

# Employment Rights Service

Community Action Research

Final Report

2019

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Published by National Learning and Work Institute

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Company registration no. 2603322 | Charity registration no. 1002775

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# Table of Contents

Executive Summary .....	6
The nature and scale of employment rights abuse .....	6
The current support offer.....	7
Tackling rights abuses in Newham .....	7
Introduction.....	9
Methodology.....	9
Structure.....	10
1. Newham’s economy, labour market and workforce.....	11
People .....	11
Employment rates .....	11
Pay .....	12
Contract type.....	14
Occupations .....	15
Stakeholder Views .....	15
Industry Sector .....	16
Stakeholder Views .....	17
2. Employment Rights .....	18
Contractual rights .....	18
Statutory rights .....	18
Non-payment of the minimum wage and unlawful deductions .....	19
Non-payment of sick pay.....	21
Unfair dismissal.....	22
Non-payment of holiday pay .....	24
Illegal and unpaid working hours .....	26
Equality and discrimination .....	28
Bogus self-employment.....	30
Modern slavery.....	31
Employer characteristics .....	33
Worker characteristics.....	34
Socio-demographic factors .....	34
Non-Unionised Workers.....	35
Those with unclear employment status.....	36
Precarious employment and one-sided flexibility.....	36
Lack of enforcement.....	38
Low levels of awareness of employment rights .....	38
Lack of confidence in enforcing employment rights .....	39
Employer Behaviour.....	40
Decline in union membership.....	40
Imbalance of power at work and ability to enforce employment rights .....	40
3. The current support landscape .....	42
Enforcement agencies .....	42

Employment tribunals.....	43
Support for employers.....	48
4. Tackling employment rights abuse in Newham .....	50
Awareness raising.....	51
Community Capacity Building .....	53
Advisor Support.....	53
Supply chain compliance .....	54
Building union membership.....	55
Summary .....	55
Awareness raising.....	58
Community Capacity Building .....	59
Qualifications, Skills and Experience .....	66
Scale .....	67
Focus and delivery agent .....	68
Preferred option .....	71
Small Scale .....	71
Large Scale .....	71

## Executive Summary

The London Borough of Newham (LBN) is considering approaches to tackle employment rights abuse in the borough as part of their approach to community wealth building. Learning and Work Institute was commissioned to conduct research to better understand the *nature* and *scale* of employment rights abuse, and to formulate an effective intervention to reduce incidences of employment rights abuse and support victims.

This report presents the findings of primary research conducted with a Community of Interest (COI), composed of Newham residents with experience of employment rights abuse, local stakeholders, trade unions, and experts on employment rights.

Our investigations focused on a wide range of statutory employment rights, including under-payment of the minimum wage, non-payment of sick pay and holiday pay, unfair dismissal, discrimination, and bogus self-employment.

### The nature and scale of employment rights abuse

Our findings suggest that **employment rights abuse is a significant and widespread problem in Newham**. The nature of the local economy, and the composition of Newham's workforce put the borough at particular risk of a range of common employment rights issues. Employment rights abuse have a number of negative consequences – across social, economic and psychological dimensions – including depriving workers of much needed wages and contributing to insecurity.

**Underpayment of the minimum wage, wage theft, discrimination, unfair dismissal and bogus self-employment** appear to be the most widespread and damaging forms of employment rights abuses in the borough:

- At least 1,800 and as many as 36,000 Newham residents were **underpaid the minimum wage** last year;
- Over 8,000 residents were **denied holiday pay** between 2018-19;
- There are around 4,000 **bogus self-employed** workers in Newham;
- Over 22,000 residents of working age **didn't receive a payslip** in 2018;
- **Racial and maternity discrimination** are significant issues for Newham residents.

Particular **groups of workers** and **certain sectors, both nationally and in Newham, are at greater risk** of employment rights abuse:

- Low-paying sectors, characterised by insecure work, such as social care, retail and hospitality display higher levels of employment rights violations;
- Recent migrants, women, those with ESOL needs or from a BAME background, are at higher risk of employment rights abuse;
- Workers in precarious employment and non-union members are more at risk.

Six main drivers of employment rights abuses in Newham were identified:

- The imbalance of power at work
- Lack of enforcement at a national level, and challenges with the Employment Tribunal system
- Low levels of awareness among workers of employment rights
- Lack of confidence in enforcing employment rights
- The decline in union membership
- Employer behaviour

Taken together, these factors have contributed to a situation in which many workers are being denied their basic rights at work.

### **The current support offer**

Support for Newham residents who have experienced problems at work **is patchy and insufficient to meet the scale of demand**. Challenges with the current offer in Newham include;

- Low awareness and visibility of support available;
- Barriers to accessing advice and support;
- Insufficient capacity to meet demand, particularly for complex cases;
- A complex and inaccessible legal support system.

This report demonstrates that the abuse of employment rights in Newham is a widespread problem, with significant and detrimental impacts on local residents. It also shows that existing support for those affected is insufficient. As such, there is a strong case for LBN to intervene in order to prevent employment rights abuse, and to support workers to enforce their rights.

### **Tackling rights abuses in Newham**

The report lays out evidence-based options for LBN to consider when designing an intervention to tackle abuses in the borough.

We sketch out a model for a **Newham Employment Rights Hub** which would aim to:

- **Raise awareness** of employment rights and of support available;
- **Strengthen community capacity** by providing outreach support for seldom heard and at-risk groups, and training community advocates;
- **Provide individual support** to those with employment rights issues, through intensive, one-to-one casework with a specialist employment rights advisor.

While local authorities lack the power to enforce labour market regulations, the Newham Employment Rights Hub could use existing powers to reduce the incidence

of employment rights abuse. In addition to supporting those who are victims of employment rights abuse, the service would help raise awareness, build community capacity, boost union membership and ensure good employment practice in LBN's supply chain. Through doing so, it could help deter and prevent such abuse in the future.

This proposed service model would involve a team of six, and an estimated cost of **£333,382 pa, supporting 400 residents** at any one time. We would recommend that the service be commissioned from a local third sector partner with experience of providing advice and support.



## Introduction

The London Borough of Newham (LBN) has a long record of investing in employment support to help residents access employment.

However, while the employment rate stands at a record high, there are growing concerns about the *quality* of work in the local economy, including the prevalence of employment rights abuse.

LBN believes that the changes to employment law, the nature of work, and a decline of union activity have led to an imbalance of power in favour of employers, and a situation where many employees are vulnerable to exploitation and to the denial of their employment rights.

It is in this context that LBN is considering how it could prevent and tackle employment rights abuse, and how it could support their residents to enforce their rights. LBN aim to ensure all residents can access decent quality work, and that everyone gets a fair deal from employers.

This work forms part of a wider approach to community wealth building, that aims to ensure that economic growth is shared locally and held democratically.

In order to inform this work, LBN commissioned Learning and Work Institute (L&W) to carry out community action research into an employment rights service for Newham. The aim of the research is to understand the nature and prevalence of employment rights abuse in Newham, to map the support that is currently available for residents facing employment rights abuse, and to set out potential options for LBN to address this challenge. research.

## Methodology

This report summarises the findings of the research. The project sought to address the following three questions:

1. What is the nature and scale of employment rights abuse in Newham?
2. What employment rights support is currently available in Newham?
3. What could LBN do to prevent and tackle employment rights abuse?

**Phase 1** involved scoping research, including:

- A **desk-based review** of existing literature and data on Newham's workforce and labour market, as well as common forms of employment rights abuse.
- Seven **semi-structured interviews** with key stakeholders including LBN staff, voluntary sector organisations, trade unions and employment rights experts. Interviews focused on the nature and scale of employment rights abuse, current support available, and what interventions could help tackle employment rights abuse.

**Phase 2** consisted of undertaking community action research (CAR). CAR is a methodology that takes the community, rather than an individual, as the unit of analysis, and which seeks to build alliances with groups affected by and connected to the issue, so that findings and solutions are informed by lived experience (Ozanne and Anderson, 2010).

Phase 2 began by convening a Community of Interest (COI), a group composed of 27 individuals with either direct experience of employment rights abuse, experience of providing support to affected individuals, or with expertise in employment rights issues. Details of the recruitment procedure, along with a breakdown of the group's demographic characteristics can be found in Appendix A.

Two action workshops were held with the COI. Workshop 1 was focused on understanding the issue with and defining the problem, exploring the nature and scale of employment rights abuses in Newham, and support that is currently available. Workshop 2 focused on developing options for LBN to improve the situation.

**Phase 3** involved analysis and development of the service options. This involved combining information from the scoping stage with data generated by the COI to develop and refine a series of evidence-based, implementable options to support residents in understanding and asserting their rights in the workplace.

## Structure

This report is divided in two sections.

Section I looks at the nature and scale of employment rights abuses in Newham, and the current support offer available to residents. Section I draws on the desk-based review, stakeholder interviews, and the first workshop as evidence. Pseudonyms have been used to protect the identities of research participants.

Section II sets out a series of appraised options for a service that could be implemented by LBN to tackle the issue of employment rights abuse in Newham, developed on the basis of the workshop findings and underpinned by the preceding research.

# 1. Newham's economy, labour market and workforce

This chapter focuses on the working age population of Newham. It explores the composition of the local labour market and then goes on to examine common forms of employment rights abuses in the UK and in Newham. This chapter draws on a review of existing research and statistics, complemented by stakeholder interviews to give a picture of what the figures mean for those living and working in Newham. The chapter ends by outlining and appraising the current support available to residents with employment rights issues.

## 1.1 Working age population of Newham

### People

Newham has one of the youngest and most ethnically and nationally diverse populations in the country<sup>1</sup>. Non-UK nationals make up a substantial share (26.8%) of the borough's population, and two in three residents are from an ethnic minority background.

Non-UK nationals and individuals from BAME backgrounds are at a greater risk of many forms rights abuse such as underpayment of the minimum wage<sup>2</sup>, non-payment of holiday pay<sup>3</sup> and discrimination<sup>4</sup>, discussed in further detail in chapter 2.

### Employment rates

Looking at Table 1, Seven in ten (69.8%) adults aged 16-64 in Newham are in employment. This figure is below both the London (74.3%) and the national (75.1%) figures, although these gaps have narrowed substantially in recent years, driven by a rapid rise in employment in Newham which has outpaced the national and regional trend<sup>5</sup>.

Newham has very high levels of self-employment, with 15.0% of residents being self-employed, higher than the figures for London (13.5%) and Great Britain (10.7%). While most self-employment will be legitimate, high levels of self-employment are a potential risk factor for employment rights abuse, given the prevalence of 'bogus' self-employment, explained below.

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<sup>1</sup> Oxford Economics (2017) Local London Growth Business Plan: The Evidence. Local London.

<sup>2</sup> Ipsos Mori. 2018. Understanding Newham 2017: Findings from Wave 9 of the Newham Household Panel Survey. London Borough of Newham. Available at: <https://www.newham.gov.uk/Documents/Misc/Research-HouseholdSurvey9.pdf>

<sup>3</sup> Resolution Foundation (2019) From rights to reality. Available at: <https://www.resolutionfoundation.org/publications/from-rights-to-reality/>

<sup>4</sup> BEIS (2014) Findings from the Survey of Employment Tribunal Applications 2013. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf)

<sup>5</sup> ONS Time series data from the Annual Survey of Hours and Earnings, available at: [https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/asher\\_time\\_series/report.aspx?](https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/asher_time_series/report.aspx?)

**Table 1: Employment and unemployment (Apr 2018 – Mar 2019)**

	Newham	London
	Percentage (95%CI)	Percentage (95%CI)
Economic Activity Rate (16-64)	73.6 (69.2 - 78.0)	78.1 (77.4 - 78.8)
In Employment	69.8 (65.2 - 74.4)	74.2 (73.5 - 74.9)
Employees	54.8 (49.8 - 59.8)	60.5 (59.7 - 61.3)
Self Employed	15 (11.4 - 18.6)	13.5 (12.9 - 14.1)
Unemployed	5.1 (2.5 - 7.7)	5 (4.6 - 5.4)
Employed in non-permanent employment	5.4 (2.7 - 8.1)	4.8 (4.4 - 5.2)

Source: ONS Annual Population Survey (accessed at: [www.nomisweb.co.uk](http://www.nomisweb.co.uk)). Numbers and %'s are for those aged 16-64. % is a proportion of resident population of area aged 16-64.

## Pay

Low pay is a significant issue in Newham. The bi-annual household survey Understanding Newham provides high quality data in granular detail on pay in the borough<sup>6</sup>. While gross weekly pay for Newham residents rose to £369 in 2017 from £323 in 2015, this was still substantially below the £449 that residents in the rest of the UK received.

The Annual Survey of Hours and Earnings (ASHE) similarly shows high levels of low pay in Newham. As table 2 shows, Newham residents are paid, on average, £3.13 an hour less than London as a whole, and slightly lower than the national average. Those in the bottom ten per cent of the wage distribution are paid £8.00 an hour, 39 pence below the bottom ten per cent of London as a whole. This is just higher than the rate of the National Living Wage in 2018/19 of £7.83, and well below the London rate of the Living Wage (£10.55)<sup>7</sup>.

According to Understanding Newham, over half (55%) of Newham residents were paid less than the London Living wage (which was at that time £10.20 per hour), up from 53% in 2015 and 48% in 2013. ASHE suggests that between 30-40% of Newham residents are paid less than the London Living Wage<sup>8</sup>.

<sup>6</sup> Ipsos Mori. 2018. Understanding Newham 2017: Findings from Wave 9 of the Newham Household Panel Survey. London Borough of Newham. Available at: <https://www.newham.gov.uk/Documents/Misc/Research-HouseholdSurvey9.pdf>

<sup>7</sup> The National Minimum Wage is the statutory minimum wage, set by the Government, for workers aged 25 and over. The London Living Wage is a voluntary minimum wage, paid by hundreds of employers across the capital, which is calculated by the Living Wage Foundation based on the amount needed to meet the cost of living.

<sup>8</sup> ASHE data for Apr 2018 – Mar 2019 puts the London Living Wage rate between the 30<sup>th</sup> and 40<sup>th</sup> percentile of gross hourly pay.

**Table 2: Hourly pay for different types of workers (2018)**

Group of Workers	Newham		London	
	Median (95%CI)	10th Percentile	Median (95%CI)	10th Percentile
Male Full Time Workers	15.38 (13.93 - 16.83)	9.25 (8.65 - 9.85)	18.33 (17.93 - 18.73)	9.51 (9.36 - 9.66)
Male Part Time Workers	8.86 (7.71 - 10.01)	7.80 (7.63 - 7.97)	9.95 (9.66 - 10.24)	7.82 (7.80 - 7.84)
Female Full Time Workers	13.22 (11.17 - 15.27)	8.12 (7.79 - 8.45)	16.86 (16.56 - 17.16)	9.20 (9.06 - 9.34)
Female Part Time Workers	9.30 (8.57 - 10.03)	#	10.26 (10.08 - 10.44)	7.83 (7.81 - 7.85)
Full Time Workers	14.83 (13.46 - 16.20)	8.71 (8.30 - 9.12)	17.58 (17.30 - 17.86)	9.37 (9.26 - 9.48)
Part Time Workers	9.16 (8.46 - 9.86)	7.83 (7.78 - 7.88)	10.17 (10.05 - 10.29)	7.83 (7.81 - 7.85)
Total	12.77 (11.69 - 13.85)	8.00 (7.83 - 8.17)	15.90 (15.65 - 16.15)	8.39 (8.32 - 8.46)

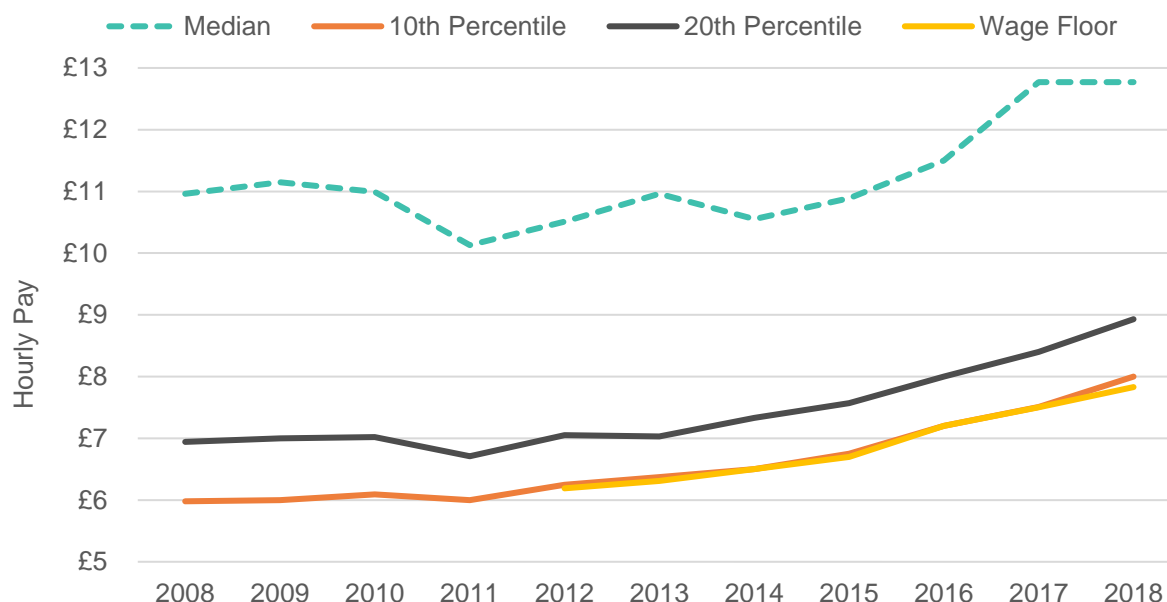
Source: Annual Survey of Hours and Earnings (accessed at: [www.nomisweb.co.uk](http://www.nomisweb.co.uk)). '#' represents figures that are suppressed due to unreliability.

