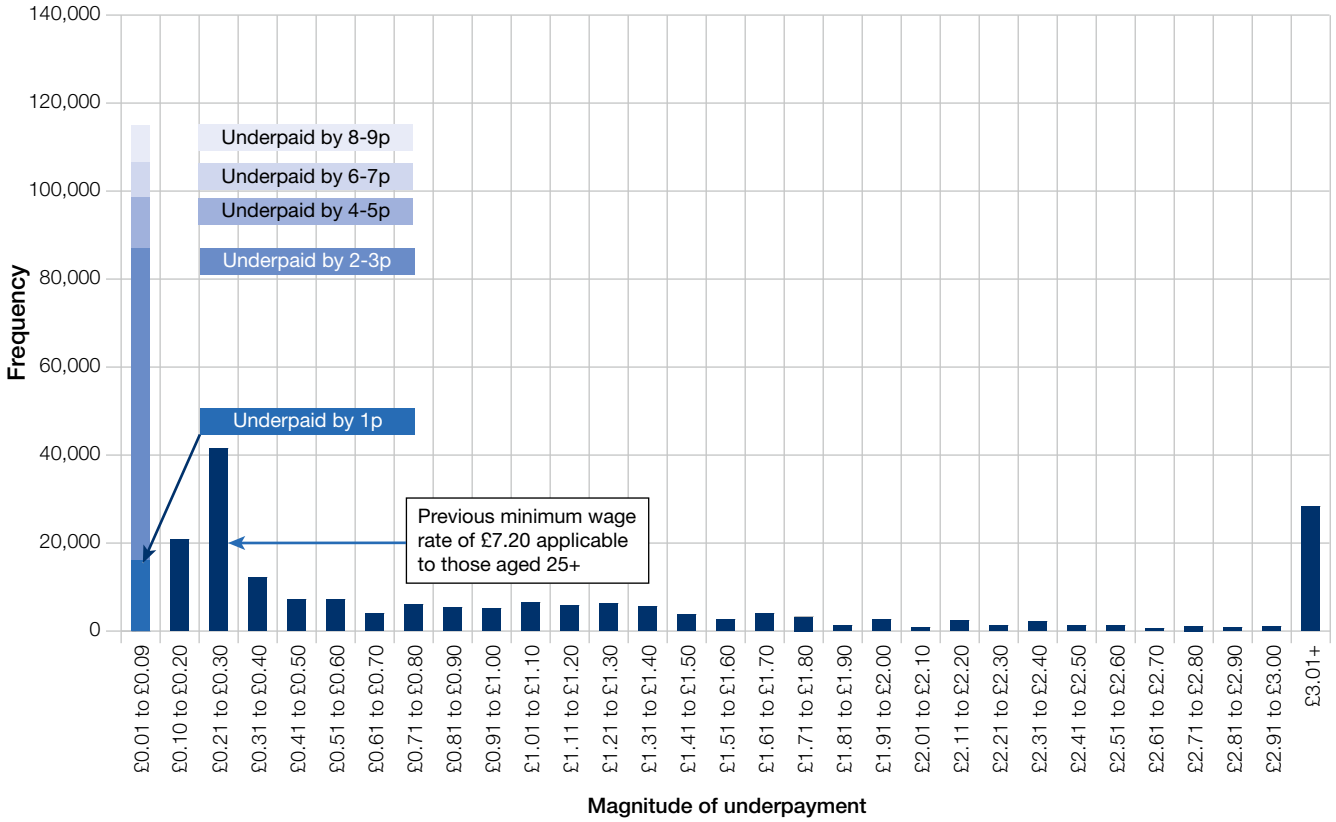
> *"All behaviour change does not arise from coercion, however, and regulators can call upon other tools to improve compliance. Sometimes employers simply need information – not the threat of penalties – to move them in the desired direction. An intervention that raises awareness and explains methods of complying will lead to desired outcomes more effectively than playing 'cops and robbers'."* (Weil, 2007)

As I set out in my 2018/19 Strategy, **there is a trade-off between the level of enforcement resources (and the ensuing likelihood of an inspection for each employer) and the size of the financial penalty that an employer might face if found to be non-compliant** (DLME,

25 Whilst the law makes no distinction between types of breaches, I will refer to infringements relating to errors in accounting for, interpreting and calculating the more technical and complex aspects of the National Minimum Wage (NMW) regulations (e.g. deductions from pay, accommodation offset, uniform payments, etc.) as 'technical breaches'. Often, but not always, these types of breaches will be unintentional.

2018a: 51). Noting the Government's rejection of my 2018/19 recommendation to increase civil penalties at this time, it would seem logical that greater emphasis must be placed on increasing efforts and resources to facilitate greater compliance in the meanwhile. Bolstering the guidance and support offered to employers should reduce the number of inadvertent breaches and free up resources to be used in targeted enforcement too.

Figure 18: Underpayment of NLW (£7.50) for those due the 25+ rate in 10p pay band (BEIS, 2018d: 11)



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

Figure 18 illustrates the spectrum of severity for NLW underpayment, showing that over 100,000 people are underpaid by less than 10p per hour (BEIS, 2018d). The Department for Business, Energy and Industrial Strategy (BEIS) reported that, of the 341,000 employee jobs paid below the relevant minimum wage in April 2017, over 90,000 of these jobs *"show very low levels of hourly underpayment, i.e. within 3 pence of the hourly rates"* (BEIS, 2018d). At this end of the spectrum, such low levels of hourly underpayment would suggest that a high proportion of underpayment may be occurring as a result of 'technical' or accidental breaches.

These are the types of breaches that can be addressed by a greater focus on the compliance approach and the provision of educational guidance to employers. Conversely, the higher levels (£3.01+) of hourly underpayment illustrated in Figure 18 demonstrate the need for effective deterrence alongside compliance initiatives, to tackle the more deliberate and flagrant acts of non-compliance.

Table 14 below was provided by the HM Revenue and Customs (HMRC) National Minimum Wage (NMW) team and details the main reasons for underpayment in the 10 NMW/National Living Wage (NLW) cases with the highest total arrears for 2017/18. The 10 cases listed reflect 72 per cent of total arrears identified by HMRC NMW in 2017/18 and cover 86 per cent of all workers underpaid in this period. These cases are not listed in any particular order but demonstrate the high prevalence of deductions for workwear and uniforms, travel time, salary sacrifice schemes and

working time, such as time spent undergoing security checks or training, as reasons for NMW breaches. As noted in section 3 (Prioritisation of enforcement resources), the average arrears per worker in these top 10 cases was £64.

Table 14: HMRC NMW – summary of main reasons for underpayment in 10 NMW/NLW cases with the highest total arrears for 2017/18

	Main reason for arrears
1	• Payments made to third party for specified workwear
2	• Unpaid working time
3	• Unpaid travel time • Premium rates paid for evenings and weekends do not count towards NMW pay, contributing towards overall NMW underpayment • Working time – live-in carers under more than one set of terms (including issues for time spent sleeping)
4	• Admin fees for workers subject to an attachment of earnings[26] • Uniform expenses incurred by workers for buying footwear and trousers of a particular style to meet the requirements of employment
5	• Unpaid time spent undergoing security checks and searches when arriving at and leaving place of work • Admin fees charged to workers for avoidance schemes, such as for payroll company services
6	• Uniform payments for clothing specified by employer dress code • Salary sacrifice in operation for pension • Salary sacrifice for cycle to work and childcare
7	• Deductions from wages to provide a fund for workers' holiday pay
8	• Admin fees for workers subject to an attachment of earnings • Unpaid working time – 15 minutes before and 15 minutes after shift to clean the store • Deductions for uniform – footwear and trousers of a particular style
9	• Requirement for workers to purchase work clothes from employer at discount rate. Full value of uniform deducted from wages if worker leaves within four weeks of employment
10	• Salary sacrifice • Unpaid time spent undergoing security checks • Unpaid time spent undertaking online training • Expenses incurred by workers for purchasing specified footwear • Cost of locker keys charged to workers

Source: HMRC NMW provided to Director of Labour Market Enforcement (DLME)

Many of the reasons listed in Table 14, such as issues with uniforms and salary sacrifice schemes, can be considered examples of 'technical' breaches'[27] where a lack of awareness or clarity could result in underpayment. Where this is the case, these types of breaches could largely be eliminated through the provision of improved guidance, support on technical issues and increased awareness of NMW/NLW obligations. In turn, this would allow HMRC to focus on more serious and/or deliberate instances of underpayment. Of course, some of the 'technical' reasons listed in Table 14 and lower levels of underpayment shown in Figure 18 may indeed reflect deliberate acts of non-compliance.

26 An 'attachment of earnings' is where a worker owes a debt to a third party and is ordered by a County Court to pay the debt. Deductions of the ordered amount will not reduce pay for NMW purposes, but any admin fees charged by the employer, for the employer's use or benefit, may reduce the worker's pay below the NMW.

27 As per my Introduction, I refer to infringements relating to errors in accounting for, interpreting and calculating the more technical and complex aspects of the NMW regulations (i.e. deductions from pay, accommodation offset, uniform payments, etc.) as 'technical breaches'.

Building upon my 2018/19 Strategy, which touched on the quality of support offered to employers, it is my view that the enforcement bodies should be mindful of the varying levels of culpability involved across the spectrum of labour market offending. **This is not to say that certain violations or employers should be treated more favourably by the bodies as, regardless of intent, the appropriate reparations must be made to the worker. Indeed, I recognise that labour market legislation does not distinguish between deliberate and accidental breaches. In recognising at a higher level that some breaches are not malicious, however, the bodies can act to prevent and eliminate accidental non-compliance from the outset by bolstering educational guidance materials and awareness-raising efforts.**

Taking a more nuanced approach to enforcement to address different types of breaches is consistent with previous policy statements from the bodies and their sponsoring departments. For example, the 2010 NMW Compliance Strategy stated that:

> *"… we will employ different strategies to reach those who want to comply (but make genuine mistakes), those who act without reasonable care, and those who deliberately flout the law (eg. within the hidden economy). Our strategies will include reaching out through publicity campaigns and stakeholder groups to ensure that those who want to comply have the information they need to do so, publicising HMRC's enforcement successes, and publicly naming those employers who deliberately flout NMW law."* (BIS, 2010b)

A focus on compliance and education is key throughout the process of enforcement, and this strand of work should be considered a priority for the three bodies. This section will consider how to bolster the compliance strands of HMRC NMW, the Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agency Standards (EAS) Inspectorate, along with their sponsoring departments (BEIS and the Home Office), to better support and educate employers. By clearly communicating expectations and providing detailed advice and guidance on how an employer is to fulfil their duties, it should become almost impossible for an employer to 'accidentally' breach the law.

There are three main themes in this section:

- **Improving the guidance to clarify the regulations**, including considering a review of the available guidance to improve the support offered to employers, labour providers and employment businesses. This section covers gaps in the guidance for various 'technical' areas of the regulation.
- The **approach taken by enforcement officers**, including how to improve the consistency of their interpretation and application of the law, providing greater clarity and transparency for employers.
- **Supporting business compliance through awareness-raising and education**, including the promotion of changes to the regulations, awareness-raising campaigns and better targeting of educational messaging aimed at employers.

4.2 Improving the guidance to clarify the regulations

Good quality and accessible guidance setting out the obligations of employers and the entitlements of workers, as underpinned by the relevant legislation, is fundamental for effective labour market enforcement. Over the course of the Call for Evidence period to inform this Strategy for 2019/20, a key and recurring issue raised by a wide range of stakeholders was the need to improve the quality and clarity of the guidance so that employers can easily understand how to implement the regulations. This section will consider how to improve the available guidance,

building upon my recommendations for 2018/19 and drawing upon examples of good practice raised during the consultation. This includes the tools used by The Pensions Regulator and labour inspectorates in other countries.

> "*To build an effective system that enforces labour market regulations the CBI believes that a compliance approach must be as clear as possible to avoid misinterpretations and so businesses know what is expected from them. This means that clear regulation and guidance and the provision of education play a significant role in effective and efficient enforcement."* Confederation of British Industry (CBI) response to the DLME's Call for Evidence

Stakeholders most strongly asserted that the main gaps in the existing guidance related to technical and complex aspects of the NMW/NLW. This was a concern voiced consistently across a range of sectors and by representatives from both multinational and small enterprises. Stakeholders considered the NMW regulations and explanatory guidance produced by BEIS to be overly complex and unclear in places; this can make it particularly burdensome for small businesses, in particular, to get right.

> *"It should be remembered that the NMW regulations are complex and sometimes difficult for employers to apply (borne out somewhat, by the ongoing saga over sleep-ins). The burden of trying to understand the minimum wage rules around things like salaried workers, travel time and costs, uniforms and equipment, tips, salary sacrifice, etc. can be disproportionate – certainly for small and micro employers – and it is not surprising to us that there can sometimes be administrative errors or technical failures."* Low Income Tax Reform Group (LITRG) response to the DLME's Call for Evidence

The National Minimum Wage Regulations 2015 consolidated all the regulation changes made since the NMW was introduced in 1999 (consisting of over 20 amendments) as part of the 'Red Tape Challenge' to make the rules clearer and more workable.[28] Despite this consolidation and attempt to simplify the rules, employers are still finding it difficult to navigate the legislation regarding NMW/NLW:

> *"Despite the aim, the 2015 regulations have not provided the clarity sought by small employers. The regulations concerning calculations are still exceptionally complex, especially for those who lack support and thus are more like to make mistakes even if this is totally unintentional."* Federation of Small Businesses (FSB) response to the DLME's Call for Evidence

> *"Ensuring HMRC takes the right approach when dealing with employers will contribute significantly to an effective and efficient labour market enforcement ... most employers comply when their responsibilities are clearly communicated."* Confederation of British Industry (CBI) response to the DLME's Call for Evidence

Contributors also stated during the Call for Evidence that the amount of NMW guidance materials available to employers has been reduced since the introduction of GOV.UK, the integrated government website, in 2012. Stakeholders told us that helpful sector-specific guidance was removed from the available resources during the transition to GOV.UK. This is an assertion supported by the Low Pay Commission (LPC) in its 2015 NMW report, which noted that the launch of GOV.UK *"actually led to a reduction in the existing material"* (LPC, 2015).

A number of issues were raised during the consultation as warranting further clarification in the guidance, particularly in relation to the need for further detail on the interpretation of the rules and to set clear parameters for their application. I am pleased that the Government, in response to

28 Available at: https://webarchive.nationalarchives.gov.uk/20150319091615/http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/pm-speech-2/

my 2018/19 Strategy, has committed to consulting on salaried hours work and salary sacrifice schemes with a view to updating the guidance and ensuring that the law remains as effective as possible.

It is clear, however, that the concerns surrounding NMW/NLW guidance are not isolated to these two issues and that a more wide-ranging review and consultation is needed. **In addition to the definition of salaried hours work and salary sacrifice schemes, other issues requiring more detailed and comprehensive guidance include:**

- **Uniform payments** – for example, clarification on what level of specificity in an employer's stipulated dress code for workers could be classed as a uniform, for the purpose of uniform expenses being treated as a deduction from NMW pay (i.e. whether dress code requirements such as 'smart clothing' or 'light-coloured shirt' would be treated as a deduction); what reasonable value and monetary limit the employer can place on purchasing the required items and what happens if the worker chooses to exceed this; and how often is reasonable for the employer to assume that the clothing should be replaced.
- **Working time and time recording** – for example, clarification on when working time begins and ends (i.e. whether it is when an employee enters the premises, arrives at their workstation, begins to perform their role or the time at which their shift begins, and what the position is when a worker voluntarily arrives earlier than their shift begins); whether time spent putting on protective clothing or a uniform before a shift must be treated as working time and, if so, how much time it is reasonable to allow for; whether time walking from a workstation to a break area and vice versa is considered to be working time for the purpose of calculating NMW.
- **Salary sacrifice pension schemes** – for example, the guidance is deemed to be contradictory and ambiguous regarding pension deductions through salary sacrifice schemes:

  "… the guidance outlines that pensions deductions do not reduce NMW pay, but also states that salary sacrifice deductions will reduce NMW pay, but does not explicitly state what the position is regarding pensions salary sacrifice deductions …" Squire Patton Boggs response to the DLME's Call for Evidence

At the time of writing, guidance on NMW/NLW regulations can be sourced across various online documents and web pages, including GOV.UK guidance, HMRC's internal manual and the BEIS (2018f) guidance on calculating the NMW. The BEIS guidance on calculating the NMW is fairly comprehensive and makes some attempt to illustrate technical issues with case studies. HMRC's published internal manual on the NMW, however, prepared internally for enforcement officers but published under the Freedom of Information (FOI) Act, is disjointed, difficult to navigate and outdated. **At the time of writing, for example, the internal manual was made up of around 376 separate guidance web pages.** It is a challenging task to keep so much up to date, and therefore it is unsurprising that inaccuracy can be found. For instance, the manual page on enforcement and proceedings incorrectly asserts that, from 1 October 2013, there is *"no monetary or other criteria attached"* to the revised BEIS naming scheme for NMW underpayment. This is incorrect and misleading to those seeking guidance, as it is only those employers who are issued with a Notice of Underpayment, owe over £100 in wages and do not meet any exceptional criteria who are publicly named, as is stated elsewhere on GOV.UK. I understand that HMRC NMW does not consider this FOI-published internal manual to constitute guidance for employers, but many stakeholders referred nonetheless to using this manual as an insight into how NMW officers enforce the regulations. **HMRC NMW must either ensure that this published manual is up to date, or clearly flag the purpose and level of accuracy of the manual upon access, signposting employers instead to the most appropriate source of guidance.**

> *"Regulations, guidance and the manual are contradictory … the information needs to be in one place and more relevant for implementation by employers. There is not enough clarity in some of the materials or rules, too much ambiguity. There is lots of room for 'interpretation'."* Squire Patton Boggs response to the DLME's Call for Evidence

Clear, detailed and up-to-date guidance, which is easy for both employers and workers to locate in order to better understand their obligations and rights, must be provided as a minimum. I fully sympathise with employers' concerns here, as the fragmented and minimalist guidance currently provided on the NMW/NLW regulations does not reflect the quality or standard necessary to support compliance. It is surely the responsibility of the Government to ensure that clear and accurate guidance is provided for the legal obligations that it has introduced. For this reason, **I recommend that BEIS review and consolidate guidance on NMW/NLW with HMRC enforcement to create a single, comprehensive and overarching guidance document.** This guidance document should be kept under continual review, updating and communicating changes to the regulations or interpretations of the regulations where necessary. Creating a single source of guidance will minimise the risk of contradiction and simplify the process for the end user. As part of this, the Government should consult more closely with employers to establish an ongoing dialogue on the problem areas highlighted above, to better understand and address uncertainty around the regulations from the ground up. I further recommend that an evaluation of the impact of this guidance is undertaken within two years of its introduction.

It became clear during the consultation that several areas of uncertainty with the regulations highlighted above, such as uniforms and working time, are issues that are prevalent among employers in particular sectors, for example in retail and hospitality. To complement a main overarching guidance document, **I recommend that BEIS, with input from HMRC enforcement, produce supplementary sector-specific advice booklets for those sectors where trends of certain types of breaches emerge or where the regulatory landscape is particularly complex.** This should aim to include more targeted advice and sector-specific case study examples and should be kept under regular review to reflect any changes to regulatory or industry practice.

Where possible, BEIS (with input from HMRC) should seek to highlight any major contrasts between the rules on tax and NMW in the guidance, to avoid any unintentional breaches on this basis. These are two entirely different remits and approaches, but where areas of the regulations intersect (such as with uniforms and tipping) more can be done to highlight the differences to employers to avoid misunderstanding:

> *"We also take the opportunity to highlight the fact that tax law and minimum wage rules interact/diverge somewhat on key issues, which may be causing employer confusion. For example, under minimum wage rules, if a worker has to pay for any type of uniform – even if it is just a pair of black trousers, black shoes and a white shirt – the cost incurred must be deducted from their pay to establish whether at least the minimum wage is being paid. However, under tax law, the rules are harsher – disallowing a deduction for tax purposes on such standard attire."* LITRG response to the DLME's Call for Evidence

Furthermore, in order to create user-friendly guidance which is responsive to key and emerging areas of concern for stakeholders, **I recommend that the three enforcement bodies look to produce and update their guidance in closer collaboration with trade associations and trade unions.** There has been some previous collaboration to this effect. In 2017, for example, the Recruitment & Employment Confederation (REC) produced a guide on NMW/NLW for recruiters 'with support' from HMRC; this included case studies and frequently asked questions (REC, 2017):

> *"This is a positive approach to compliance which we recommend be repeated across other sectors – HMRC working with trade associations to produce useful guidance on common areas where employers make mistakes such as deductions and working time."*
> REC response to the DLME's Call for Evidence

Moreover, in 2009 trade unions such as the Trades Union Congress (TUC) and Unite worked with BEIS – alongside trade associations such as the CBI and British Hospitality (now UKHospitality) – to develop a code of best practice on service charges, tips, gratuities and cover charges (BIS, 2009b).

EAS's Annual Strategy for 2018 notes cooperation with trade associations to support compliance and inform proactive work strands:

> "*EAS will continue to support and work with industry and trade associations to support those operating in the sector to comply with the law. This work complements the publicity strand of delivery whilst also ensuring EAS can be proactive in identifying emerging trends and potential risks.*" (EAS, 2018)

GLAA has also engaged with major firms and industry bodies across the UK's construction and textiles industries, and with retailers and suppliers, to establish joint agreement protocols to tackle labour exploitation in these sectors. Signatories to the Apparel and General Merchandise Public and Private Protocol for textiles include retailers such as John Lewis, Marks & Spencer, Next and New Look, and the protocol is supported by industry bodies such as the British Retail Consortium (BRC). **I am keen to see an evaluation of the impact and benefits of such joint agreement protocols in due course.**

Building upon this work, business representatives and unions should be invited to feed into the key government guidance documents where appropriate, for example to flag problem areas warranting further clarification and to create realistic case studies to illustrate difficult areas of application. This may work particularly well in relation to the production of any sector-specific guidance, enabling the bodies to draw upon the considerable expertise and reach of the specialised trade associations and trade unions.

This approach is consistent with the recommendations of the Government's Regulatory Futures Review, which advocated a compliance-based approach for regulators based on transparent collaboration with businesses and stakeholders (Cabinet Office, 2017). There is certainly an appetite for closer collaboration amongst stakeholders. During consultation, UKHospitality, REC, CBI, BRC and FSB, to name a few, expressed their willingness to work in partnership with the enforcement bodies to improve compliance and to help review and promote the guidance. Trade unions, such as the TUC, Unite, the Union of Shop, Distributive and Allied Workers (USDAW) and UNISON, stated during stakeholder meetings that they too would be keen to contribute to such an exercise. As well as ensuring that the guidance is fit for purpose, such collaboration may also bolster the dissemination of these materials, given the extensive reach of these trade associations and unions.

In addition to greater collaboration with trade associations and unions**, I recommend that the three bodies do more to coordinate the guidance and subsequent messaging between themselves, where there is overlap of issues**. Certain areas of the regulations cross the work of the three enforcement bodies. For example, NMW considerations, such as the accommodation offset, may be particularly prevalent in the agricultural sector regulated by GLAA. The three bodies should therefore do more to pool knowledge of emerging issues in this regard to bolster the guidance provided and support offered to employers across the labour market. One key forum for improving awareness of such cross-cutting issues and to harmonising subsequent messaging is through an effective coordinated communications strategy. My Office launched an internal communications initiative in 2019 to enhance information sharing between the enforcement bodies and their sponsoring departments. I will report on this further in my next annual report.

As alluded to in my 2018/19 Strategy, GLAA has generally had more proactive communications than the other enforcement bodies and has publicised guidance for labour providers in a number of ways, such as through their GLAA Brief Series and regional seminars. Notably, the online guidance offered by GLAA is both consistent and accessible; for example, by separating information by user (i.e. worker, labour user or labour provider) and providing documents in multiple languages.

As part of their 'Promote' work, HMRC NMW refers to the BEIS-owned NMW guidance where appropriate, for example as part of targeted webinars and e-learning. HMRC NMW has also used tools such as nudge letters and mass emails sent to employers to encourage compliance, and has launched targeted issue or sector-specific campaigns, such as for interns and the equine sector. My 2018/19 Strategy made several recommendations concerning the need to raise the profile of EAS and increase awareness of the guidance for employment businesses. At the time of the consultation period for this Strategy for 2019/20, the Government had not responded to these recommendations. As a result, the evidence received regarding EAS guidance and communications broadly reiterated the same concerns that we heard last year, namely that EAS does not have sufficient online presence meaning that employment businesses rely primarily on trade associations for clarification and support. I am pleased that the Government has now committed to work with EAS to raise awareness of the rights and obligations under the relevant legislation (BEIS and Home Office, 2018: 13).[29] In the meantime, EAS has worked to increase proactive communications, for example through conducting a targeted awareness-raising exercise with local authorities and bolstering upstream communications with agency workers intending to come to the UK through work with the Romanian and Bulgarian Embassies (EAS, 2018).

