



Newham London

Pay by the rules:

Local Enforcement of the
National Minimum Wage

March 2015



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Foreword



The introduction of the National Minimum Wage by a Labour government is the most popular policy in recent memory. It has raised incomes for our poorest workers and saved the Exchequer millions without damaging employment

rates. I believe, in line with many in the Labour movement, that over time it should rise to be a true living wage.

But, scandalously, we are still a long way from the National Minimum Wage doing what it says on the tin. Across the nation there are hundreds of thousands of workers receiving less than the legal minimum. Independent estimates say that almost a fifth of workers in my borough – the second most deprived in the country – are falling below this basic floor, and losing thousands of pounds as a result. Currently we do not have the powers we need to build the economic resilience of those residents.

The civil servants who are currently enforcing at a national level are doing their best, and continue to be needed, but the resources available to them will always be limited. Councils are best placed to identify whether underpayment is a local priority,

and to come down hard on rogue employers. We have strong connections to good businesses and to the community; and we already enforce across a host of similar issues. Businesses which are breaking health and safety or trade waste rules are more likely to be underpaying their workers.

But equally, if you're amongst the majority of companies that are paying your workers their legal due, then exploitative businesses who out-compete through poverty pay are as much your enemy as ours. That's why I'm delighted that we have major local employers on our side in making the call for sustainably funded local enforcement of this law.

It would be quick to implement, good for low-waged workers, good for business, and good for the public finances. Localising enforcement of the National Minimum Wage is an important step in ensuring everyone pays by the rules.

A handwritten signature in black ink that reads "Robin Wales". The signature is written in a cursive, flowing style.

Sir Robin Wales
Mayor of Newham

Pay By the Rules: Local Enforcement of the National Minimum Wage



GMB have been campaigning for fairer wages for all workers for 126 years. For the last 16 of those the National Minimum Wage has provided a valued backstop. But we know, through our roots across the country amongst a

growing membership of over two thirds of a million workers, that for too many today the minimum wage just isn't the reality.

Workers who are being paid below what the law requires are often in insecure employment or unaware of what they are entitled to. They have no power as individuals to enforce their rights. They need organised support, from local trade union representatives and from government, to get what they deserve.

GMB has strong working relationships with local councils up and down the country, and we believe that their on-the-ground knowledge, commitment to residents, and ability to join up services will make local enforcement a vital addition to the fight for better wages.

Every worker has the right to a fair day's pay for a fair day's work. The level of the National Minimum Wage currently doesn't reflect that. It needs to move much more quickly, to being a living wage that frees our workers from reliance on in-work benefits. The Labour Party recognises that low-paid Britain needs a pay rise.

I hope that they, and policymakers of all stripes, also agree that it needs more effective enforcement to make that pay rise a reality. Giving local authorities the power to enforce and retain the fines collected will give workers the support they need to get their due.

A handwritten signature in black ink that reads "Paul Kenny". The signature is written in a cursive, flowing style.

Paul Kenny
General Secretary, GMB

Support for Local Enforcement of the National Minimum Wage

“This report makes a powerful case for giving local authorities a greater role in enforcing the National Minimum Wage. If Labour is elected in May we will act, giving local authorities new powers to tackle rogue employers.

“Under this government we’ve seen a failure to properly enforce the legal minimum and only a tiny number of prosecutions brought. As this report shows, there are real concerns that non payment is still far too commonplace.

“Labour local authorities like Newham are leading the way in tackling low pay. Councils must be given the tools and powers they need to beef up local enforcement and make sure everyone at work gets paid what they are entitled to under the law.”

Chuka Umunna MP, Shadow Business Secretary and MP for Streatham

“It’s an outrage that 16 years after the National Minimum Wage was introduced unscrupulous businesses are still getting away with poverty pay. Local authorities have a duty to protect all residents from wage exploitation and a shadow economy. At the local level we have the knowledge, experience and will to tackle this issue. Devolution of both investigatory and enforcement National Minimum Wage powers would ensure hundreds of thousands of workers receive the salary they are entitled to.”