Figure 1 below shows hourly wages of Newham residents over time, against the wage floor for each year. We can see that the hourly wage for the lowest paid ten percent of Newham residents (10<sup>th</sup> percentile) hugs the wage floor as it increases in value.

This means that the number of residents at risk of minimum wage underpayment is growing. The size of Newham's working age population has increased by an average of 2.3% each year from 2008 to 2018<sup>9</sup>. Therefore, number of residents within the bottom ten percent of the wage distribution, and at risk of minimum wage underpayment, has increased each year.

<sup>9</sup> L&W analysis of ONS Annual Population Survey data. Available at: [https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/wapop\\_time\\_series/report.aspx?](https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/wapop_time_series/report.aspx?)

**Figure 1: Trends in Newham’s gross hourly wages, 2008-2018**



Source: Annual Survey of Hours and Earnings (accessed at: [www.nomisweb.co.uk](http://www.nomisweb.co.uk)). The wage floor displayed is as follows: 2012 (21 and over)=£6.19, 2013 (21 and over)=£6.31, 2014 (21 and over)=£6.50, 2015 (21 and over)=£6.70, 2016 (25 and over)=£7.20, 2017 (25 and over)=£7.50, 2018 (25 and over)=£7.83.

The higher levels of low pay in Newham contribute to high levels of in-work poverty. Incidence of poverty<sup>10</sup> in Newham now stands at more than double the national level, with child poverty rates at almost three times the UK average<sup>11</sup>.

Given the high levels of low pay in Newham, and the substantial proportion of the workforce earning at or close to the statutory minimum wage, there is a **substantial number of Newham residents at risk of minimum wage underpayment**.

### Contract type

Most employees in Newham are on permanent contracts. According to Understanding Newham, 80% of Newham employees were on permanent, full-time

<sup>10</sup> Defined as a household with gross equivalised income, before housing costs, of less than 60% of the national median income.

<sup>11</sup> Ipsos Mori. 2018. Understanding Newham 2017: Findings from Wave 9 of the Newham Household Panel Survey. London Borough of Newham. Available at: <https://www.newham.gov.uk/Documents/Misc/Research-HouseholdSurvey9.pdf>

contracts in 2017, with a further 11% were employed on part-time, permanent contracts<sup>12</sup>.

There has been growing concern in recent years about the rise of insecure forms of work including zero hours contracts (ZHCs), which do not specify a minimum number of working hours, and which may leave workers more vulnerable to exploitation and employment rights abuse. The latest data from ONS suggests that 2.7% of people nationally are employed on a ZHC, with the figure being slightly lower in London (2.3%).<sup>13</sup> Whilst ONS does not provide data by local authority, there is reason to suggest that insecure forms of work are more common in Newham. The latest wave of Understanding Newham found in 2017 that one in twenty employees (5%) were either on zero hours contracts (ZHC), seasonal work, casual employment, or other contractual arrangements. This figure is likely to understate the true scale of insecure work, given that some workers may be unaware of their contract type, and the difficulty in surveying this group<sup>14</sup>.

## Occupations

While the proportion of people employed in high-skilled occupations in Newham has been increasing in recent years, the workforce in Newham remains more concentrated in 'low-skilled' occupations.

Just over two-fifths (43.5%) of people in employment in Newham are employed as Managers, Directors, Professionals and Associate Professionals. The share of the workforce in these occupations has seen a rapid rise in recent years, increasing by 13 percentage points over the last five years, yet it remains significantly below the London average<sup>15</sup>.

Looking at lower-skilled occupations, one in five (20.7%) Newham employees are in caring, leisure, sales & customer service roles, far higher than the London (13.2%) and Great Britain (16.5%) figures. Similarly, the proportion of employees working in elementary occupations in Newham (16.5%) is nearly twice that of the rest of London (8.5%).

## Stakeholder Views

During scoping interviews, stakeholders suggested that Newham's workforce could be characterised as two groups with different experiences of employment.

One group was composed of newer residents, young professionals concentrated around particular geographical areas such as Olympic park, and small pockets of middle-class residents. This group was perceived to be relatively affluent, with higher

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<sup>12</sup> Ipsos Mori. 2018. Understanding Newham 2017: Findings from Wave 9 of the Newham Household Panel Survey. London Borough of Newham. Available at: <https://www.newham.gov.uk/Documents/Misc/Research-HouseholdSurvey9.pdf>

<sup>13</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contracts-that-donot-guarantee-a-minimum-number-of-hours/mar2017>

<sup>14</sup> Numbers of seasonal workers are difficult to estimate due to their transient nature. Single point-in-time estimates will miss a section of workers who have either already left or are yet to arrive.

<sup>15</sup> Time series data from the Annual Population Survey, available at:

[https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/empocc\\_time\\_series/report.aspx?](https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/empocc_time_series/report.aspx?)

levels of qualification and earning potential, and access to secure and well-paid employment in London's economy. The other, much larger, group was perceived to be composed of residents working in low paying, insecure jobs and be at risk of the negative impacts associated with this kind of work, such as in-work poverty.

Stakeholders discussed the experience of the labour market for this group as one marked by an unequal balance of power between employee and employer. Stakeholders and participants in the COI viewed the high volume of low skilled labour as contributing to a feeling amongst some employers that portions of their workforce were less valuable and easily replaceable, putting residents at risk of poor and sometimes illegal treatment at work.

The rise of flexible working practices and bogus self-employment was seen to benefit employers, at the expense of employees; the unequal way that 'flexible' working practices are implemented means that employees are required to shoulder the burden of being 'flexible' while receiving no assurances that their employer will follow suit. These views are reflected by the recent Taylor Review of modern working practices, which highlighted the challenge of one-sided flexibility<sup>16</sup>.

Overall, while there has been significant regeneration efforts in particular areas of the borough<sup>17</sup> (notably Stratford, the Royal Docks, and Olympic Park), a large increase in Newham's employment rate in recent years<sup>18</sup>, and a greater share of residents who are in professional roles<sup>19</sup>, stakeholders perceived Newham's labour market to be in a state of decline in terms of job quality and security. This trend was seen to result not only in poorer living standards for residents, but also a reduction in what people expected from their employment in terms of their rights and entitlement to fair treatment.

## 1.2 Local Economy

### Industry Sector

The biggest share of employee jobs in Newham are in the wholesale & retail trade (18.7%), representing 20,000 employees<sup>20</sup>; seven percentage points higher than the London rate. This is followed by administrative & support service activities (14.0%), three percentage points higher than London; education (12.1%), four percentage points higher than London; human health & social work activities (11.2%), comparable to the London rate; accommodation & food service jobs (8.4%), and; construction (6.5%). Compared to the London economy, Newham's jobs market is weighted towards low-paying sectors.

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<sup>16</sup> Taylor, M, (2017) Good Work – The Taylor review of modern working practices [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>17</sup> Oxford Economics (2017) Local London Growth Business Plan: The Evidence. Local London

<sup>18</sup> ONS, Annual Population Survey (2019) <https://www.nomisweb.co.uk/reports/lmp/la/1946157255/report.aspx?town=newham>

<sup>19</sup> Time series data from the Annual Population Survey, available at: [https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/empocc\\_time\\_series/report.aspx?](https://www.nomisweb.co.uk/reports/lmp/la/1946157255/subreports/empocc_time_series/report.aspx?)

<sup>20</sup> ONS Business Register and Employment Survey 2017. Available at [nomisweb.co.uk](https://www.nomisweb.co.uk).



## Stakeholder Views

In scoping interviews, stakeholders discussed the large share of the local economy that is taken up by micro firms and small and medium enterprises (SMEs), perceived to have a particularly high turnover rate.

While invisible to official sources of data, we heard of the existence of a large informal, or 'grey', economy which one respondent estimated to be amongst the biggest in the country. BEIS estimate that 12% of the UK's economic activity occurs in the 'grey' or 'shadow' economy<sup>21</sup>; a figure that could be far higher in Newham. This grey economy was thought to take many forms across the borough, from informal textile operations carried out in residential settings to more formal food processing and packaging or construction activities undertaken without a formal contract of employment. The perceived risks of poor job quality and employment rights abuse to individuals participating in the grey economy was much higher than those within more traditional sectors of the economy.

## Summary

Newham has seen a substantial rise in employment in recent years, with its employment rate increasing by 12.4 percentage points in the last decade<sup>22</sup>. While gains have been made in supporting more people into work, there are still significant and persistent issues with low pay. This puts a **substantial number of Newham residents at risk of minimum wage underpayment**.

There has been an increase in the share of the workforce employed in highly skilled occupations; however, a large share of Newham residents work in lower-skilled roles such as caring, service, and machine operative occupations.

Newham's local economy, in terms of industry sector composition, is heavily weighted towards traditionally low paying sectors, such as wholesale & retail, social work and food services. Many of these sectors are characterised by the extensive use of zero hours contracts and other forms of insecure work, which can also contribute to a **heightened risks of employment rights abuses**.

Looking beyond the numbers and official figures, the stakeholders we interviewed perceived the labour market in Newham to be in a state of **decline in terms of job quality and security**. A perceived **unequal balance of power between employer and employee** was seen as contributing to the risk of employment rights abuse.

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<sup>21</sup> BEIS (2017) Minimum Wage Underpayment in the Informal Economy. BEIS Research Paper Number 16.

<sup>22</sup> ONS, Annual Population Survey (2019)

<https://www.nomisweb.co.uk/reports/lmp/la/1946157255/report.aspx?town=newham>

## 2. Employment Rights

This section examines employment rights issues in the UK, and in Newham. It begins by exploring the most common forms of rights abuse in the UK, and then looks at how risks are distributed across different positions within the labour market and across socio-demographic groups. Finally, the section examines the drivers of employment rights abuse in the UK and in Newham.

The evidence base on the scale of employment rights violations is fragmented and partial at a national level<sup>23</sup>, and even more scarce at the borough level. This is unsurprising given employment rights abuse is illegal, and so difficult to measure. To overcome this gap in the evidence base, we conducted interviews with local stakeholders and national experts, and a workshop was held with the COI to investigate employment rights issues manifest in Newham, to gauge the scale of the problem, and to explore their perceived causes.

This section triangulates three data sources to provide an overview of the current situation in Newham. It draws on findings from the first workshop, interviews with stakeholders, and research evidence from the literature review.

### 2.1 Common forms of employment rights abuse in the UK

There are two main types of employment rights, contractual rights and statutory rights.

#### Contractual rights

Contractual rights derive from a contract of employment. These include the right to payment of a salary, holiday entitlement and the right to notice of termination of employment. These rights can either be written into an employment contract, or they can arise from 'custom and practice'.<sup>24</sup>

While the denial of contractual rights can be an issue for many workers, the policy options available to local authorities for intervention in this area are limited. Furthermore, due to variation in contractual terms and conditions between employers and between workers, it can be more difficult to identify and enforce against denial of contractual rights, rather than denial of statutory rights which apply to all employees.

#### Statutory rights

Statutory employment rights are those given to employees by law, defined by Parliament in primary or secondary legislation. Statutory rights apply to all, regardless of individual contractual arrangements. This report focuses mainly on

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<sup>23</sup> Cockbain et al. (2019) How can the scale and nature of labour market non-compliance in the UK best be assessed? Final report of a scoping study for the Director of Labour Market Enforcement. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814582/How\\_c\\_an\\_the\\_scale\\_and\\_nature\\_of\\_labour\\_market\\_non-compliance\\_in\\_the\\_UK\\_best\\_be\\_assessed\\_July\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814582/How_c_an_the_scale_and_nature_of_labour_market_non-compliance_in_the_UK_best_be_assessed_July_2019.pdf)

<sup>24</sup> <https://www.slatergordon.co.uk/media-centre/blog/2016/02/what-is-the-difference-between-a-contractual-and-a-statutory-employment-right/>

statutory employment rights issues and the policy levers available to LBN to intervene in this space.

Common forms of employment rights abuse in the UK include;

- Non-payment of the minimum wage and unlawful deductions;
- non-payment of sick pay;
- unfair dismissal;
- non-payment of holiday pay;
- illegal and unpaid working hours;
- equality and discrimination;
- bogus self-employment

This section will look at each of these seven in turn, examining the nature and scale of the issues.

### **Non-payment of the minimum wage and unlawful deductions**

The National Minimum Wage (NMW) is a statutory minimum wage floor, which sets out the legal minimum a worker can be paid. The minimum wage is set at varying rates depending on the age of employee and the type of employment. The recently introduced National Living Wage (NLW) is the name for the minimum wage for workers aged 25 and over; it currently stands at £8.21.

**Table 3: Minimum wage rates (2019/20)**

Year	25 and over	21 – 24	18 – 20	Under 18	Apprentices
2019/20	£8.21	£7.70	£6.16	£4.35	£3.90

Source: [www.gov.uk/national-minimum-wage-rates](http://www.gov.uk/national-minimum-wage-rates)

Estimating the scale of minimum wage underpayment in the UK is a task fraught with difficulty, owing to the limitations of current data collection methods and the fact that it is illegal and thus hidden from authorities and researchers.

According to ONS, there were 441,000 employees aged 16 years old and above who were paid below the NMW in April 2018, representing 1.6% of all employee jobs<sup>25</sup>. However, ONS notes that this estimate cannot be taken as a reliable measure of non-compliance as it is not always possible to say for certain whether an individual is entitled to the minimum wage in the dataset used, as they may, for example, receive free accommodation.

The Low Pay Commission (LPC) also attempts to provide estimates on the scale of minimum wage non-compliance in the UK. They try to overcome some of the methodological challenges by pooling multiple datasets and focusing on workers aged over 25 who are eligible for the NLW. LPC estimates that in April 2018, 369,000 workers entitled to the NLW were underpaid the legal minimum. Including workers not entitled to the National Living Wage due to being aged 24 and below or

<sup>25</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowandhighpayuk/2018>

being on the first year of an apprenticeship, the LPC estimates that 439,000 individuals were underpaid the relevant minimum wage in April 2018.

Whilst ONS and LPC do not provide data at a local authority level, Understanding Newham provides some data which suggests underpayment of the minimum wage in the borough may be very high. By dividing reported gross weekly pay by the reported number of hours worked, and comparing this to the age relevant minimum wage, Understanding Newham suggests that one in four (27%) Newham resident employees who were in work in 2017 were paid below the legal minimum wage. The figure is higher among women (34%), and it is higher among people from black (35%) and Asian (29%) backgrounds. Underpayment of the minimum wage is notably higher among employees working in certain sectors, such as the retail (45%).

Applying the proportions calculated by LPC and Understanding Newham to Newham's population gives an estimate that **at least 1,800 (LPC) and up to 36,000 (Understanding Newham) residents were underpaid the minimum wage in 2018.**

There are a number of possible reasons for this discrepancy between the two estimates, largely owing to the differing survey methodologies used. The LPC figure is likely to be an *underestimate*; it relies on employers self-reported HR data that would not include any instances of intentional non-compliance, nor would it capture any hours worked additional to those contracted, that were not formally recorded in HR systems. Furthermore, it is not able to capture activity occurring in the informal economy, effectively 'invisible' to Government<sup>26</sup>.

Conversely, the Understanding Newham figure is based on employees self-reporting their pay and hours worked, so errors in recalling these figures for the specific pay period of reference may account for some of the observed differences. Additionally, Understanding Newham will likely capture *unpaid overtime*, in employees' reports of hours worked, whereas ASHE will not. As is stated in the 2018 Understanding Newham report, the survey has "not been designed specifically to capture detailed household and individual income" (p. 49), and the estimate for median hourly pay is significantly below that provided by ASHE, which likely arise due to the very different methodologies.