The suitability and practicality of the Conduct Regulations in the contemporary labour market remains a key concern for some stakeholders. Several stakeholders asserted during this year's Call for Evidence that the current regulations enforced by EAS are not always fit for purpose. **In particular, there are ongoing concerns about the challenges presented by online and app-based recruitment companies, an increasing number of which are based outside the UK and are thus out of scope for EAS**. I believe that reform, to modernise and simplify the legislation underpinning the regulation of employment agencies, should be considered in the context of any future single labour market enforcement body (see Part Three of this Strategy).

More generally, **each of the three enforcement bodies should look to improve the availability and quality of the educational guidance and tools that they offer to business in order to bolster voluntary compliance**. It is clear to me, from my engagement across industry, that the majority of firms want to be compliant, and it is my view that the enforcement bodies have a duty to provide sufficient information and support to enable them to do so. If, once adequate guidance has been provided to enable an employer to be compliant, they remain non-compliant, then it is of course only right that they should be penalised for this.

The compliance approach taken by The Pensions Regulator was highlighted during the consultation as an example of good practice. Their approach is based on preventing problems from developing in the first place by being clear about expectations and legal obligations. A key part of their work is focused on 'setting expectations' via codes of practice and guidance, communicating expected standards through toolkits, providing examples of good and bad practice, carrying out thematic reviews, facilitating peer group and third-party learning, and holding industry events. The Pensions Regulator's guidance and support tools are aimed at both employers and facilitators (i.e. actuaries, accountants and bookkeepers) to help improve compliance at all levels of engagement with the regulations:

29 The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

"The Regulator has had great success in its compliance approach dealing with small and micro employers through the use of 'nudge' letters and emails." FSB response to the DLME's Call for Evidence

Table 15: The Pensions Regulator – summary of compliance and enforcement approach

Educational tools and support	Enforcement process (for automatic enrolment)
• **Tailored guidance for employers, business advisers, trustees, individuals and public service schemes.** Clear step-by-step guidance, offering both extended guidelines and supplementary 'quick guides' that include FAQs, jargon busters/glossaries, and flowcharts outlining the required steps to take. • **Quarterly compliance and enforcement bulletins for employers** outlining details of the fines and prosecutions secured during that quarter and illustrative case studies of recent prosecutions to inform employers and help ensure that others do not make the same mistakes. • **Free online training platform for trustees and public service workers.** Online learning for trustees consists of 11 learning modules, 11 assessments and 130+ resources. The Public Service toolkit programme is split into seven separate courses. • **Template documents.** Letter templates in 20 languages to inform staff how pension schemes do or do not apply to them, and sample business plans for trustees. • **Checklists.** Declaration and redeclaration of compliance checklists, outlining the information which needs to be provided and the clear steps which need to be taken. Simplistic format with top tips. • **Codes of practice** to provide practical guidelines on how to comply with the legal requirements of pensions regulation.	• **Warning letters** offer an email address and phone number to help employers comply/find out more about how to meet their legal duties. • **Statutory notices** are issued if employers do not comply within the stated deadline. This tells employers how to comply with legal duties and/or how to pay any missed or late contributions. They outline the breaches and outstanding pension contributions owed. • **Penalty notices** are issued if employers fail to comply with a statutory notice, or to address particular kinds of breach. There are two types: a) **fixed penalty notice** set at £400, which must be paid within the period set out in the penalty notice; and b) **escalating penalty notice**, which sets out a new deadline to comply, after which employers will be fined at a daily rate of £50 to £10,000. This will continue to increase at the daily rate until the employer complies with the statutory notice. • **Prohibited recruitment conduct penalty notice.** If employers do not comply with a compliance notice or there is evidence of a breach, a penalty at a prescribed rate of £1,000 to £5,000 may be issued, depending on the number of staff an employer has. • **Prosecutions are reserved for those** "wilfully failing to put eligible staff into a pension scheme" and knowingly providing false information in a declaration of compliance. The maximum punishment is two years' imprisonment.

Whereas most regulators tend to take a risk-averse approach to creating guidance and advising on difficult areas of interpretation, The Pensions Regulator considers there to be a trade-off here with the employer's understanding of their legal obligations. During the Call for Evidence, representatives from The Pensions Regulator told my Office that they have prioritised user accessibility and understanding when creating their guidance, aiming to be as helpful as possible by providing a follow-up helpline for additional clarification and support.

Whilst The Pensions Regulator clearly operates outside my remit, using different legal powers and processes, I would nonetheless **highlight the excellent range of compliance tools, educational materials and support provided to businesses as an example of good practice that the three enforcement bodies would do well to learn from**.

Box 9 below sets out some of the compliance tools provided by other labour inspectorates globally, with regard to their provision of guidance and support offered to help stakeholders understand their respective minimum wage laws. New Zealand and Canada offer a range of

interactive online tools for both employers and workers, including a range of options to tailor advice and outcomes to individual requirements, for example through eligibility checkers and payment calculators.

Box 9: Overview of international provision of compliance tools

New Zealand:

- **Employment agreement builder:** an interactive tool to help create tailored employment agreements for staff. The tool sets out three types of clauses for consideration by employers: **mandatory** obligations by law; **recommended clauses** conducive to a *"great employment relationship"*; and **optional** clauses useful in some roles or industries but not needed for others. The finished document is then sent to the employer, alongside a sample offer letter, a summary of tips tailored to their business and a to-do list of suggestions for next steps.
- **Free online employment learning modules:** these are available on topics such as resolving problems, working arrangements, employment arrangements, pay and wages, annual leave and holidays, and hours of work.
- **Translation of 'quick guides' and 'minimum employment standards' documents** into multiple languages.
- **Email newsletter subscription:** monthly bulletin for news and updates on employment.
- Interactive online tools such as **eligibility checkers for employment rights** and **pay calculators**.
- **Template record-keeping spreadsheets** for recording holiday and wages.

Canada (Ontario):

- **Interactive online calculators** to work out rates of pay and overtime, public holiday pay, severance pay entitlement and termination pay entitlement.
- **'Special rule tool'** for guidance on particular industries and jobs where exemptions from the legislation or special rules apply.
- **Employment Standards Poster:** mandatory to display in the workplace and must be visible to workers. Available for download in 14 languages.

Sources: https://www.employment.govt.nz/ and https://www.fairwork.gov.au/

I recommend that the three enforcement bodies draw upon examples of good practice beyond their remits to consider introducing a toolkit of interactive online compliance tools and additional guidance resources. The range of helpful tools identified above from the work of The Pensions Regulator and international inspectorates (such as tailored wage calculators and contract- building tools) may be a good starting point.

4.3 Interactions: approach taken by enforcement officers

The three enforcement bodies rely upon their front-line enforcement officers to uphold a standard of professional excellence in their interactions with both employers and workers. During the Call for Evidence, stakeholders across industry asserted that the quality of interactions with enforcement officers can differ considerably – across the three bodies within my remit, but also in the approach taken within any one body. This section will consider the approach taken by enforcement officers and the consistency of their interpretation and application of the law.

Concerns raised about the approach of enforcement officers predominantly related to HMRC NMW. I heard from employers across multiple sectors that HMRC's enforcement officers can sometimes take an adversarial approach to compliance inspections. **While it is, of course, necessary for enforcement officers to take a hard line on labour violations and to seek redress for workers, this can still be achieved alongside a more educative approach which also seeks to secure future compliance as a priority**. Indeed, feedback from stakeholders suggests that both EAS and GLAA licensing officers tend to strike a good balance in this regard, providing guidance and support to help secure broader compliance as part of their enforcement work.

Stakeholders consistently reported that engagement with HMRC NMW can be overly adversarial in nature. Employers also told me about NMW officers imposing unnecessary administrative burdens on firms during investigations, for example by requiring substantial volumes of evidence to be submitted to HMRC on paper rather than in digital form. It was suggested that HMRC's approach to tax is often far more collaborative and pragmatic in nature:

> *"One member described HMRC's approach as 'bully-boy tactics' and used an approach of fear rather than collaboration … There is a feeling amongst those who have HMRC audits that they are out to find things to trip employers up on, rather than helping them to comply. This seems to be a different approach to how HMRC enforce tax which takes a much more collaborative approach."* REC evidence submitted to the DLME's Call for Evidence

> *"Our members have continued to raise that they have experienced a more adversarial approach from HMRC in relation to compliance issues."* FSB evidence submitted to the DLME's Call for Evidence

> *"There appears to be a mentality not to guide business on how to comply because of a misguided belief that this will only be used to find a workaround."* Association of Labour Providers (ALP) evidence submitted to the DLME's Call for Evidence

> *"CBI members often say that dealing with HMRC on this matter is extremely difficult and that the HMRC has a better approach when it comes to tax collection."* CBI evidence submitted to the DLME's Call for Evidence

> *"They made you feel like you didn't even want to open your mouth in case you tripped up."* REC member, in REC evidence submitted to the DLME's Call for Evidence

Notably, some businesses reported to us that some HMRC officers have inconsistently interpreted technical aspects of the regulations, resulting in inconsistent outcomes across industry. **Consistency in the interpretation and application of the law is the keystone of any fair and effective enforcement regime**. **The application of the regulations must be clear and transparent** to stakeholders, so that employers understand what is expected of them. During my Call for Evidence, however, I heard evidence that the current application of NMW regulations can be unpredictable, with different enforcement caseworkers or regional teams interpreting the regulations to differing effect:

> *"The industry has witnessed inconsistency in decisions between case workers, limited technical knowledge during investigations and a lack of cross-industry sharing to prevent similar errors being made by multiple employers."* BRC evidence submitted to the DLME's Call for Evidence

> *"Presently, one of the biggest areas of concern for our member companies in the area of Minimum Wage enforcement is the unpredictability of HMRC's approach. Compared to other forms of control and inspection – licensing, food hygiene, fire regulations etc. –*

> *we have found that HMRC have, in effect, been developing their interpretation of the NMW Regulations. The problem with this is that this 'new' interpretation is then applied retrospectively."* UKHospitality evidence submitted to the DLME's Call for Evidence

One particular area of inconsistency raised by multiple stakeholders is HMRC NMW's interpretation of the rules regarding uniform deductions, for example in determining what level of specificity in an employer's stipulated dress code will incur deductions as a uniform for the purposes of NMW (discussed in more detail in section 4.2). Stakeholders expressed concern that HMRC's interpretation and position on uniforms can differ depending on the NMW officer or region in scope, resulting in different enforcement outcomes. The BRC provided the following anonymised example to illustrate this in practice:

> *"A HMRC investigation of a national retailer was split into two divisions, led by two different case workers. When considering if a breach had occurred in relation to uniform, one case worker concluded no breach had occurred whereas the other case worker concluded there had been a breach of the NMW regulations. The retailer brought these inconsistencies to light."* BRC evidence submitted to the DLME's Call for Evidence

HMRC NMW has developed the 'What Good Looks Like' framework to provide a standard guide for an effective case-working approach. This framework breaks down the NMW investigation process into five distinct stages and provides guidance, standard templates and model letters to ensure consistency across investigations. Building upon this, every effort must also be made to ensure that the regulations are applied correctly and consistently by enforcement officers during this investigation process, particularly where the legislation in scope is complex or open to interpretation. In light of the evidence that I have heard during consultation, **I recommend that HMRC NMW improve the consistency of its caseworkers' interpretation and application of the NMW regulations by:**

a. Providing **additional training on how to interpret and apply the legislation**, particularly for emerging problem areas for underpayment, such as uniform deductions.

b. **Reviewing and improving the internal operational guidance offered to caseworkers by the Professionalism, Learning & Guidance (PLG) team** as the first point of contact to clarify the regulations and operational application.[30] **This should be carried out in tandem with the review of external guidance for employers recommended in section 4.2.**

c. Conducting **independent audits of a sample of enforcement activity** to ensure that application of the regulations and outcomes is consistent. This could build upon the PLG's current work to conduct quarterly moderation on Key Stage Indicators for the NMW Management Board. Audit findings should be used to inform and improve internal operational guidance.

d. **Assigning caseloads to inspectors by specialism to develop sector- and issue-specific expertise**, as far as is practicably possible within resourcing constraints, to improve the quality of interactions and achieve better consistency.

4.4 Considering the benefit to workers

Stakeholders also asserted that the application of NMW regulations by enforcement officers can sometimes be to the detriment of workers; this is contrary to the spirit of the legislation, which aims to protect the minimum standards of workers. For example, pay averaging schemes enable workers to maintain a stable income across payment periods, while also enabling working hours to remain flexible in response to an employer's fluctuating needs or a worker's availability. With

30 The PLG team within HMRC NMW provides ongoing support to HMRC caseworkers by way of new learning products (as required by the business) and the provision of operational guidance (written and verbal).

insecure employment models on the rise, these mechanisms provide workers with necessary income security. However, such arrangements have been considered by HMRC to be at risk of breaching NMW requirements, unless the work falls within the definition of 'salaried hours work', but there is no clear policy rationale for why pay can be averaged in some circumstances but not others.

The provision of accommodation in certain circumstances, and HMRC's interpretation of whether such arrangements impact on wages for the purpose of NMW, was similarly highlighted as an emerging area of concern for some retailers:

> *"Accommodation above retail stores is often let out to the public on commercial terms. Employees may also apply to rent out the accommodation – usually at a discount to the standard rates. The provision of accommodation is not work-related and is not provided as a benefit in kind. HMRC are challenging this arrangement, and treating any rent/ accommodation costs paid by our client's employees as a deduction/payment that reduces pay for NMW purposes.*
>
> *This suggests that the HMRC enforcement of NMW legislation is having an adverse and unintended effect: it is putting unnecessary barriers in place that prevent good commercial arrangements being entered into with low-paid employees. We have clients who – in view of NMW risks – are revising arrangements in order to prevent accommodation from being let to employees, and to prevent occupants of accommodation from becoming employees. Indeed, employees will probably have to leave their accommodation."* Ernst & Young LLP evidence submitted to the DLME's Call for Evidence

Several stakeholders asserted that the application of the regulations by HMRC NMW has resulted in certain benefits being removed from the workforce, as the enforcement risk and administrative burden involved in offering these schemes within the scope of the regulations become too arduous. Deductions from pay cannot typically reduce a worker's wages below the NMW, even if the deduction is agreed to by the worker. Stakeholders evidenced cases where voluntary schemes which primarily benefited the worker, such as salary sacrifice schemes, savings schemes and social club memberships, have been increasingly subject to enforcement action in recent years. Box 10 below illustrates the recent case of Iceland Foods, which had £21 million of arrears identified by HMRC regarding a Christmas savings scheme. Some stakeholders reported that breaches for such deductions can also be rooted in issues around the pay reference period used to calculate pay for NMW purposes, namely that the infringement would not materialise if the cost of the deduction was averaged out across multiple pay periods. Enforcement focus on these types of scheme often has the result of restricting the range of non-cash benefits offered to the lowest-paid workers:

> *"To avoid breaching the regulations some retailers find themselves unable to offer these benefits to the lowest paid, the very group who would benefit most."* BRC evidence to the DLME's Call for Evidence
>
> *"Larger companies remain disappointed that salary sacrifice schemes are not accounted for within NLW calculations. To comply with NLW requirements, employers have to remove the lowest paid from these schemes, which means the lowest paid cannot benefit from the reduced NI contributions under salary sacrifice, and neither can the employers."* SaferJobs evidence to the DLME's Call for Evidence
>
> *"Deductions for benefit of the employer are being interpreted far wider than the Regulations to include voluntary deductions which are paid into social funds, lotteries etc."* Squire Patton Boggs evidence to the DLME's Call for Evidence

Box 10: Iceland Foods – NMW enforcement regarding a Christmas savings club

In January 2019, it was reported that HMRC NMW had issued Iceland with a bill of £21 million. It was alleged that Iceland had underpaid around £3.5 million a year, for six years, to those workers who had made use of the company's voluntary Christmas savings scheme. Workers had sums deducted from their weekly pay, to be saved in a separate account and returned on demand. HMRC NMW viewed this as a deduction that caused pay to fall below NMW rates.

Iceland also claimed that it had been told by HMRC that its policy on footwear also breached NMW rules, as guidance that shopfloor staff should wear 'sensible shoes' constitutes a uniform and should be supplemented accordingly.

HMRC NMW officials point out that employers can still offer these types of schemes, but they must be administered in a different way in order to be NMW compliant. For example, while deductions directly from wages may not be permitted, a worker can make separate voluntary payments to their employer after wages are paid. Alternative administration by employers may reasonably be an appropriate workaround for offering certain types of schemes (i.e. Christmas clubs or saving schemes), in which case BEIS/HMRC NMW should issue informative guidance on how employers can provide these schemes in a way that is compliant with the NMW regulations. Further consideration must, however, be given to those schemes which require direct contributions from pay in order for workers to take advantage of tax-free benefits, such as childcare vouchers.

I appreciate that the NMW legislation protects against deductions in order to safeguard workers from those unscrupulous employers who would look to exploit any opportunity to reduce wages below the NMW. It is my view, however, that it is not in the spirit of labour market regulation to restrict voluntary deductions where the worker makes an informed decision that a non-monetary benefit, such as childcare vouchers, is of greater value to them. **I welcome the BEIS consultation on this issue and recommend that BEIS and HMRC review and amend the regulations to allow for voluntary deductions which enable low-paid workers to access genuine non-cash and tax-free workplace benefits within the scope of NMW provisions.**

4.5 Record-keeping regulations

My 2018/19 Strategy discussed the importance of tackling the issue of poor-quality (or even sometimes the lack of) documentation and records kept by some employers. Previously, record-keeping offences under the National Minimum Wage Act 1998 had to be combined with another offence for officers to take enforcement action. However, changes to the BEIS NMW enforcement guidance in November 2017 now mean that HMRC NMW investigators can pursue prosecutions for standalone record-keeping offences. In my 2018/19 Strategy, I stressed the importance of HMRC NMW making the most of this change to pursue more prosecutions for non-record-keeping offences.

During this year's Call for Evidence, it has become apparent that **there are inherent barriers within the NMW regulations that prescribe record-keeping requirements which may be preventing HMRC NMW officers from assiduously enforcing against record-keeping offences**. The statutory requirements for keeping NMW records are set out in Section 59 of the National Minimum Wage Regulations 2015, which broadly state that records must be *"sufficient to establish that the employer is remunerating the worker at a rate at least equal to the national minimum wage"* and that information about a worker in respect of a pay reference period must be kept in a single document. Concerns have been raised that these regulations are not detailed enough and as a result cannot be reinforced.

Indeed, some HMRC NMW representatives stated that these requirements are too vague to allow them to take action against some employers with poor-quality records. This point was reiterated by UNISON during consultation:

> *"When UNISON has raised this issue with HMRC and BEIS officials they have claimed that the failure to prosecute any social care employers for failing to keep sufficient records, despite the requirements of Regulation 59, is because the regulations are too vague. The lack of a clear definition about the standard of records that must be kept hinder prosecutions. More support needs to be provided to the HMRC to make it clear what standards of minimum wage records must be kept by employers. HMRC inspectors should not be able to use the current lack of clarity as an excuse not to take action against employers because in the social care system this problem is central to why there are such high levels of non-compliance with the minimum wage."* UNISON evidence to the DLME's Call for Evidence

The NMW regulations, which prescribe the form and manner in which employers have a duty to keep records, must be clear and detailed on the minimum requirements of wage records. By way of example, this could include an onus on employers to provide: the worker's details; the date; total working time for each day worked; the total working time for each pay reference period; start and finish times; and the length of any breaks taken. Setting out such basic and universal requirements for workplace records would provide a clear and consistent standard against which to enforce, while also providing clarity for business on what good record-keeping looks like. **I therefore recommend that BEIS/HMRC NMW review the regulations on records to be kept by an employer to set out the minimum requirements needed to keep sufficient records.**

I further note **an inconsistency in the length of time for which records must be kept by employers and the time for which employers may be held liable for underpayment of NMW**. The NMW Regulations 2015 state that employers must keep records for a period of **three years**. HMRC NMW may, however, take enforcement action against an employer going back **six years** before the date that the Notice of Underpayment is served. During the Call for Evidence, some stakeholders highlighted the three-year requirement as arbitrarily falling short of actual liability, potentially rendering them vulnerable to enforcement action for the time period outside of the prescribed minimum**. It is my view that it is in the interests of both business and HMRC NMW to align the time requirements to keep records with the period of legal liability.** Although this may impose an increased burden on business, it would also, on balance, enable firms to prove compliance for the entire period of their legal liability. **I therefore further recommend that the time period for which employer records must be kept is extended and aligned with the period of liability under the National Minimum Wage Act 1998.** I appreciate that this must be a forward-looking obligation rather than one to be applied retrospectively.

4.6 Validating compliance

As part of a holistic enforcement approach, which supports compliance, the enforcement bodies should provide opportunities for employers to voluntarily self-report and validate compliance. As I have argued in section 3 (Prioritisation of enforcement resources), both stakeholders and my Office have a concern that HMRC's underlying performance incentives may be distorting investigative approach away from achieving a longer-term educational outcome for employers. More broadly**, HMRC should adapt its interactions and approach in line with that already taken by GLAA and EAS, to validate compliance and provide guidance where an employer is unsure of how to operate within the interpretation of the law.**

Stakeholders argued during consultation that there should be more opportunity for firms to check compliance or complete voluntary audits without fear of facing the full range of penalties, such as naming and shaming:

> *"Voluntary external audits undertaken by employers should not incur the same name and shame regime/fines as those uncovered by HMRC – recognise and support companies trying to be compliant, at a lower cost to HMRC."* CBI evidence submitted to the DLME's Call for Evidence

> *"Retailers would also like HMRC's enforcement team to re-introduce a self-reporting mechanism to foster a collaborative relationship to support compliance. In instances of self-reporting arrears would be paid to workers but penalties would not be levied nor employers named and shamed."* BRC evidence submitted to the DLME's Call for Evidence

> *"To encourage compliance, the Government should create a culture of openness whereby smaller businesses feel comfortable and are able to approach enforcement bodies for help without fear of prosecution. A risk-based and proportionate approach means the first instinct of an enforcement body is to provide assistance and support throughout the compliance process where non-compliance is a result of the complexity, ignorance or misunderstanding of the rules."* FSB evidence submitted to the DLME's Call for Evidence

I am sympathetic to this argument and believe that HMRC NMW should engage more helpfully with employers where concerted efforts to comply and self-audit are demonstrated. **It is, however, important to ensure that rogue and recidivist employers are not able to exploit any schemes in place to escape penalties.**

HMRC NMW's self-correction scheme was introduced in 2014/15 to support effective and efficient enforcement. HMRC NMW can instruct an employer to carry out a self-review of their at-risk workers and self-correct for the rest of their payroll going back multiple years during any live case. Notably, any and all arrears that are identified through self-correction are exempted from any penalties as well as from the naming and shaming scheme. If the initial live case is concluded with total arrears meeting the naming threshold, however, the firm is still subject to naming and shaming.

Between August 2017 and March 2018, HMRC also piloted an assisted self-correction scheme for businesses which had not been subject to a complaint but wanted to do the right thing for their workers (BEIS, 2018d). Employers who voluntarily used assisted self-correction would not be subject to penalties or naming. As part of this pilot, HMRC issued 3,000 letters to employers outlining the scheme. This resulted in 78 employers coming forward to formally engage with the process and carry out a self-review. From this, 56 declarations were received and £246,000 in arrears was identified for just under 700 workers (BEIS, 2018d).

HMRC NMW has now launched a new variation of self-correction called the Voluntary Disclosure scheme. This optional scheme gives employers the opportunity to notify HMRC NMW of any infringements identified as part of self-review, once arrears have been paid to workers. As part of this, HMRC NMW webinars have encouraged employers to access online self-service materials such as 'how to self-review' videos. Initial stakeholder evidence suggests, however, that some employers are failing to understand the merits of completing Voluntary Disclosure:

> *"It effectively means the employer self corrects and then informs HMRC afterwards, which many employers are struggling to see the benefit of that final step. There is admittedly a clear benefit to no naming and shaming and no penalties but this can be achieved through a well-managed self-correction process.*" (Ernst and Young LLP, 2018: 6)

BEIS and HMRC NMW should do more to promote the Voluntary Disclosure scheme and its benefits, encouraging more employers to validate their compliance. HMRC NMW plans to review the outcomes of this scheme in due course. Any evaluation should also include a review of the effectiveness of the promotional methods and messaging used to raise awareness of the scheme.