Cllr Richard Watts, Leader, Islington Council

“With a track record of efficient enforcement and strong local knowledge, local authorities are best placed to investigate and enforce the national minimum wage. If the next government is seriously committed to localism then it should immediately devolve these powers to allow local government to protect their residents from criminal employers. There is no justification for inaction when the most vulnerable are being exploited.”

Cllr Jim McMahon, Local Government Association Labour Group Lead, and Leader, Oldham Council

“It is outrageous that some employees are not paid the legal minimum wage. More must be done to tackle this underpayment and I am proud that Labour will stand up for the most vulnerable by empowering local authorities to investigate wage exploitation and enforce this basic right. The current level of prosecution is shockingly low and this is something local authorities should have the power to address alongside HMRC.”

Rt. Hon. The Lord Andrew Adonis

“The impact of non-compliance with NMW has a negative effect on individuals, their families and the communities in which they live. More must be done to force rogue employers to comply with their legal and social obligations and local authorities should have full investigatory and enforcement powers to tackle this issue. ExCeL London aspires to paying a living wage and would encourage other employers to adopt a similar ethos.”

Adam Chircop, Head of HR, ExCeL London

“It is a scandal how many employers are getting away with paying their workers less than the minimum wage. Often these are small firms, meaning that local authorities are better placed than a national agency to enforce compliance and to pursue those who persistently fail to fulfil their obligations. I endorse the proposals in this report for local authorities to be given the powers they need to enforce the minimum wage. If the next government adopted these proposals, I believe there would be a significant fall in the number of workers being paid less than the minimum they are entitled to.”

Nick Pearce, Director, IPPR

“Westfield is committed to the communities in which it operates and has created 18,000 permanent new jobs for London. Westfield believes local authorities can play an active role to support their community and help enforce businesses to comply with the legal minimum wage.”

**John Burton, Westfield Director
of Development**

“Compliance with the national minimum wage is both a moral and a legal obligation for employers and the ability to effectively enforce this is important. This report gives good insights into one way enforcement might be made more robust going forward to help achieve better work and better working lives.”

**CIPD, the professional body for HR and
people development**

Executive Summary

The National Minimum Wage has been an important tool for maintaining basic living standards in our country since 1999, and research shows it has not impacted on employment. But like any rule, it is only as good as its policing.

Currently, enforcement by HMRC brings in arrears for 22,000 people each year. Government figures, which are very likely to be an underestimate, suggest that 236,000 people are being underpaid in the UK – a figure which is rising year on year. In Newham alone, the second most deprived borough in England and Wales, nearly a fifth of workers do not receive the minimum wage and independent research shows that £38.2m is lost to underpayment each year – more than is lost to individuals in the borough through benefit cuts. This report details some of the hardship caused by businesses which do not pay by the rules.

Central Government's approach to enforcement has been too cautious, only prosecuting two businesses in the last five years, despite there being, by the Government's own admission, hundreds of businesses which repeatedly break the law. Central Government alone does not have sufficient resource or on-the-ground knowledge to tackle this problem.

That is why this report outlines a process and methodology for local enforcement, sustainably funded using retained fines from civil penalties. Local enforcement would be a freedom, not a duty, empowering councils to enact the localism agenda alongside continued national-level work and co-ordination by HMRC. Councils would be able to draw on intelligence within their organisation, trusting relationships with local businesses, and joined-up enforcement work to make the National Minimum Wage a true, enforced basic right.

Local enforcement does not require primary legislation, so it could be implemented without delay. Making financing of local enforcement simple and sustainable would require legislative change, but a short-term solution would enable work to get underway.

Our call is for a new government to introduce local enforcement in the first month after the General Election. It would be low cost, could transform the working lives of thousands of the lowest paid, and should be part of any meaningful effort to tackle the cost of living crisis.

Recommendations

Devolution of the full suite of powers to enforce the National Minimum Wage to local authorities, giving them the freedom to tackle non-compliance.

HMRC to continue targeted enforcement, maintain the national helpline, and support local enforcement through information-sharing and co-ordination across local authority areas.

In order to create a sustainable funding model without additional funding from Central Government, local authorities should retain all civil penalty income generated through enforcement.