It is difficult to estimate the amount of lost wages due to minimum wage underpayment, however, Understanding Newham estimates that in 2015, £38.3m was lost in unpaid wages in the borough<sup>27</sup>. According to LPC's estimates, over a third of workers underpaid the minimum wage were under-paid by less than 10pence/hr; one in three of which were underpaid by up to 5 pence<sup>28</sup>. Looking at the 2018 figures for employers who were 'named and shamed' for underpayment of the minimum wage during the year, published by the Department for Business, Energy

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<sup>26</sup> BEIS (2017) Minimum Wage Underpayment in the Informal Economy. BEIS Research Paper Number 16.

<sup>27</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19.

<sup>28</sup> It should be stressed that this will only capture instances of non-intentional non-compliance.

and Industrial Strategy, a total of £1.1 million in wages were withheld from workers, representing an average of about £119 for each of the 9,213 workers found to be denied income<sup>29</sup>. However, the actual figure of total wage theft occurring in London is likely to be very significantly higher. LPC estimates that official complaints represent just 2% of all instances of underpayment, an even smaller proportion of which will successfully make it through an employment tribunal and result in a conviction to make the naming list<sup>30</sup>.

In addition to unpaid hours, another common cause of underpayment of the minimum wage is illegal deductions from pay. In 2018/19, there were 17,621 applications to employment tribunal for unauthorised deductions of pay, nationally, with 10% being successful at tribunal, and a further 25% settled through Acas conciliation<sup>31</sup>. Claims for illegal deductions were far higher prior to the introduction of tribunal fees, with over 30,000 claims in 2013/14 and each of the four preceding years.

We heard from stakeholders working in frontline support services that some of the most common issues they dealt with related to wages, either in the form of residents being underpaid or wages being withheld altogether. This frontline perspective was reflected in the stories told by residents of Newham during workshop discussions. We heard of experiences ranging from being asked to work overtime with no additional remuneration to pay being withheld altogether. Some participants highlighted companies or temporary labour agencies seemingly 'disappearing' and reappearing shortly after under a different name, in a process described as 'phoenixing', which was seen as particularly common in the construction and care industry. Such a practice was said to enable companies to write off any existing debts through declaring insolvency, leaving workers unpaid and employers free to start the cycle of underpayment again.

### **Non-payment of sick pay**

By law, employees who are unable to work due to sickness are entitled to Statutory Sick Pay (SSP) from their employer. Employees are entitled to SSP if they have worked at least one day for their employer, and their usual earnings exceed £118 a week. Part time employees, agency workers and employees on zero hours contracts are all entitled to SSP. An employee is entitled to SSP if they are off work for four or more days, and eligibility lasts up to 28 weeks.

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<sup>29</sup> Arrears period ranged from 2011 – 2017. Data available at: <https://www.gov.uk/government/news/nearly-200-employers-named-and-shamed-for-underpaying-thousands-of-minimum-wage-workers>

<sup>30</sup> Just 11% of minimum wage tribunal cases were successful at hearing in 2018/19, with a further 22% settled through Acas conciliation. Available at: <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019>

<sup>31</sup> <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019>

There is evidence that many employees are denied their right to SSP. Analysis by Citizens Advice<sup>32</sup>, conducted in 2017, revealed that some employers exercise various tactics to bypass these rules and avoid paying sick pay, including;

- cancelling workers' shifts or removing them from the Rota after they call in sick, making it look as though they are not meant to be working;
- reducing wages or claiming that employees work less hours than they actually do, which means that they do not meet the threshold for sick pay;
- requesting that employees provide a GP's certificate to prove they are unfit for work before the 7-day self-certification period has ended;
- refusing to complete the relevant HMRC sick pay form that would require an employer to describe why they have not paid an employee's sick pay;
- in some instances, terminating the employment rather than paying out the statutory entitlement.

Qualitative research has shown that some are reluctant to bring up the issue of sick pay for fear of punitive action from their employer in response<sup>33</sup>.

The scale of non-compliance is difficult to estimate due to a lack of robust data collection mechanisms. However, half of the total pay and entitlements enquiries that Citizen's Advice took between mid-2015 to mid-2016 throughout the UK were about sick pay and sick leave<sup>34</sup>, which provides an indication of the prevalence of sick pay issues amongst those seeking support.

Analysis by IPPR found that one in ten UK claimants of Employment Support Allowance (ESA) had been denied SSP by their employer, with indications that the vast majority of these employees having been entitled to receive SSP<sup>35</sup>.

One expert stakeholder who was interviewed recognised that unpaid sick pay was an issue but believed it to be a less serious problem compared to unpaid hours and holiday pay.

## **Unfair dismissal**

Employees who have worked at an organisation for at least 2 years are protected from all forms of unfair dismissal, unless the employer has good reason for dismissing them, and they have followed the company's formal disciplinary or dismissal process.

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<sup>32</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/employers-tricking-people-out-of-sick-pay-says-citizens-advice/>

<sup>33</sup> University of Greenwich (2017). Non-Standard Contracts and the National Living Wage: A Report for the Low Pay Commission. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/660561/Moore\\_AntunesTailbyNewsomeWhiteGreenwich\\_NonStandardContractsandtheNLW\\_FINAL\\_2017\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660561/Moore_AntunesTailbyNewsomeWhiteGreenwich_NonStandardContractsandtheNLW_FINAL_2017_Report.pdf)

<sup>34</sup> <https://citra.maps.arcgis.com/apps/Cascade/index.html?appid=1f001f56c8d9443a8fac2c622cbe16e4>

<sup>35</sup> <https://www.ippr.org/files/publications/pdf/working-well-feb2017.pdf>

Dismissals are classed as ‘automatically unfair’ if the reason is connected to a number of protected areas, such as pregnancy and maternity, acting as a union or employee representative, being a part-time or fixed-time employee, or due to pay and working hours<sup>36</sup>. Where a dismissal is deemed to be automatically unfair, the two-year qualification period does not apply.

Many thousands of UK employees are unfairly dismissed each year. The latest data shows that in 2018/19, there were 15,965 employment tribunal applications for unfair dismissal. Of these, 7% were successful at hearing, and a further 34% resulted in Acas conciliated settlements. However, these figures will represent only a small proportion of all cases, and they are likely vastly to underestimate of the scale of the issue<sup>37</sup>. Before the introduction of employment tribunal fees, the number of applications was significantly higher, with more than 40,000 applications in 2013/14 and each of the preceding 4 years.<sup>38</sup>

#### Case study: Experiencing Unfair Dismissal

*During the first workshop, Florence discussed her experience of unfair dismissal.*

Florence moved to the UK from Latin America and was working as a dinner lady in her most recent role. About a month ago she noticed that she did not receive any pay from her employer as she usually would each week. When she raised the issue with her manager, she was told that this must have been an administrative error and that she should wait patiently for her wages to come through. After a number of days had passed without any pay, she raised the issue again. Florence found herself being directed to speak to individual after individual in the company without finding that her issue was being addressed or resolved. Ultimately, Florence was dismissed from her job for ‘making a fuss’ about her pay. All of the discussions that Florence had with management about her pay were verbal and she had nothing in writing from the company about the promises they had made to pay her at various deadlines. She told us that she felt let down and that she had been lied to.

One stakeholder, representing a local advice service, stated that unfair dismissal accounts for the bulk of the workplace issues they support residents with. In many cases, a lack of formal employment contract often accompanies the unfair dismissal making it extremely difficult to prove that any wrongdoing has occurred. During the first workshop, residents discussed the conditions under which they had been

<sup>36</sup> <https://www.acas.org.uk/index.aspx?articleid=4098>

<sup>37</sup> Cockbain et al. (2019) How can the scale and nature of labour market non-compliance in the UK best be assessed? Final report of a scoping study for the Director of Labour Market Enforcement. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814582/How\\_c\\_an\\_the\\_scale\\_and\\_nature\\_of\\_labour\\_market\\_non-compliance\\_in\\_the\\_UK\\_best\\_be\\_assessed\\_July\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814582/How_c_an_the_scale_and_nature_of_labour_market_non-compliance_in_the_UK_best_be_assessed_July_2019.pdf)

<sup>38</sup> <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2018>

dismissed from previous roles, with many falling under the category of ‘automatically unfair’. For example, Florence<sup>39</sup>, whose story is detailed in the case study above, was dismissed for “making a fuss” about not receiving the pay to which she claimed she was legally entitled. Another resident, Tom, was dismissed after raising concerns about health and safety issues that he witnessed at his place of work. Support practitioners and residents spoke of the ways that employers would frame an unfair dismissal, placing the blame on employees for being “unreasonable”, “getting angry” and “raising their voices”. While no workshop participants had themselves been dismissed for being associated with union activity, one resident spoke of the repercussions their co-workers faced;

*“My organisation, they don’t have a union. I started asking why, and they said don’t - the people who asked are not working here anymore”*

Resident of Newham – First Workshop.

### **Non-payment of holiday pay**

Under the Working Time Regulations (WTR), employees are entitled to a statutory leave entitlement or holiday pay. Full-time, part-time and zero hours contracted employees are eligible, with the entitlement varying based on the number of days/hours worked. Full-time employees are entitled to 5.6 weeks (28 days) of paid holiday each year<sup>40</sup>.

While all employees, regardless of contractual status, are entitled to holiday pay, public awareness of this fact is low. A recent survey by the Department for Business, Energy & Industrial Strategy (BEIS) showed that one in three UK workers incorrectly thought that only people in permanent employment are entitled to holiday pay and one in two thought people on zero hours contracts don’t qualify for holiday pay<sup>41</sup>. Furthermore, awareness was even lower for younger workers, people of BAME backgrounds, atypical workers and for the Greater London region.

It is difficult to quantify the scale of denial of holiday entitlement and/or pay, but a number of reports suggest it is a major problem across the UK;

- Resolution Foundation analysis suggests that 6% of all UK workers reported receiving no holiday pay in 2016-18<sup>42</sup>. Older and younger workers, those on atypical contracts and particular sectors such as Hospitality and Education, are most at risk.

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<sup>39</sup> The individual’s real name has not been used for confidentiality reasons.

<sup>40</sup> <https://beta.acas.org.uk/checking-holiday-entitlement>

<sup>41</sup> BEIS (2019) Holiday Pay Survey. Available at: <https://www.gov.uk/government/publications/holiday-pay-survey>

<sup>42</sup> Resolution Foundation (2019) From rights to reality: enforcing labour market laws in the UK. Available at: <https://www.resolutionfoundation.org/publications/from-rights-to-reality/>



- Clark and Herman<sup>43</sup> suggested that each year, around 5% of employed workers report that they will not receive holiday pay. They approximated that £1.8 billion of holiday pay is not paid each year, impacting 1.8 million workers.
- Metcalfe's 2019 Labour Market Enforcement Strategy estimates that over half of all wage theft (workers being paid less than they are legally entitled to) is due to unpaid holiday pay.<sup>44</sup> Given Metcalfe's estimate of an annual pay penalty of £470 to the 6.6 million workers in the bottom thirty per cent of the wage distribution, this would result in an annual shortfall of around £235 due to non-payment of holiday pay to those affected by wage theft.
- One fifth of all pay and entitlement issues that Citizens Advice dealt with in 2016 were specifically about paid holiday<sup>45</sup>.

Applying the most recent estimates of UK workers denied holiday pay, published by Resolution Foundation<sup>46</sup>, to Newham suggests that **over 8,200 Newham residents were denied holiday pay outright between 2018-19.**

Withheld wages emerged as a major issue from discussions during the first workshop and unpaid holiday pay was perceived to account for a large proportion of these problems. A large local support provider stated that unpaid holiday pay was one of the most common issues they dealt with.

Particular issues were discussed around residents not being paid for their last pay period, including any outstanding holiday pay that are owed, after they had left a job or had been unfairly dismissed. Support practitioners stated this to be a common problem and residents recounted numerous ways in which they had experienced this. One resident spoke of how, after returning from a period abroad to care for a family member, their contract had been prematurely terminated and they had not received any outstanding pay they were owed.

*"I think an awful lot of agencies, temporary labour agencies, have the policy of, don't give them the holiday pay when they leave, wait until they ask for it and sometimes wait until they start making a real fuss."*

Expert Stakeholder – Stakeholder Interview

As with other areas of employment rights abuse, certain forms of employment status and contract type were seen by COI participants as having a higher risk of denial of holiday pay. Workers on ZHCs, as well as agency and temporary workers were seen as more likely to be vulnerable to this type of employment rights abuse.

This is corroborated by the literature. Research conducted by Citizens Advice highlighted that it can be difficult for workers on variable hours contracts to prove the

<sup>43</sup> [https://www.mdx.ac.uk/\\_data/assets/pdf\\_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825\\_p21](https://www.mdx.ac.uk/_data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825_p21)

<sup>44</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19.

<sup>45</sup> <http://cita.maps.arcgis.com/apps/Cascade/index.html?appid=40135e849fdf46a9a0b53a9b8aa27d7d>

<sup>46</sup> Resolution Foundation (2019) From rights to reality: enforcing labour market laws in the UK. Available at: <https://www.resolutionfoundation.org/publications/from-rights-to-reality/>

number of hours they have worked in order to access holiday pay and prove sick pay entitlements<sup>47</sup>. Access to which should be based on actual hours worked, rather than contracted. A recent BEIS survey found that only 52% of atypical workers said they were paid the correct amount of holiday pay, compared to 80% of workers in typical contractual arrangements<sup>48</sup>.

### **Illegal and unpaid working hours**

Under the Working Time Regulations (WTR), employees are entitled to work no more than 48 hours on average per week, although individuals can 'opt out' of this regulation if they choose to do so.<sup>49</sup> Generally, employees are also entitled to at least a 20-minute break if they work in excess of six hours a day, have 11 hours of consecutive rest in a 24-hour period, and have one day off each week (or two consecutive days off a fortnight).

Evidence suggests that the number of people in the UK working excessively long hours is on the rise<sup>50</sup>. In 2015, just under 3.5 million people worked more than 48 hours per week, which represents a 15% increase since 2010, with the increase being larger still in London (21%). It is not clear how many people in the UK work illegal hours, since the data will include long-hours workers who have opted out of the WTR, whose hours are therefore legal, as well as those who have not opted out, and are working excessive hours illegally. However, it is concerning that many employees reported that they feel pressured to 'opt-out' from the 48-hour working limit and perceived this as a condition of employment.

Evidence suggests long – and potentially illegal – working hours are a particular problem in Newham. Analysis of the Understanding Newham survey shows that just over one in ten<sup>51</sup> (10.5%) full time employed residents worked more than 48 hours a week in 2017, slightly higher than the figure for London provided by TUC at 9.9%.

In addition to illegal working hours, the evidence suggests there is a significant problem in the UK labour market with unpaid working hours. This is particularly prevalent in some sectors. A survey of UNISON workers in home care for example found that 63% of workers were not paid for travel time, despite explicit HMRC guidance that it should be included as working time and paid appropriately.<sup>52</sup> This was reflected in the accounts of residents working in the care sector and support practitioners who attended the workshop. One resident who worked in the care sector spoke of having to spend long periods of time on standby without pay, and not receiving pay altogether for hours they had worked.

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<sup>47</sup> Citizens Advice (2017). Sharp Practice at Work. Available at: <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/sharp-practice-at-work/>

<sup>48</sup> BEIS (2019) Holiday Pay Survey. Available at: <https://www.gov.uk/government/publications/holiday-pay-survey>

<sup>49</sup> Acas (2019) Working hours <http://www.acas.org.uk/index.aspx?articleid=1373>

<sup>50</sup> TUC (2015) 15 percent increase in people working more than 48 hours a week <https://www.tuc.org.uk/news/15-cent-increase-people-working-more-48-hours-week-risks-return-%E2%80%98burnout-britain%E2%80%99-warns-tuc>

<sup>51</sup> Base size = 286

<sup>52</sup> <https://www.unison.org.uk/content/uploads/2019/04/Pressed-for-time-and-out-of-pocket-04-2019.pdf>

Stakeholders noted that where individuals were in more casualised forms of employment, non-payment of working hours was a risk. Furthermore, claiming payment for completed work after leaving an employer was seen to pose a particular issue. When payslips are only available on an online intranet portal, unavailable to individuals who are no longer employees, or when individuals have not been given a paper payslip at all, proving the number of hours worked and claiming compensation was thought to be near impossible. We heard from stakeholders that being denied a payslip is likely to accompany wider rights' abuses, akin to a canary in a coalmine. Recent estimates suggest that nearly one in ten (9%) UK workers don't receive a payslip<sup>53</sup>. Applying this proportion to Newham suggests that **over 22,000 residents didn't receive a payslip in 2018**.

The nature of unpaid wages ranged from the accumulation of frequent small infractions to individuals stating they had not been paid for up to 5 weeks of work.