4.7 Supporting compliance through awareness-raising and education

In an effective enforcement system, the aim of enforcement tools will be twofold: to encourage voluntary compliance and to deter non-compliance. Both of these aims can be achieved through greater publicity and awareness-raising of employment laws and the enforcement action levied against those in breach. As such, in my 2018/19 Strategy I recommended greater publicity for enforcement activity and outcomes, such as prosecutions and Labour Market Enforcement Undertakings/Labour Market Enforcement Orders, in order to create a powerful deterrent effect across the wider labour market.

Building upon this, it is **also important for the bodies to use announcements and publicity campaigns as an opportunity to educate and raise awareness of the employer's legal obligations, in order to help prevent labour market violations from the outset**. Analysis of NMW/NLW underpayment finds that rates of non-compliance can vary over the course of the year, with the number of infringements increasing significantly following uplifts to NMW rates (LPC, 2017a). Labour Force Survey data illustrates the *"strong frictional nature of underpayment: the number of workers affected is at its highest immediately following each uprating, but then falls by around half in the six to nine months that follow"* (LPC, 2017a: 10). Such a temporary increase in non-compliance may be observed as employers take time to respond to the new NMW rates implemented. This 'frictional element' to non-compliance is something that could be addressed through effective public information campaigns to promote and inform employers of upcoming changes. Indeed, there is some evidence to suggest that the extensive communications campaign which accompanied the introduction of the NLW in 2015 (see Table 16 for further details) helped to mitigate any increase in infringements following its introduction, when compared the measure of infringements observed following the October 2015 NMW uprating (LPC, 2017a: 11).

To bolster the compliance approach, the bodies should promote and target communications to business through:

- The use of public information campaigns;
- Targeted and joined-up messaging;
- Publicising enforcement activity and outcomes.

This section will primarily focus on raising awareness among employers and business. Awareness of workers' rights was considered in section 3.26.

The use of public information campaigns

Public information campaigns are key tools through which to maximise employer compliance and promote awareness of rights and obligations. The enforcement bodies have a pivotal opportunity to expand the reach of their communications through digital forums such as campaign websites, online apps and social media platforms such as LinkedIn, Facebook and Twitter. Such platforms can also be used to provide messaging to target populations, regions and sectors.

The National Living Wage campaign, carried out by the Department for Business, Innovation and Skills (BIS) in 2016, is a strong example of a successful awareness-raising campaign. This campaign used digital advertising through social media, TV advertising and employer webinars to advertise the new and incoming NLW rate, demonstrating the impact that publicising changes to employment law can have. On evaluation, it was found that over 1 million people visited the NLW campaign website, with more than 25 per cent of people then clicking through to the online calculator on GOV.UK and 265,628 people visiting the 'Frequently Asked Questions' pages.

BIS also worked with HMRC on this campaign to deliver employer messages through online webinars, generating 14,800 visits to the campaign website for information on how business could prepare. Local stakeholders were also engaged to promote the campaign messaging, with 125 stakeholders partnering with the Government Communications Service (GCS) to co-create online content. Table 16 sets out the full evaluation results provided by BIS.

As a result of this campaign, awareness of incoming NLW rates among both workers and employers increased considerably. Pre-wave surveys testing key performance indicators (KPIs) were carried out before the campaign launched to gauge a baseline of awareness and understanding. This was followed by post-wave surveys carried out one month after the introduction of the NLW. The results show that awareness of the £7.20 NLW rate increased by 34 percentage points among employers and 47 percentage points among employees following the campaign.

Table 16: NLW awareness campaign – evaluation results

KPIs – Employers	Pre-wave survey %	Target % for post-wave survey	Post wave results
Prompted awareness of NLW	85	90	93
Knowledge of the £7.20 rate	50	80	84
NLW will be the law	70	85	92
Date NLW comes into effect	68	85	89

KPIs – Workers	Pre-wave survey %	Target % for post-wave survey	Post wave results
Prompted awareness of NLW	57	70–80	88
Knowledge of the £7.20 rate	33	50	80
NLW will be the law	46	70	84
Date NLW comes into effect	42	70	81

Source: Evaluation data from 2016 provided by BEIS

During consultation, several stakeholders highlighted planned amendments to the Employment Rights Act 1996, scheduled to come into force in April 2019, as a key opportunity for BEIS/HMRC to publicise changes in employer obligations and worker rights. This change in law will require employers to include the number of hours worked on payslips where pay varies by reference to time worked. Several stakeholders claim that no awareness campaigns have been planned by BEIS to advertise these legal changes.

The Department for Transport (DfT) and the Maritime and Coastguard Agency (MCA) highlighted upcoming amendments to the National Minimum Wage Act 1998, in relation to seafarers, as another key opportunity to promote changes to both legal obligations and guidance. These legislative amendments, provisionally planned for summer 2019, will come into force alongside the planned NMW rise in 2020. The amendments will implement key changes to the application of NMW to seafarers: workers on vessels registered outside of the UK and non-UK workers would be entitled to payment at the NMW rate if they are ordinarily working within the UK's territorial waters (see section 5.9 for further details).

Amendments to employment law must be effectively communicated if employers are to reasonably be aware of and comply with the changes. **I recommend that the enforcement bodies promote and advertise all changes to the regulations and guidance, to set clear expectations against which to enforce. Promotional materials should be targeted at particular sectors where it is appropriate to do so.** I appreciate that this activity must be

proportionate to the scale and impact of the changes and is further subject to resourcing constraints, but I believe that the bodies have a duty to inform employers of any changes to legislation or guidance in good time.

Awareness-raising for EAS has been considerably more difficult, given both their lack of resourcing to carry out business as usual activities (see section 3, Prioritisation of enforcement resources) and lack of online presence prior to February 2019, when its website on GOV.UK launched. Knowledge of the employment agency regulations remains a concern among stakeholders, who would like EAS to do more to promote their work across the industry, such as hosting webinars and workshops. Upon implementing my 2018/19 Strategy recommendations, aimed at improving the public profile and reach of EAS by creating a dedicated web page, EAS should look to utilise this platform to raise awareness of key obligations under the Conduct Regulations and to disseminate guidance.

> *"EAS should be easier to contact to report cases of bad practice. They could run free workshops for recruitment business owners/start-ups."* REC member quoted in REC evidence submitted to the DLME's Call for Evidence

> *"Evidence would suggest, from looking at jobs advertised on agency websites, that employers and agencies also lack awareness of the current Minimum Wage rates. Whilst the Government has attempted to resolve this issue through advertisement campaigns promoting the Living Wage rates, much less has been done to advise individuals of their rights under the Agency Conduct Regulations."* USDAW's evidence submitted to the DLME's Call for Evidence

As noted above, GLAA has carried out a number of activities to successfully raise its profile across the labour market following the rebrand of the organisation in April 2017. Some stakeholders asserted during consultation, however, that GLAA's awareness-raising materials have been mainly focused on serious exploitation and modern slavery. There is a perception that less promotional activity is undertaken with regard to GLAA's licensing remit:

> *"Whilst the GLAA has published some useful materials for workers and labour providers and users, the GLAA social media and public profile is too heavily focussed on tackling modern slavery."* TUC's evidence submitted to the DLME's Call for Evidence

4.8 Targeted and joined-up messaging

In bolstering awareness of labour market regulations, **the three bodies should look beyond their immediate remits for opportunities to promote and insert key messaging across wider government and third-party materials**.

In order to employ staff, it is necessary first to register as an employer with HMRC. GOV.UK provides a 'step by step' guide for new employers to outline the necessary requirements and legal obligations to prepare a business to take on staff.[31] While this checklist covers the basics of NMW, sick pay and parental leave, this is framed as an 'affordability' test to check whether the business can afford to take on employees, rather than an opportunity to reinforce legal obligations and the repercussions of getting it wrong. There is no reference to more detailed NMW guidance covering common technical breaches (i.e. uniforms, accommodation offset, salary sacrifice schemes), obligations regarding record-keeping or, most notably, signposting to GLAA or EAS for the regulated sectors or activities.

I appreciate that materials such as this checklist must balance the provision of information with the need to simplify the process as much as possible for business. The GOV.UK checklist includes separate stages to outline fire safety/health and safety requirements, data protection

31 Available at: https://www.gov.uk/employing-staff

and responsibilities around workplace pensions. It is my view that more can be done to more extensively promote the material on employment laws**. I recommend that the enforcement bodies, particularly GLAA and EAS, consider how to promote and insert their messaging into wider government communications, such as through the 'step by step' guide for new employers on GOV.UK.**

4.9 Publicising activity and outcomes

Enforcement activity should be visible, and outcomes should be used tactically to educate employers about the risks of non-compliance. This draws upon deterrence theory to discourage intentional acts of non-compliance, but also helps to highlight areas of the regulations where the unwitting employer might be caught out by the more technical aspects of the rules.

In addition to the BEIS naming and shaming scheme, HMRC NMW offers limited publicity around NMW enforcement activity.

The BEIS naming and shaming scheme was discussed in section 3 (Prioritisation of enforcement resources). There I highlighted that, although it retains its 'fear factor' for employers, the numbers of employers being named each year (over 900 between mid-2017 and mid-2018) risks diluting the impact of this intervention. The scheme also sets the bar too low to be named: just £100 of identified arrears per employer. I make recommendations below for how this threshold should be raised.

However, the naming scheme also presents a great opportunity from a compliance perspective. Building upon last year's Strategy recommendation, I believe that more can be done to bolster the naming scheme's educational value. The information currently provided during naming rounds is limited and has not typically provided sufficient details to explain why the infringement has occurred and how it could have been avoided. For example, the July 2018 naming round listed 'misusing the accommodation offset' and 'using the wrong time periods for calculating pay"' as top reasons for underpayment in that round (BEIS et al., 2018). No further details or links to the relevant guidance for employers on these issues were, however, provided.

I am pleased that the Government has accepted and will implement my 2018/19 recommendation that further information is required for naming and shaming, including the provision of more detailed case studies to illustrate and educate employers on the key reasons for underpayment and how to avoid similar infringements.

I would like to see future naming rounds run with a quarterly frequency, but for these to have much more of a sector focus along with a prominent educative element. As such, the publicity already achieved through the naming rounds can be used to help spread a stronger compliance message across other employers operating in the same industry. **I recommend that HMRC and BEIS focus on sector-specific naming rounds coupled with an education campaign to maximise the impact of naming and to raise awareness. At the same time, in order to expose the most serious NMW/NLW infringements, the cut-off for naming should be on the basis of average arrears per worker per employer and the threshold set at average arrears in excess of £500**.

I believe that BEIS and HMRC NMW can further promote compliance through the dissemination of enforcement updates and detailed case studies.

> *"Where non-compliance is found, particularly as a result of technical misunderstanding or human error, the retail industry would like to see HMRC's enforcement team share and promote findings among employers to ensure others do not fall foul of the same misunderstanding or technical error."* BRC evidence submitted to the DLME's Call for Evidence

> "*We remain concerned that some small businesses may inadvertently find themselves non-compliant with the minimum wage legislation due to lack of awareness of changes … To ensure firms do not unintentionally fall foul of the new rules, we have called on the Government to enact a campaign of targeted communication along with the publication of appropriate guidance. We also recommended that HMRC take extra efforts to facilitate compliance through clear communication when making changes to the minimum wage rates."* FSB evidence submitted to the DLME's Call for Evidence

> *"To be successful, any enforcement activity needs to be visible so that it can have a deterrent effect. However, FCSA members have long been frustrated that insufficient 'noise' is made about compliance work taking place behind the scenes, therefore giving dubious businesses cause to believe that they will never get caught."* Freelancer & Contractor Services Association (FCSA) evidence submitted to the DLME's Call for Evidence

The Pensions Regulator publishes updates on enforcement activity to help educate employers. Regular newsletters and bulletins, distributed to those signed up for alerts, draw upon recent enforcement proceedings to highlight the mistakes and wrongdoing of business. This aims to ensure that others do not make the same mistakes, either through increased knowledge and awareness or through broader deterrents. Box 11 illustrates this approach in more detail. **I endorse The Pension Regulator's approach to distributing educational material as an example of best practice and recommend that the three enforcement bodies look to produce similar newsletters and bulletins for employers on a regular basis. In particular, more use should be made of case study examples to highlight both good and bad employer behaviour as a practical guide to compliance.**

> *"The Pensions Regulator (TPR) who are widely regarded as successful and effective at enforcing the auto enrolment programme. Not only do they seem to actually use the powers they have, but they are also not afraid to divulge details of how they have used them. This sends out a strong message and helps to act as a disincentive to employers considering ignoring their obligations*." LITRG response to the DLME's Call for Evidence

GLAA has a relatively strong media presence and publishes announcements through social media to highlight enforcement activity. I am aware that GLAA also produces a Brief series to provide updates on changes to enforcement standards and to elaborate on the guidance. For example, a briefing was published ahead of the changes to the Licensing Standards, which came into force in October 2018, to outline the key changes to how businesses would be assessed. GLAA would do well to bolster their existing Brief series by providing case study examples to illustrate good/bad practice, so as to aid understanding and practical application of the rules.

Where EAS has publicised news and information on its enforcement outcomes, this has been well received by stakeholders. EAS must continue to build its media presence following the launch of its dedicated website.

> *"We were pleased to see the recent press release by EAS on a recent prosecution they made. This was picked up in the trade press. This is something members would like to see more of."* REC evidence submitted to the DLME's Call for Evidence

Box 11: The Pensions Regulator's (TPR's) use of newsletters and bulletins

The Pensions Regulator (TPR) produces quarterly compliance and enforcement bulletins for employers to provide updates on changes, issues and recent enforcement activities. These bulletins also include details of enforcement outcomes, such as fines gathered and powers used during that quarter.

TPR creates educational case studies from recent prosecutions to illustrate real examples of violations. These case studies achieve both a deterrence and compliance effect by clearly communicating the standard expected of employers.

For example, the April – June 2018 bulletin provided a case study outlining the TPR's first ever prosecution under the Computers Misuse Act 1990, alongside a key takeaway message for employers:

Case study

"This recruitment agency had a duties start date in February 2014 and had received a series of five letters from TPR, with information about their AE (automatic enrolment) duties and how to comply with the law. In January, the agency registered with a pension provider and enrolled their staff. When members are put into the scheme they receive an individualised ID number, which they need to quote if they want to opt out of the scheme.

The directors of the company wanted to maximise the number of workers opting out of the scheme as they feared AE would cost the business too much money. To do this, senior staff at the company pretended to be some of the workers. They rang the provider to get the ID numbers, then went online and used the numbers to opt the workers out of their pensions.

The pension scheme became suspicious of the behaviour (a large majority of the workers had opted out, compared to a national average of less than 10%) and contacted TPR. We opened an investigation in conjunction with local police, and the directors and senior staff have since been charged with and pleaded guilty to an offence under the Computers Misuse Act 1990."

Message to employers

"You can't opt an employee out of their automatic enrolment pension scheme – only they can. If you try and do this we will find out and use the full range of our powers to ensure staff get the pensions they are due."

Source: The Pensions Regulator (2018) Compliance and Enforcement Quarterly bulletin: April – June 2018.

Box 12: Helping employers get it right – summary of recommendations

5. **The three bodies should conduct a full review of the guidance to clarify the regulations and improve the support offered to employers, labour providers and employment businesses.**

    a) I recommend that the three enforcement bodies look to produce and update their guidance in closer collaboration with trade associations and trade unions.

    b) I recommend that the three bodies do more to coordinate the guidance and subsequent messaging between themselves, where there is overlap of issues.

    c) I recommend that the three enforcement bodies draw upon examples of good practice beyond their remits to consider introducing a toolkit of interactive online compliance tools and additional guidance resources.

    d) I recommend that BEIS review and consolidate guidance on NMW/NLW with HMRC enforcement to create a single, comprehensive and overarching guidance document. An evaluation of the impact of this guidance should be undertaken two years from its introduction.

    e) I recommend that HMRC and BEIS focus on sector-specific naming rounds coupled with an education campaign to maximise the impact of naming and to raise awareness. At the same time, in order to expose the most serious NMW/NLW infringements, the cut-off for naming should be on the basis of average arrears per worker per employer and the threshold set at average arrears in excess of £500.

    f) I recommend that BEIS, with input from HMRC enforcement, produce supplementary sector-specific advice booklets for those sectors where trends of certain types of breaches emerge or where the regulatory landscape is particularly complex (i.e. such as issues around uniform deductions within retail and hospitality, pay averaging, salary sacrifice, etc.)

6. **HMRC NMW should improve the consistency of its caseworkers' interpretation and application of the NMW regulations by:**

    a) Providing additional training on how to interpret and apply the legislation, particularly for emerging problem areas for underpayment, such as uniform deductions.

    b) Reviewing and improving the internal operational guidance offered to caseworkers by the Professionalism, Learning & Guidance team (PLG) as the first point of contact to clarify the regulations and operational application. This should be carried out in tandem with the review of external guidance for employers.

    c) Conducting independent audits of a sample of enforcement activity to ensure that application of the regulations and outcomes is consistent. This could build upon the PLG's current work to conduct quarterly moderation on Key Stage Indicators for the NMW Management Board. Audit findings should be used to inform and improve internal operational guidance.

    d) Assigning caseloads to inspectors by specialism to develop sector- and issue-specific expertise, as far as is practicably possible within resourcing constraints, to improve the quality of interactions and achieve better consistency.

7. I recommend that BEIS review and consult on the following sections of the NMW regulations, to consider issues regarding practical application and operation.

a) Record-keeping requirements: to set out the minimum requirements needed to keep sufficient records and to extend the time period for which employer records must be kept, to align with the period of liability under the National Minimum Wage Act 1998.

b) Deductions for the benefit of workers: to review the regulations underpinning deductions from pay, to consider how best to enable low-paid workers to access genuine, non-cash workplace benefits within the scope of the NMW provisions.

c) Pay averaging: under current regulations pay can be averaged in some circumstances but not others, but there is no clear policy rationale for this.

d) Clarifying issues around uniform payments, working time and time recording, salary sacrifice and pension schemes.

8. To promote compliance with the regulations, I recommend that the enforcement bodies increase the volume of awareness-raising campaigns and improve the targeting of educational messaging aimed at employers.

a) I recommend that the bodies promote and advertise all changes to the regulations and guidance, to set clear expectations against which to enforce. I appreciate that this activity should be proportionate to the scale and impact of the changes.

b) I recommend that the bodies, particularly GLAA and EAS, consider how to promote and insert their messaging across wider government communications, such as through GOV.UK's 'step by step' guide for new employers.

c) I recommend that the bodies look to use The Pensions Regulator's approach to distributing educational material as an example of best practice, such as by producing similar newsletters and bulletins for employers on a regular basis. In particular, more use should be made of case study examples to highlight both good and bad employer behaviour as a practical guide to compliance.

5. Using joint working to tackle more serious and persistent non-compliance in the labour market

5.1 Introduction

One of the pivotal reasons for the Director of Labour Market Enforcement (DLME) post being set up in 2016 was to address concerns around the silo working of the different enforcement bodies. In 2016, the Government expanded the role of the Gangmasters and Labour Abuse Authority (GLAA) to include Police and Criminal Evidence Act 1984 (PACE) powers (with effect from 30 April 2017) and created the coordinating function of the DLME, allowing the enforcement bodies to address the broad spectrum of non-compliance within their respective remits, while also providing the opportunity for increased coordination and joint working.

It remains the case that an integrated, multi-agency approach is often needed to tackle labour market exploitation. An important part of my role is, therefore, to encourage and facilitate joint working among the three enforcement bodies and other organisations and to increase opportunities for intelligence-sharing.

In my 2018/19 Strategy, my recommendations focused on intelligence-sharing, learning from shared experience, and relationship-building with other enforcement agencies and wider partners, as well as the importance of operating a feedback loop. I also recommended that two specific joint working initiatives be piloted and evaluated in Newham and Leicester. While progress has been made in these areas, more still needs to be done. For the purposes of this section, joint working will focus on intelligence-sharing, risk modelling and operational activity, the latter including use of other agency powers to disrupt non-compliance.

While I very much advocate joint working, I also understand that it must be justified, particularly when considering the resource-intensive nature of joint operational activity. This section therefore places greater emphasis on the benefits and importance of intelligence-sharing. Effective and timely sharing of intelligence can lead to more targeted enforcement and therefore more effective use of operational resources.

In the Call for Evidence for my 2019/20 Strategy, I sought information on how the three enforcement bodies could work more closely in partnership, where joint working efforts should be directed, where there might be scope for wider state regulators and examples of best practice. As stated in my 2018/19 Strategy, one of my priorities for the year ahead was to ensure that the bodies under my remit had the legal gateways in place to receive and share information and intelligence from all interested bodies, including industry and third parties (DLME, 2018a). As such, I also sought feedback on this area as part of my Call for Evidence to inform this Strategy. Barriers

to, and a perceived lack of, intelligence-sharing were cited as a key frustration by the bodies and wider stakeholders alike, particularly in terms of the limiting factor the said challenges could have upon operational activity. I will consider these factors in more detail.

This section focuses on how the bodies can use joint working to tackle more serious and persistent non-compliance. It identifies four broad themes as key components of effective joint working on which the bodies should focus:

- reviewing existing intelligence processes and legal gateways in order to adopt a more proactive approach to intelligence-sharing and to improve the efficiency of their joint operational activity;
- aligning enforcement activity within DLME-defined priority sectors, considering how best to use shared powers and improving strategic understanding of threat, risk and harm;
- considering opportunities to engage further in joint working with wider partners, with particular focus on tackling recidivism and deliberate non-compliance; and
- conducting robust evaluation of joint working in order to understand the value of such initiatives and where intelligence and operational resources can be best utilised in further work.

In December 2018, the Government announced plans to consult on the creation of a single enforcement body. Work on this Strategy was, however, well under way by this time. As such, this section will consider opportunities to improve joint working under the current three-body system. Nevertheless, many of the themes identified and the recommendations remain relevant in the context of a single enforcement body.

5.2 Operational intelligence-sharing

As outlined in section 3 (Prioritisation of enforcement resources), it is widely recognised that enforcement activity cannot rely solely on responding to worker complaints. I previously recommended a shift to a more proactive enforcement approach due to its value in uncovering violations, but also due to its "substantial deterrent effect, especially among businesses in the same region and industry of the inspected workplace" (Professor Judy Fudge, 2018, cited in DLME, 2018a). One way to develop this proactive approach is through better intelligence-sharing to inform the bodies' risk modelling processes and, ultimately, their targeted enforcement.

An area of focus since my last Strategy has been evaluating the enforcement bodies' progress against strategic priorities. One important aspect of this is the extent to which opportunities for intelligence-sharing and joint working have been exploited.

Intelligence-sharing processes within the bodies

As an intelligence-led authority, GLAA follows the basic principles of the National Intelligence Model (NIM).[32] Strategic and tactical intelligence products inform the strategic and operational priorities of the organisation. A central intelligence hub supported by a regional field intelligence capability drives operational activity in all its forms and also identifies opportunities for information-sharing and joint working with partner agencies. All intelligence development and investigations are prioritised according to a risk and harm assessment. Tasking and coordination procedures ensure that priority cases are appropriately resourced and progressed within acceptable time parameters.

32 The NIM is used across law enforcement and standardises how intelligence is collected, coordinated and disseminated.

The HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) inspection of the use of investigative powers by GLAA described in section 3 (Prioritisation of enforcement resources) included an assessment of whether GLAA systems and processes enable the use of investigative powers.

The inspection found that GLAA received a substantial volume of intelligence from a wide range of sources (5,386 reports between May 2017 and July 2018). I am encouraged that a significant proportion of this came from its own enforcement and Labour Abuse Prevention Officer (LAPO) teams. **However, as I will discuss later in this section, pilot activity focused on the Leicester garment industry has highlighted the enforcement bodies' dearth of intelligence on this particular area**. The range of external sources from which GLAA is now receiving intelligence is also encouraging, as is the finding that it is in receipt of regular reporting from labour providers and users. GLAA's plans to arrange access to the Police National Database and National Automatic Number Plate Recognition Data Centre are positive steps (HMICFRS, 2019).

The inspection also noted that GLAA is planning to strengthen its intelligence-sharing with HM Revenue and Customs (HMRC) National Minimum Wage (NMW) and Employment Agency Standards (EAS) through my Office's Information Hub (HMICFRS, 2019). While the Information Hub has and will continue to play a role in this at a strategic level, it is the responsibility of the enforcement bodies to ensure that they are effectively sharing operational intelligence with each other. This is something I will discuss further in the subsequent section on improving intelligence-sharing.

Some concerns were raised about the timeliness with which GLAA intelligence is disseminated, although HMICFRS was unable to reach an informed judgement on this issue. Other areas of concern for HMICFRS are the complicated nature of the process for engaging intelligence support and the lack of financial intelligence capability (HMICFRS, 2019). While I do not comment on all of this directly in this Strategy, proactive sharing of intelligence at the earliest opportunity is something I touch upon throughout this section. The lack of internal financial intelligence capability is also of concern. I am encouraged that GLAA intends to train a member of staff as a financial investigator and seek the assistance of regional asset recovery teams. However, given the strong financial motivation behind non-compliance and exploitation, I am concerned that one trained member of staff may not be sufficient internal specialist resource.