Government to legislate to double the percentage of unpaid wages that can be levied as a civil penalty to create a real deterrent to rogue businesses.

Background

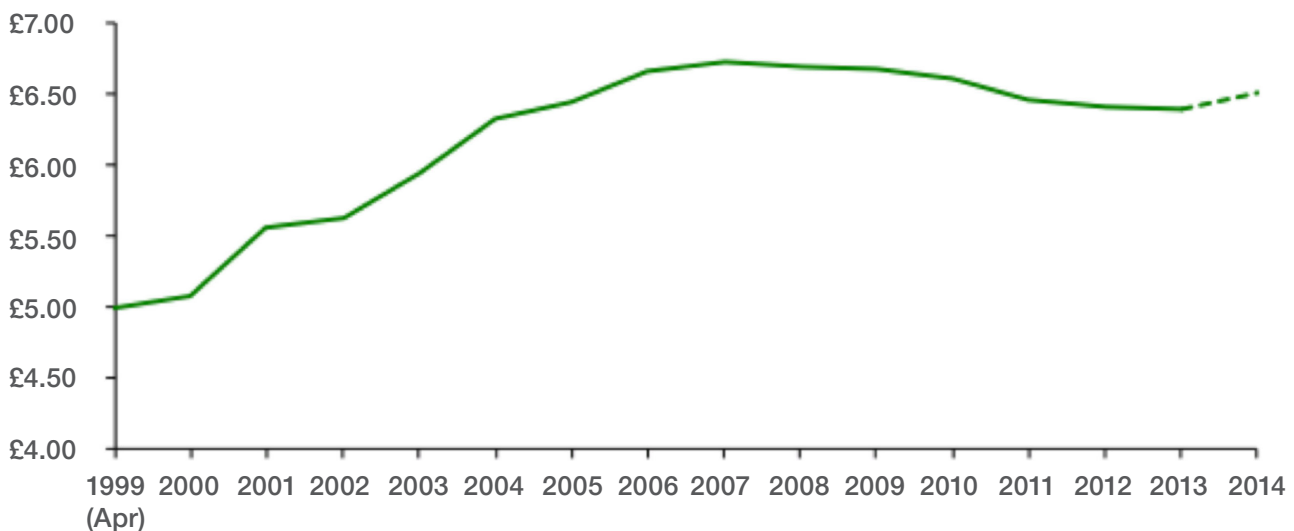
The Labour Party of 1997 included the establishment of the National Minimum Wage (NMW) as a key promise in its election manifesto, in order to 'remove the worst excesses of low pay (and be of particular benefit to women), while cutting some of the massive £4 billion benefits bill by which the taxpayer subsidises companies that pay very low wages.'¹ Following the National Minimum Wage Act 1998 it was introduced on April 1999.

The Act included separate rates for older and younger workers, which have increased annually. Further categories for 16 and 17

year olds and apprentices were introduced in 2004 and 2010. Increases in the rate are not a statutory requirement, and are set by the Secretary of State on the basis of advice offered by the Low Pay Commission, following consensual agreement between employer representatives and the unions.

In real terms (adjusted for CPI inflation) the NMW increased every year to 2007 and then fell in every subsequent year to 2013. The increase of 3% compared to inflation of 1.2% in October 2014 was the first real-terms increase in six years (see below).²

**Figure 1: Real Value of the National Minimum Wage at October, 1999-2014
(Adult rate of NMW, September 2014 prices adjusted by CPI)**



Adult rate of NMW applied to workers aged 22 and over from 1999 to 2010 and to workers aged 21 and over from 2010 onwards. NMW rates are converted to real terms using CPI at October each year, with the exception of 1999 (uses CPI at April 1999) and 2014 (uses CPI at September 2014).

Source: Low Pay Commission and ONS, Consumer Price Inflation, September 2014

¹ Labour Party, 1997 General Election Manifesto

² House of Commons library, The National Minimum Wage: rates, updated November 2014.