*“But the big issue is things like unpaid additional hours. So, either in small quantities of 20 minutes, half an hour per day, or sometimes overtime which never quite gets paid. So, that's quite a serious issue.”*

Expert Stakeholder – Stakeholder Interview

There is an interaction between unpaid working hours and underpayment of the minimum wage. If a worker is paid at or close to the minimum wage, not being paid for all of the hours they actually work can represent illegal underpayment of the minimum wage. This is particularly common in the social care sector, which is characterised both by low levels of hourly pay, and the prevalence of non-paid working hours<sup>54</sup>.

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<sup>53</sup> Resolution Foundation (2019) From rights to reality: enforcing labour market laws in the UK. Available at: <https://www.resolutionfoundation.org/publications/from-rights-to-reality/>

<sup>54</sup> Dromey, J, and Hochlad, D, (2018), <https://www.ippr.org/files/2018-11/fair-care-a-workforce-strategy-november18.pdf>, Institute for Public Policy Research

### Case Study: The Experience of Unpaid Hours

Irena moved to the UK from Eastern Europe a few months before starting a job at a large chain in the retail sector. She told her story on how she came to be increasingly victimised at work. Irena stated that she prided herself on having never been late for work since she started working in the UK. However, she found that she was being asked to work an extra 15-30 minutes every day by her manager. Sitting down one evening she calculated the value of this unpaid overtime that was being asked of her and was shocked at how much it amounted to over the course of her employment. While this kind of flexibility was expected from her, this was not reciprocated by her employer. She told us of one morning when, after arriving to work precisely one minute late, her manager publicly disciplined her for her lateness with no recognition of the unpaid overtime that Irena had worked. When asked if this was commonplace in her workplace, she responded that she was the only employee whom she knew that was treated in this way. Irena told us that she was the only foreign national in her workplace and believed her treatment to stem from this fact. Being singled out by her manager led her co-workers to follow suit and Irena found herself in a position in which colleagues, fearing no repercussions from an apathetic management, would tease her for being foreign; stating that they could not understand her when she spoke or would ignore her altogether. When Irena subsequently asked to take two weeks of holiday, within her rights as an employee, she was told that she would have to take it as unpaid holiday.

Irena was visibly upset by this situation and clearly had not expected anything of this nature before she had moved to the UK;

*“I thought that coming to the UK I would have more rights, be treated better than in my home country. I was wrong.”*

Irena, Newham Resident – 1<sup>st</sup> Workshop.

This example is illustrative of the stories of personal experience that were shared in the workshop. Of how multiple issues, some representing poor employment practice, but some clearly crossing the line into illegal employment rights violations, can combine to both the financial and psychological detriment of the victim.

### **Equality and discrimination**

The Equality Act 2010 provides the judicial framework for ensuring employees are treated fairly at work. Under the Act it is unlawful to discriminate against employees in the workplace, by treating them unfavourably on the grounds of nine ‘protected characteristics’<sup>55</sup>:

- Age
- Disability

<sup>55</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex (gender)
- Sexual orientation

The act defines four different types of discrimination<sup>56</sup>:

- **Direct discrimination** is when an employee is treated less favourably because they possess one or more of the protected characteristics listed above;
- **Indirect discrimination** occurs when an employer implements a criterion or practice which is applied uniformly to a group of employees, which unfairly disadvantages one group who share one or more of the protected characteristics, and which cannot be justified as an essential occupational requirement; **Harassment** is unwanted contact, in relation to one of the protected characteristics or of a sexual nature, that violates an individual's dignity or creates an environment that is deemed hostile or offensive;
- **Victimisation** is a situation in which an employee suffers ill treatment or detriment because they have personally made or supported another's allegation of discrimination.

Table 4, below, shows employment tribunals related to discrimination and/or unfair dismissal based on one of the protected characteristics in 2017/18. Data is available only at the national level.

**Table 4: Employment tribunal applications and outcomes relating to protected characteristics (Oct – Dec 2018)**

	Disability discrimination	Equal pay	Race discrimination	Religious or belief discrimination	Sex discrimination	Sexual orientation discrimination	Unfair dismissal for pregnancy
Applications to employment tribunal	3,649	10,669	1,684	386	6,890	200	934
Acas conciliated settlements	40%	5%	35%	13%	32%	13%	38%
Successful at hearing	4%	6%	3%	32%	3%	1%	4%

Source: ONS Employment Tribunal statistics.

Research has shown that pregnancy and maternity discrimination is a commonplace and persistent issue. The Equality and Human Rights Commission (EHRC) investigated the issue in 2016 and found that over three in four mothers (77%) had

<sup>56</sup> Acas (2017). *Equality and discrimination: Understanding the basics*. Available at: [http://www.acas.org.uk/media/pdf/1/0/Equality\\_discrim\\_understand\\_basics\\_Nov.pdf](http://www.acas.org.uk/media/pdf/1/0/Equality_discrim_understand_basics_Nov.pdf)

experienced negative, and possibly discriminatory, behaviour during their pregnancy or on return from maternity leave<sup>57</sup>. Almost one in ten mothers felt they were being forced to leave their job due to their pregnancy, and one in four (25%) employers thought pregnancy put an unreasonable cost burden on their business.

We heard from stakeholders and members of the COI of the commonplace nature of race discrimination for workers in London, and in Newham.

For one resident, it happened so frequently that they found themselves forced to manage and ignore the situation;

*“I just brace myself before I go into the workplace, I don’t really take it in... It’s not fine, but I can ignore it... I come here to work, earn money and go home.”*

Newham Residents – First Workshop

Another member of the COI had moved to Newham from Rwanda and experienced racial discrimination at work. Upon raising a health and safety concern with management, they were told that such matters should not be of their concern. The resident persisted to raise the issue, as they knew that the practices they witnessed were below a legal standard. Finally, their employer, who viewed them as ‘causing trouble’, questioned their authority to even raise health and safety issues, owing to their ethnicity: “why are you talking about health and safety, they don’t have health and safety in Africa!”. This event, recounted during the workshop by a resident, is illustrative of the way in which bullying and discrimination along lines of ethnicity, nationality and disability were perceived and experienced by the COI as entangled with other forms of employment rights abuse. This resulted in individuals feeling isolated, targeted and sometimes singled out amongst their colleagues.

Participants in the COI argued that race discrimination in the workplace was relatively widespread in part because it was ‘fairly easy to get away with’, owing to the lack of enforcement. This is reflected by the low levels of success at employment tribunal. While one in three race discrimination cases disposed of at Tribunal in the UK in 2018/19 ended in Acas conciliated settlements, just two per cent were successful at hearing<sup>58</sup>.

### **Bogus self-employment**

Bogus self-employment is when workers are told they are self-employed despite meeting the legal tests that would define them as employees or workers.<sup>59</sup> Bogus self-employment can be driven by two main motivations:

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<sup>57</sup> EHRC (2016) Pregnancy and Maternity – Related Discrimination and Disadvantage: Summary of key findings. Available at: <https://www.gov.uk/government/publications/pregnancy-and-maternity-related-discrimination-and-disadvantage-final-reports>

<sup>58</sup> ONS Employment Tribunal Statistics: Main Tables (January to March 2019). Available at: <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019>.

<sup>59</sup> <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Neither%20one%20thing%20nor%20the%20other.pdf>

- The desire to avoid paying employers national insurance contributions for the workers that they use;
- The desire to avoid the rights that workers or employees are entitled to, such as holiday and sickness pay, or the entitlement to the minimum wage.

It is difficult to quantify the scale of bogus self-employment in the UK, in part due to the lack of codified definitions of what constitutes an employee, a worker, or a self-employed worker<sup>60</sup>. However, evidence suggests bogus self-employment is commonplace, with Citizens Advice Bureau estimating that there were 460,000 bogusly self-employed workers in 2015, representing around 1 in 10 self-employed workers<sup>61</sup>. **Based on these proportions, there may be around 3,900 bogus self-employed workers in Newham.**

Residents and stakeholders viewed bogus self-employment as a major challenge in the borough. As one stakeholder explained;

*“I suppose the other one, which again is in construction but also all over the place, with cab drivers and HGV drivers and some cleaners, is the business of, so called self-employment, when people really aren’t self-employed at all.”*

Expert Stakeholder – Stakeholder Interview

Members of the COI perceived bogus self-employment to be a particularly damaging violation. It was seen to undermine an individual’s access to a number of their statutory rights to which they should be entitled, including SSP, holiday pay, the minimum wage, or protection from unfair dismissal. In one instance, a COI member discussed how a client was wrongly treated as self-employed by a care organisation and found themselves billed for training they had received while working.

Based on the cases they had dealt with, one stakeholder described the care, construction, cleaning and security sectors as the “four chief offenders”, which is backed up by the literature, as detailed in the 2018/19 DLME strategy<sup>62</sup>.

## Modern slavery

Modern slavery represents the extreme end of labour market exploitation. Modern slavery covers forced labour, criminal and sexual exploitation and domestic servitude, and it is a criminal rather than a civil offence.

According to the Home Office there were estimated to be between 10,000 and 13,000 potential victims of modern slavery in the UK in 2014. Incidences of modern slavery and labour and labour exploitation has been on the rise in recent years<sup>63</sup>.

<sup>60</sup> Taylor, M. (2017) Good Work: The Taylor Review of Modern Working Practices. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rq.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rq.pdf)

<sup>61</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/bogus-self-employment-costing-millions-to-workers-and-government/>

<sup>62</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19.

<sup>63</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705495/labour-market-enforcement-strategy-2018-2019-executive-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705495/labour-market-enforcement-strategy-2018-2019-executive-summary.pdf)

Local authorities have a central role in tackling modern slavery. Under the Modern Slavery Act (2015), local authorities have the duty to notify the Home Office of any individual they encounter who they believe is a victim of slavery or human trafficking. Beyond this statutory duty to identify victims, local authorities work in local partnership to prevent modern slavery, and to provide support for victims.

Modern slavery did not feature as a substantive point of discussion during either workshop held with members of the COI. It was mentioned during one of the scoping interviews as an area of concern in the borough.

## Summary

Both the available data and the primary research conducted with the COI suggests that **employment rights abuse is a significant and widespread problem in Newham.**

We heard from stakeholders and support practitioners that ‘wage theft’ is the most common employment rights issue in Newham. This can take the form of unpaid working hours, non-payment of holiday pay, or underpayment of the minimum wage. **We estimate that between 1,800 and 36,000 residents were underpaid the minimum wage in 2018, with at least 8,200 denied holiday pay outright in the same year.**

**The composition of Newham’s economy and working age population put the borough at particular risk of wage theft issues.** Newham residents are disproportionately concentrated in low-pay sectors, where incidences of underpayment of the minimum wage are more common, and there is a high proportion of migrant workers and workers from BAME backgrounds who are overrepresented in national estimates of minimum wage underpayment.

**Racial discrimination** and other forms of discrimination, such as **maternity discrimination** were felt to be significant issues for Newham residents.

**Unfair dismissal was as a major concern**, with this interacting with other forms of employment rights violations.

**Bogus self-employment** was seen to be both common and particularly damaging for those affected given it denies access to basic statutory rights. Rates of self-employment are high compared to the rest of nation; **there may be around 3,900 bogus self-employed workers in Newham.**

Residents of the COI who had experience employment rights violations were clear that the **impact of being victimised extended beyond financial concerns.** In some instances, the effect of being victimised at work **led to feelings of being isolated and ‘othered’ by colleagues and management.** Residents spoke of how unfair working environments put them under immense stress and made them resent going in to work. One resident stated that “you just get up in the morning and don’t want to go into work”.



Wage theft, particular forms of discrimination, unfair dismissal and bogus self-employment appear to be the most widespread and damaging forms of employment rights abuses in the borough. Through the inclusion of local residents, stakeholders and members of the local support network, this represents a collective diagnosis of the issue and forms the basis on which policy response options have been developed, discussed in Chapter 3.

## 2.2 Who is most at risk of employment rights abuse?

Workers are at risk of different kinds of employment rights abuse dependant on socio-demographic factors and their position within the labour market. Risk of abuse varies across contract type, employment status, and industry sector. In addition to factors relating to the labour market and individual characteristics, non-unionised workers and those with an unclear employment status are at particular risk. However, active violations of workers' rights are only one side of the coin. Precarious working conditions, or 'one-sided flexibility', can create an environment where people feel unable to assert their rights and entitlements.

This section looks at the risks that different groups of workers face.

### Employer characteristics

#### Employer sector

The prevalence of employment rights abuse varies significantly between sectors, with employment rights abuses more common in low-paid, low-skilled sectors:

- The Low Pay Commission identified higher incidence of underpayment of the minimum wage in certain sectors, with the highest levels in childcare, where 43% of workers covered<sup>64</sup> by the NLW were found to have been underpaid. In absolute terms, hospitality, retail, and cleaning and maintenance are the occupations with the highest number of underpaid workers.
- There is extensive evidence of widespread abuse of employment rights in the social care sector, including non-payment of working time and underpayment of the minimum wage<sup>65</sup>
- This is in part reflected by Understanding Newham, which finds higher levels of underpayment of the minimum wage in sectors such as retail<sup>66</sup>.

Members of the COI highlighted a number of sectors where employment rights abuses were seen as being particularly common, including social care, hospitality and retail.

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<sup>64</sup> LPC define 'covered' as the number of individuals who are paid up to and within 5 pence of the relevant minimum wage rate.

<sup>65</sup> <https://www.ippr.org/research/publications/fair-care>

<sup>66</sup> Ipsos Mori. 2018. Understanding Newham 2017: Findings from Wave 9 of the Newham Household Panel Survey. London Borough of Newham. Available at: <https://www.newham.gov.uk/Documents/Misc/Research-HouseholdSurvey9.pdf>

Some stakeholders suggested that violations of employment rights were common in certain businesses, including chicken shops, newsagents, massage parlours and small family businesses. This was informed by feedback from enforcement teams, but it was recognised that ‘hard data’ was lacking here. Employment rights issues in these areas was seen to overlap with immigration issues, with those with irregular migration statuses being particularly vulnerable to exploitation and employment rights abuse.

## **Employer size**

There appears to be some variation in the prevalence of employment rights abuse by size of employer.

The Low Pay Commission found that a significantly higher proportion of underpaid workers are employed in micro-level firms (23% of those covered by National Living Wage were found to be paid below that level), compared with medium sized (12%) or the largest employers<sup>67</sup> (15%)<sup>68</sup>.

This suggests that compliance is a greater issue for micro firms, who may lack internal HR and finance capacity, and who may inadvertently violate employment rights. However, workers in large firms account for just under one in four (22%) underpaid workers. This may pose a particular issue for Newham, with micro enterprises accounting for 95% of its businesses, 4 percentage points higher than the share across London<sup>69</sup>.

## **Worker characteristics**

### **Socio-demographic factors**

There is substantial evidence to suggest that some groups are at higher risk of employment rights abuse.

Stakeholders and members of the COI were clear that they believed the risk of employment rights abuses within Newham varied greatly depending on **socio-demographic factors** such as migration status, English for speakers of other languages (ESOL) need, disability status, mental health issues, nationality, ethnicity, and age.

Both national and local evidence suggests **gender** is a major factor, with women at greater risk of underpayment of the minimum wage. According to the Low Pay Commission, women account for nearly two in three (64%) workers underpaid the minimum wage across the UK in 2018. Similarly, Understanding Newham suggests

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<sup>67</sup> Micro = fewer than 10 employees, medium sized = 50-249 employees, largest = 250 or more employees.

<sup>68</sup> Low Pay Commission (2019). Non-compliance and Enforcement of the National Minimum Wage.

<sup>69</sup> Interdepartmental Business Register (2018), accessed via NOMIS. [Available at: https://www.nomisweb.co.uk/reports/lmp/la/1946157255/report.aspx#tabjobs](https://www.nomisweb.co.uk/reports/lmp/la/1946157255/report.aspx#tabjobs)

that one third of women in Newham are underpaid the minimum wage in 2017 compared to one in five men<sup>70</sup>.

In addition to the higher risk of employment rights abuse for women, there appears to be a particular risk around **maternity**, as is set out above.

Stakeholders remarked that **recent migrants** were often not aware of the rights and entitlements that are afforded to them in the workplace. In addition, they were often concentrated in sections of the labour market where employment rights abuse is most prevalent, and they often suffer from low bargaining power and an inability to enforce their rights.

**Younger employees** were also seen to be at risk due to a lack of experience in navigating the labour market and a lack of understanding of employment rights. As one stakeholder remarked, “It’s not surprising that people have a low awareness of their rights, no one teaches it to them”.

Workers from a **BAME background** are at risk of racial discrimination at work. The 2014 Survey of Employment Tribunal Applications shows that those from ethnic minority backgrounds are over-represented in tribunal application statistics<sup>71</sup>. Furthermore, Understanding Newham suggests residents from black (35%) and Asian (29%) backgrounds are more likely to be underpaid the minimum wage<sup>72</sup>.