Since the 2018/19 Strategy, EAS has improved its intelligence-led working by refining its risk indicators, while also increasing partnership working with enforcement bodies and key stakeholders to identify non-compliant behaviours. Currently, EAS has one member of staff whose role it is to look at risks and intelligence. This role will be further supported by realising the benefits of its new IT infrastructure (which came online in February 2019). This will better support EAS capability in this area.

HMRC NMW uses intelligence from a range of internal and external sources to inform its enforcement decisions. In order to ensure that enforcement activity remains targeted to the highest area of risk, HMRC's NMW risk profiling team works closely with internal stakeholders and external labour market enforcement stakeholders to improve its understanding of the wider NMW picture of risk. In addition, NMW operational teams have close links with HMRC's Fraud Investigation Service and with regional stakeholders including the police, the Government Agency Intelligence Network (GAIN), Home Office Immigration Enforcement, and GLAA who regularly share intelligence to inform HMRC NMW's targeted enforcement and joint working.

Additionally, HMRC NMW has access to all HMRC tax-related data and systems to analyse returns for PAYE, National Insurance (NI), VAT and Corporation Tax, as well as benefit claims and tax credits, previous HMRC compliance history and third-party intelligence. As I have set out in section 3 (Prioritisation of enforcement resources) I am encouraged by the wealth of intelligence HMRC NMW uses within its targeted enforcement. However, there remains more that could be done to improve HMRC's use of strategic intelligence with regards to NMW threats. I will consider

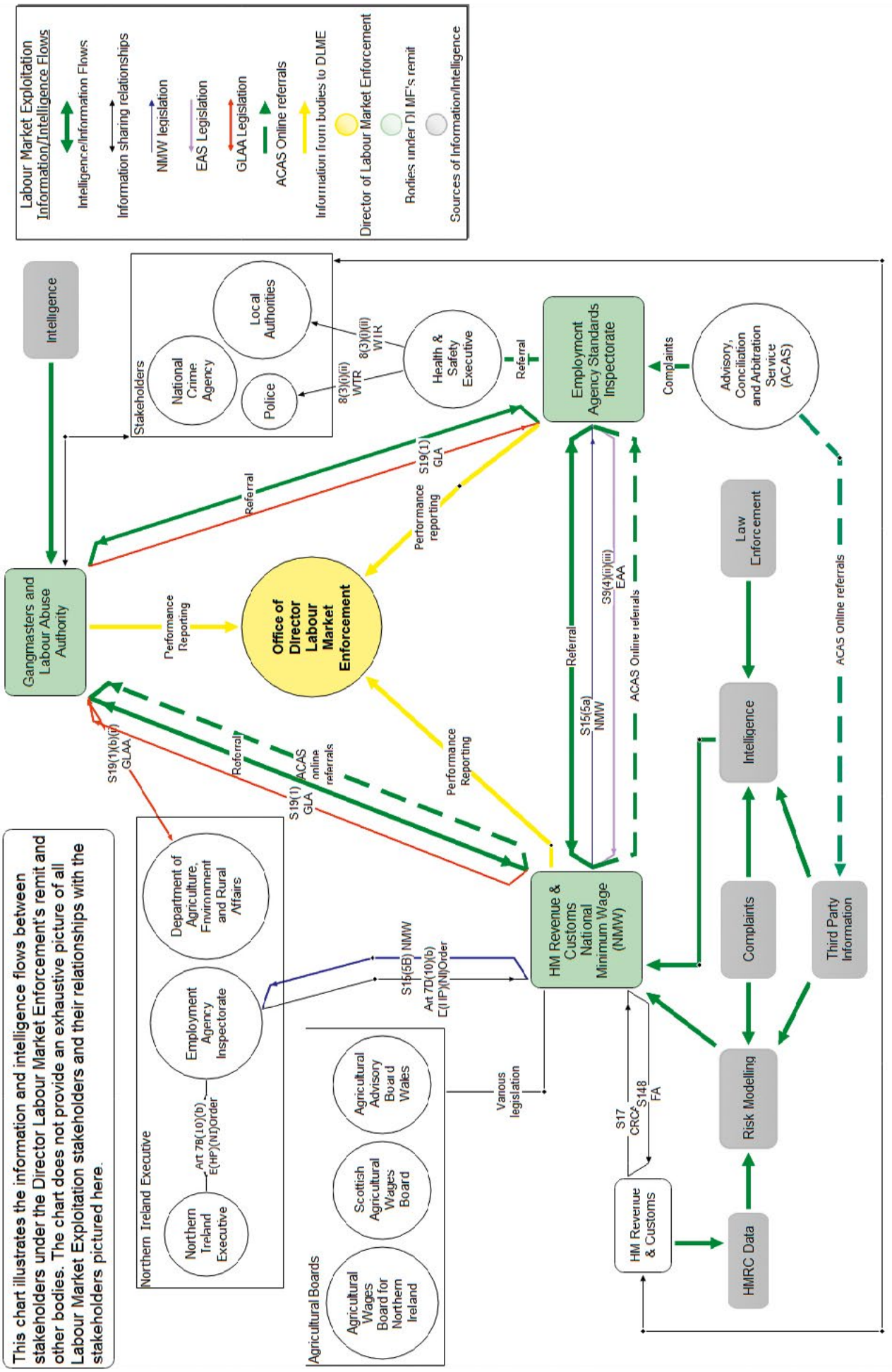
how HMRC NMW aligns its own targeted enforcement to the DLME priority sectors later in this section. Nonetheless, I reiterate my suggestion that greater investment in strategic intelligence to improve NMW-specific intelligence reporting would be a positive step.

Improving intelligence-sharing

The mechanisms needed for the three bodies to exchange intelligence among themselves are already in place; for example, there are express legal gateways for the disclosure of information by GLAA, HMRC NMW or EAS contained in section 19 of the Gangmasters (Licensing) Act 2004, section 9 of the Employment Agencies Act 1973, and section 15 of the National Minimum Wage Act 1998, as amended by Schedule 3 to the Immigration Act 2016. These provisions provide broad powers to exchange information which supports labour market enforcement functions. The landscape is, however, far from simple and effective intelligence-sharing extends beyond the three enforcement bodies.

Additionally, Memoranda of Understanding (MoU) exist between the enforcement bodies to ensure a consistent approach is taken to the triaging of intelligence and the subsequent identification of cases for joint working and/or referral to the appropriate enforcement body (Tripartite Joint Working MoU). Through their triage processes, each body identifies the nature of suspected breaches to determine if joint or parallel investigations are required with partners. Where one of the authorities undertakes intelligence analysis that indicates a risk falls within the remit of one of the other authorities, that information will be shared to determine the most appropriate investigative response. While not an exhaustive picture, Box 13 depicts information and intelligence flows between the three bodies and with other key stakeholders.

Box 13: Current information and intelligence flows between the enforcement bodies



Anecdotally, I heard from each of the enforcement bodies that there are issues with the regularity of the flow of information between them, therefore impacting on opportunities for joint working. Similarly, during my Call for Evidence, I heard of frustrations that information-sharing processes among the enforcement bodies were not performing as they should.

> *"Clear demarcation on which body should lead on what type of case, sharing resource where approaching the same organisation, and through data sharing."* SAFERjobs response to the DLME's Call for Evidence

Specifically, concerns were raised regarding labour providers with revoked licences being allowed to continue to supply workers to companies (including warehouses) in non-licensed sectors. Although it is unfair to assume that a labour provider with a revoked licence would automatically breach Agency Worker Regulations (AWR)/NMW in non-licensed sectors, it would seem sensible that GLAA share this information with EAS in order to inform EAS's own risk assessment and possible enforcement visits where appropriate. As such, **I recommend that the three bodies and sponsor departments review the joint working MoU as a priority to ensure that the intelligence flow and subsequent tasking processes are operating as effectively as possible. More specifically, I recommend intelligence-sharing between GLAA and EAS is improved as a matter of priority.**

A key challenge within this information-sharing process is HMRC's legislation which prohibits any body receiving intelligence from HMRC to then share this onwards, say, to a further enforcement or regulatory body without HMRC's permission.

> *"HMRC officers are bound by the disclosure provisions of the Commissioners for Revenue and Customs Act 2005 (CRCA). There are only limited circumstances where disclosure is permitted."* Commissioners for Revenue and Customs Act 2005

The issue could be addressed by improving the intelligence triaging process within HMRC to ensure that, *where appropriate*, data are identified and shared with both GLAA and EAS simultaneously, thereby avoiding the delays associated with having to pass this information from one body to another separately. In line with my recommendations in section 4 (Helping employers get it right) regarding initiatives to improve investigators' awareness of relevant legislation, **I recommend that HMRC consider how to better identify relevant intelligence at the start of the intelligence triage process in order to optimise opportunities for targeted enforcement.**

> *"Sharing of intelligence in real time is essential and ensuring the intelligence is risk assessed by each agency in a timely manner. It is also important to recognise the competing needs of each of the three agencies. In the most serious of cases a joint case conference may be useful to establish which of the agencies should be involved and to what level. Smarter working and targeting high risk/high harm jobs for joint working and sharing data after the event."* HMRC Fraud Investigation Service response to the DLME's Call for Evidence

5.3 Operational intelligence-sharing: wider partners

I have recommended in section 3 (Prioritisation of enforcement resources) that HMRC NMW should adopt a more strategic view of its sectoral enforcement challenge by better integrating intelligence from within HMRC and sources of compliance information from other enforcement agencies with its current risk modelling work.

I have also suggested that more resources be directed away from the smaller and less serious cases (for instance, in the retail sector) to the Serious Non-Compliance team, suggesting that HMRC NMW monitor the more serious end of the spectrum of non-compliance and target more of its existing resource here.

It is important to recognise that labour market offending may occur alongside offences beyond my remit. As described in section 2 (Strategic intelligence assessment), this may include issues such as health and safety violations, tax evasion and fraud. The presence of multiple violations is demonstrated in operational activity discussed later in this section as well as in section 6 (Sector studies) in relation to the warehousing and hospitality sectors. For example, health and safety breaches are considered common in the warehousing sector.

While intelligence, operational activity and research findings suggest the presence of multiple violations, the extent to which labour market non-compliance occurs alongside other issues or offences is not currently known. Developing intelligence in this area would help to improve understanding of these issues and ultimately inform the response. Intelligence held by wider partners should play a crucial role in identifying such instances of multiple violations and developing a richer intelligence picture. In the forthcoming year, **I recommend that the three bodies develop an understanding of the extent to which offences within their remit occur alongside other violations and where non-compliance is deliberate. This will involve further developing of relationships with law enforcement and other government departments in order to identify and access relevant data sources.** I am encouraged that GLAA is already working to agree a new MoU with the Department for Work and Pensions (DWP) and look forward to seeing how this contributes to an understanding of multiple violations.

More broadly, the National Crime Agency (NCA), Regional Organised Crime Units (ROCUs) and police forces play a key role in coordinating activity and facilitating intelligence-sharing to combat modern slavery. This includes using GAIN, a mechanism for effective intelligence-sharing across a wide network of partners. Building on such relationships may improve intelligence flows and allow for more effective sharing of resources through local, regional and national tasking and coordination processes.

Aligned to cases of deliberate non-compliance is the issue of 'phoenixing'.

> *"[Acas] said, 'You've got a fairly strong case, but the nature of these things is such that if you take it to court, they'll just liquidate the company and start trading under a different name the next day'…..apparently, it's quite common for small companies to do that."*
> Worker interview (IFF, 2019b)

As part of efforts to crack down on the issue of phoenixing, I welcome the Government's decision to introduce measures to improve the UK's insolvency framework, including legislating to give the Insolvency Service the necessary powers to investigate former directors of dissolved companies when they are suspected to have acted in breach of their legal obligations (BEIS and Home Office, 2018). I am also encouraged that HMRC has agreed a new legal gateway with the Insolvency Service, aimed at identifying NMW cases suitable for director disqualification.

One area in which all three enforcement bodies can look to work more closely with the Insolvency Service is in relation to Labour Market Enforcement Undertakings and Orders (LMEU/Os). Should companies associated with LMEU/Os enter into formal insolvency, information on LMEU/Os could be used to inform Insolvency Service targeting decisions and potentially streamline any subsequent investigation. This would be particularly useful in circumstances where a breach of an LMEU/O has occurred. Furthermore, such cases may fall within the scope of section 2 of the Company Directors Disqualification Act 1986 for indictable offences, presenting an additional method of disrupting persistently non-compliant businesses and ultimately a deterrent against abuse of director status. The concept of disruption is something I will return to more broadly later in this section. However, in these specific circumstances, **I recommend that the bodies proactively share information on LMEU/Os with the Insolvency Service in order to inform their targeting decisions and potentially streamline their investigations**.

5.4 Joint operational activity – the enforcement bodies

The joint working MoU states that, where appropriate, the enforcement bodies will engage in joint investigations and operations to ensure the full range of labour market enforcement powers and sanctions are considered and, where appropriate, applied to non-compliant businesses. However, close cooperation does not mean that there will always be a joint investigation; for example, this may result in joint planning of an investigation where the enforcement authorities operate separately.

During the Call for Evidence for this Strategy, my view that joint working is not automatically more effective than single body interventions was also reiterated. EAS, for instance, highlighted the benefits of coordinating activity while also recognising the amount of resources required to prepare for joint operations with other bodies, which do not automatically yield outcomes greater than those a sole operation might have found.

> *"Better co-ordination brings benefits in terms of efficiencies and focus, not only for the enforcement bodies but also for business. Co-ordinated activity means higher visibility coupled with much less disruption for employers and workers rather than multiple days of activity by different bodies. Further, by combining multiple investigations into a single operation, undertaking joint operations in this way represents a more efficient and cost-effective [approach]."*

> *"Joint working for joint working sake is not an efficient or effective mechanism for delivery. It is right and proper that individual regulators conduct unitary operations to ensure they meet their statutory obligations."* EAS response to the DLME's Call for Evidence

This demonstrates the important role that is played by the Strategic Coordination Group (SCG). The SCG was set up by my Office in October 2016 to bring together the three enforcement bodies' operational and strategic expertise. The group identifies issues that would benefit from closer collaboration, identifies opportunities for joint enforcement activity and assists in operational delivery. Since my last Strategy, the SCG has played a role in coordinating joint working in priority sectors, as demonstrated by the case study in Box 14 below. More broadly, it has also focused on strategic joint working opportunities, including the Leicester pilot as well as feeding into Project Aidant, both of which are described later in this document, in section 5.7 (Joint working – wider partnerships).

Box 14: Activity in DLME priority sectors

Following media reports and concerns about labour exploitation in the warehousing sector, the SCG provided a forum for sharing intelligence, planning operational activity and assigning an operational lead. Intelligence garnered and shared between the enforcement bodies formed the basis of the operation. It suggested that employment businesses supplying workers to the sector were not complying with the Conduct of Employment Agencies and Employment Business Regulations 2003 (as amended) and that workers were potentially not being paid NMW. Given its remit, EAS was deemed best placed to conduct operational activity. Intelligence-led visits resulted in EAS identifying 14 breaches of legislation and safeguarding 1,731 workers. The identified breaches were numerous in comparison to typical cases and ranged from health and safety breaches to failure to keep adequate records. The operation demonstrated the accuracy of the intelligence and has helped increase intelligence regarding the sector.

Providing definitive figures for the number of joint operations between the enforcement bodies is not possible as they each use different recording metrics.[33] It would therefore not be possible to draw meaningful comparisons. Furthermore, GLAA's response to a Parliamentary Question on the number of joint operations between GLAA and Home Office Immigration Enforcement indicates that GLAA does not collect information in a way that enables it to provide a breakdown by individual agencies as the majority of activity is with multiple agencies (Parliamentary Question, 2019). Broadly speaking, and by each of the bodies' own measures, there does appear to have been an increase in joint working during the latest full year for which data are available (2017/18). Since my 2018/19 Strategy, further joint operational activity has taken place, including in DLME priority sectors. While figures for the full 2018/19 financial year are not available at the time of writing, year to date GLAA and HMRC NMW figures indicate a substantial increase during this period, with NMW breaches and other forms of labour market non-compliance (including the extreme end of the spectrum) uncovered. This is something I will explore further in my 2018/19 Annual Report. While I understand that the bodies have different remits and established ways in which data are captured, it is not unreasonable to expect that they make efforts to align their metrics and reach mutually agreed figures.

A substantial proportion of joint operations involves one of the enforcement bodies working with wider partners but not with either of the other enforcement bodies.

> *"The strength of partnership working is purely in the number of resources that can be brought to bear on an issue, i.e. if EAS were to share an operation with only the two other labour market enforcement bodies, it is unlikely that either will have a cross cutting interest. However, if EAS were to share their intention more widely, then it is increasingly likely that another regulatory/law enforcement organisation will have information or an interest. This allows for the creation of a richer picture of the matter in hand and may mean a change in operational approach or lead."* EAS response to the DLME's Call for Evidence

This also emphasises the **importance of information and intelligence-sharing as well as the crucial role played by wider partners, for example local authorities, Home Office Immigration Enforcement and multi-agency partnerships**. Intelligence-sharing directly impacts on operational activity as it may lead to more targeted enforcement and therefore more effective use of operational resources.

5.5 Leicester garment compliance taskforce pilot

Following the recommendation in my 2018/19 Strategy, my Office helped coordinate pilot activity involving the three bodies and a parallel operation by the Health and Safety Executive (HSE) to test joint working aimed at tackling non-compliance in the Leicester garment industry. Further details of the pilot are included in Box 15 below. While activity is still ongoing, findings thus far demonstrate the value in involving wider partners. If implemented effectively, introducing broader intelligence sources and powers has the potential to make the resource-intensive nature of joint operations worthwhile. That said, there should not be an over-reliance on wider partner intelligence. The pilot has highlighted the lack of intelligence held by the three enforcement bodies on this sector. As such, I am hopeful that initiatives such as GLAA's Apparel and General Merchandise Public and Private Protocol (GLAA, 2018h) will help build its intelligence picture moving forward. In line with the compliance-based approach, there must, therefore, also be an onus on businesses to share intelligence with the enforcement bodies. The GLAA's Apparel and General Merchandise Public and Private Protocol and the equivalent for the construction industry

33 GLAA uses a broad metric per overarching operations whereas HMRC NMW and EAS use a more detailed metric, therefore the numbers recorded by each are not comparable.

formalise this responsibility. In terms of joint operational activity, real value is added where the bodies/actors involved in the joint activity have wider powers to engage and different sources of intelligence to complement the bodies' existing intelligence sources.

Box 15: Leicester garment industry compliance pilot

In line with the recommendation in my 2018/19 Strategy, the four main national enforcement bodies – HMRC, the GLAA, EAS and HSE – have been piloting activity in the Leicester garment industry.

The pilot has identified a number of behaviours which may be indicative of deliberate non-compliance as described in section 2 (Strategic intelligence assessment). This includes the following:

- non-payment of NMW;
- PAYE issues;
- no payslips;
- more workers working at the site than declared;
- health and safety issues; and
- fire regulation issues.

While a formal evaluation is yet to take place, a number of key benefits and lessons have been identified:

- **Greater coordination:** The range of partners involved allows for a coordinated response to tackling non-compliance. Key partnerships that will work alongside the pilot include the Safer Leicester Partnership, the new Modern Slavery Action Group, and GLAA's Apparel and General Merchandise Public and Private Protocol (GLAA, 2018h) with major brands and manufacturers.
- **The value of partner agency intelligence and improved understanding of non-compliant business models:** Third party intelligence was crucial in informing operational activity. Furthermore, joint operational activity has provided insight into how non-compliant businesses operate both within and beyond the Director's remit.
- **The importance of community engagement:** Operational activity emphasised the importance of building intelligence that can be gleaned from engagement with local communities.
- **Improved intelligence flows:** Since pilot activity began, more intelligence is starting to be shared. Information-sharing agreements with fashion brands should further improve intelligence flows. GLAA's Apparel and General Merchandise Public and Private Protocol brings together fashion retailers and law enforcement bodies to prevent exploitation in the UK textiles industry. This involves retailers exchanging information and intelligence on labour exploitation with the authorities in support of targeted enforcement and investigations.

In evidence to the Environmental Audit Committee (EAC) inquiry into the sustainability of the fashion industry (House of Commons EAC, 2019), the Mayor of Leicester highlights that ethical compliance issues extend beyond Leicester (Soulsby, 2018). The pilot I recommended in my

2018/19 Strategy was intended to provide valuable learning for other areas on how to tackle these issues. **I recommend a full evaluation of the Leicester pilot in order to understand what works and whether this is a good model for elsewhere.**

I am conscious that there has been a series of operations focused on the rag trade in Leicester in the last 20 years or so,[34] but still problems remain. I want to ensure that the enforcement bodies fully grasp this problem and intervene to bring lasting change. Depending on the results of the evaluation, we may need to consider further steps to address the reported widespread non-compliance here.

Evaluation of joint working extends beyond this pilot and, as I have emphasised throughout this Strategy, evaluation of the impact of enforcement efforts upon non-compliance is essential in order to inform future enforcement activity. While the enforcement bodies conduct some degree of evaluation or debriefing of operations, this does not include formal and consistent evaluation of joint working.

I have heard anecdotally from HMRC NMW that there are a number of benefits and limitations of joint working, as summarised in Table 17 below:

Table 17: Perceived benefits and limitations of joint working among HMRC staff

Benefits	Limitations
A shared intelligence picture that can drive a better understanding of customer behaviours and effective targeting of non-compliance.	**A disconnected risk assessment.** The positive impact of a collective presence on the ground may be offset by disconnect in risk levels (and therefore potential scope of non-compliance) across agencies.
Commonality of objectives across LME partners, thus creating an enforcement focus on key risks to magnify the impact on behaviours.	**Sequencing/logistical issues.** These may build delay during joint visits due to coordinating visit dates and bespoke investigative action by each agency.
Raised awareness externally of LME partners and cohesive working, increasing the deterrent effect on rogue employers and proximate business community.	**A diverse operational approach.** The intervention method may not meet the business need or achieve the same benefits for other LME partners.
The ability to achieve a 'once and done' approach to joint visits, achieving efficiencies in the evidence-gathering and investigation processes.	
Developing and improving working relationships across LME partners – identifying and adopting best practice.	

Robust evaluation will help the bodies understand the value of joint working initiatives and where intelligence and operational resources can be best utilised in future work. **I recommend that the three bodies establish success criteria at the start of operational activity, evaluating immediate outcomes through processes such as multi-agency debriefs as well as monitoring of the longer-term disruption effect.**

5.6 Prioritising and aligning joint working: the enforcement bodies

In this section, I will focus on the enforcement bodies' targeted enforcement activity in DLME priority sectors. While the above examples highlight the progress that has been made in terms of operational joint working between the bodies, there remain limits to a joint operational approach

34 Repeated reference is made to non-compliance and various operations and interventions in the Leicester garment trade in Low Pay Commission (LPC) reports and associated evidence dating back to 2001. Specific initiatives include: work between the Inland Revenue, the National Union of Knitwear, Footwear and Apparel Trades (KFAT) and Leicester City Council to forge links with local clothing and textiles trades (LPC, 2003); the Highfields LPC pilot project (DTI, 2004); Joint HMRC/EAS unannounced visits and outreach events such as Leicester City Council's Building on Opportunities, Skills and Training (BOOST) project (BIS, 2011b); and Operation Serbal, launched in response to a Channel 4 documentary highlighting illegal practices in the Leicester garment trade (BIS, 2013a).

in its current form. The most effective use of resources in terms of joint working between the three enforcement bodies is on occasions where there is a shared strategic priority, for example within a particular sector. In these instances, benefit is seen in the intelligence-sharing and risking process to inform operational activity, enabling the bodies to build the intelligence picture and identify gaps in their knowledge.

The Information Hub's work to define priority sectors requires a collective understanding of threat, risk and harm. The Management of Risk in Law Enforcement (MoRiLE) process described in section 2 (Strategic intelligence assessment) is largely driven by the three bodies' intelligence. However, it also seeks to incorporate understanding from wider partners. Strategic intelligence and understanding of threat, risk and harm among the bodies are crucial to this process. As discussed in section 3 (Prioritisation of enforcement resources), neither HMRC NMW nor EAS currently has this capability internally and all three bodies should improve their intelligence capability to have a more strategic picture of threats.

Enforcement bodies' targeted enforcement and priority sectors[35]

In this section, I provide an overview of the bodies' targeted enforcement by sector in order to understand the extent to which their activity is focused on DLME priority sectors. I should note here that, while my role is to set the strategic direction for each of the bodies within my remit, I cannot mandate that specific activity be undertaken. The Immigration Act 2016 set out that HMRC NMW and EAS must pay regard to the Director's Strategy, whereas GLAA must act in accordance with my Strategy.[36] Each of the enforcement bodies retains primacy to determine the use of its own resources. In this way, this section considers what activity the bodies have been undertaking while keeping in mind that, inevitably, not all risks will be relevant to all three bodies simultaneously.