³ Low Pay Commission press release, 17th March 2015 <https://www.gov.uk/government/news/the-government-accepts-minimum-wage-rate-recommendations>

⁴ Labour Party (2014), 'An £8 Minimum Wage' accessed December 2014 <http://www.labour.org.uk/blog/entry/an-8-minimum-wage>

⁵ Liberal Democrat Press release, 'Vince Cable to Bolster Apprenticeship Pay' 6th October 2014 http://www.libdems.org.uk/vince_cable_to_bolster_apprenticeship_pay#

The planned increase of 3% for October 2015 is predicted to be the largest real-terms increase since 2007.³ The Labour Party has announced a policy of increasing the NMW to £8 per hour by 2020 – an increase from 54% to 58% of the median wage.⁴ Other major parties have also supported increases, although they have not made an increase in the main rate party policy. The Liberal Democrats proposed an increase in apprentice minimum wages,⁵ which the Government plans to partly implement, through a 20% rise in October 2015, and the Conservative Chancellor George Osborne indicated in 2014 that he would have supported a large above-inflation rise.⁶

The ‘bite’ of the NMW is a term used to describe the statutory minimum as a proportion of average wages in an area. Research shows

that as the ‘bite’ increases – due to increases in the NMW, or falling real wages – non-compliance goes up.⁷

Cross-party support for an increasing NMW therefore emphasizes the necessity of more effective enforcement activity at a greater volume than currently seen. As the NMW begins to increase again there are likely to be more instances of non-payment. More enforcement will be needed to protect the low paid.

In the Labour Party’s pre-manifesto document ‘Changing Britain Together’, giving local authorities a role in NMW enforcement is stated as party policy. This report calls on all parties to support this position and outlines a model for how local enforcement could be implemented.

³ Nicholas Watt, The Guardian, ‘George Osborne Backs Minimum Wage Rise to £7 an Hour’ 16th January 2014 <http://www.theguardian.com/society/2014/jan/16/george-osborne-backs-minimum-wage-rise-7-pounds>

⁷ le Roux, S., Lucchino, P., and Wilkinson, D., (2013), An Investigation into the Extent of Non-Compliance with the Nation Minimum Wage, National Institute of Economic and Social Research

Non-Compliance with the National Minimum Wage

Reliable national figures on non-compliance are hard to come by. The Low Pay Commission's report for 2015 acknowledges that 'it continues to be very difficult to obtain an accurate measure of non-compliance'.⁸

The closest to governmental statistics on non-compliance comes from the Annual Survey of Hours and Earnings (ASHE), which is based on a one per cent sample of employee jobs taken from HM Revenue & Customs Pay as You Earn (PAYE) records. This only takes into account jobs paid through the PAYE system, which is likely to exclude much of the informal economy, and relies on employer records reflecting a truthful account of hours worked. Recent analysis from the Institute of Economic Affairs estimates that the informal economy may account for 10% of UK GDP.⁹

The ASHE sample suggests, using a new methodology which takes fuller account of individuals on the apprentice NMW, that in April 2014 there were 236,000 jobs which paid less than the relevant NMW held by employees aged 16 and over, or 0.9% of employee jobs. According to these national figures younger people aged 16-17 or 18-20 are more than twice as likely to be paid less than the NMW than older workers.

This number is a reduction on figures reported in previous years, but only because the methodology has changed. Using the previous methodology, the number underpaid the NMW rose from 280,000 in April 2013 to 309,000 workers a year later. Underpayment is an increasing problem.¹⁰ The TUC's 2015 report on NMW enforcement suggested a figure of 250,000 employees underpaid, based on ASHE data and estimates of the size of the informal economy.¹¹

The Labour Force Survey (LFS) has also been used to estimate non-compliance with the NMW. A conservative estimate conducted by the National Institute of Economic and Social Research in 2013 also suggested non-compliance at 1.2% nationwide, with an increase in non-compliance since 2007.¹²

These national figures are either reliant on employers being honest about underpayment when reporting to HMRC (in the case of ASHE) or are conservative and somewhat out of date (LFS). However, even these cautious estimates suggest hundreds of thousands of workers are receiving less than the bare minimum the law promises them. The Government has refused to estimate the amount lost by these employees.¹³

Indications that national figures may underestimate the problem are also to be found in detailed research by King's College London in 2011 which suggested that, taking into account travel time, between 157,000 to 219,000 workers in the care sector alone were being underpaid the NMW.¹⁴ The Government's own commissioned research into underpayment of the apprentice rate of the NMW found that 14% of all apprentices across Great Britain did not receive the basic minimum appropriate for their age.¹⁵

Local evidence also suggests that the national figures may be drastically undercounting those being exploited by poverty pay. Newham is an area with historically low wages, high unemployment, and high population churn – all factors which promote NMW underpayment. Our current enforcement action with businesses has suggested that underpayment may be rife in the borough, reducing incomes for our residents and driving down the local economy.