### **Non-Unionised Workers**

There is some evidence to suggest that workers who are not members of a trade union are more vulnerable to employment rights abuses. For example, in 2015, 6.1% of workers who were not signed up to a collective agreement reported they had no holiday pay entitlement, compared to 2.7% of workers who were covered<sup>73</sup>.

This was reflected during primary research, with members of the COI suggesting that non-unionised workers were at greater risk of employment rights abuse. This was due to these workers being less likely to understand their employment rights, and less likely to be able to access advice and support should they face an issue at work.

Participants also highlighted hostility among some employers to unions, including potentially illegal discrimination against workers looking to organise their workplace.

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<sup>70</sup> Ipsos Mori. 2018. Understanding Newham 2017: Findings from Wave 9 of the Newham Household Panel Survey. London Borough of Newham. Available at: <https://www.newham.gov.uk/Documents/Misc/Research-HouseholdSurvey9.pdf>

<sup>71</sup> BEIS (2014) Findings from the Survey of Employment Tribunal Applications 2013. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf)

<sup>72</sup> Ipsos Mori. 2018. Understanding Newham 2017: Findings from Wave 9 of the Newham Household Panel Survey. London Borough of Newham. Available at: <https://www.newham.gov.uk/Documents/Misc/Research-HouseholdSurvey9.pdf>

<sup>73</sup> Clark, N. and Herman, E. (2017). Unpaid Britain: wage default in the British labour market. Middlesex University. Available at: [https://www.mdx.ac.uk/\\_data/assets/pdf\\_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825](https://www.mdx.ac.uk/_data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825)

## Those with unclear employment status

A lack of clarity over an individual's employment rights status can leave them vulnerable to employment rights abuse.

The lack of clear and codified definitions of what constitutes an employee, a worker or a self-employed worker, and a lack of awareness among workers and among some employers can contribute to confusion over an individual's status and entitlements.

The Taylor Review (2017)<sup>74</sup> recommended that Government clarify in legislation the differences between 'worker' status and genuine self-employment and the rights and responsibilities that apply for each category of employment status.

## Precarious employment and one-sided flexibility

There has been significant growth in insecure forms of work in the UK in recent years. This includes;

- Nearly 900,000 people on zero hours contracts, representing nearly 3% of employment<sup>75</sup>;
- Between 800,000 and 1.2m agency workers<sup>76</sup>;
- Gig economy workers, estimated to account for 4% of all in employment<sup>77</sup>;
- Low paid self-employment;
- Workers on temporary contracts.

Both the Taylor Review and the Low Pay Commission have highlighted the risks of 'one-sided flexibility' that can accompany precarious and insecure work. This is a situation in which the worker lacks power relative to the employer and is expected to demonstrate complete flexibility, without being able to benefit from flexibility in return.<sup>78</sup>

In such circumstances, workers can feel reluctant to raise issues relating to their employment rights for fear of putting their future employment at risk. Workers on zero hours contracts for example can fear being 'zeroed down' – being denied hours

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<sup>74</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>75</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/mp17peopleinemploymentonzerohourscontracts>

<sup>76</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>77</sup> Taylor, M. (2017) Good Work: The Taylor Review of Modern Working Practices. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>78</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contracts-that-donot-guarantee-a-minimum-number-of-hours/april-2018>;  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

or work in the future<sup>79</sup>. A recent survey by BEIS found that workers in atypical contractual arrangements (on a zero hours contract, a fixed term temporary contract, or an agency worker) are also more likely to state that they feel they would face repercussions from their employer if they exercised their holiday entitlements<sup>80</sup>.

Such fears were expressed by Newham residents in the first workshop, with one resident stating that they had to agree to any hours offered in order to keep their job. Support practitioners of the COI viewed this to be a particular problem in the care sector.

The Skills and Employment Survey provides a rough estimate of the scale of one-sided flexibility; 7% of UK employees, amounting to 1.7 million workers, stated that they were very anxious that their assigned working hours would unexpectedly fluctuate<sup>81</sup>. If this figure was replicated in Newham, it would represent **9,600 employees who are anxious about their hours fluctuating**. In reality, the scale of such insecurity is likely to be significantly greater due to the prevalence of insecure work in the borough.

## Summary

Whilst there are incidences of employment rights abuse across the economy, there are particular risks in certain areas.

There appear to be higher levels of employment rights abuse associated with certain types of **employers**, most notably in certain low-pay sectors such as social care, retail and hospitality, and among smaller employers.

There are also higher levels of risk for certain groups of **workers**. This includes higher risk for certain **socio-demographic groups**, such as women and recent migrants. Employment rights abuse also appears to be more common among workers in precarious employment, those who are not members of a trade union, and those who have unclear employment status.

## 2.3 Drivers of employment rights abuse

Having considered the groups who are at particular risk of employment rights abuse, this section seeks to understand the drivers of employment rights abuse. Based on the national evidence and the findings of the COI, it explores low levels of awareness, lack of enforcement, and a growing imbalance of power between employee and employer in the workplace.

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<sup>79</sup> Low Pay Commission (2018). A Response to Government on 'One-Sided Flexibility'. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/765193/LPC\\_Response\\_to\\_the\\_Government\\_on\\_one-sided\\_flexibility.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765193/LPC_Response_to_the_Government_on_one-sided_flexibility.pdf)

<sup>80</sup> BEIS (2019) Holiday Pay Survey. Available at: <https://www.gov.uk/government/publications/holiday-pay-survey>

<sup>81</sup> Felstead et al. (2018). Insecurity at work in Britain: First findings from the Skills and Employment Survey 2017. Available at: [https://www.cardiff.ac.uk/\\_data/assets/pdf\\_file/0011/1309457/6\\_Insecurity\\_Minireport\\_Final.pdf](https://www.cardiff.ac.uk/_data/assets/pdf_file/0011/1309457/6_Insecurity_Minireport_Final.pdf)

## Lack of enforcement

The lack of effective enforcement of employment rights is crucial to understanding the prevalence of employment rights abuse.

National evidence has highlighted the limited nature of proactive employment rights enforcement. The Migration Advisory Committee (MAC) calculated in 2014, that “on average, a firm can... expect to be prosecuted [*for various forms of wage theft*] once in a million years.”<sup>82</sup>.

This was a common theme of the COI, with members highlighting the limitations of national enforcement of employment rights. As one member explained when asked about why employment rights abuse takes place;

*“...because it is fairly easy to get away with”*

COI members highlighted limited budgets and resources for enforcement of employment rights as being part of this problem.

## Low levels of awareness of employment rights

In the context of limited proactive employment rights enforcement, the UK system relies heavily on individuals to challenge employment rights abuse. However, the lack of awareness of employment rights appears to be a major factor in limiting enforcement, and in explaining the prevalence of employment rights abuse.

Awareness of employment rights among workers is important both to deterring employment rights abuse, and as a precondition to workers being able to enforce their rights. Workers need to be able to understand the rights to which they are entitled, and when they may have been a victim of employment rights abuse. In addition to being aware of their rights, workers need to be aware of how they can enforce their rights.

However, both national evidence and the findings of the COI suggest that there is a significant gap in understanding of employment rights.

The COI was in consensus that awareness of employment rights abuse in the borough was extremely low, and that an understanding of where to go for further information and support was even lower.

Workers in insecure forms of employment appear to be particularly unlikely to understand their employment rights.

- A recent survey by BEIS found that workers in atypical contractual arrangements (on a zero hours contract, a fixed term temporary contract, or

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<sup>82</sup> Migration Advisory Committee (2014) Migrants in Low Skilled Work. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333083/MAC-Migrants\\_in\\_low-skilled\\_work\\_Full\\_report\\_2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf)

an agency worker) have a lower understanding of their holiday pay entitlements<sup>83</sup>.

- A recent survey by Citizens Advice Bureau found that half of workers on ZHCs thought they were not entitled to paid holiday at all<sup>84</sup>.

In addition to the lack of worker understanding of employment rights, COI members also discussed the low level of awareness among employers of employment rights. They thought that some employers, particularly small businesses with limited or no HR capacity, lacked a familiarity with employment rights, which can sometimes lead to inadvertent denial of employment rights.

Following the recommendation of the Taylor Review, all employees are now entitled to a written statement covering details of their employment contract and rights from their employer within two months of starting work<sup>85</sup>. These are welcomed proposals and developments, however, there is clearly scope to improve awareness and use of official complaint channels, in addition to investing more in enforcement bodies.

### **Lack of confidence in enforcing employment rights**

In addition to understanding employment rights, workers need to be able and willing to enforce them. However, this is a significant challenge for many.

The introduction of Employment Tribunal (ET) fees in 2013 was followed by a significant decline in applications. Applications in tax year 13/14 were down 45% on the previous year and fell a further 42% in 14/15<sup>86</sup>, suggesting it had a substantial impact on workers' willingness to pursue their rights through tribunal. The number of cases has been increasing since ET fees were declared illegal in 2017, however, they still remain 37% below the number of applications before their introduction.

Whilst ET fees have been scrapped, the inability to access legal aid for most cases can represent a barrier for workers in pursuing redress through this route.

Members of the COI spoke about low levels of confidence in asserting their rights in the workplace and low levels of belief in the capacity for positive change. We heard individuals say that they would rather change job over confronting their manager and bringing an issue up.

*“I know no matter what I do, I don't think I'll get the help I need... if it doesn't go my way, they'll use that against me...”*

Newham Resident – First Workshop

*“part of that is to do with sense of entitlement that is absent, quite contrary to popular theory, particularly amongst young people. They don't think they're entitled to make a fuss.”*

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<sup>83</sup> BEIS (2019) Holiday Pay Survey. Available at: <https://www.gov.uk/government/publications/holiday-pay-survey>

<sup>84</sup> Citizens Advice (2017). Sharp Practice at Work. Available at: <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/sharp-practice-at-work/>

<sup>85</sup> BEIS (2018) Good Work Plan. Available at: <https://www.gov.uk/government/publications/good-work-plan>

<sup>86</sup> L&W's analysis of Employment Tribunal statistics. Available at: <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019>

## **Employer Behaviour**

Opinion varied on the drivers of employer behaviour relating to employment rights abuse.

On the one hand, COI members discussed unintentional, yet still illegal, non-compliance. Primarily perceived to be small businesses mistakenly underpaying workers, without the capacity and resources to adequately ensure that all holiday pay calculations are accurate. On the other hand, members highlighted what they saw as intentional non-compliance by many employers. Many emphasised that employers were intentionally underpaying workers through a variety of mechanisms as a way to cut costs.

## **Decline in union membership**

The decline in trade union membership can be seen to have contributed to an imbalance of power in the labour market and to the prevalence of employment rights abuse. Without unions to improve the bargaining power of workers, and to ensure that they are aware of and confident in enforcing their employment rights, COI members perceived power to have shifted towards employers and away from employees.

As highlighted above, there is evidence to suggest that members of trade unions may be at lower risk of employment rights abuse than other workers.

This could be due to a number of factors. First, workers in a union are more likely to be able to access free, specialist employment rights advice and support, to help them understand when they may have been a victim of employment rights abuse, and their options for seeking recourse<sup>87</sup>. Second, in addition to understanding rights and enforcement options, trade union members may also be more willing and confident to take action to enforce their rights where they feel they have been the victim of employment rights abuse. Finally, this knowledge and support could also have a deterrent effect on employers.

However, while trade union membership could act as a preventative and protective factor against employment rights abuse, union membership has fallen substantially over the last four decades. In 2018, just 22.1% of workers across the UK were members of a trade union, with membership in London being lower still at 18.2%<sup>88</sup>.

## **Imbalance of power at work and ability to enforce employment rights**

The drivers detailed above were seen to combine to create a situation where employees find themselves powerless relative to their employer.

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<sup>87</sup> Holgate, J. et al. (2010). Help and Representation for Problems at Work: what has happened to support networks and advice centres? London: Working Lives Research Institute.

<sup>88</sup> ONS (2019) Trade Union Membership Statistics 2018. Available at: <https://www.gov.uk/government/statistics/trade-union-statistics-2018>



Given the lack of proactive enforcement, the decline in union membership, the context of one-sided flexibility and insecure work, even if workers are aware of their employment rights, they often lack the confidence and capacity to enforce them.

Only 62% of workers on atypical contracts would feel comfortable talking to their employer if they thought their holiday pay entitlement was wrong, compared to 82% of typical workers<sup>89</sup>. However, these practices were also seen to undermine the foundations on which collective action could rest. With workers vying for the same share of limited hours, employers were seen to be able pit colleagues against each other. One COI member termed this as tactics of “divide and rule”.

This imbalance of power can create a negative feedback loop, where lack of power undermines confidence in the ability for change; a lack of support results in feeling isolated and contributes to institutional distrust; and, one sided flexibility can undermine relations between colleagues and function to set workers against each other, reducing any basis for collective action or individual enforcement.

## Summary

Six main drivers of employment rights abuses in Newham were uncovered during this research:

- **Lack of enforcement** at a national level, and **challenges with the Employment Tribunal system** mean that responsibility is placed on individual workers to understand and assert their rights.
- However, **levels of awareness of employment rights are low** among workers, and lowest among workers who face the greatest risk of employment rights abuse.
- **Lack of confidence in enforcing employment rights.** Even where violations take place, and workers are aware of them, fear of reprisal from employers can serve to stop workers from making complaints.
- The **decline in union membership** has left many employees without access to information and support.
- **Employer behaviour.** While some incidences of employment rights abuse may result from a lack of understanding of employment rights, in many cases they relate to deliberate decisions by employers who are seeking to minimise costs and maximise profit by denying workers their rights.
- The **imbalance of power at work** resulting from the drivers listed above leaves many workers vulnerable to employment rights abuse.

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<sup>89</sup> BEIS (2019) Holiday Pay Survey. Data tables available at: <https://www.gov.uk/government/publications/holiday-pay-survey>

## 3. The current support landscape

This section examines the support available to Newham residents who experience employment rights issues. It begins by looking at the overarching enforcement framework in the UK, including the tribunal process, and then looks at the local support landscape in Newham. The local offer is then appraised from the perspective of the Community of Interest (COI), assessing gaps in the offer and barriers to uptake.

### 3.1 Current enforcement framework for employment rights in the UK

#### Enforcement agencies

Different government bodies are tasked with ensuring that employers comply with employment rights regulations and legislation. Non-compliance can result in penalties for businesses. The most serious breaches can lead to prosecution and imprisonment.

The following enforcement bodies are in operation in the UK:

- **HMRC** enforces the National Minimum Wage (NWM) and the National Living Wage (NLW). HMRC investigate reports of underpayment of the minimum wage, and they have some powers to conduct proactive enforcement.
- **The Gangmasters and Labour Abuse Authority (GLAA)** requires businesses to apply for licenses to protect the rights of temporary laborers in high risk sectors in the fresh food supply chain.
- **The Employment Agency Standards Inspectorate (EAS)** protect agency workers' rights
- **The Health and Safety Executive (HSE)** enforce rules around health and safety, as well as some elements of working time regulation.

For the most part, these enforcement bodies are reactive, responding to individual complaints, rather than proactively investigating areas of labour market violations<sup>90</sup>.

The number of complaints received by enforcement bodies is very small relative to the scale of employment rights abuse. For example, the Low Pay Commission suggest that the number of official complaints received by Acas and HMRC represent just 2% of the actual number of workers who have been underpaid their minimum wage entitlements<sup>91</sup>.

To give an indication of the scarcity of proactive enforcement action, Clarke calculated that an employer should expect a visit from a minimum wage enforcement officer every 230 years<sup>92</sup>. This estimate is lower than that given by the Director of

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<sup>90</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19.

<sup>91</sup> Low Pay Commission (2019). Non-compliance and enforcement of the National Minimum Wage.

<sup>92</sup> Clark, N. and Herman, E. (2017). Unpaid Britain: wage default in the British labour market. Middlesex University. Available at: [https://www.mdx.ac.uk/\\_data/assets/pdf\\_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825](https://www.mdx.ac.uk/_data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825)

Labour Market Enforcement in his 2018/19 annual strategy, which puts the figure at once every 500 years<sup>93</sup>.

More resource has been allocated to enforcement in recent years and the number of complaints received by HMRC rose on last year. Funding to support minimum wage enforcement was increased from £13 million in 2015/16 to £26.3 million in 2018/19<sup>94</sup>. At the recent spending round, it was announced that this would increase to £28 million in 2020/21<sup>95</sup>.

Stakeholders pointed to severely under-resourced and inadequate enforcement practices as a reason for why underpayment of the minimum wage is at such a high level, why many discrimination cases do not result in prosecution and as a factor contributing to the shift of power towards employers.