The duration of planning cycles must be borne in mind when considering how quickly the bodies can respond to the introduction of new priority sectors, and this will continue to be the case with updated DLME assessments. Further, while I can infer the level of activity to some extent, my ability to make a full assessment is limited by the nature of the data, differences in recording among the enforcement bodies and the fact that, at the time of writing, data are not yet available for the 2018/19 financial year in full. **This is something I will look to revisit in my 2018/19 Annual Report.** In line with requirements of the Immigration Act 2016, this provides an assessment of the extent to which labour market functions were exercised in accordance with the preceding year's Strategy.

Table 18: Priority sectors

DLME priority sectors 2018/19	Ministerial priority sectors for NMW in acting SLA
Car washes	Social care
Agriculture	Employment agencies
Care	Gig economy
Nail bars	Apprentices
Shellfish gathering	Migrant workers
Hospitality	Retail/commercial warehouses
Construction	
Poultry & eggs	
Factories & warehousing	

35 Due to the inconsistencies in the classification of sectors across the enforcement bodies, where necessary we have used proxies to define priority sectors.

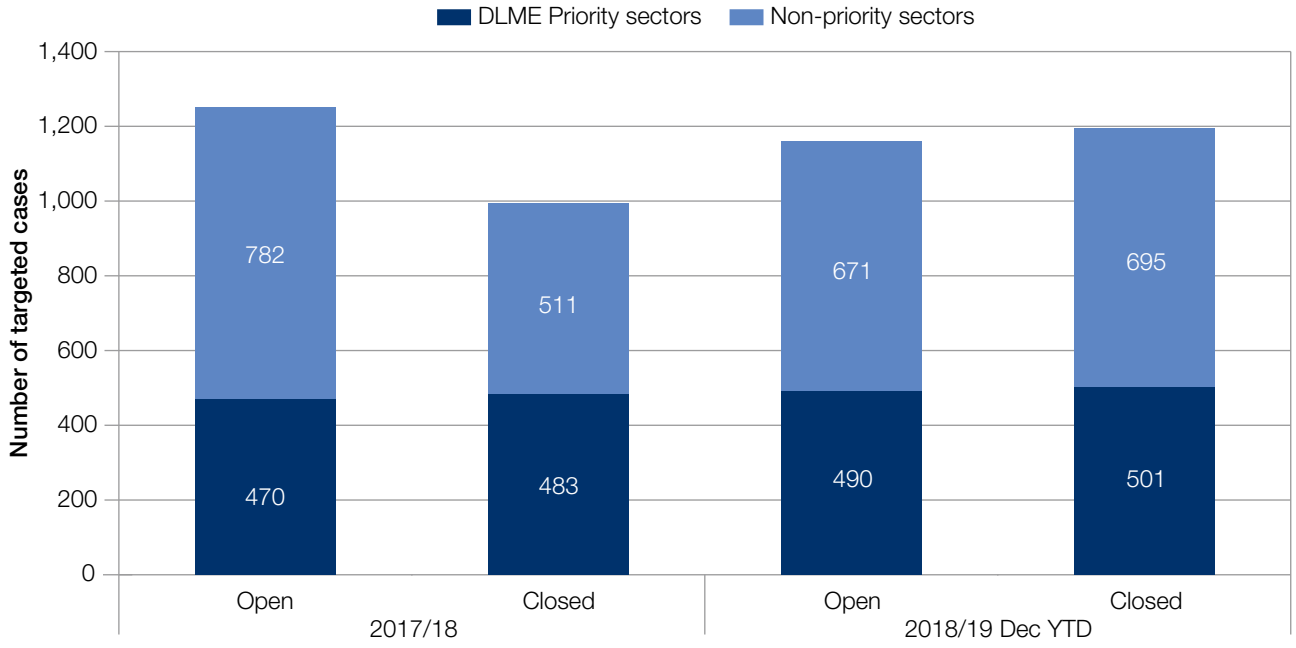
36 Section 2(6) of the Immigration Act 2016 sets out the need to have regard to the Director's Strategy and applies to all three enforcement bodies. In addition to this, Schedule 3 to the Immigration Act 2016 sets out that GLAA must act in accordance with the Director's Strategy.

HM Revenue and Customs National Minimum Wage

The current Service Level Agreement (SLA), discussed in section 3 (Prioritisation of enforcement resources), has a target for at least 50 per cent of new HMRC NMW targeted enforcement activity to be conducted in its ministerial priority sectors listed in Table 18 above. While some of these are distinct from DLME priority sectors, there is also a certain amount of overlap in the 2018/19 period, namely in terms of care and warehouses. As such, I would expect a significant proportion of activity in these sectors by default.

Since the introduction of DLME priority sectors, the total number and proportion of open cases in these sectors[37] has increased with 38 per cent (470) open cases at the end of 2017/18 and 42 per cent (490) open as of December 2018 (see Figure 19). In the hospitality sector, in particular the food (and beverage) service activities sector, the stock of opened cases almost doubled, going from 124 in March 2018 to 227 in December 2018. In the period April to December 2018, HMRC NMW closed more targeted enforcement cases than in the entire 2017/18 financial year, though the proportion of these cases that were in DLME priority sectors is lower than in 2017/18. As these open cases are completed, the proportion of closed cases in DLME priority sectors may well rise in the coming months.

Figure 19: HMRC NMW targeted enforcement in DLME priority sectors, 2017/18 compared to April–December 2018 (2018/19 YTD)



Source: DLME analysis of HMRC caseload information.

Due to the overlap with SLA ministerial priority sectors, I would expect to see HMRC NMW allocating significant resource to targeted enforcement activities in DLME priority sectors, too. The uplift in open targeted enforcement cases in these areas is encouraging, and I am pleased to see that regard has been paid to DLME priority sectors so far this year. I will be interested to see the outcomes of these cases going forward.

EAS targeted enforcement in DLME priority sectors

At the time of writing, EAS does not have specific priority sectors other than those set out in my previous Strategy. It should be noted that some of the DLME priority sectors are GLAA-licensed sectors and, therefore, it may not always be appropriate for EAS to conduct enforcement activity in the agriculture, shellfish gathering or poultry and egg sectors in the first instance. Furthermore,

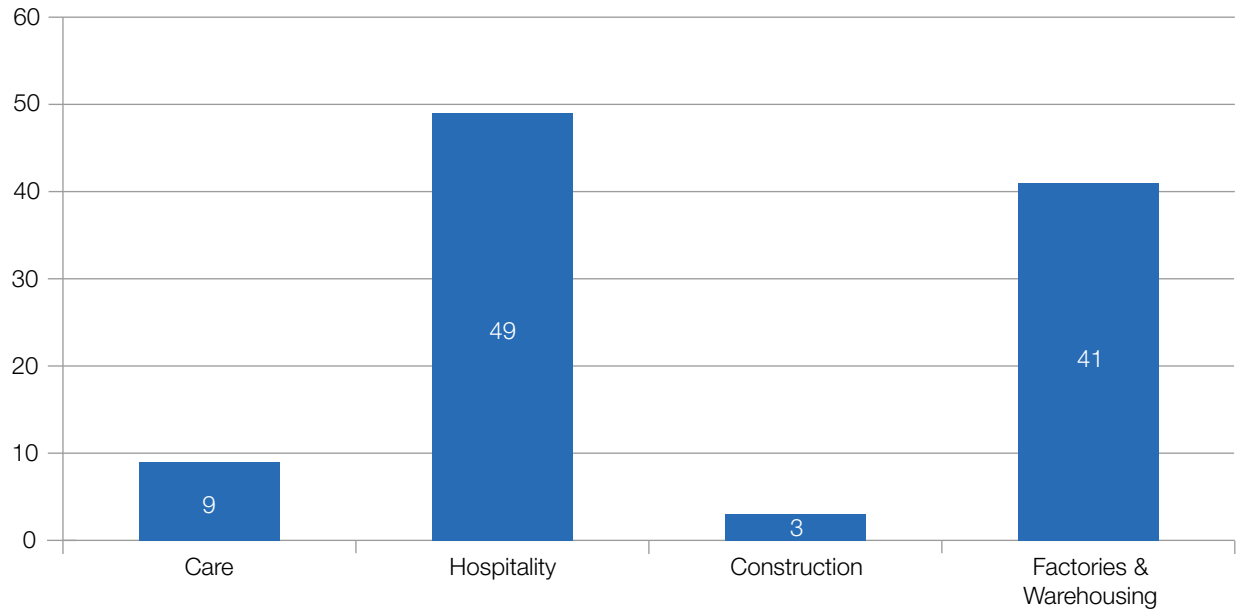
37 Due to the inconsistencies in the classification of sectors, DLME priority sectors have been proxied and, therefore, may not match other published figures.

due to the nature of their remit, it is not guaranteed that EAS will have a role to play in every priority sector. This will of course be determined by the nature of recruitment/labour provision within each sector.

During 2017/18, EAS carried out 145 targeted visits, 70 per cent of which were in the DLME priority sectors agreed in early 2018 (see Figure 20). Hospitality and factories & warehousing equated to 34 per cent and 28 per cent of total EAS visits respectively.[38] Due to EAS planning cycles, activity is scheduled 12 months in advance. As such, the substantial amount of activity in certain sectors cannot be attributed to their inclusion in DLME priority sectors in early 2018. However, the consistency between EAS planned activity and forthcoming priority sectors is encouraging.

Even with its limited resource, EAS continues to allocate significant resource into targeted enforcement activity. However, at the time of writing, data are not yet available for 2018/19, the period following the introduction of DLME priority sectors. It is therefore not possible to draw comparisons with the level of activity in these sectors during the previous financial year. This is something I will revisit in my 2018/19 Annual Report, while also acknowledging the impact of the planning cycle.

Figure 20: EAS targeted enforcement in DLME priority sectors, 2017/18



Source: DLME analysis of EAS caseload information.

Gangmasters and Labour Abuse Authority targeted enforcement in DLME priority sectors

As with EAS, at the time of writing, GLAA did not have a specific set of priority sectors other than those set out in my previous Strategy. GLAA does, however, license three of the nine DLME priority sectors, so it is expected that significant resource would be allocated to the agriculture, shellfish gathering and poultry and egg sectors by nature of their work.

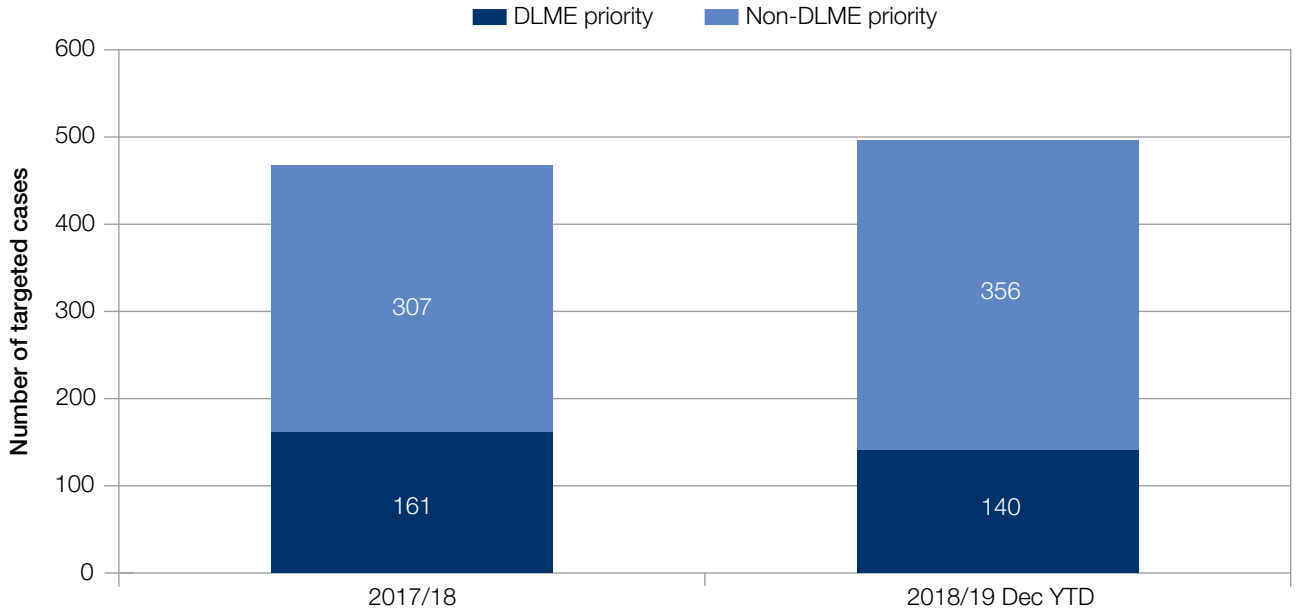
Between April and December 2018, the proportion of GLAA cases tasked in DLME priority sectors[39] fell to 28 per cent from 34 per cent in 2017/18 (see Figure 21). Rather than a reduction in resources being allocated to DLME priority sectors, this appears to have been driven by an uplift in the volume of cases being tasked in other sectors. The volume of non-DLME priority sector cases tasked in 2018/19 had already exceeded the 2017/18 total by December 2018.

38 Due to the inconsistencies in the classification of sectors, DLME priority sectors have been proxied and, therefore, may not match other published figures.

39 Due to the inconsistencies in the classification of sectors, DLME priority sectors have been proxied and, therefore, may not match other published figures.

This appears to be chiefly driven by more than 70 (15 per cent) cases being tasked in 'agency activities' between April and December 2018, while no activity was undertaken in this sector in 2017/18. A proactive approach to intelligence-sharing to improve the efficiency of joint operational activity is a key recommendation of this section and I will be keen to work with EAS and GLAA on the alignment of their operational activity regarding labour providers within my priority sectors.

Figure 21: GLAA enforcement activity in DLME priority sectors, 2017/18 compared to April–December 2018 (2018/19 YTD)



Source: DLME analysis of GLAA caseload information.

Considering the severity of potential labour exploitation cases, I appreciate that GLAA will wish to allocate resources to those cases that pose the highest risk or threat. Where possible, though, I would wish for GLAA to pay regard to DLME priority sectors in its tasking processes.

DLME assessment

Both prior to and since establishing DLME priority sectors, the enforcement bodies have undertaken activity in these areas. As with all enforcement activity, I will evaluate the drivers behind this activity as fully as possible in my 2018/19 Annual Report. Moving forward, I expect the bodies to continue efforts to focus targeted enforcement on DLME priority sectors. Given that the sectors have remained largely consistent with those identified in my 2017/18 Strategy, this should not represent an insurmountable challenge.

In terms of joint working, I have been told of some examples focused on DLME priority sectors. For example, several joint operations in the **hand car wash sector** have been conducted, all identifying NMW breaches. Partners have included GLAA, police and local authorities. Investigations have often arisen as a result of modern slavery allegations or intelligence received by the police and wider partners. Associated issues have included concerns around accommodation, non-payment of workers and risk of deductions as well as links to wider criminality such as money laundering and drug supply. There is, however, more that can be done to align activity and ensure that each agency's resources and powers are utilised in the most effective way.

There seems to be significant overlap in activities being undertaken (by each of the bodies individually), particularly around employment agencies. This is an HMRC NMW ministerial priority sector and 15 per cent of 2018/19 year to date (YTD) cases tasked by GLAA were looking at 'agency activities', which would suggest that joint working/intelligence-sharing between these two bodies with EAS and/or each other could be very beneficial.

To support my aim of better aligning enforcement activity between the bodies within priority sectors, I have recently revised the Labour Market Enforcement Board (LME Board) which will now consider joint working as part of its wider function. This will be supported by two sub-groups: the aforementioned SCG and the Evidence and Analysis Group (EAG). The latter will provide data, information and analyses to the Board. The renewed focus of the Board will be:

- understanding how the enforcement efforts of the three bodies are being utilised to tackle non-compliance in those sectors across the labour market identified in this Strategy at greatest risk of non-compliance; and
- identifying opportunities for joint working between two or more of the enforcement bodies to further help tackle these identified threats and then giving authorisation for such enforcement activity to be undertaken.

Joint working for joint working's sake has never been my aim. Due to the differing challenges within the priority sectors in section 2 (Strategic intelligence assessment), it is not necessary that all three bodies conduct joint operations within each of these sectors. Due to their differing powers and remits, not every priority sector is relevant to all three bodies. Nevertheless, it is reasonable to expect a degree of commitment from the bodies that, for those sectors which do pose a threat within their remit, they will share relevant intelligence and devise a plan to undertake joint action where appropriate to ensure that resources are maximised in those areas.

As such, at the start of each financial year, **I recommend that the bodies and my Office consider how to use the EAG, LME Board and SCG respectively, to identify, agree and facilitate joint activity in the sectors on which the Director recommends the bodies focus. This process should, of course, allow for the fact that not all sectors will be relevant to all bodies.** For example, if the Strategic Intelligence Assessment points towards NMW and modern slavery issues in car washes, then one would expect HMRC and GLAA both individually and via joint working to be prioritising this area. Therefore, a difference in strategic priorities should not be a barrier to joint working in these priority areas.

Joint working tools

I welcome the Government's response to my 2018/19 recommendation that there should be greater use of – and publicity for – prosecutions and LMEU/Os to help increase the deterrent effect. This is an important regime aimed at tackling serious and persistent non-compliance and I am encouraged that the bodies are beginning to use the 'undertaking' element of this power, aimed at preventing further offending. There has not yet been any actionable breach of an undertaking and therefore no need to progress to an order, which can be viewed as a positive.

I am pleased that LMEOs are due to come into force in Scotland in May 2019. Following agreement of the necessary MoU between the enforcement bodies and the Crown Office and Procurator Fiscal Service, I look forward to the enforcement bodies using the opportunity to apply LMEU/Os more widely.

Each of the bodies has developed policies and procedures for the implementation and management of LMEUs, and I recognise that a certain degree of flexibility is required to account for the nuances of individual cases. Nonetheless, there are several steps I would like to see taken to ensure that these tools are exploited to their full potential in the future.

- As is the case for many other aspects of joint working and indeed the wider work of the bodies, we currently lack robust evaluation of the efficacy of LMEU/Os in tackling non-compliance in the long term. I recognise we are still very early in the process of using LMEU/Os, but **I recommend that the three bodies conduct ongoing evaluation of the impact of LMEU/Os, both in terms of immediate outcomes and the longer-term disruption effect.**

- The enforcement bodies are yet to secure any combined LMEU/Os where multiple offences occur across the remit of the three bodies. GLAA is the only body which can coordinate and lead on securing LMEU/Os in England and Wales in such circumstances. With this in mind, **I recommend the bodies establish how best to utilise LMEU/O powers jointly in order to address non-compliance across the whole spectrum of offences.**

5.7 Joint working – wider partnerships

My 2018/19 Strategy discussed the potential benefits of the enforcement bodies developing relationships with established strategic partnerships. Such groups tend to focus primarily on modern slavery and present opportunities to form effective relationships within this remit. It is also important that the bodies form relationships aimed at tackling wider non-compliance. Existing local, regional and national initiatives and anti-slavery networks are also a mechanism for this.

A key assessment in section 2 (Strategic intelligence assessment) is that local, regional and national strategic partnerships have contributed to improved intelligence reporting, operations and increased awareness. This has, in turn, resulted in increased identification of victims of labour exploitation across mainly low-skilled sectors. While this may constitute modern slavery, many instances either do not meet the threshold or such offences cannot be proven.

The case study in Box 16 below demonstrates where exploitation cases will not always meet the modern slavery threshold but may still involve other aspects of labour market non-compliance. **I recommend that the three bodies engage with strategic partnerships and anti-slavery networks**, with particular focus on addressing serious, persistent and deliberate non-compliance.

Box 16: The Hertfordshire Modern Slavery Partnership

The Hertfordshire Modern Slavery Partnership (HMSP) is coordinated by the Shiva Foundation and made up of more than 40 statutory and non-statutory agencies and charities. Operation Tropic, the operational sub-group, shares intelligence across a number of enforcement bodies and conducts welfare visits to follow up on potential modern slavery cases. The enforcement bodies include the police, fire and rescue service, GLAA, DWP, the Environment Agency, Trading Standards, HMRC, Home Office Immigration Enforcement, the NCA and Hertfordshire County Council. They work together relying on whichever of their powers is most appropriate to conduct joint intelligence-led visits.

This approach is working well in Hertfordshire, with joint visits taking place at car washes, restaurants and nail bars. This has resulted in an array of outcomes, including improvement notices, prohibition notices and the registration of employees previously unknown to HMRC and paid less than NMW.

On one occasion, Operation Tropic officers received intelligence that a local restaurant was employing workers who were being exploited; however, there wasn't enough evidence for police to take enforcement action. Officers completed a number of subsequent welfare visits, including one involving HMRC, with whom they had developed a good working relationship. Initially only 12 persons were registered as employed at the premises. Following the joint visit there are now 21 registered employees and the business has been ordered to pay the outstanding tax and penalties imposed by HMRC.

Source: Shiva Foundation response to the DLME's Call for Evidence.

The Office of the Independent Anti-Slavery Commissioner (IASC) and the University of Nottingham have recently completed a collaborative project to map multi-agency anti-slavery partnerships. This remains the most comprehensive overview of these networks and should be a key reference point for the bodies. The work found that the majority of current partnerships focus primarily on

intelligence-sharing, training and community awareness. Overall, they are not yet focusing on wider societal issues such as supply chains (University of Nottingham Rights Lab and the Office of the IASC, 2018). Supply chains may therefore be a mutually beneficial area for the bodies to focus on within such partnerships, particularly noting the recent concerns raised by the EAC in this area. In relation to labour exploitation in UK garment factories, the EAC notes that, as low-end supply chains, garments have become marked by intense cost competition and unstable orders (EAC, 2019b). More broadly, 2016 research into how companies had responded to the Modern Slavery Act found that more than three-quarters of the 71 UK brands and retailers included thought there was a likelihood of modern slavery occurring in their supply chains. Furthermore, supply chain complexity was identified as a key barrier to addressing modern slavery (Hult Research and the Ethical Trading Initiative, 2016).

The DLME Information Hub has continued to develop its relationship with established partnerships and key stakeholders such as those of Greater Manchester, the West Midlands, South Wales, the London Modern Slavery Partnership Board, Discovery – East Sussex and the London Borough of Newham (LBN). Their shared experience has helped us better understand the benefits and challenges of joint working.

During the past year, each of the bodies has built on and established relationships with other state enforcement bodies and third parties. GLAA and HMRC NMW conducted joint operational activity with a range of partners during this period. GLAA has predominantly worked with the police, although there has been a small number of operations with other partners including the NCA, Home Office Immigration Enforcement, HSE, local authorities and the Security Industry Authority (SIA). HMRC NMW has conducted joint visits with the police, Home Office Immigration Enforcement, GLAA, EAS and local authorities.

An example of this has been joint working in the **restaurant/take away sector**. The HMRC NMW Serious Non-Compliance team has worked with HMRC's Fraud Investigation Service and Hidden Economy team as well as GLAA, the police and the Home Office. As a result of numerous referrals relating to the fast food sector, including from the police, Serious Non-Compliance teams instigated and led an operation which resulted in the identification of issues within and beyond the remit of HMRC NMW. This includes finding NMW risks, a licensing breach, large VAT hits for the HMRC Hidden Economy team and tax issues for HMRC Fraud Investigation Service. HMRC officers are still working together on the NMW, VAT and tax issues. The employers have all accepted that the issues exist and calculations of arrears are imminent.

Facilitated through the SCG, the enforcement bodies have also demonstrated effective operational joint working at a national level. Of significance is the activity carried out through Project Aidant. This is the NCA-led series of multi-agency intensification periods concerned with tackling modern slavery which has focused, in part, on improving intelligence collection. However, poor quality responses to intelligence requirements have hampered the ability to form meaningful assessments of the labour exploitation threat. GLAA jointly led Project Aidant phase 11 with the NCA, which represented the UK's contribution to the European Multidisciplinary Platform Against Criminal Threats (EMPACT) Joint Action Days on Labour Exploitation. Numerous community engagement activities took place to help raise public awareness of labour exploitation, including how to identify and report it to the relevant authorities. Some 62 arrests were made, and 111 potential victims identified. Police forces across the UK took part and there was a high level of engagement with partner agencies. Contributions from other government departments were invaluable in achieving operational results. A recurring theme of Project Aidant was that, when arrests were not possible, collaborative working identified other disruption opportunities. For example, the Fire and Rescue Service was able to close houses in multiple occupation as a result of faulty electrics, issues with water supplies or fire risks (NCA Modern Slavery & Human Trafficking Unit, 2018).