### **Employment tribunals**

In addition to these enforcement agencies, individual workers and groups of workers have the ability to pursue redress for employment rights breaches through Employment Tribunals (ETs). These can include issues ranging from unfair dismissal, and non-payment of holiday pay to discrimination. Before a case progresses to a tribunal, the individual must first notify Acas, a statutory body responsible for undertaking conciliation between employer and employee, who will attempt to resolve the dispute through mediation (Early Conciliation), prior to both parties appearing at a tribunal. Participation in the conciliation process is optional for both employees and employers.

Legal aid is not available for ETs, except for in some cases relating to discrimination. This can leave individuals without professional representation through the process. Individuals can present their own cases without legal representation, however support organisations and residents who had been through the process highlighted this as undesirable, given the complexity of the process and the stress involved.

If a tribunal agrees that an individual's rights have not been upheld, they can order an employer to pay the individual financial rewards including redress and compensation. However, some cases will go through several appeal rounds and many employees do not receive the compensation to which they are entitled. The Taylor Review concluded that there are various issues with the tribunal process, including the fact that it places too much of the responsibility on often vulnerable individuals to assert their employment status, and that the findings of ETs relate only to the individual(s) taking the claim forward and are not automatically applied to colleagues in the same circumstances.

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<sup>93</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19.

<sup>94</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2019/20.

<sup>95</sup> HM Treasury (2019) Spending Round 2019. Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/829177/Spending\\_Round\\_2019\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829177/Spending_Round_2019_web.pdf)

### 3.2 What current support is there for Newham residents who have employment rights issues?

In addition to the national enforcement agencies and the formal methods for seeking redress, there are various sources of support that are available to Newham residents who face employment rights issues. These are largely provided through charities, law clinics, trade unions and community organisations:

- **Toynbee Hall** operate in the East End of London. They are a charity who aim to support people and communities to overcome barriers and break free from poverty. They offer a one to one advice service for people who live, work or study in London who need help with work related issues including dismissal, redundancy, discrimination, unpaid wages and employment tribunal claims. They also deliver the City Advice project, funded by the City of London Corporation, running drop-in sessions and operating a general advice line including for employment rights issues.
- **Citizens Advice**<sup>96</sup> CAB East End hub<sup>97</sup> provides free, confidential and impartial advice for individuals living in Newham and other boroughs in East London, namely Hackney and Tower Hamlets. It offers a telephone service which operates between 10am and 1pm on Tuesdays and Wednesdays as well as pre-bookable appointments a specialist caseworker for people with more complex employment rights issues. Members of the COI who had accessed this service spoke extremely highly of the personalised, face to face, and continued support that it provided to them, often recounting the money the caseworker had recouped from employers on their behalf
- **Tower Hamlets Law Centre**<sup>98</sup> is a charitable organization whose vision is to provide “access to justice for the East End community”<sup>99</sup>. They offer a fortnightly drop-in employment advice clinic for employees who need advice on issues including unfair dismissal, redundancy, discrimination at work, wages, employment rights and employment status.
- **Community Links** is a community charity based in East London, whose mission is “to support people in coming together, overcoming barriers, building purpose and making the most of the place they live in”<sup>100</sup>. In collaboration with corporate lawyers, they offer a free legal advice drop-in law surgery (including employment law advice) twice a week, which is delivered by a team of in-house advisors and volunteers. Assistance during the appeals processes against DWP or Local Authority decisions and representation at appeal hearings is also available.

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<sup>96</sup> <https://www.citizensadvice.org.uk/work/>

<sup>97</sup> <http://www.eastendcab.org.uk/newham/>

<sup>98</sup> <http://thlc.co.uk/>

<sup>99</sup> <http://thlc.co.uk/about-us>

<sup>100</sup> <https://www.community-links.org/about-us/>

- **Acas**<sup>101</sup> (Advisory, Conciliation and Arbitration Service) provide free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. In addition to providing information on employment rights on their website, Acas provide a free helpline to help people understand and enforce their employment rights.
- **Trade unions** play an important role in provision of specialist employment rights support and more general advice and information. Workers in a union are more likely to be able to access free advice and support, to help them understand when they may have been a victim of employment rights abuse, and their options for seeking redress or compensation.
- **Community groups** coalesce around either an ethnic, religious or national identity and are often the first point of call for individuals who are having issues at work. This is particularly the case for non-unionized workers who do not have a specific support network tied to their employment. We heard from stakeholders of numerous community groups that are active within Newham, providing basic support and signposting members to other services. While groups of this nature are keen to support in any way, they can with employment issues, they are considered to not have the time, resources or requisite expertise to adequately support their membership base. There are, however, some exceptions to this, with the [Shpresa Programme](#), which is focused on the Albanian-speaking community, receiving funding from Trust for London to provide employment rights support to their members

### 3.3 Assessing the current support offer

This section aims to provide an assessment of the current support offer, drawing primarily on findings from interviews with stakeholders, the first COI workshop and wider literature and data sources where appropriate. Stakeholders and members of the COI were asked about their views of the current support landscape in terms of the offer available to both workers and local employers, including the barriers and facilitators to access and up-take.

#### Third sector support

Third sector organisations such as Community Links, Citizen’s Advice and others were seen to provide a much-needed support to Newham who face employment rights issues. However, COI members also identified a number of shortcomings in the current offer from third sector providers in terms of awareness of available services, their accessibility, and capacity to support residents, particularly those with more complex cases.

#### Awareness

First, alongside low levels of awareness of employment rights among residents, the COI highlighted that **awareness of the options available to workers in seeking**

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<sup>101</sup> <http://www.acas.org.uk/index.aspx?articleid=1339>

**redress** for problems at work was **perceived to be extremely low**, particularly among workers who are more likely to face exploitation and employment rights abuse. A result of declining visibility as funding has been reduced and focus is placed on service delivery instead of outreach and awareness raising.

Wider qualitative research evidence undertaken across London corroborates this picture and links low awareness of available services to large cuts in local authority budgets and consequent reductions in service visibility<sup>102</sup>.

### **Barriers to access**

Second, in addition to the low levels of awareness, the COI highlighted **challenges with accessing the support that is available**. These challenges centre around geographically restricted provision, short and unsuitable opening hours, insufficient supply to meet levels of demand, and ESOL needs.

Combined with high travel costs within London, the restriction of one to one support to only a couple of locations within Newham makes these offers **geographically inaccessible for many**. One member discussed the difficulties posed for single mothers who struggled to fit seeking support around their care responsibilities. We heard of an example in which a resident had to stop returning to the location where they were receiving support partway through the resolution of their issue due to the travel costs they were incurring. Their case went unresolved.

Where residents are able to access provision, we heard that **short opening hours during the working day mean many in employment are unable to attend**.

*“It should be more longer, because people after job want to come - 6 o’clock or 8 o’clock”*

Newham Resident – First Workshop

We heard that **services struggle to deal with the current level of demand**, and members of the COI were clear that the number currently presenting at services represents only a fraction of those facing problems at work. Those that are able often have to queue for extensive periods of time prior to the service opening to guarantee that they will be seen that day<sup>103</sup>. Additional barriers included ESOL needs, thought to prevent residents engaging with the offer.

### **Capacity**

Finally, there are issues around the **capacity of existing services, particularly for more complex cases**. Members of the COI who had direct experience spoke positively of the work undertaken by organisations such as Community Links and Citizens Advice to provide basic advice and support. Yet, there was recognition that workers with more complex cases were often unable to find a resolution for their issue. This is because existing support services are relatively poorly resourced, often

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<sup>102</sup> Holgate, J. et al. (2010). Help and Representation for Problems at Work: what has happened to support networks and advice centres? London: Working Lives Research Institute.

<sup>103</sup> Ibid

relying on trainee solicitors who offer only one-off advice and support, rather than ongoing casework support.

Whilst there was seen to be a number of sources of *information*, COI perceived a shortage of more *intensive support*, both in terms of face-to-face advice and ongoing casework support.

Stakeholders and support organisations spoke of the impact of funding reductions as a result of austerity, and the numerous strategies that had been taken to adapt and ensure support is available to those who need it. These include utilising partnership approaches and finding innovative low-cost alternatives to service provision, such as partnering with trainee solicitors and undergraduates studying law. However, respondents were clear that reductions in funding had resulted in a decline in the quality and availability of support that was available to residents.

## Trade Unions

Trade unions can be a vital source of specialist employment rights support and advice<sup>104</sup>. However, union membership has been in steady decline for the last forty years, falling 16 percentage points from 1989 to 2018<sup>105</sup>, with levels at series record lows. This has resulted in the perception among COI members that unions are “on the back foot” and face a hostile environment in the workplace owing to both government policy and business practices. Union membership within the borough is thought to be largely focused in the public sector and areas such as transport, with other sectors either completely untouched or partial.

While stakeholders referenced examples of good progress being made to find ways to organise more non-traditional sections of the labour market, more work is needed to reach out to more casualised or informal sections of the labour market. Union membership was seen as being particularly low in low pay sectors which were seen as having particular problems with employment rights abuse. That is to say that unions are least present where they are needed most.

Innovative solutions will be needed to overcome the current mismatch between a union membership structure built for the traditional workplace structure of the past, and the current reality of a flexible and fluid bottom end of the labour market, where individuals may move from sector to sector and cycle in and out of low paid work.

Where unions were present in the workplace, they were seen as offering high-quality, accessible and effective advice and support to people facing employment rights issues. However, this support is generally only available to members, and membership in the borough is low. One COI member compared union membership to the protection offered by house insurance; you cannot insure your house after it has burned down. While unions were seen as effective in finding a resolution to

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<sup>104</sup> Holgate, J. et al. (2010). Help and Representation for Problems at Work: what has happened to support networks and advice centres? London: Working Lives Research Institute.

<sup>105</sup> <https://www.gov.uk/government/statistics/trade-union-statistics-2018>

employment rights issues, one member of the COI highlighted the fact that they sometimes only offer support if they think a case is winnable.

Awareness of unions and the support they can provide was perceived by the COI to be low among large sections of Newham's working age population. Some members of the COI suggested that low awareness was in part a result of unions focusing on supporting their current members rather than channelling resources into outreach work.

### **Employment Tribunals and Legal Support**

Whilst ET fees have been scrapped, members of the COI highlighted the importance of professional legal advice and support to helping people achieve a resolution through tribunal.

The lack of availability of legal aid for the vast majority of ET cases was seen as a major barrier in this regard.

In the absence of legal aid, and with limited casework support available locally, residents viewed having to represent themselves at ET as a necessity. This was seen as being difficult for non-experts and for people who might lack an understanding of the system, or basic skills such as literacy and English language. It was also seen as time-consuming, and stressful. One COI member, a resident of Newham, who had been through the employment tribunal process discussed the huge amount of pressure and stress that it had put them under, which ultimately led them to seek emotional support with the issue. In the absence of legal aid, some residents have to rely on no-win, no-fee lawyers. However, such lawyers were seen as often reluctant to take cases which may have only a limited chance of success, or limited compensation in the event of success.

Acas, the statutory body charged with trying to find settlements to disputes before they reach court, was seen by COI to provide good basic guidance and information through their website. Acas was seen to be easy to get in contact with and responsive to issues, although the lack of availability of face to face support was seen as a drawback.

### **Support for employers**

In addition to the relative lack of advice and support for employees, some member of the COI highlighted a lack of support for businesses around employment rights.

Some stakeholders pointed to national provision that was currently available, including resources from Acas and the Chartered Institute of Personnel Development. However, awareness of and engagement with these sources of employer support was perceived to be low amongst employers in the borough.

Support for employers was highlighted by the COI numerous times as worth considering, particularly for small organisations with little HR capacity.



## Summary

While there are a number of sources of support for Newham residents with employment rights issues, there remain significant gaps.

A number of third sector organisations provide information and advice for Newham residents with employment issues. While much of this support is high-quality, it is limited by lack of awareness, limited access, and insufficient capacity. As one member of the COI stated, “*demand is high, but provision is low*”.

While trade unions provide effective support for members, the vast majority of workers in Newham are not members of a union, with membership being particularly low where it is needed most.

ETs are now free to make a claim to, but the inaccessibility of legal aid for most cases leaves residents with little support.

Having considered the gaps in current provision, below we set out a number of options for LBN to intervene in order to tackle employment rights abuse and help residents access support.

## 4. Tackling employment rights abuse in Newham

### 4.1 Introduction

Employment rights violations in Newham appear to be a serious and widespread problem, with indications that a significant number of residents are negatively impacted. The wider literature and primary research undertaken with the COI show that the negative effects of labour market violations cover social, economic and psychological dimensions and can undermine communities, depriving vulnerable workers of much needed wages and contributing to insecurity.

The current support available for residents who face employment rights issues is patchy and insufficient. As such, there is a strong case for LBN to act and to intervene.

A second workshop was held with the COI to co-develop solutions to tackle the problem of rights abuses in Newham. To frame the discussions, the workshop began with a presentation on the drivers of employment rights abuse in Newham, and the current support offer; the findings from the first workshop and wider scoping activity.

This chapter reports on the findings of the service development workshop, in terms of desired service objectives, methods to achieve those objectives and barriers to implementation. Finally, these objectives and activities are packaged up and presented as models for an employment rights service that could prevent employment rights abuse and offer effective support to those who do face employment rights issues.

#### Co-developing solutions: framing the workshop

We uncovered five key drivers of employment rights abuse in Newham:

- Lack of enforcement.
- Low levels of awareness.
- Lack of confidence in asserting and enforcing rights
- Employer behavior.
- Decline in union membership
- An imbalance of power in the workplace.

We found four key issues that functioned to restrict residents from seeking and finding support:

- Low visibility
- Under-resourced: geographically restricted, short opening hours, long waits
- Inadequate support for those with complex cases
- Complex and inaccessible wider legal support system

## 4.2 Workshop Findings: Co-developing service options

### Exploring service objectives

In exploring the potential for an employment rights service in Newham, the workshop considered three potential service objectives;

- **Awareness raising** – making sure more people understand their rights and the support available to them.
- **Capacity building** – empowering and building strong communities.
- **Individual Support** – for individuals who have experience the abuse of their rights.

These objectives were developed on the basis of findings from the preceding research activities, designed to address the drivers of employment abuse in the borough and plug gaps in the existing support offer. In the first instance, these objectives were explored with the COI, who were also asked about other potential objectives. The bulk of the workshop was then dedicated to co-developing ways to address each objective.

#### Awareness raising

A consistent theme from the background research and the COI was the extent to which many workers lack an understanding of their employment rights, or of where to go if they face an employment rights issue at work. Raising awareness of employment rights and understanding of individuals' employment status was seen to enable the other objectives; you cannot seek support for a problem if it is not recognised as problem in the first instance. Consequently, many participants saw awareness raising as crucial in tackling employment rights abuse, which should be a central part of an employment rights service.

LBN was seen as being well-placed to support with awareness raising, given their extensive communications capacity and existing communications channels.

Discussions were held on where awareness raising should be targeted and on the most appropriate channels of communication, summarised below in Table 5.

**Table 5: Targeting awareness raising activity**

Who	Where	Communication Channel
<ul style="list-style-type: none"> <li>• Agency workers</li> <li>• Workers on ZHCs</li> <li>• Workers in sectors with high levels of employment rights issues</li> <li>• Residents starting a new job</li> <li>• Young people</li> <li>• People with a disability</li> <li>• People from BAME communities</li> <li>• New and re-entrants to the labour market</li> </ul>	<ul style="list-style-type: none"> <li>• NCT classes and Sure Start Children's Centers</li> <li>• Students Unions</li> <li>• Community Groups</li> <li>• Faith Groups</li> <li>• Hospitality, security and care sector</li> <li>• Temporary employment agencies</li> <li>• Jobcentre Plus and Workplace</li> <li>• Libraries</li> </ul>	<ul style="list-style-type: none"> <li>• Newham magazine</li> <li>• LBN website</li> <li>• Council tax bills and benefit letters</li> <li>• Social media</li> <li>• Jobcentre</li> <li>• Business rate letters</li> <li>• Billboards</li> <li>• Local radio</li> </ul>

Source: discussions with COI members during the second workshop

The COI was clear that awareness raising should be focused on prevention and take an “upstream” approach. Through targeting new or recent returners to the labour market, such as school leavers or new parents, future instances of employment rights abuse could be prevented. As such, education and awareness raising in schools was seen as pivotal. A school leavers pack, distributed by the council, was suggested;

*“Let’s start a generation who will fight back”*

COI Member – Second Workshop

A joined-up approach was deemed to be most effective. Members spoke of the need to identify and exploit ‘touch points’ that residents have with existing organisations and council services to disseminate information about employment rights.

Suggestions included a Newham workers pack, or a ‘new starters checklist’, containing information on employment rights and signposting to the service, distributed through Workplace to individuals placed in a job. Others suggested a website page that would pop up when residents pay their council tax as a method to reach a large number. Recognition was given to the need to provide materials in a variety of languages to ensure that all in the borough could access the information.

While awareness raising was viewed as a vital endeavour, the COI was clear that such activity alone, would be insufficient. In order to be effective, **awareness raising needs to be combined with support for those who have employment rights issues to be effective.** Having information on your rights does not necessarily mean that an individual has the knowledge, confidence and support required to take action.

## Community Capacity Building

In addition to direct communication with residents in order to raise awareness of employment rights and availability of support, we explored the potential for community capacity building.

This refers to the process of fostering strong and resilient communities, empowering people in Newham to help themselves and each other to understand and assert their rights at work. In the context of employment rights, this can relate to;

- **supporting and training individuals** within hard to reach and at-risk communities to understand employment rights, employment rights abuse, and support available, so that they can support others
- **using existing community networks** to raise awareness of employment rights issues, and help people access support.

The COI viewed this objective as closely linked to awareness raising, and an extremely important aspect of any effective, efficient and sustainable intervention to tackle rights abuse in the borough. It was seen as being particularly important for communities which are often hard to reach, and who are more at risk of employment rights issues, including migrant communities and those lacking English as a first language.

Participants talked about the importance of having support available in community centres and other shared places where community members and groups could get together, learn about employment rights and hear find out how to get support.

## Advisor Support

In addition to raising awareness, and building community capacity, having access to support from expert advisors was seen as a crucial part of any service offer.

Advisor support was seen as important in helping individuals gain confidence and understand where they may have a case, and in taking people through the process of seeking redress, whether that be through engaging directly with their employer, reporting issues to enforcement agencies, pursuing conciliation through Acas, or through taking a case to employment tribunal. The COI participants suggested that for people with employment rights issues, advisors can both provide expertise, and be “on their side” and willing to fight for their corner.

Participants suggested that face-to-face support was seen as being more effective than online or phone advice, and access to ongoing support and case working was seen as more effective than one-off advice. Both of these were seen as lacking in terms of current provision. However, participants recognised that this support was more expensive than more light-touch support.

There were mixed views as to whether such a service would best be provided by LBN or by a third party:

- Some participants suggested that an advisor service could be **delivered by LBN**, working alongside or as part of Workplace. This would provide a coherent employment-related service covering both job-brokerage, and support with employment issues for those in work.
- The majority of participants argued that such a service should be commissioned by LBN but **delivered by a third party**. This was seen as important to avoiding any risk of conflict of interest; to ensuring the service was seen as independent, impartial and trusted; and to engage appropriate expertise in this area.

COI members were keen to stress that measures would need to be in place to ensure that any support offer put in place would not repeat the issues that they experienced trying to access existing services; residents should not have to queue up for hours to be seen for a very short period of time, they should be able to access the service at suitable hours of the day, locally.

In addition to the objectives set out above, members of the COI proactively identified two additional objectives for an LBN-led employment rights service;

### **Supply chain compliance**

In addition to raising awareness, building community capacity and providing advisor support, members of the COI argued that LBN could play a strategic role in preventing employment rights abuse through their supply chain.

In addition to being large employers, local authorities procure a large amount of goods and services. A strategic approach to procurement and the supply chain – with a particular focus on sectors with higher prevalence of employment rights abuse such as social care, childcare, and construction – was seen as being an important part of a wider effort to tackle employment rights issues.

Members of the COI recognised that there was some work underway in this area. LBN has a modern slavery and human trafficking statement. The local authority has signed up to the UNISON Ethical Care Charter, which sets out minimum expected standards for social care providers commissioned by the local authority.

In keeping with the recommendation of the Director for Labour Market Enforcement, LBN should consider amending its procurement templates to explicitly compel compliance with labour market regulations in public contracts<sup>106</sup>. In addition to stating this within its procurement framework, LBN should consider investing in staff capacity to ensure compliance and enforcement throughout their supply chain.

Alongside a greater focus on ensuring compliance through LBN's supply chain, the impact could be multiplied by securing a commitment to this approach from other local anchor institutions, such as Newham College, University of East London the local NHS trust, and local housing associations.

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<sup>106</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19.

Alongside the support provided to those who face employment rights issues, ensuring compliance through LBN's supply chain represents a more preventative approach.

### **Building union membership**

A number of participants in the COI suggested that trade union membership could be seen as a preventative and protective factor with regard to employment rights issues. This is backed up by the literature which suggests that union members may be less vulnerable to employment rights abuse, and that when they are, they are more likely to be able to access expert advice and support.

Given this, and the decline in union membership locally in recent years, there was some suggestion that an employment rights service could encourage residents who face issues at work, as well as workers more broadly, to join a trade union.

### **Summary**

The COI agreed that awareness raising, community capacity building and individual support were the right objectives for the service to address. These areas were seen as being complementary and representing a strategic and multi-faceted approach to tackling the challenge. Two additional objectives were raised: a strategic approach to tackling employment rights issues through the supply chain, and an effort to boost union membership locally.

### **4.3 Service Options**

This section presents a series of costed service options for an employment rights service that could be implemented in Newham. These options are based on the evidence generated throughout the project, and they have been co-developed with the COI to address the existing gaps in support. They are intended to help inform LBN's considerations as to how to address the problem of employment rights issues. The section begins by detailing the 'preferred' option, providing the rationale for its choice, followed by alternative options with a different focus and scale of intervention.

#### **Newham Employment Rights Hub**

Our proposed model – the Newham Employment Rights Hub – covers all three of the objectives that COI members recognised as integral to an effective intervention to tackle employment rights abuse. It would aim to:

- **raise awareness** of employment rights across the borough;
- **strengthen community capacity** by providing group educational interventions and training community advocates
- **provide individual support** to those with employment rights issues, through intensive, one-to-one casework with a specialist employment rights advisor.

Each of the components are inter-connected, with awareness raising and strengthening community capacity helping to direct those with identified issues to the individual support.

The Newham Employment Rights Hub is based both on *support* and *prevention*.

For those who have already been subject to rights abuses, personalised and intensive *support* will help to resolve cases and deliver compensation to individuals.

In addition to supporting individuals, the Newham Employment Rights Hub would seek to *prevent* such abuse taking place and to reduce the incidence of employment rights abuse in the borough. Through ensuring workers are able to enforce their rights, the Newham Employment Rights Hub could help deter employers from violating employment rights in the first place. In addition, through raising awareness of employment rights, building community capacity, boosting union membership and ensuring good employment practice in LBN's supply chain, the service could help address the balance of power at work, and prevent such abuse in the future.



# Newham Employment Rights Hub

Signposting

Referrals

<b><u>Aim</u></b>	<b>Awareness Raising</b> Mass and targeted communications, led by LBN, promoting awareness of employment rights across the borough.	<b>Community Capacity Building</b> Deep community engagement with hard to reach groups. Fostering strong and resilient communities through the development of community rights advocates.	<b>Individual Support</b> Intensive, personalised, one-to-one support for those who have experienced employment rights abuse at work.
<b><u>Activity</u></b>	<ul style="list-style-type: none"> <li>• Mass communication of information on employment rights to residents</li> <li>• Mass communication of information on employment rights to local employers</li> <li>• Targeted communication of information on employment rights to at risk groups of residents</li> <li>• Awareness raising activity of services available to residents affected by rights abuse</li> <li>• Awareness raising activity of services available to employers</li> </ul>	<ul style="list-style-type: none"> <li>• Community development work: identification of community groups and existing resident networks in need of employment rights support</li> <li>• Delivery of day clinics in community settings for hard to reach groups</li> <li>• Delivery of group educational activities in community settings</li> <li>• Leadership identification: advocate training and development</li> <li>• Delivery of educational sessions for employers</li> <li>• Referral to individual support services where necessary</li> </ul>	<ul style="list-style-type: none"> <li>• Triage service: identification of rights abuse</li> <li>• Provision of basic employment rights advice and guidance</li> <li>• Practical support to raise concerns with employer and direct employer engagement</li> <li>• Continued casework support for more serious cases</li> <li>• Practical support with reporting to enforcement agencies and tribunal claims</li> </ul>
<b><u>Staff</u></b>	No additional staffing implications - led by LBN communications team	1.0 FTE Snr Community Employment Rights Advisor (Community EmRA)	2.0 FTE Snr EmRA (Caseworker) 2.0 FTE EmRA (Advice and Guidance)
1.0 FTE Service Manager			

**Wider strategic approach to supply chain compliance**

## Components

### Awareness raising

The first aspect of the Newham Employment Rights Hub would be a strategic approach to communication and awareness raising among both workers and employers. In the current national enforcement framework, individual workers are responsible for asserting their rights at work<sup>107</sup>. Therefore, it is essential that all residents are aware of their rights and entitlements to prevent bad employers from taking advantage of them.

In terms of the **audience**, this should include both mass communications focused on all residents, and targeted communication focused on groups who are particularly vulnerable to employment rights abuse. In addition to targeting workers, LBN could also consider communications directed at employers, highlighting where they can go for information on employment rights, and the determination of LBN to tackle employment rights abuse.

In terms of the **content** of communications, this should focus on the provision of clear, accessible information for people to;

- understand their **employment rights**;
- understand and identify **common forms of employment rights abuse**;
- understand **where to go for support**, including signposting to individual support.

In terms of the **channels** for communication, LBN could consider using;

- **existing LBN channels** such as the Newham Mag, the LBN website and visual advertising owned by LBN.
- **employment-related services** such as Workplace and Jobcentre Plus
- **existing community groups**

### Drivers of rights abuse addressed

Low awareness. Large scale communication efforts are effective. The Employment Agencies Standards Inspectorate stated in their 2016/17 annual report that awareness raising activities may have contributed to the 10% increase in complaints they received on the previous year<sup>108</sup>. A strategic approach to communications, including both mass communication and targeted messages, could help boost awareness of employment rights, and where to go for support, helping both prevent and address employment rights abuse.

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<sup>107</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19.

<sup>108</sup> EAS (2017) Employment Agencies Standards (EAS) Inspectorate: Annual Report 2016-17. Available at: <https://www.gov.uk/government/publications/employment-agency-standards-eas-inspectorate-annual-report-2016-to-2017>

Employer behaviour. Providing information to employers on where they can go for support with compliance will ensure that instances of non-intentional non-compliance are reduced and deter deliberate avoidance of employment rights.

Power imbalance. The lack of understanding of employment rights, and awareness of sources of support, helps contribute to a power imbalance at work in which employers are able to get away with employment rights abuse. Helping raise awareness of rights and the support available could counteract this.

*Awareness raising could help prevent instances of abuse occurring, reducing the number of cases in the long run, as well as helping those with existing issues to access support.*

## **Community Capacity Building**

In addition to mass and targeted communications, a community capacity building approach would help to engage with seldom heard communities who are at greater risk of employment rights abuse. This would help to further increase awareness and provide the confidence and encouragement necessary for individuals to assert their rights.

A specialist Community EmRA will be responsible for community outreach and development work. Their function will have two focuses:

- the **direct delivery** of educational interventions in community settings
- the **training of community members** to act as community advocates, championing employment rights issues in their community.

Focused on supporting and building capacity within groups that are seldom heard and those at greater risk of employment rights abuse. The community capacity building could focus on:

- Faith and community groups
- Refugee and migrant groups
- New parents, through NCT classes and Children's Centres
- Student unions

This role will need to be flexible and responsive to the needs and circumstances of the groups engaged with. From delivering sessions on rights at work focused on maternity discrimination for new parents, to training up members of faith and community groups to share information among existing networks. This could be combined with drop-in sessions in community locations.

While activities should be suitably tailored, we would expect certain 'core' elements to be part of all educational interventions. This would include information on employment rights and common forms of employment rights abuse; steps that individuals can take if they believe they are being subjected to rights abuse; when and how to engage with their employer; and where to go if they need support. As

such, we would expect the post holder to utilise toolkits in delivering outreach and development work, in addition to training community advocates to use these specially purposed advocate toolkits to effectively support members of their community.

The Community EmRA would provide a triage function, helping direct individuals with relatively simple cases to existing online or telephone advice, and directing those with more complex cases to the more intensive individual support.

The Community EmRA's role could be both resident and employer facing. This could involve visits to employers to offer support with compliance, with a focus on particular high-risk sectors.

### **Drivers of rights abuse addressed**

Low awareness. The delivery of educational interventions in community settings, and the training of individuals within existing community groups, will ensure that the residents who face the greatest access barriers to information and support are reached.

Power imbalance. Informed communities, where people understand their rights and how to enforce them, are powerful communities. Powerful communities are less vulnerable to being exploited.

*In raising awareness of employment rights, community capacity building prevents instances of abuse occurring, reducing the number of cases in the long run. By training advocates in how to support members of their community, capacity building helps to resolve existing cases.*

### **Individual Support**

The individual support strand of the service model will provide expert information, advice and guidance for workers with identified employment rights issues, delivered by trained and Employment Rights Advisors (EmRA).

### **Role of Employment Rights Advisors (EmRA)**

Two EmRAs will provide advice and guidance to individuals presenting to the service, face-to-face and over the phone. They will provide a triage service, identifying relevant information - employment status, length of time in employment, for example – and helping to diagnose client's issues. EmRAs would have a caseload of up to 120 individuals, to which they provide advice and guidance, and support in raising concerns and resolving issues with their employer. The EmRAs purpose would be to support individuals to resolve the issues they face themselves, and to refer those with more challenging cases to Snr EmRA's who would provide a more intensive offer of personalised support.

### **Role of Senior Employment Rights Advisor (Snr EmRA)**

Two Senior EmRAs would provide more intensive support to workers with more complex and challenging employment rights issues, and/or those with greater needs, who are unable to resolve their issues on their own.

Senior EmRAs would work with residents to seek redress, whether that be through engaging with the employer to seek a settlement, reporting incidences to enforcement agencies, or pursuing conciliation or an ET claim.

Each Senior EmRA would maintain a caseload of up to 80 residents.

### **Stages of Support**

Broadly, Snr EmRAs would provide support in four stages:

- First, Senior EmRAs would conduct an **in-depth face to face conversation** to understand the issue. Employment rights caseworkers interviewed suggested this should last between one and two hours.
- Secondly, Senior EmRAs would develop an **action plan** with the client detailing the steps that both client and Snr EmRA will take.
- Thirdly, Senior EmRAs will provide **practical support prior to a case going to an ET**. Senior EmRAs will help clients report incidences to enforcement agencies and engage in early conciliation through Acas. During this time, the Senior EmRA can engage with the client's employer and seek to achieve a financial settlement for their client.
- Fourthly, Senior EmRAs would provide **support preparing and submitting ET claims**. Where issues cannot be resolved before tribunal, the Senior EmRA will draft a set of tribunal submissions, including a schedule of loss in conjunction with the client<sup>109</sup>. Senior EmRA's will not provide representation at ET but will provide continued practical support for clients at 'arms-length' during the process, referring clients on to sources of national and local legal support, including: The Free Representation Unit, Advocate, Employment Litigation In Person Scheme, or the Personal Support Unit.

### **Tiered support system**

EmRAs would provide a triage service, acting as a 'gateway' before clients are referred on to caseworkers. Where cases can be resolved by the provision of one-to-one advice and guidance, this is to be delivered by an EmRA. More complex cases will be handed over to Senior EmRAs for wrap around case working. Designing need assessment tools and the triage process in conjunction with Senior EmRAs will ensure that caseworkers time is kept for cases of higher complexity and used efficiently. Such a system will need to be regularly reviewed to ensure that the correct individuals are being allocated to caseworkers.

### **Drivers of rights abuse addressed**

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<sup>109</sup> A schedule of loss details what a claimant believes their employer owes them. We heard that individuals often include unsuitable items in a written schedule of loss, harming their chances of a successful claim.