Disruption is a concept often applied to serious and organised criminality that sits between enforcement (prosecution) and prevention. While it is action oriented and concentrates on the offender, it aims to achieve more creative and long-term solutions. The process lends itself to the use of partnership intelligence and intervention, allowing for more innovative methods of intervention (Kirby, Northey and Snow, 2015). The benefits of a multi-agency approach to disruption are apparent from existing joint working initiatives. We have, however, heard anecdotally from law enforcement partners that success may lead only to short-term disruption due to the resilience of non-compliant businesses. This is demonstrated by the case study in Box 17 below.

Box 17: Greater Manchester Police case study demonstrating the resilience of non-compliant businesses

A car wash located on a busy arterial road in Greater Manchester had raised concerns over a number of years, including regarding forced labour. A constant stream of Eastern European workers was being financially exploited through unfair pay deductions.

A harm reduction visit took place involving multiple agencies including HMRC, Trading Standards, Greater Manchester Fire and Rescue Service and the Czech police. The owner was subsequently imprisoned for offences unrelated to modern slavery. Responsibility for management of the business was handed to a family member and the exploitative practices have continued: for example NMW issues, lack of contracts and payslips and abuse of self-employed status. There are also a number of other companies operating through this family and associates that raise wider concerns linked to organised criminality. The police and partner agencies have continued to receive complaints and there is a concern that the imprisonment of the owner may actually have increased the level of risk for workers.

Action was taken by HMRC NMW and United Utilities to support one victim in recouping wages owed and to deal with water run-off. While these compliance issues have been addressed in the short term, identifying ways to prevent the owner and associates continuing these exploitative working practices is proving a challenge, even though there are plans to pursue modern slavery charges. With no regulatory framework against which to assess the activity and enable closure of the business for non-compliance, the police are reliant on victim testimony to secure criminal convictions. Given the likelihood of the business continuing under different management, it is difficult to know if the attempted prosecution on modern slavery grounds will have an impact on the behaviour of this business.

I recommend that the three bodies explore how different agency powers can be used collectively to support sustained and long-term disruption of non-compliance, with focus on recidivists and deliberate offenders. This will be particularly important in cases where issues extend beyond the remit of the three bodies and where specialist teams exist. For example, ROCU Disruption Teams use a range of powers and legislation to disrupt serious and organised crime.

5.8 Joint working – Local Authority Partnerships

The potential value of joint working between national and local agencies has been evidenced by the Cabinet Office Better Business Compliance Partnership programme, which found benefits in combining and analysing intelligence as well as well-planned multi-agency visits (DCLG, 2016).

In my 2018/19 Strategy, I recommended the enforcement bodies test joint working relationships with local authorities through local pilots. More specifically, I recommended that the Department for Business, Energy and Industrial Strategy (BEIS) and HMRC NMW work with the London Borough of Newham (LBN) to pilot a new local partnership model of NMW enforcement. In autumn 2018, while developing this Strategy, I visited LBN and observed privately rented

sector enforcement visits. This provided me with valuable insight into the benefits, but also the resource-intensive nature, of joint operational activity. An update on pilot activity is included in Box 18 below, along with an overview of LBN's Data Warehouse which aims to improve services and value for money, including through targeted enforcement.

Box 18: Pilot of joint working: NMW enforcement in Newham

Joint enforcement activity

LBN and HMRC took part in their first joint operations on minimum wage enforcement in December 2018. In this operation, designed to develop how the different teams could work together, LBN provided information on premises, and HMRC used its legal authority to investigate these premises. Nail bars were chosen as a priority area from HMRC. LBN and HMRC are now looking at how learning from this can inform their joint approach.

Data Warehouse

LBN is at the forefront of local authorities using data science and data matching to improve services and deliver value for money. Its in-house-developed software has brought more than 20 of the Council's core systems into a Data Warehouse database.

Predictive models are also produced, facilitating earlier intervention and improving outcomes for residents. For example, on homelessness prevention, LBN can now predict with 83 per cent accuracy who will be accepted with a full duty and can target prevention activity on them. When used by their private rented sector licensing initiative in a joint operations approach, the Council has been able to prosecute more rogue landlords than the rest of London put together (70 per cent).

Newham's Data Warehouse has supported the police and other agencies in conducting operations such as identifying occupants of particular properties, thus assisting the police to tackle gang and serious youth violence. It is also used by the security services to support their counter-terrorism activities and was utilised following the London Bridge attacks.

With sufficient greater sharing of information, the Data Warehouse could significantly enhance NMW enforcement, targeting enforcement action at those exploitative employers most likely to be underpaying.

Initial findings from the pilot and the Data Warehouse highlight two important and linked areas for further consideration: the importance of awareness-raising among local authority inspectors and the value of sharing intelligence.

Understanding of labour market non-compliance among local authority inspectors is key. I am encouraged that HMRC NMW is working with LBN to further upskill inspectors on the signs of non-compliance. From our stakeholder engagement, it is clear that GLAA has also been proactive in raising awareness among local authority inspectors, particularly in relation to modern slavery. However, anecdotally, we have heard that inspectors still do not always have enough awareness of indicators. This may, in turn, impact on the quality and quantity of intelligence collected and shared. **I recommend that the three bodies further engage with local authorities to ensure that their inspectors have the necessary information to identify the signs of non-compliance and the channels through which to share actionable information in return.**

In its response to my Call for Evidence, EAS recognised the benefits of intelligence-sharing partnerships and tools:

> *"EAS is committed to lead by example in sharing information and will continue to forge partnerships that mitigate this threat. EAS has supported the Health and Safety Laboratory to create a Regulatory Intelligence Hub under the regulatory futures project."* EAS response to the DLME's Call for Evidence

The LBN Data Warehouse tool demonstrates the benefits of such an initiative at the local level. Engagement with such initiatives would aid the bodies in developing their understanding of the extent to which offences within their remit occur alongside other violations and where non-compliance is deliberate, in line with my recommendation earlier in this section. At the national level, the Regulatory Futures Review recommended that regulators form a working group to explore the feasibility, scope and funding mechanism of a Regulatory Intelligence Hub (RIH), (Cabinet Office, 2017). This is a proposed change programme that aims to deliver more cost-effective regulation through sharing of best practice and guidance, data-sharing and coordination of intelligence. HSE has since produced a report detailing the business requirement as well as key benefits and impacts. HSE has outlined the key potential benefits of the RIH. Appropriate cross-government sharing of regulatory data would allow for more effective risk- and evidence-based interventions. This would, in turn, improve efficiency and targeting of regulatory activity. The RIH may help to improve issues discussed earlier in this Strategy, namely the cost-effectiveness of operational activity, and reduce the burden on compliant businesses (HSE, 2017). While funding for the RIH is yet to be secured, this programme may present future opportunities for joint working with the LME bodies at a national level. I therefore very much support this work as and when resources are available.

In Part Two of this Strategy (Sector Studies) I explore further the importance of joint working with local authorities in specific sectors. In doing so, **I recommend that the three bodies work more closely with local authorities to tackle labour market non-compliance and exploitation, particularly in those sectors not within HSE's enforcement remit, such as warehousing.**

5.9 Sector-specific partnerships

Health and education

In our Call for Evidence, we have also seen evidence of sector-specific joint working. For example, as described in Box 19 below, SAFERjobs and EAS are collaborating to create the first Association of Compliance Organisations (ASCOR) to tackle non-compliance in the education and healthcare sectors. I look forward to seeing how this work develops and impacts upon non-compliance in these sectors.

Box 19: Protecting vulnerable workers in the education and healthcare sectors

The ASCOR is in the process of being established by SAFERjobs in collaboration with EAS to protect vulnerable non-permanent workers in the education and healthcare sectors. It aims to bring together key compliance and worker rights organisations to collaboratively tackle non-compliance. By collaborating and sharing intelligence this should:

- lead to increased intelligence for the regulator (EAS), in turn leading to greater enforcement activity resulting in a levelling of the playing field;
- input into joint policy to improve safeguarding, ethical recruitment and practices within the sector; and
- lead to joint activity such as referring non-compliance to the Department for Education (DfE) framework, therefore increasing the consequences.

Seafarers

During our Call for Evidence, the National Union of Rail, Maritime and Transport Workers (RMT) raised specific concerns around enforcement of employment rights for seafarers. Key issues highlighted were lack of guidance and understanding as well as issues with information sharing between the enforcement bodies and MCA inspectors. I was invited to visit the MCA during development of this Strategy to understand more about their role as a regulator in this sector and in particular how effective joint working currently is.

Many of the concerns raised by the RMT will be addressed by the proposed legislative amendments concerning NMW and seafarers in April 2020. In November 2017, the Department for Transport (DfT) chaired a Legal Working Group on the NMW and Seafarers, proposing a number of recommendations for government to amend the legislation. The legislative amendments are provisionally planned for summer 2019 and are set to come into force alongside the planned NMW rise in April 2020. This aims to be the first step in affording seafarers the same protections as workers on land and will mean that workers on vessels registered outside the UK and non-UK workers would be entitled to payment at the NMW rate, if they are ordinarily working within the UK's territorial waters (i.e. travelling to a UK port or making a journey within these waters).

With regards to joint working, the Maritime and Coastguard Agency (MCA) currently routinely shares details of potential NMW cases with HMRC. I was pleased to hear that this process seems to be working effectively, although only a small proportion of cases currently dealt with by MCA qualify for NMW. This will likely increase with the proposed legislative amendments coming into force in April 2020, which will apply to approximately 9,000 seafarers. This is a clear example of why it is so important for the enforcement bodies to promote and advertise all changes to the regulations and guidance, as recommended in section 4 (Helping employers get it right), ensuring that both employers and workers are aware of their responsibilities and rights.

More broadly, I heard about the crucial role the National Maritime Information Centre (NMIC) plays in facilitating joint working between relevant partners. The NMIC facilitates maritime information and intelligence-sharing between a range of relevant government departments and agencies, including GLAA and HMRC. This is a valuable forum through which the bodies can build their intelligence picture, formalise relationships and participate in coordinated joint operational activity. It will play an even more important role with the introduction of the aforementioned legislative changes regarding seafarers.

Recruitment

In response to the Call for Evidence for this Strategy, SAFERjobs suggested that joint working should focus on online recruitment, recruitment agency non-compliance and new methods of recruitment/fissuring of the supply chain. These issues reflect the changing nature of recruitment in the UK labour market as well as wider questions around the remit of EAS. In section 3 (Prioritisation of enforcement resources), I have already noted the prevalence of online recruitment scams and the partnership work being undertaken in response to this, along with further recommendations for tackling this issue. I have also recommended a review of the threat to labour hire compliance from online recruitment/app-based recruitment and a review of the legislation underpinning employment agencies/businesses. While I do not make any further specific recommendations, joint working will no doubt play a crucial role in future work within this remit.

5.10 Evaluation of joint working

In section 3 (Prioritisation of enforcement resources), I highlighted steps taken to address the need for monitoring and improvement across the three bodies. This is also directly relevant when considering joint working at the operational or project level, both between the three bodies and with wider partners. Assessment of the effectiveness of joint working is limited by the current lack of robust evaluation. While I very much support joint working, I understand the bodies' concerns that it must be justified. Its impact is often difficult to assess, and benefits may not always be immediately apparent. During my Call for Evidence, HMRC stated that joint activity led to mixed outcomes, highlighting that it was more labour intensive in the planning stages but that sharing the associated risks is beneficial.

Such issues are not exclusive to labour market non-compliance. The IASC and University of Nottingham project echoes concerns regarding impact, finding little reference to measurement of outputs or outcomes from partnership work. Similarly, a study on the emergence and effectiveness of disruption in tackling serious and organised crime found that while practitioners overwhelmingly supported the method and were themselves convinced of its impact, more substantive quantitative assessment was not possible (Kirby, Northey and Snow, 2015). **The bodies should therefore conduct robust evaluation of joint working in order to understand the value of such initiatives and where intelligence and operational resources can be best utilised in further work.**

As stated throughout this section, I would like the bodies to focus specifically on the following:

- conducting a full evaluation of the Leicester garment industry compliance pilot, with particular focus on its scalability to inform nationwide enforcement within the textiles industry;
- establishing success criteria at the start of operational activity, evaluating immediate outcomes through processes such as multi-agency debriefs as well as monitoring the longer-term disruption effect; and
- in due course, evaluating the process and impact of LMEU/Os, both in terms of immediate outcomes and the longer-term disruption effect.

While evaluation of joint working is a matter for the enforcement bodies, my Office no doubt has a role to play in setting standards and expectations. The collective understanding gleaned from operational activity will also be vital in directing focus on priority sectors.

Box 20: Using joint working to tackle more serious and persistent non-compliance in the labour market – summary of recommendations

9. I recommend that the three enforcement bodies review existing intelligence processes and legal gateways in order to adopt a more proactive approach to intelligence-sharing and to improve the efficiency of their joint operational activity.

a) I recommend that the three bodies and sponsor departments review the joint working Memoranda of Understanding as a priority to ensure that the intelligence flow and subsequent tasking processes are operating as effectively as possible.

b) I recommend that intelligence-sharing between GLAA and EAS is improved as a matter of priority.

c) I recommend that HMRC should consider how to better identify relevant intelligence at the start of the intelligence triage process in order to optimise opportunities for targeted enforcement.

d) I recommend that the three bodies develop an understanding of the extent to which offences within their remit occur alongside other violations and where non-compliance is deliberate. This will involve further developing of relationships with law enforcement and other government departments in order to identify and access relevant data sources.

e) I recommend that the bodies proactively share information on Labour Market Enforcement Undertakings/Orders with the Insolvency Service in order to inform their targeting decisions and potentially streamline their investigations.

10. The three enforcement bodies and sponsor departments should work with my Office to align activity within the DLME-defined priority sectors, consider how best to use shared powers and improve strategic understanding of threat, risk and harm.

a) I recommend that the bodies and my Office consider how to use the Evidence and Analysis Group, Labour Market Enforcement Board and Strategic Coordination Group respectively to identify, agree and facilitate joint activity in the sectors on which the Director recommends the bodies focus. This process should, of course, allow for the fact that not all sectors will be relevant to all bodies.

b) I recommend that the bodies should establish how best to utilise Labour Market Enforcement Undertaking/Order powers jointly in order to address non-compliance across the whole spectrum of offences.

11. The three enforcement bodies should consider how they can engage further in joint working with wider partners, with particular focus on recidivists and deliberate non-compliance.

a) I recommend that the three bodies engage with strategic partnerships and anti-slavery networks.

b) I recommend that the three bodies explore how different agency powers can be used collectively to support sustained and long-term disruption of non-compliance, with focus on recidivists and deliberate offenders.

c) I recommend that the three bodies further engage with local authorities to ensure that their inspectors have the necessary information to identify the signs of non-compliance and the channels through which to share actionable information in return.

d) I recommend that the three bodies work more closely with local authorities to tackle labour market non-compliance and exploitation, particularly in those sectors not within HSE's enforcement remit, such as warehousing.

12. I recommend that the three enforcement bodies conduct robust evaluation of joint working in order to understand the value of such initiatives and where intelligence and operational resources can be best utilised in further work.

a) I recommend a full evaluation of the Leicester pilot in order to understand what works and whether this is a good model for elsewhere.

b) I recommend that the three bodies establish success criteria at the start of operational activity, evaluating immediate outcomes through processes such as multi-agency debriefs as well as monitoring the longer-term disruption effect.

c) I recommend that the three bodies conduct ongoing evaluation of the impact of Labour Market Enforcement Undertakings/Orders, both in terms of immediate outcomes and the longer-term disruption effect.

Part Two

6. Sector studies: warehousing and hospitality

6.1 Introduction

As set out in section 2 (Strategic intelligence assessment), both the **warehousing** and **hospitality** sectors were identified as high-risk sectors in my 2018/19 Strategy. As these sectors were not addressed by specific recommendations in my last Strategy, I chose to conduct a 'deep-dive' into these areas for this iteration. In addition to the three cross-cutting themes considered already, the Call for Evidence posed specific questions about non-compliance within these sectors. During this period, I also engaged with stakeholders, which included hosting three sector-specific roundtables with representatives from business, trade unions and government to further inform my understanding.

Moreover, to further understand the scale and nature of non-compliance within the warehousing and hospitality sectors, my Office commissioned independent research into the hotels, restaurant and food service sector (hereafter collectively referred to as 'hospitality') and the warehousing sector to supplement the stakeholder engagement. The aim of the research was to provide a better understanding of how the UK warehousing (IFF, 2019a), hotels (López-Andreu, Papadopolous and Jamalian, 2019) and restaurant (IFF, 2019b) sectors have been affected by the fissuring of the worker–employer relationship in the last 10 years.

These research projects consisted of:

- a review of the existing data and literature to ascertain the characteristics of and trends within the sectors; and
- primary qualitative interviews with a variety stakeholders and workers from each sector.

These research papers are published in full alongside this Strategy. This section, therefore, reports on the scale and nature of non-compliance within the warehousing and hospitality sectors, outlining the evidence drawn from the commissioned research, stakeholder evidence, and analysis of open source data and wider available literature. This research informs and builds upon the intelligence my Office receives through the Information Hub to assess the scale and nature of non-compliance in these sectors. Prior to these projects being undertaken, there was limited available research focusing on these issues in these sectors. As such, this commissioned research has proven a valuable addition to the evidence base, and I am grateful to the researchers who undertook this work.

6.2 Warehousing

The UK warehousing sector is expanding, potentially affecting conditions for workers. As a labour-intensive industry reliant on flexible workers, many of whom may be migrants, the volume of potential breaches and affected individuals could be high.

Box 21: Issues identified in the warehousing sector

Pay and Conditions:

- Not being able or allowed to take breaks
- Not being paid for all hours worked
- Late payment of wages
- Lack of appropriate equipment
- Lack of space to conduct work safely
- Lack of clarity or provision of written contracts

Broader issues:

- Lack of awareness of rights
- Lack of awareness of complaint channels

Source: IFF (2019a).

Background

Within standard industry classifications, the warehousing sector falls under 'transportation and storage activities' but is increasingly typified by distribution centres for retailers. In my 2018/19 Strategy, the 'factories and warehousing' sector was identified as being particularly at risk of labour exploitation. Though there is some overlap in the risks involved between these industries, for this exercise, warehouses and the specific associated threats were considered in isolation.

Using the SIC 2007 codes,[40] this section presents a detailed look at the four-digit SIC 5210 'Warehousing and storage' or the broader grouping of SIC 52 'Warehousing and support activities for transportation' where the additional granularity is not available.

In comparison to some of the other at-risk sectors identified in 2018/19, the warehousing sector is one of the smaller ones. In 2018, the warehousing and storage sector consisted of 11,700 enterprises (businesses) and 15,800 local units (sites),[41] accounting for less than 1 per cent of firms/sites in the UK (ONS, 2018d). That said, the relatively recent growth in online retail has contributed to a rapid expansion in the sector, with the number of warehousing and storage enterprises more than quadrupling from 2010 to 2018.

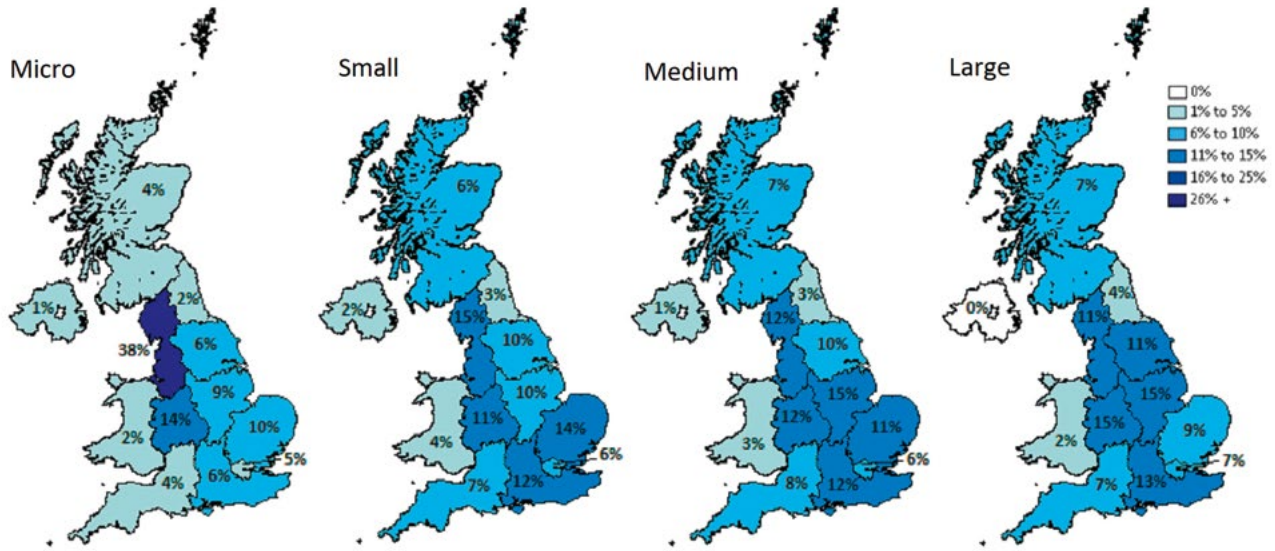
AMA Research (2014) intimated that the trend towards online retailing in the UK is *"leading to a significant structural change in the warehouse sector, with a two-tier market becoming established which combines smaller distribution centres close to urban markets supported by remote and larger distribution centres purely for internet sales"*. This is supported by the proportion of micro warehousing and storage sites (i.e. those with up to nine employees) based in

40 The UK Standard Industrial Classification 2007 (ONS, n.d.) is a hierarchical classification system grouping business establishments and other statistical units by the type of economic activity in which they are engaged.

41 An **enterprise** can be thought of as the overall business, made up of all the individual sites or workplaces. It is defined as the smallest combination of legal units (generally based on VAT and/or PAYE records) that has a certain degree of autonomy within an enterprise group. A **local unit** is an individual site (for example, a hotel) associated with an enterprise. It can also be referred to as **workplace**.

the North West rising from 10 per cent in 2010 to 38 per cent in 2018, while 30 per cent of large warehousing and storage sites (i.e. employing more than 250 members of staff) were located in the Midlands in 2018 (see Figure 22) (ONS, 2018d).

Figure 22: Share of 'warehousing and storage' local units by UK region and size, 2018



Source: ONS (2018d).

Fragmented employment models

The retail sector dominates the warehousing industry, and its seasonal fluctuations in demand, for example around Christmas and the January sales, drive a need for flexibility in the warehousing workforce (IFF, 2019a). Moreover, IFF Research identified a relatively high incidence of employment agencies being used to recruit in the warehousing sector, and that the use of non-standard contracts is disproportionately high. Indeed, the Union of Shop, Distributive and Allied Workers (USDAW) in its evidence suggested that some warehousing sites now have as many as 40–50 per cent of their staff on agency contracts. The use of agencies may provide security to employers that require a flexible supply of labour, but this does not necessarily ensure protection for the workers. For example, Berry-Lound, Greatbatch and Tate (2015) suggest that some forms of employment agency provisions – particularly the Swedish Derogation – are used to undercut the wages of permanent staff across sectors in the UK. As was discussed in my 2018/19 Strategy, abuse of the Swedish Derogation can lead to agency workers receiving a much lower hourly rate than permanent staff, which may put these temporary staff at a higher risk of National Minimum Wage (NMW) underpayment. **I welcome the Government's commitment to abolish it** (BEIS and Home Office, 2018).

It is suggested that the fissured nature of the employment relationship in this sector, for example through the use of agencies, makes it difficult to identify who is responsible for upholding employment rights and with whom workplace issues should be raised. As noted in my 2018/19 Strategy, this is exacerbated by the presence of intermediaries and umbrella companies, which create further distance between the end user and the worker, and enables them to avoid their responsibilities as an employer, both financially and with regards to other worker rights.

Though not limited to the warehousing sector, throughout the Call for Evidence I heard examples of agencies illegally charging job-finding fees and fees for fraudulent jobs and training.

> *"Fake websites are created that lure people into paying certain fees – such as for a CV to be rewritten, a police check, to register etc. Someone pays via paypal and that is it."*

> *"Pay for DBS check [criminal record check for England and Wales] scams are prevalent in the warehousing sector. Commonly this occurs by applicants responding to fake job adverts online, warehousing is targeted by fraudsters as barriers to applying are low (such as experience, qualifications, etc) and fraudsters hope to get as wide an application base as possible."* SAFERjobs response to the DLME's Call for Evidence

I am encouraged by the good work being undertaken by SAFERjobs and partners to tackle fraudulent activity in the online employment agency sector and I have considered this issue further in section 3 (Prioritisation of enforcement resources).