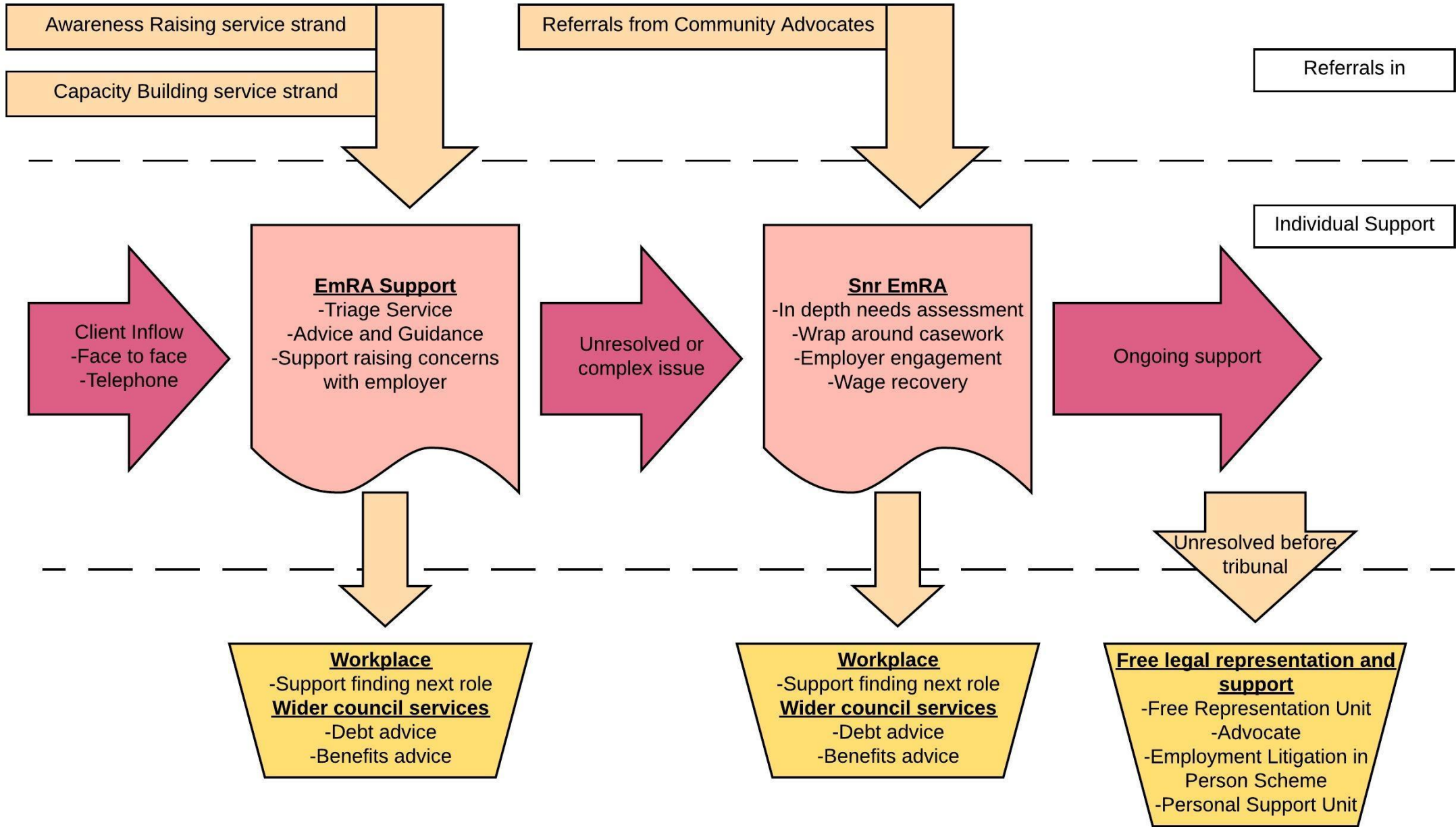
Power imbalance. The provision of expert advice and support for an individual to navigate the system, engage with their employer and enforce their rights could help redress the power imbalance that underlies much of current employment rights abuse

Employer behaviour. Through helping people enforce their rights, such support could send a message to employers, and have the effect of preventing employment rights abuse in the first place.

Lack of enforcement. By supporting clients to make formal complaints to Acas and to take claims to employment tribunals, the service will help address the problem with the lack of proactive enforcement.

*Individual support helps individuals with existing cases to resolve the issue, allowing them to access redress, and deterring employers from denying workers their rights in the future.*

# Individual Support Component: Service User Journey



## Utilising generated data

A Management Information (MI) system should be designed and implemented for use in the service for operational purposes, including service monitoring and evaluation. However, this data also represents an opportunity for LBN to lead the way in proactive enforcement. LBN have proposed an innovative local partnership model of NMW enforcement, detailed on page 80 of the 2018/19 Labour Market Enforcement Strategy<sup>110</sup>. LBN suggest using local data and intelligence to proactively target rogue employers who are likely non-compliant, following up identification of labour market violations with joint enforcement activity in conjunction with HMRC. A service of this nature, offering triage and diagnostic support, will generate a wealth of data that could serve as a valuable source of information to target employers in proactive enforcement activities. The 2019/20 strategy places an even greater emphasis on the utility of such an approach, emphasising that national enforcement agencies should draw on information gathered and held by wider partners to develop a rich intelligence picture to enable the targeting of repeat offenders. Piloting this approach would be dependent on the support of wider partners such as BEIS and HMRC, however, the service model proposed by L&W would generate the information required for its success.

## Monitoring and Evaluation

Robust monitoring and evaluation should be embedded into the service in order to measure its impact and support ongoing improvement.

Monitoring the impact of the Newham Employment Rights Hub would be challenging. Robust data on the incidence of employment rights abuse at the borough level is largely absent, and the incidence of employment rights abuse will be affected by many factors.

Given this, we would recommend using a mixture of output, outcome and impact measures to monitor and evaluate the service. This could include the following suggestions outlined in Table 6 below.

**Table 6: Potential output, outcome and impact measures**

Type	Indicator	Data source	Risk
Output measures	Number of residents supported	Management information	While an increase in the number of residents supported may indicate greater reach, the ultimate aim should be preventing employment rights abuse and reducing demand.
Outcome measures	Number/proportion of cases resolved	Management information	

<sup>110</sup> Metcalfe, D. (2019) United Kingdom Labour Market Enforcement Strategy 2018/19. Pg. 80.



	Recovered wages	Management information	
Impact measures	Number of workers underpaid minimum wage	NHPS	While the service could help deter underpayment, there are many other factors involved.
	Proportion of workers not receiving holiday pay or payslip	ONS Labour Force Survey (potential issue with sample size), or NHPS (additional question)	While the service could help deter non-payment of holiday pay and denial of payslips, there are many other factors involved.
	Proportion of residents confident in enforcing employment rights	NHPS (additional question), and/or pre and post support questionnaire	

We would recommend embedding evaluation mechanisms in each service component from the outset to monitor performance over time. For example, a brief pre and post survey on self-reported awareness of rights and confidence raising issues with employers could be administered to participants of group educational interventions. This would provide feedback on the intervention’s effectiveness.

Additional measures capturing subjective outcomes such as changes in wellbeing and wider perceptual measures would provide a more detailed understanding of service performance.

### **Enforcement or Support**

The national enforcement framework means that responsibility is placed on individuals to ensure they understand and enforce their rights at work<sup>111</sup>. While some innovative approaches are being developed, such as the local partnership model to NMW enforcement detailed above, there are currently no direct enforcement powers available to local authorities. Therefore, the proposed service focuses largely on raising awareness and supporting workers.

Within the current system, we believe this represents the most effective approach available to a local authority. It is based on supporting those affected to enforce their rights, as well as increasing awareness of employment rights, strengthening community capacity, boosting union membership and enforcing employment rights through the supply chain.

Alongside this direct action locally, we recommend that LBN – along with London Councils and the GLA – continue to lobby central government for the devolution of

<sup>111</sup> Resolution Foundation (2019) From rights to reality: enforcing labour market laws. Available at:

minimum wage enforcement and proactively work with national enforcement bodies to pilot approaches recommended by the Director of Labour Market Enforcement, such as sector-based licencing<sup>112</sup>.

### **Exclusion of legal representation**

During the first workshop, a lack of free legal representation emerged as a key gap in the existing support offer.

We explored including legal support and representation in the offer of the Newham Employment Rights Hub, but the cost would be prohibitive within current budget restraints.

LBN could explore other options to increase access to legal advice, such as seeking pro-bono support from local law firms.

### **Staffing requirements**

#### **Qualifications, Skills and Experience**

##### **Service Manager**

The service manager for the Newham Employment Rights Hub should be recruited based on their experience of managing employment rights support, or similar employment-related provision.

They should ideally have extensive understanding of employment rights issues, and strong people and project management skills.

##### **Senior EmRA**

We would expect Senior Employment Rights Advisors to be recruited based on their experience of providing employment rights advice in similar settings.

They should have an in-depth technical knowledge of relevant legislation relating to employment rights issues.

In terms of qualifications, there would not be a single qualification that would determine eligibility, but relevant qualifications might include a Bachelors or Masters degree in a relevant area, a Legal Practice Course qualification, or the Advice Quality Mark at Caseworker Level.

Experience of working in a supportive role in the third or public would be highly desirable. An individual who had worked in a high street law firm specialising in employment would likely be an ideal candidate.

##### **Community EmRA**

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<sup>112</sup> With the support of the GLAA, sector-based licensing could be piloted within at-risk areas of the labour market - nail bars and car washes, for example. Sir David Metcalfe, the Director for Labour Market Enforcement, recommends that GLAA work with local authorities to pilot such initiatives on a small geographical scale in the first instance.

The specialised Community EmRA role will require a slightly different skillset with emphasis placed on community development, stakeholder engagement and relationship management, and supporting training and development.

Based on feedback from the COI, additional language capabilities would be desirable here, as well as for the other EmRAs.

## **EmRA**

We would expect that Employment Rights Advisors have a working knowledge of relevant legislation relating to employment rights issues.

At a minimum, we would expect that EmRA's would possess, or be willing to train towards, the Advice Quality Mark at Caseworker Level qualification, certified by the Advice Service Alliance. This is industry standard and a qualification that funders expect such a position holder to possess.

Experience of prior work in a public facing, supportive role would be deemed essential, and experience of such in a public or third sector role highly desirable.

### **Cost, structure and number of residents supported**

The cost of this preferred service option has been calculated at an **estimated £333,382 pa**. This includes on-costs but excludes workspace costs<sup>113</sup>. A breakdown of service cost calculations can be found in Appendix B. Calculations are based on in-house delivery and therefore on local authority pension contributions.

This preferred service model would provide support to 400 residents at any one time, based on each EmRA supporting a caseload of 120 residents and each Snr EmRA supporting a caseload of 80 residents<sup>114</sup>. This excludes the people supported by the Community EmRA, who would not hold an active caseload.

These caseloads would allow for fifty minutes of client contact time every three weeks, with additional time for casework and administration.

### **Alternative service options**

This section details alternative models for the employment rights service. Options have been generated by altering the scale, focus, and delivery agent of the service.

## **Scale**

Taking the preferred service option as a mid-point in terms of scale and cost, L&W have calculated the cost and number of residents supported by a smaller and larger scale service. A full breakdown of costs is detailed in Appendix B.

A smaller scale service could consist of:

- 1 Employment Rights Advisor (FTE 1.0)

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<sup>113</sup> Service cost has been calculated using the mid-point of salary ranges. On-costs include Employers NI contributions, pension contributions, and additional expenses (including staff training).

<sup>114</sup> Caseload sizes have been estimated based on information provided by an employment rights caseworker working for a third sector provider in the local area, as well as information on caseloads for employment advisors and other rights advisors.

- 1 Community Employment Rights Advisor (FTE 1.0)
- 1 Senior Employment Rights Advisors (FTE 1.0)
- 1 Service Manager (FTE 0.8)

The cost of this smaller scale service option has been calculated at an **estimated £215,330** and would support at least 280 residents.

A larger scale service could consist of:

- 3 Employment Rights Advisor (FTE 1.0)
- 2 Community Employment Rights Advisors (FTE 1.0)
- 2 Senior Employment Rights Advisors (FTE 1.0)
- 1 Service Manager (FTE 1.0)

The cost of a smaller scale service option has been calculated at an **estimated £437,846** and would support at least 680 residents.

Efficiency savings accrue with economies of scale. The smaller scale service represents the least value for money option, at an estimated £769 spent for each resident supported, the preferred option supports each resident for an estimated £695, and the larger scale option supports each resident for an estimated £644.

## Focus

In addition to varying the scale of the Newham Employment Rights Hub, LBN could vary the focus of the service. This could involve focusing less on support for individuals facing employment rights issues, and more on community capacity building or ensuring compliance through the supply chain.

## Delivery model

Finally, LBN could either deliver the service in house, or in partnership with a third party.

Given the issues raised above, **we would recommend that while LBN should lead on communications and supply chain compliance, community capacity building and individual support should be commissioned from an external partner.**

Commissioning the work from an external partner would ensure that the support is seen as independent and impartial, and that it can be trusted by residents who may be wary of approaching a public body. It would allow LBN to bring in specialist support in an area where it has not got recent experience. Finally, it could enable LBN to lever in match funding from a trust or foundation, increasing the service's impact and reducing the cost to the council.

This would involve trade-offs, including the extent to which the support could be directly controlled by LBN, and the ability to integrate it with other council services.

If LBN opted to work with an external partner, it could either undertake a commissioning process, or provide funding through a grant mechanism.

Commissioning would allow LBN to ensure it secures a partner with sufficient experience and expertise, and it would give LBN greater control of the activities to be delivered. A grant process would give greater control over the decision on the delivery partner, but less control over the activities delivered<sup>115</sup>. We would recommend LBN commissions the service, and we believe it would be of interest to a number of local third sector organisations with experience of rights advice and community development. In addition to seeking a third sector partner to deliver the Newham Employment Rights Hub, LBN could also explore working in partnership with trade unions or the TUC to support the delivery of the service. This could include:

- **Awareness raising:** Working with trade unions to raise awareness of employment rights and of the support available through the Newham Employment Rights Hub.
- **Community capacity building:** Working with trade unions to help build capacity across Newham's community by providing information sessions and training to workers at particular risk of employment rights abuse.
- **Encouraging union membership:** As part of the service, the Newham Employment Rights Hub could encourage residents to join a trade union – using TUC's Unionfinder tool.

LBN could explore the possibility of commissioning a trade union or the TUC to deliver the Newham Employment Rights Hub. However, providing such a service, which would be available to all Newham residents irrespective of their area of work or union membership, would be outside of the normal role of trade unions in representing their members.

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<sup>115</sup> <https://www.nao.org.uk/successful-commissioning/sourcing-providers/grant-or-procurement/enforceability/>

## Appendix A: Composition of the COI

The community of interest was composed of 27 individuals; 15 Newham residents and 13 key stakeholders, including senior LBN policy staff, trade unionists, and both local and national support practitioners.

Newham residents were recruited through a number of channels, including those accessing local support services for employment rights issues and individuals in contact with council services. Residents were purposively selected, targeting those with direct experience of statutory employment rights abuse or residents employed in sectors or contractual arrangements known for heightened risk of statutory employment rights abuse. This included:

- Those working in low paying industries
- Workers on zero hours contracts
- Agency workers

Council services' Management Information (MI) data was used to create tailored mailing lists to extend invitations to residents. Additionally, local support organisations provided recruitment support, disseminating invitations to residents seeking support with employment rights issues.

Basic demographic information was collected from residents. Table 7 displays the profile of residents participating in the Community of Interest. Broadly, membership to the COI matches the profile of Newham's population, with a slight bias towards female and older participants.

**Table 7: Demographic characteristics, Residents in Community of Interest**

	Age			Gender			Ethnicity		
	16-34	35-64	Missing	Female	Male	Missing	BME	White	Missing
Frequency	5	7	3	11	4	0	9	4	2
Proportion in sample	42%	58%		73%	27%		69%	31%	
Proportion in population	50%	50%		53%	47%		73%	28%	

*'Proportion in population' values have been calculate using ONS Annual Population Survey data, available at [nomis.co.uk](http://nomis.co.uk)*

## Appendix B: Cost breakdown of service options

### Preferred option

Role	Staffing	Salary costs	Employer National Insurance Contributions	Pension contribution (16%)	Additional expenses (training etc)	Total
Employment Rights Advisor (PO2)	2	£34,500.00	£3,569.78	£ 5,520.00	10%	£95,897.52
Senior Employment Rights Advisor (PO4)	3	£40,500.00	£4,397.78	£ 6,480.00	10%	£169,546.67
Service Manager (PO7)	1	£48,500.00	£5,501.78	£ 7,760.00	10%	£67,937.96
<b>SERVICE COST</b>						<b>£333,382.15</b>

### Small Scale

Role	Staffing	Salary costs	Employer National Insurance Contributions	Pension contribution (16%)	Additional expenses (training etc)	Total
Employment Rights Advisor (PO2)	1	£34,500.00	£3,569.78	£ 5,520.00	10%	£47,948.76
Senior Employment Rights Advisor (PO4)	2	£40,500.00	£4,397.78	£ 6,480.00	10%	£113,031.12
Service Manager (PO7)	0.8	£48,500.00	£5,501.78	£ 7,760.00	10%	£53,350.37
<b>SERVICE COST</b>						<b>£215,330.24</b>

### Large Scale

Role	Staffing	Salary costs	Employer National Insurance Contributions	Pension contribution (16%)	Additional expenses (training etc)	Total
Employment Rights Advisor (PO2)	3	£34,500.00	£3,569.78	£ 5,520.00	10%	£143,846.27
Senior Employment Rights Advisor (PO4)	4	£40,500.00	£4,397.78	£ 6,480.00	10%	£226,062.23
Service Manager (PO7)	1	£48,500.00	£5,501.78	£ 7,760.00	10%	£67,937.96
<b>SERVICE COST</b>						<b>£437,846.46</b>