Sector pay and conditions

As this sector continues to grow, so too does the cost pressure exerted upon firms through their long supply chains. IFF (2019a) posits that the dominance of major retailers is putting pressure on the warehousing sector, creating a competition-driven cost-cutting business environment. Though technology has led to some improved efficiencies in the sector, warehousing is still a sector reliant on labour; as such, some firms are applying retrenchment measures among their workforce. For example, Newsome et al. (2018) highlight an example where an employer avoided the cost burden of personal protective equipment (PPE) by making workers pay for such items; a story which was echoed by Unite in its response to our Call for Evidence, and in discussions with Employment Agency Standards (EAS) as part of our research for this sector.

> *"A decline in earnings has been forced by non-unionised companies entering the market with significantly lower pay rates and commencing 'a race to the bottom' in many areas."* UNITE response to the DLME's Call for Evidence

Furthermore, as is the case with other high-risk sectors, IFF (2019a) found evidence to suggest that some warehousing sites are being established to take advantage of the relatively low wages in high unemployment areas, in which employers can exploit the availability of staff who may be more willing to accept low wages. Moreover, there is evidence of a disproportionately high number of migrant workers being employed in the sector (CBI, 2018), which might represent a lower cost pool of labour compared with the cost of employing UK nationals (Sporton, 2013).

On the face of it, price competition has not led to drastically lower wages. The median hourly wage in the UK warehousing and storage sector was £11.78 for full-time workers (see Table 19) in 2018, which was closer to the median hourly wage across the UK economy than the National Living Wage (NLW) at the time (£7.83 for those aged 25 and over). As such, the warehousing sector would not be considered a low-paying sector by the Low Pay Commission's (LPC's) definition.[42] This would support the Office for National Statistics' Annual Survey of Hours and Earnings (ASHE) 2018 estimates which suggest that only around 1.5 per cent of jobs in 'warehousing and support activities for transportation' were underpaid minimum wage, in line with the estimated 1.6 per cent underpayment across all sectors (ONS, 2018b).

Table 19: Gross hourly pay for full- and part-time workers in the warehousing and storage sector and at the UK median, 2018

	Hourly pay (including overtime)		
	Sector 10th percentile	Sector median	UK median
Full-time	£8.36	£11.78	£14.37
Part-time	£7.83	£9.24	£9.35

Source: ONS (2018c).

42 The Low Pay Commission's autumn 2017 report defines a low-paid job as being paid up to five pence above the NLW rate (LPC, 2017: 70).

Based on the above evidence, it may seem contradictory that 'retail/commercial warehouses' were identified as a priority sector for HM Revenue and Customs (HMRC) NMW in the 2017/18 Service Level Agreement (SLA). However, Mulholland and Stewart (2014) indicated that newly hired staff in warehousing were receiving lower pay than the existing workforce, with the discrepancy being associated with overtime and unsocial hours pay premia.

> *"For those on permanent contracts, long standing employers have grandfathered 'first generation' contracts and replaced these with contracts offering lower terms and conditions. At the same time many workers entering the industry are struggling to access permanent contracts and are instead trapped on agency provided Pay Between Assignment contracts."* USDAW response to the DLME's Call for Evidence

Moreover, the evidence of unpaid time described in IFF (2019a) coupled with any deductions in pay (such as for PPE) could potentially lead to NMW underpayment in the warehousing sector. For example, in its response to my Call for Evidence, Unite stated that workers at a Sports Direct owned warehouse[43] were found to not be receiving NMW due to lengthy, unpaid security searches and disproportionate deductions to wages for lateness. This case also led to the associated employment agencies being named by the Department for Business, Energy and Industrial Strategy (BEIS) for breaching NMW regulations.

> *"Thousands of workers at Sports Direct's Shirebrook warehouse in Derbyshire received back pay totalling an estimated £1 million for non-payment of the minimum wage. This covers workers directly employed by Sports Direct and those employed through employment agency The Best Connection."* Unite response to the DLME's Call for Evidence

That said, few warehousing firms themselves have been subject to BEIS' naming policy – the July 2018 round named three employers in the sector. According to HMRC figures, in the period April to November 2018, less than 13 per cent of cases undertaken by HMRC NMW in this sector led to the identification of arrears for workers. However, as stakeholder evidence detailed above would suggest, non-compliance seems to be rather more prevalent among the employment agencies and labour providers operating within the warehousing sector. In its worker interviews, IFF (2019a) found that junior staff on flexible or agency contracts more frequently reported not being paid for their hours worked; and, during the Call for Evidence, many stakeholders indicated their frustration at hours being recorded incorrectly, leading to underpayment or non-payment of overtime. I welcome the Government's commitment to introduce hours and/or hourly pay to payslips as of April 2019, as this transparency may increase workers' awareness of potential breaches.[44]

Improving awareness

> *"The rules around holiday pay are unclear for temp and agency workers. They can work weeks and not take holiday but are entitled to claim the amount of pay they would have received as holiday at the end of this as a lump sum. If they don't have awareness of this [fact] they won't request it, so won't get it."* Recruitment & Employment Confederation (REC) response to the DLME's Call for Evidence

43 The House of Commons Business, Innovation and Skills Committee reported that: *"workers at Sports Direct's warehouse in Shirebrook are not directly employed by Sports Direct, but are employed by two agencies, The Best Connection and Transline Group. Their representatives appeared before the Committee and gave woefully poor, and in some cases, incorrect, evidence. For Sports Direct to pay £50 million to agencies that do not seem to have a basic understanding of employment law and practices seems irresponsible, if not reckless"* (House of Commons Business, Innovation and Skills Committee, 2017: 3).

44 This is planned through the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 (intended to come into force April 2019) which amends section 8 of that Act to require employers **to include the number of hours employees are being paid on their payslips**, where pay varies by reference to time worked. When the order on payslips for workers comes into force, time-paid workers will by extension receive the number of hours on their payslips.

The lack of awareness of worker rights is likely exacerbated by the disproportionately large migrant population working in this sector, some of whom may not have much knowledge of their rights in the UK or the English language skills to fully understand them. Nevertheless, whether UK citizens or migrant workers, IFF Research (2019a) found some evidence that, even among those warehousing workers that believed they knew their rights, many were not wholly informed or, in some cases, had suffered breaches without realising.

Though the 'transportation and storage' sector had higher than average private sector trade union membership in 2017 (35.6 per cent compared to 13.5 per cent in the UK private sector), more than a third of workplaces in the sector did not have any union representation (BEIS, 2018c). Even when staff did have a voice, it was not necessarily heard. Trade unions in the sector noted that workers that were aware of a breach did not always have access to or an awareness of the channels through which they could complain.

IFF (2019a) also uncovered limited awareness of external agencies, including the Gangmasters and Labour Abuse Authority (GLAA), EAS, and the sector's relevant trade unions. Workers interviewed had typically heard of Citizens Advice and the Advisory, Conciliation and Arbitration Service (Acas). The preference for resolution among the workers interviewed by IFF Research was internal channels and would only consider these advisory routes if they were unable to resolve the issue with their employer first.

Improving enforcement

There is some evidence of a reluctance to complain even when a breach is identified by workers. IFF (2019a) interviewed workers who suggested they would only contact external agencies when dealing with what they considered more serious issues, such as harassment, rather than concerns around, for example, underpayment. Furthermore, many of these workers were reluctant to raise issues at work for fear of retributive actions. IFF (2019a) suggested that, due to the nature of the work, many see the warehousing sector as an 'employer of last resort', particularly younger workers in the UK (UKWA, 2018). In this way, it may be that those who are working in the sector have fewer employment options and are subsequently more concerned about the risk of reprisal for complaining about their employer. Rather than being forced to take fewer hours or, indeed, to lose their job, the evidence from IFF Research suggests that workers in the warehousing sector might instead choose to temporarily accept the low pay or poor conditions until they can secure employment elsewhere. Consequently, the employer faces no real penalty for non-compliance and the issue is simply passed on to the next generation of staff.

Box 22: Warehousing case study 1

John – warehouse worker – zero-hours contract

John is 53. He experienced a breach in his previous role 4-5 years ago. His previous role was as a picker/packer in a large retail warehouse. He found the job through an agency and was put on a zero hours contract.

Not very long after starting work at the warehouse the supervisors/managers would frequently ask if John and other colleagues could take their breaks later as they were behind schedule. This would mean that John could be working up to 8 hours before having any break at all.

John always agreed to take his break later as he was very concerned that the supervisors/managers could decide to stop giving him hours. He was most concerned about the impact on his family if their only income significantly decreased or stopped all together. These concerns stopped John from speaking to anyone about this issue.

Source: IFF (2019a).

This fear of reprisal appeared to be particularly pronounced among agency workers and has been noted by a number of stakeholders. The precarious position of agency workers further discourages them from complaining about non-compliance.

> *"The problem is if you're an agency worker you don't want to cause a fuss. A lot of times people won't report stuff in fear that it will affect them."* Male, 42, picker (IFF, 2019a)

As well as the aforementioned NMW risks, potential Agency Worker Regulations 2010 (AWR) breaches are also a serious threat within the warehousing sector. In 2017/18, 18 per cent (251) of EAS cases were connected to the warehousing/'industrial' sector, identifying 112 infringements between them (EAS, 2018). Stakeholders noted an array of AWR-related non-compliance in the sector, including charging for equipment and training; failure to notify workers of health and safety issues; and charging work-finding fees.

Furthermore, of those respondents who were aware of the enforcement bodies' remits, stakeholders questioned why the responsibility for labour providers is split between two bodies, which is apparent in this sector.

> *"The boundaries between GLAA and EAS do not always seem completely clear. The EAS is the regulator for all recruitment agencies in all sectors, yet the GLAA have responsibility for recruitment agencies in certain sectors, why is this? Should EAS not lead on all recruitment companies in all sectors and take intelligence from the GLAA about the recruitment sector?'* SAFERjobs response to the DLME's Call for Evidence

Specifically, concerns were raised regarding labour providers with revoked GLAA licences being allowed to continue to supply workers to companies (including warehouses) in non-licensed sectors. Although it is unfair to assume that a labour provider with a revoked licence would automatically breach AWR/NMW in non-licensed sectors, it would seem sensible that this information be shared with EAS in order to inform their own risk assessment and possible enforcement visit, as explored in more detail in section 5 on joint working.

Working with wider enforcement partners

Although not within the Director's remit, there may be justification for joint working within the warehousing sector in connection with health and safety. As noted, health and safety compromises may be seen by some unscrupulous employers as an easy cost-cutting measure within this sector. In some cases, workers are footing the bill while other workers simply go without the appropriate protection.

Box 23: Warehousing case study 2

Leo – warehouse picker – permanent contract

Leo is 42 and has been working in the Warehousing industry for 22 years. He has worked for his current employer in a Warehouse for a supermarket chain for 4 years, after being made redundant from his previous role. He is employed directly and works full-time.

He reported having various concerns about health and safety. In particular, he said that there was not enough space for forklift trucks to move around safely due to narrow aisles, walkways were not marked, and truck drivers did not use their horns. Near misses were a regular occurrence and one woman had been injured by a forklift truck collision this year. The respondent had not raised this issue. Some of his colleagues had experienced issues with not being paid on time; this was after the company switched to an online payslip system which was controlled externally. This also affected some employees' pension contributions; these employees received letters from their pension provider and discovered that contributions were not being made. The respondent did not know whether they had raised this issue.

Source: IFF (2019a).

Considering the physical nature of the sector, this finding was particularly worrying, and is echoed by the House of Commons Business, Innovation and Skills Committee's own research which noted *"disturbing evidence on health and safety conditions at the Shirebrook warehouse"* and led the Committee to conclude it was:

> *"concerned at the number of RIDDOR*[45] ***cases, the number and frequency of ambulance visits to Shirebrook warehouse, and the personal testimonies*** *recounting health and safety breaches. We invite Mr Ashley and the [employment] agencies to review the health and safety provisions in the warehouse, to ensure that workers' health and safety are not put at risk as a result of working for Sports Direct, and to report back to us with their findings. We also encourage Bolsover District Council and the Health and Safety Executive to take a more active role in overseeing that health and safety provisions are being correctly adhered to."* House of Commons Business, Innovation and Skills Committee (2017)

Depending on the main activity carried out on the premises, health and safety legislation in Great Britain is enforced either by the Health and Safety Executive (HSE) or one of more than 380 local authorities. In the case of warehousing, it is local authorities that have primary responsibility for health and safety enforcement. With health and safety issues often being symptomatic of wider non-compliance**, I would refer to my recommendation in section 5 on joint working that the labour market enforcement bodies look to work more closely with local authorities to tackle this sector.**

45 RIDDOR refers to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.

6.3 Hospitality

Box 24: Common issues identified in the hospitality sector

Pay and conditions:

- not being able or allowed to take breaks;
- not being paid for all hours worked;
- late payment of wages;
- lack of clarity or provision of written contracts; and
- underpayment of NMW/NLW due to:
  - unpaid overtime, including inaccurate recording of hours by managers, or pay-per-task rather than hours worked (so-called piece rates); and
  - employer error around the current rate of and/or eligibility criteria for minimum wages in the UK.

Broader issues:

- lack of awareness of rights; and
- lack of awareness of complaints channels.

Sources: IFF (2019b); López-Andreu, Papadopoulos and Jamalian (2019)

Background

The hospitality sector encompasses a myriad of service industries but there is a preponderance of hotels, restaurants and catering within it. In the 2018/19 Strategy, this sector was identified as being 'at-risk', with particular regard to NMW non-compliance. This risk remains consistent in the latest strategic assessment, though this work also identified a growing threat of exploitation among vulnerable workers, up to and including modern slavery indicators. These threats were noted across the hospitality industries, though were especially pronounced in hotels and restaurants.

In this section, I present a detailed look at the key threat areas of hotels and restaurants. These two industries are inextricably linked within the hospitality sector, and so some information presented covers the broader HORECA[46] sphere. This has broadly been defined using SIC 55 (Accommodation) and SIC 56 (Food services) in combination.

Hospitality is one of the largest sectors identified in the DLME Strategic Assessment. It was comprised of more than 153,100 enterprises (businesses/firms) and 198,700 local units (sites)[47] in the UK in 2018 (ONS, 2018d). This accounts for approximately 6 per cent of firms and 7 per cent of sites in the UK.

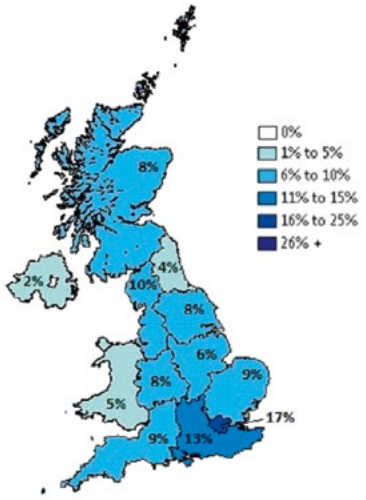
46 HORECA is an abbreviation for the food service industry covering the hotel, restaurants and catering sector. This is defined by Section H of the European Union's NACE system Rev. 1 which classifies economic sectors. There are a number of classifications within this, such as canteens, bars, hotels, etc. https://osha.europa.eu/sites/default/files/publications/documents/en/publications/e-facts/efact21/E-fact_21_-_Introduction_to_the_HORECA_Sector.pdf

47 An **enterprise** can be thought of as the overall business, made up of all the individual sites or workplaces. It is defined as the smallest combination of legal units (generally based on VAT and/or PAYE records) that has a certain degree of autonomy within an enterprise group. A **local unit** is an individual site (for example, a hotel) associated with an enterprise. It can also be referred to as **workplace**.

Food services dominate, covering 89 per cent (176,500) of hospitality local units compared to the 11 per cent (22,200) of local units in the hotel industry. Due to their nature, food service sites tend to be smaller than their hotel equivalents, with 70 per cent of restaurants having up to nine employees in the UK in 2018 and only 0.1 per cent being considered large sites (more than 250 employees). In contrast, hotel sites had a disproportionately high concentration of larger sites: 10 per cent of hotel sites had more than 50 employees, compared with only 3 per cent of local units across UK sectors (ONS, 2018d)

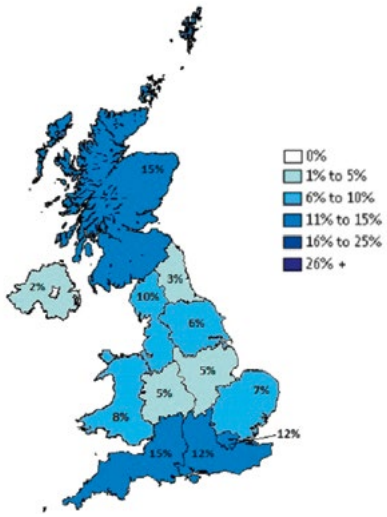
In 2018, around 17 per cent of food service sites were located in London, with the South East and the North West accounting for another 13 per cent and 10 per cent of local units, respectively (see Figure 23a). The concentration of sites in London is more pronounced among large local units: 35 per cent of food service sites with more than 250 employees were located in the capital. Similarly, the hotel sector also has a distinct London skew, with almost half of all large hotel sites being based in the capital despite only 12 per cent of total hotel sites being located there (see Figure 23b).

Figure 23a: Share of food service local units by UK region, 2018



Source: ONS (2018d).

Figure 23b: Share of hotel local units by UK region, 2018



Source: ONS (2018d).

López-Andreu, Papadopoulos and Jamalian (2019) noted that the growth of the UK hotel sector may be related to the increase in overseas visitors, potentially influenced by the economic recovery of continental Europe since the 2008 recession and the expansion of emerging markets. In contrast, the UK's slow earnings growth and low consumer confidence under austerity may have led many of the hospitality sector's customers to seek lower prices or perceived better value for money, particularly within the food service industry. At the same time, firms are facing increasing costs of operations. IFF (2019b) noted that rising property costs have been particularly pronounced in London and, hence, affected a significant proportion of firms in the hospitality sector, while rising food costs have squeezed profit margins in restaurants. This research also suggested that the introduction of the NLW and the Apprenticeship Levy have ratcheted up labour costs for the sector, especially the food service industry.

Fragmented employment models

The hospitality sector exemplifies the increasingly fissured and complex nature of the employment relationship which I discussed in my 2018/19 Strategy. Fissured employment relationships are more susceptible to violation as they create legal ambiguities as to who is responsible for upholding workers' employment rights.

Box 25: Typology of hotel ownership models

Four main business types have been identified:

- Physical ownership model – the company physically owns the hotel and the capital asset and directly employ the workers in the hotel.
- The managed hotels model – there is a split between ownership (specialised property, real estate fund or pension fund) and the management of the property (that is derived to a big player in the market).
- The franchise model – a company or group operates a hotel on behalf of an owner.
- The single entity businesses (or independent hotels) model – these tend to be owned by a family or a trust and have a more stable ownership and management structure.

Source: López-Andreu, Papadopoulos and Jamalian (2019)

In particular, the hotels element of the hospitality sector includes a variety of business models and employment structures which impact on the employment relationship (see Box 25 below). This can make unscrupulous employment practices difficult to detect. Enforcing compliance can then be more challenging as it may not always be clear where responsibility for ensuring compliance with employment regulations lies.

Within the hotels sector, the increased use of different staffing methods alongside a complex management structure has led to subcontractors and agencies deploying aggressive strategies to increase their profitability and control – consequently, working conditions often deteriorate (López-Andreu, Papadopoulos and Jamalian, 2019).

> *"The hotel passes responsibility for those working on its premises to a third party. The more parties in the supply chain, the more complex it gets and the easier it is for exploitative practices to go unnoticed … Outsourced workers are particularly vulnerable. Additionally, outsourcing can allow unethical practices to go unnoticed (i.e. debt bondage), as well as above-board but potentially abusive practices (payment per room)."*
> Shiva Foundation response to the DLME's Call for Evidence

In my 2018/19 Strategy, I recommended more accountability and leverage through the supply chain, helping to ensure greater compliance through joint responsibility measures. I welcome the Government's commitment to consult on this area and I look forward to the discussions around this, particularly as the fissuring of the employment relationship was reiterated by stakeholders as a key issue during the consultation for the 2019/20 Strategy.

Sector pay and conditions

Green et al. (2018) note that, despite the climate of the sector and rising costs, hospitality firms were *"loath to pass on extra costs to the customer"*, seeking to minimise input and operational costs instead. In 2018, the median hourly wage in the hospitality sector was only around £9 (see Table 20) for full-time workers. This rate was around £5 per hour below the UK median for all sectors, and was closer to the NLW of £7.83. This may be connected to the apparent reliance on young and migrant workers, with some evidence to suggest that almost a quarter of staff in the hospitality sector were not UK nationals (People 1st, 2017). As noted earlier, there is some evidence of migrants being considered a cheaper pool of labour, while young people are subject to much lower NMW rates than people aged 25 and over.

Table 20: Gross hourly pay including overtime for full- and part-time workers in the hospitality sector and at the UK median, 2018

		Hourly pay (including overtime)		
		Sector 10th percentile	Sector median	UK median
Accommodation	Full-time	£7.81	£9.32	£14.37
	Part-time	£5.90	£7.85	£9.35
Food service	Full-time	£7.82	£9.19	£14.37
	Part-time	£5.90	£7.83	£9.35

Source: ONS (2018c).

This low base rate of pay leaves workers in the sector particularly vulnerable to NMW underpayment, as only a small drop could bring them below the relevant NMW rate. Stakeholders noted an incidence of employers making unlawful deductions from wages for uniforms or lateness in the hospitality sector. However, IFF (2019b) and López-Andreu, Papadopoulos and Jamalian (2019) found that the bulk of breaches of NMW regulations noted by workers interviewed in the food service and hotel sectors are associated with extended periods of unpaid time (see Box 24), though the typology seems to differ between the two industries.

> *"Its very common to do half an hour or an hour [unpaid] more to finish things before the other turn start or to prepare things for the next day."* Male, 27, British, reception manager, big chain hotel, full-time permanent (López-Andreu, Papadopoulos and Jamalian, 2019)

In the hotels sector, López-Andreu, Papadopoulos and Jamalian (2019) found evidence to suggest a degree of pressure being put on workers to do more in less time, resulting in many workers not taking paid breaks or working unpaid overtime. Unite, in its evidence, identified housekeeping roles as being particularly affected by these pressures. Notably, the use of service contract piece rates, particularly in cleaning, has led to increased pressure on workers to complete more tasks for their hourly wage. Service contract piece rates tend to operate on the basis of the cleaning contractor invoicing per room rather than per hour, which in turn puts pressure on workers to complete the task irrespective of how long it takes. Though this could conceivably be a tool used to incentivise staff to be more efficient, some workers are, in fact, seeing their pay fall below the NMW due to working unpaid overtime to complete the mandated quota of work.

> *"Most major hotel chains outsource their housekeeping departments, invoicing by the room rather than the hour. This means service providers and agencies compete for contracts on the basis of how much more labour they can squeeze out of us for the lowest price. There is a race to the bottom with the companies who try to do the right thing being constantly undermined by those who base their business model on exploitation."* Unite (2016)

Around 8 per cent (107) of EAS cases were related to the hospitality sector in 2017/18, identifying more than 200 infringements between them (EAS, 2018). Lai, Soltani and Baum (2008) suggested that there is a culture of *"no work, no payment"* in the UK hotel industry, which may be more pronounced in those occupations typically filled by agency workers. Although not unlawful, the inherent vulnerabilities of zero-hour contracts are well documented and can be taken advantage of by some employers (BEIS, 2017a). **I am pleased that the Government has committed to provide those on zero hours and agency contracts a right to request more predictable working hours** (BEIS and Home Office, 2018). However, more needs to be done to raise awareness of worker rights across the employment landscape to ensure these rights are upheld.

The culture of working through breaks or past the end of shifts in the food service sector appears to be less employer-driven, with stakeholders suggesting that it is considered standard industry practice. IFF (2019b) noted that staff would willingly work extra time per shift to ensure the team delivered against its targets, despite receiving no financial recompense. Whether driven by camaraderie or perceived social pressure, the workers interviewed typically accepted that unpaid overtime was simply the custom of the sector.

> *"You absolutely don't want to be the one who turn around and says, 'stuff you guys, I'm going to sit down for 20-minutes'. […] You feel sort of guilted to stay to a certain degree."* Male, 26, chef (IFF, 2019b)

In the response to the Call for Evidence, Unite, the Trades Union Congress (TUC) and REC all reported that unpaid working hours are a problem among chefs. Stakeholders reported instances of salaried chefs working excessively long hours for no overtime pay or time in lieu, dropping them below the hourly NMW as a result. A case study provided by IFF (2019b) also supported this assertion (see Box 26 below).

> *"Unite has further evidence of rampant exploitation of chefs in the hospitality sector where it has become common practice for chefs to be put on a salaried contract which automatically opts them out of the 48-hour limit in the Working Time Regulations. A Unite survey of 87 chefs shows 44 per cent work 48 to 60 hours a week and 14 per cent work in excess of 60 hours. Salary versus actual hours worked can easily bring many out below the NLW rate. It is also becoming more and more common for chefs to be expected to work a trial shift of 5 to 8 hours for no pay when applying for a new position."* Unite response to the DLME's Call for Evidence

Box 26: Hospitality case study

Xander – chef – permanent contract, 35+ hours

Xander is 45 with 22 years in the sector. In his current position as a chef, he feels he is treated fairly. In 2015, however, Xander took a pay cut to start in a chef position at a new restaurant, where he thought he could make an impact. He started on £22K with the promise of a pay rise. He was working on average 80-90 hours a week, which equated to around £5.13 an hour on average. The workload eventually became too much, so Xander decided to raise the issue verbally with his employer. It escalated to an argument and he was fired on the spot. He went to Citizen's Advice and was referred to Acas, who told him that, while he had a solid case, he could not expect much in return financially even if the case was successful. Therefore, Xander decided not to take the case forward.

Source: IFF (2019b).

The combination of working excessive hours, sometimes in excess of 80 hours per week, for a low rate of pay could potentially be considered so exploitative that it falls under GLAA's extended remit. In 2017, GLAA was involved in a joint operation in the food service sector with law enforcement and other partners that led to the four people being placed in the National Referral Mechanism (NRM),[48] illustrating the severity of some labour exploitation in the food service industry. GLAA investigations in the hotels sector have not uncovered such severe labour exploitation but have uncovered numerous breaches of NMW regulations.

48 The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. Available at: https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/modern-slavery-and-human-trafficking?highlight=WyJucm0iXQ

Improving enforcement

As explored above, minimum wage non-compliance is one of the biggest risks for labour market enforcement in the hospitality sector. ASHE data indicate that approximately 1.6 per cent of 16+ jobs were underpaid minimum wage in the UK in 2018 (ONS, 2018c). This rises to 3.6 per cent for accommodation and 3.8 per cent for food service industries in the UK. In its most recent naming round in July 2018, BEIS named 22 firms in the accommodation sector for breaching NMW regulations, and a further 34 businesses in the food services sector. With an average arrears value per worker of £167 and £213, respectively, hospitality industries far exceeded the average (£64) for the naming round.

In the period April to November 2018, 260 cases in the food services sector were closed by HMRC NMW. Almost half (49 per cent) of the complaint-led cases that were closed identified arrears for workers, leading to an average of £46 of arrears per worker. Though only 24 per cent of proactive cases led to arrears being identified in the period, targeted enforcement in this sector led to an average of almost £100 of arrears per worker.

At the same time, HMRC closed 90 cases in the accommodation sector, 71 per cent of which were targeted enforcement. More than half of the complaint-led cases that were closed identified arrears for workers, leading to an average of £52 of arrears per worker. Moreover, 48 per cent of proactive cases led to arrears being identified, with targeted enforcement in this sector leading to an average of £233 of arrears per worker.

Service agencies: awareness of complaints routes

During the Call for Evidence, stakeholders highlighted a notable enforcement gap in the hotels sector relating to contract cleaners and service agencies. Although commonly termed 'agency workers', where contract cleaning workers are subject to on-the-job supervision by the cleaning company, they will, in fact, fall outside the statutory remit of EAS. This situation has created confusion regarding the most appropriate route for workers to raise complaints. EAS confirmed the limit of its remit in respect of contract cleaners during our Call for Evidence:

> *"Addressing the issue of cleaning services EAS does have the statutory power to ensure the compliance of an employment business/agency that directly supplies to a hotel; where the hotel is exercising direction and control of the worker. However, EAS does not have any statutory powers in circumstances where there is a contract cleaning arrangement and the cleaning agency places a supervisor in the hotel to ensure the work undertaken is to the required standard."*[49] EAS response to the DLME's Call for Evidence

The scope and reach of enforcement activity across the three enforcement bodies must be clear to the bodies themselves, to wider stakeholders and to those workers seeking to complain. As such, I would hope to see within the Government's consultation regarding the creation of a single enforcement body that any consideration of modernising the legislation underpinning employment agencies/businesses takes this issue into account. In the shorter term, I recommend that BEIS works with EAS and HMRC NMW to examine how supervised service agency workers can be most effectively protected from labour market exploitation. This should be an opportunity for greater intelligence-sharing and joint working between EAS and HMRC NMW, as discussed within section 5 on joint working.

Awareness-raising

As with other at-risk sectors, there is evidence to suggest significant under-reporting of breaches in hospitality. Part of the reason for this could be a lack of awareness of rights among workers, a problem that is likely exacerbated by the disproportionately low trade union membership in

49 This is because the Employment Agencies Act 1973 section 13(3) states: *"For the purposes of this Act "employment business" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity."*

the sector. In 2017, fewer than 3 per cent of employees in the hospitality sector were members of a trade union (BEIS, 2018c). López-Andreu, Papadopoulos and Jamalian (2019) found that employees – particularly migrant workers – are in some cases misinformed about their rights to the extent that, in the absence of a trade union, they are unable to identify any breaches taking place *"without scrutinising their everyday dealings with the hotel"*.

IFF (2019b) noted a consensus among the stakeholders interviewed that more could be done to improve workers' awareness of both their rights and prospective resolution routes. These interviews identified younger or migrant workers as being more vulnerable groups that may particularly benefit from concerted awareness-raising efforts. Though a commendable goal, this is unlikely to resolve the issue of under-reporting breaches due to the extent of the normalisation of labour market non-compliance in the hospitality sector. There is evidence to suggest that some hospitality workers will knowingly accept violations of their rights because they feel it is the nature of the sector (IFF, 2019b) or they fear reprisal for raising grievances (López-Andreu, Papadopoulos and Jamalian, 2019).

For these reasons, there is a tendency among workers in this sector to seek new employment rather than try to improve conditions under their existing employment (IFF, 2019b). This is supported by López-Andreu, Papadopoulos and Jamalian (2019) which suggested that accepting non-compliance or finding a new job are the options that dominate over individual voice in the hotel industry. There is evidence to suggest that the hospitality sector as a whole has a disproportionately high staff turnover rate – with an annual staff retention rate reported as low as 70 per cent compared to the UK average of 85 per cent (Hawkins, 2018) – which may permit a pervasive culture of non-compliance that is being perpetuated through chronic under-reporting. I have explored the exit-voice issue in more detail in section 3 (Prioritisation of enforcement resources).

Promoting compliance

As with my 2018/19 Strategy, stakeholders again attested to the challenge of ensuring that compliance and ethical practices filter down through the supply chain. Some stakeholders (including Shiva Foundation, Human One, UKHospitality and ITP) called for industry leaders and representatives to work with government to identify how to encourage good practice among employers in the hospitality sector.

One mechanism to address the challenges of the fissured relationship within the hospitality sector is to promote the need for social responsibility within business models. As part of the Government's consultation on this later this year, it may be pertinent to consider various models suggested by stakeholders in order to secure compliance (see Box 27 below). Many of these initiatives are positive examples of how compliance can be better promoted across the sector but cannot solve the problem alone and predominantly focus on one element of labour exploitation such as modern slavery rather than addressing the broader spectrum of labour exploitation.

Box 27: Example of efforts within the hospitality industry to promote compliance

Shiva Foundation, *Stop Slavery Blueprint*

In September 2018, Shiva Foundation launched the *Stop Slavery Blueprint*. The launch came one year after the toolkit was implemented across Shiva Hotels Group properties, using learnings from its use on the ground and consultation with the wider industry. This is an online toolkit providing guidance on how to address the risks of modern slavery within a hotel business, and the subsequent supply chain. This is intended to be used internally by businesses within the hospitality sector. The toolkit consists of guidance in the form of suggested policies and practices, checklists of suggested action to prevent modern slavery and template examples of how to implement this as good practice within a hotel business. The Blueprint can be adapted by managers, department heads or the appropriate teams within the business implementing the relevant procedures and protocols to their organisation. Ultimately the implementation of the Blueprint has been carried out by senior management and has created greater awareness for employers and employees. The *Stop Slavery Blueprint* sets out key principles which should be enforced into a hotel to prevent modern slavery, focusing on the key risk areas which they have identified as: hotel usage, employees, supply chains and executive decision making. Recommended actions are directed at how to identify the risks of modern slavery, how senior management can implement good practice, and how employees can report any indicators of modern slavery. The Blueprint also suggests how to monitor these risks ensuring responsibility with management and establishing an Anti-Slavery Committee made up of Head Office staff who meet regularly to discuss the issue.

Shiva Foundation response to the DLME's Call for Evidence

6.4 Labour Market Enforcement conclusions

The current trends and levels of non-compliance and exploitation within the warehousing and hospitality sector have gone hand-in-hand with profound changes to the labour market which were identified and discussed in my 2018/19 Strategy.

Both the warehousing and hospitality sectors are highly competitive and businesses within these sectors are facing increasing cost pressures, impacting on the pay and conditions for workers. These pressures are further exacerbated by the fissured nature of the employment relationship within these sectors. My 2018/19 Strategy addressed several enforcement gaps where labour market enforcement could be improved, and I await the implementation of the proposals contained in the Government's response to these with interest.

Exploitation in these and many other sectors is further aggravated by a lack of understanding of employment rights and complaints channels. Coupled with a lack of clarity in workers' contracts and even their employment relationship, this can make it difficult for the enforcement bodies to detect non-compliance. Again, I made several recommendations in my 2018/19 Strategy around promoting worker rights, supporting awareness and access to enforcement, and I am pleased that the Government has accepted the majority of them.

As this section has argued, efforts to tackle exploitation in these sectors must include efforts to:

- increase **workers' awareness of their rights, and complaint channels**; particularly noting the vulnerability of the workforce in both sectors;
- improve the relationship between **the enforcement bodies responsible for labour provision (EAS and GLAA)**;

- **improve enforcement** across the spectrum of non-compliance by working with organisations outside the Director's remit to bolster targeted/proactive enforcement; and
- perhaps most importantly, it is vital that the enforcement bodies improve their understanding of the strategic risk in these sectors in order to make the most effective use of targeted enforcement, as I have argued in section 3 (Prioritisation of enforcement resources).

In addition to the above, **I reiterate the argument made earlier in this section that ongoing evaluation of labour market enforcement (interventions and processes) and the overall impact these have on levels of non-compliance is essential.**

Part Three

7. Office of the Director of Labour Market Enforcement workplan 2019/20

My first full annual Strategy in 2018/19 was inevitably quite high level. This year's Strategy by contrast is more technical in nature and has sought to expand on many of the issues raised last year. Many of the same issues were raised by stakeholders during my Call for Evidence in summer/autumn 2018, but this Strategy gave me the opportunity to dig further into the details.

Looking ahead to the coming year, there is still plenty to do.

This section sets out my approach for my next strategy and the work on which the Director's Office will focus. This includes:

- helping to ensure a timely response to, and implementation of, the 2019/20 Labour Market Enforcement Strategy;
- gathering evidence for and preparing my annual Strategy for 2020/21;
- strengthening the Labour Market Enforcement Board and supporting structures to further build the evidence base and our understanding of labour market enforcement issues;
- taking forward the next stages of my research programme, particularly around assessing the scale and nature of non-compliance and beginning evaluation of the impact of the work of the three bodies;
- further development of the Director of Labour Market Enforcement (DLME) Information Hub; and
- fulfilling my other obligations as set out in the Immigration Act 2016.

I discuss each of these in turn below.

Beyond these, of course, is the forthcoming consultation on establishing a single labour market enforcement body, first trailed by the Government in December 2018 and expected to be open to views from the public in summer 2019. As I stated in the Introduction, this announcement came in the latter stages of the drafting of this report. Moving towards a single body would be a major undertaking requiring careful and evidence-based consideration. I was therefore reluctant to focus too much on this issue in this Strategy and instead the intention is that my Office will give the matter the attention it deserves, by responding separately to the Government consultation once it is live. I do, though, raise some initial questions in this context at the end of this section.

7.1 Implementing the 2019/20 Labour Market Enforcement Strategy

I am obviously keen that those recommendations in this Strategy which are accepted by the Government are implemented in a timely manner. I have considered a range of issues, some involving amending the enforcement bodies' current approach and some, more wide ranging, regarding the underlying principles which inform that approach. Action is needed in each of these areas. I recognise that in some instances legislative updates may be necessary and I of course note the pressure which Brexit continues to place on parliamentary timetables.

The majority of the recommendations should be possible without legislative change. My recommendations, along with indicative timeframes for implementation for the bodies and/or departments responsible for taking these forward, are presented in full at the start of this document. As with my previous Strategy, I will be proactive in working with the relevant government departments, enforcement bodies and wider partners in order to achieve these. I will report on progress in the relevant annual report and future iterations of my annual Strategy.

7.2 Labour Market Enforcement Strategy 2020/21

The Immigration Act 2016 requires me to produce an annual Labour Market Enforcement Strategy to deliver to government before the end of each financial year. Therefore, I would anticipate launching a Call for Evidence to inform the 2020/21 Strategy by the summer of 2019. As ever, I will be keen to meet with stakeholders across the UK and to receive written submissions. The themes of the 2020/21 Strategy are still to be finalised, although, as with this year, will likely have a strong sector focus.

What is also likely is that the 2020/21 Strategy will have a narrower strategic focus, due to my intention to provide a comprehensive response to the Government's consultation on a single enforcement body in spring 2019.

7.3 Development of the Labour Market Enforcement Board

Facilitating joint working firstly between the labour market enforcement bodies and secondly with other state enforcement bodies remains a core part of my remit. I have recently bolstered structures to help bring a sharper focus to multi-agency enforcement, either through better intelligence-sharing and/or through joint operations. The joint enforcement operation that commenced in Leicester in autumn 2018 gives us a strong platform on which to build.

This Labour Market Enforcement Board, which I chair, has senior representation from each of the three labour market bodies, as well as the two sponsoring government departments. This helps provide the authority and legitimacy for joint activity to be agreed, undertaken and evaluated. Underpinning the Board are the Strategic Coordination Group (SCG), which executes joint operations, and a new Evidence and Analysis Group (EAG), which draws on all available intelligence and information from a variety of sources and state enforcement partners to help direct joint activity to those areas and sectors where it is most needed.

7.4 Development of the DLME Information Hub

Now that the Management of Risk in Law Enforcement (MoRiLe) approach to identifying at-risk sectors has become fully embedded in my Strategy, I will be looking to strengthen this strand of work, including more frequent updates (biannual rather than annual) to the list of at-risk sectors, developing links with new intelligence sources and carrying out more in-depth analyses of sectors where the threat of labour market non-compliance is only beginning to emerge.

The major focus of research for the coming year will be following up on the two scoping studies to a) introduce robust evaluation of enforcement body interventions and b) take forward work to begin to measure the scale and nature of non-compliance in the labour market. Both of these will be vital to underpin our understanding of the non-compliance picture and how the work of the three bodies makes a difference to combating this. Therefore, the Government will need to invest in these areas if we are to really make a marked and lasting impression on tackling non-compliance in the labour market and ensuring workers are being protected.

7.5 Further Immigration Act 2016 obligations

Beyond the requirements to deliver an annual Strategy and the establishment of the Information Hub, the Immigration Act 2016 also requires me to produce:

- an annual report to the Secretary of State assessing the labour market enforcement activities of the three bodies; assessing how the Strategy impacted on the scale and nature of noncompliance; and a statement of the work of the Information Hub; and
- ad-hoc reports on labour market enforcement either commissioned by the Secretary of State or proposed by the Director.

As with this year, the Director's Office stands ready to fulfil both obligations.

7.6 Single enforcement body consultation

In the Good Work Plan (BEIS, 2018a), the Government announced its intention to consult on the creation of a single enforcement body. I await details of the terms of reference for the consultation which, at the time of writing, have not yet been published and naturally I am keen to play an integral role here in shaping the future enforcement landscape.

The Government last considered the potential merits of a single enforcement body in 2011, when the then Coalition Government conducted its Review of Workplace Rights. This internal review was limited to the three bodies under my remit plus those aspects of the Working Time Regulations that are enforced by the Government (mainly the 48-hour working time limits). It sought to:

> *"identify and assess the cost and operational benefits of different compliance and enforcement models ranging from incremental improvements to current arrangements through to models consolidating enforcement functions in a single or fewer number of bodies."* (BIS, 2011b)

Ultimately, the decision was taken at the time not to proceed with a single labour market enforcement body, and the review concluded:

> *"We have looked at how our current enforcement agencies operate and if establishing a single Fair Employment Agency would benefit workers or reduce the burden on the taxpayer. We have concluded that a single agency would not provide significant benefits to workers. By having enforcement agencies focused on specific areas we have a well-functioning, risk-based system within the UK."* (BIS, 2012a)

Instead, the Government established the role of Director of Labour Market Enforcement to promote joined-up working and strategic direction across the three bodies. There was also a significant uplift in funding for the state labour market enforcement bodies. It will be important to understand the impact of these changes in the consideration of whether a more fundamental structural change to the enforcement model is warranted.

That said, as highlighted in my 2018/19 Strategy, the current system is complex and fragmented and is clearly sub-optimal for workers needing employment protection. If one were starting from scratch, it is unlikely that one would design state labour market enforcement along its current lines. Indeed, the International Labour Organization (ILO) recommended best practice is that inspection be placed under the supervision and control of a central authority.

I am therefore supportive of the Government's proposal to consult on this matter, though this clearly warrants careful consideration.

While the option of a single enforcement body may be attractive at a theoretical level, and indeed exists in several other countries, this is a substantial step change from the current UK system. The practicalities, time and resources required to bring together the three organisations would be significant. It is my view, therefore, that the Government must first make a thorough assessment of the potential benefits of a single enforcement body and assess if, and how, this option could improve the current system.

In particular, there are several different models that the single enforcement body could take. Careful consideration of the organisational design and remit of any new body will be key to ensuring that any new organisation resolves many of the limitations, gaps and difficulties of the current system, and brings about the greatest improvements for workers, employers and government. For me, the first question is, what would a single body need to achieve to improve the system and represent value for money? I believe that the key success criteria would have to include:

- **simplification** of the 'user journey' for:
  - workers
  - employers
  - enforcement officers;
- **modernisation** in line with current working practices and closing the enforcement gaps; and
- enabling a **more strategic approach**: ensuring a balance between compliance approach and deterrence effect.

The intention is that my Office will respond to the public consultation once it is published. My evidence to government on this issue will build upon the work of my Office to date, focusing on several key themes, including, but not limited to:

- the most effective **enforcement approach**;
- the potential **remit** of a single enforcement body;
- the **powers and tools** required of any potential single enforcement body;
- if and how a single enforcement body could improve the current system of **intelligence-sharing** and **joint working**; and
- the future **role of the DLME** in this process.

During our Call for Evidence, some stakeholders raised issues which will be relevant for the consideration of a single enforcement body, in line with the themes listed above. In particular, issues raised include the potential to modernise legislation and address enforcement gaps and the opportunity to ensure a coherent enforcement approach across the spectrum of non-compliance and to streamline intelligence-sharing. My Office will ensure that we consider these in some detail in our response to the consultation.

If the decision were taken to pursue a single enforcement body, there is likely to be a lengthy process of implementation. During that period, it is essential that safeguards are in place to ensure that enforcement activities are effectively maintained during any transitional period.

Annex A: Acronyms

Acas: Advisory, Conciliation and Arbitration Service

AE: automatic enrolment

ALP: Association of Labour Providers

APSCo: Association of Professional Staffing Companies

ASCOR: Association of Compliance Organisations

ASHE: Annual Survey of Hours and Earnings

AWR: Agency Workers Regulations

BEIS: Department for Business, Energy and Industrial Strategy

BERR: Department for Business, Enterprise and Regulatory Reform

BIS: Department for Business, Innovation and Skills

BOOST: Building on Opportunities, Skills and Training

BRC: British Retail Consortium

CBI: Confederation of British Industry

CIPD: Chartered Institute of Personnel and Development

CPS: Crown Prosecution Service

CWA: Car Wash Association

DBS: Disclosure and Barring Service

DCLG: Department for Communities and Local Government

Defra: Department for Environment, Food and Rural Affairs

DfE: Department for Education

DfT: Department for Transport

DLME: Director of Labour Market Enforcement

DTI: Department of Trade and Industry

DWP: Department for Work and Pensions

EA: Environment Agency

EAC: Environmental Audit Committee

EAG: Evidence and Analysis Group

EAS: Employment Agency Standards

EMPACT: European Multidisciplinary Platform Against Criminal Threats

FCSA: Freelancer & Contractor Services Association

FLEX: Focus on Labour Exploitation

FOI: Freedom of Information

FSB: Federation of Small Businesses

FTE: full-time equivalent

GAIN: Government Agency Intelligence Network

GCS: Government Communications Service

GLA: Gangmasters Licensing Authority

GLAA: Gangmasters and Labour Abuse Authority

HMICFRS: HM Inspectorate of Constabulary and Fire & Rescue Services

HMRC: HM Revenue and Customs

HMSP: Hertfordshire Modern Slavery Partnership

HORECA: Hotels, Restaurants and Catering

HSE: Health and Safety Executive

IASC: Independent Anti-Slavery Commissioner

IER: Institute for Employment Research at the University of Warwick

IFCA: Inshore Fisheries and Conservation Authorities

ILO: International Labour Organization

ITP: International Tourism Partnership

KFAT: National Union of Knitwear, Footwear and Apparel Trades

KPI: key performance indicator

LAPO: Labour Abuse Prevention Officer

LBN: London Borough of Newham

LFS: Labour Force Survey

LITRG: Low Incomes Tax Reform Group of the Chartered Institute of Taxation

LLP: limited liability partnership

LME: Labour Market Enforcement

LMEO: Labour Market Enforcement Order

LMEU: Labour Market Enforcement Undertaking

LPC: Low Pay Commission

Ltd: limited liability company

MCA: Maritime and Coastguard Agency

MoRiLE: Management of Risk in Law Enforcement

MoU: Memorandum of Understanding

NACE: Nomenclature statistique des activités économiques dans la Communauté européée (the statistical classification of economic activities in the European Community)

NAO: National Audit Office

NASUWT: The National Association of Schoolmasters Union of Women Teachers

NatCen: National Centre for Social Research

NCA: National Crime Agency

NI: National Insurance

NIM: National Intelligence Model

NLW: National Living Wage

NMIC: National Maritime Information Centre

NMW: National Minimum Wage

NoU: Notice of Underpayment

NRM: National Referral Mechanism

OECD: Organisation for Economic Co-operation and Development

ONS: Office for National Statistics

PACE: Police and Criminal Evidence Act 1984

PAYE: Pay As You Earn

PBA: pay between assignments

PLG: Professionalism, Learning and Guidance team

PPE: personal protective equipment

REC: Recruitment & Employment Confederation

RIDDOR: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013

RIH: Regulatory Intelligence Hub

RMT: National Union of Rail, Maritime and Transport Workers

ROCU: Regional Organised Crime Unit

SAFERjobs: Safe Advice for Employment and Recruitment Jobs

SCCS: Social Care Compliance Scheme

SCG: Strategic Coordination Group

SIA: Security Industry Authority

SIC: Standard Industrial Classification

SLA: Service Level Agreement

SNC: Serious Non-Compliance

STPO: Slavery and Trafficking Prevention Order

TPR: The Pensions Regulator

TUC: Trades Union Congress

UKWA: United Kingdom Warehousing Association

USDAW: Union of Shop, Distributive and Allied Workers

VAT: Value Added Tax

YTD: year to date

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Annex C: List of organisations that responded to the Call for Evidence

Association of Labour Providers (ALP)

Association of Professional Staffing Companies (APSCo)

Boyes Turner LLP

British Retail Consortium (BRC)

Car Wash Association (CWA)

Confederation of British Industry (CBI)

Discovery – East Sussex

Employment Agency Standards (EAS) Inspectorate

Extraman Recruitment

Ernst &Young LLP

Federation of Small Businesses (FSB)

Focus on Labour Exploitation (FLEX)

Freelancer & Contractor Service Association (FCSA)

Gangmasters and Labour Abuse Authority (GLAA)

HMRC Fraud Investigation Service

HMRC National Minimum Wage

Human One

Independent Workers Union of Great Britain (IWGB)

The Insolvency Service

Institute of Hospitality

International Tourism Partnership (ITP)

Linda Boyle Consultancy Services

Low Incomes Tax Reform Group (LITRG)

Maritime and Coastguard Agency (MCA)

National Association of Schoolmasters Union of Women Teachers (NASUWT)

National Union of Rail, Maritime and Transport Workers (RMT)

Ocado

PricewaterhouseCoopers (PwC)

PRISM

Recruitment & Employment Confederation (REC)

Reflect Recruitment Group

Safe Advice for Employment and Recruitment Jobs (SAFERjobs)

Shiva Foundation

Squire Paton Boggs LLP

Trades Union Congress (TUC)

UKHospitality

Union of Shop, Distributive and Allied Workers (Usdaw)

UNISON

Unite

WMT Chartered Accountants

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