Leading market research company Ipsos MORI conducted the Newham Household Panel Survey in 2013, producing the most robust

⁸ Low Pay Commission (2015), The National Minimum Wage: Low Pay Commission report 2015, Her Majesty's Stationery Office

⁹ Schneider, F., and Williams, C., (2013) The Shadow Economy, Institute of Economic Affairs: London

¹⁰ Office for National Statistics (2014), Statistical Bulletin: Low pay, 2014

¹¹ TUC, (2015) National Minimum Wage Enforcement: keeping up the

pressure – what more needs to be done?

¹² le Roux, S., Lucchino, P., and Wilkinson, D., (2013), Ibid.

¹³ Parliamentary Question response to Stephen Timms MP dated 15th December 2014 <http://www.theyworkforyou.com/wrans/?id=2014-12-10.218189.h&s=national+minimum+wage+complaints#g218189.r0>

and in-depth survey data collected by any local authority on incomes in their area. That research found that shockingly just under a fifth (17%) of Newham residents who are in employment earn less than the minimum wage.¹⁶ The findings are based on over-21-year-old respondents' reported working hours and earnings, and exclude those who are working full-time in a family business (some of whom are exempt from the NMW) or are self-employed.

Independent analysis by Ipsos MORI using this dataset considered the amount of lost wages that underpayment of the NMW represents in Newham, taking advantage of fuller data on exact amounts of underpayment. It used residents' most recent gross weekly pay and the number of hours they worked over a normal week to calculate their hourly wage.

That research estimated that £38.2m is lost every year in underpaid wages in Newham – an average annual shortfall of £2,260 for each of the 16,898 residents who reported earning less than the NMW. Underpayment is relatively consistent by age and gender, with workers in retail, wholesale and personal services jobs more likely to be underpaid, with 25% earning less than the minimum.¹⁷

If this annual shortfall of £2,260 per person were found amongst the 236,000 people who are underpaid across the country, there could be as much as £533m lost to working people in the UK each year due to organisations failing to pay by the rules. Even a much more conservative estimate, using the average arrears collected per person by HMRC at its current level of enforcement activity (£187 over the last five years), suggests £44m is

lost each year. This figure is lower as it reflects only the amounts HMRC brings in, not the amount individuals are actually underpaid.

Key statistics

£38.2m – Loss to Newham residents from underpayment of the NMW each year (Ipsos MORI, 2015)

£44m-£533m – Estimate of loss to employees nationwide per year

236,000 – Number of people the Government estimates were underpaid the NMW in 2014 (ONS, 2014)

157,000-219,000 – Estimated number of workers underpaid the NMW in the social care sector alone (Hussein, 2011)

17% – Proportion of employed Newham residents reporting that they were underpaid the NMW in 2013 (Ipsos MORI, 2015)

¹⁴ Hussein, S., (2011), 'Estimating Probabilities and Numbers of Direct Care Workers Paid under the National Minimum Wage in the UK: A Bayesian approach', Social Care Workforce Periodical, Issue 16

¹⁵ IFF Research (2014) Apprenticeship Pay Survey 2014, BIS Research Paper No. 207, Department for Business, Innovation and Skills

¹⁶ Ipsos Social Research Institute (2014), Newham Household Panel Survey, Wave 7, Ipsos MORI: London

¹⁷ Ipsos Social Research Institute (2015), Newham Household Panel Survey: Calculating underpayment of the Minimum Wage in Newham, Ipsos MORI: London

What is the Impact of Non-Compliance?

Non-compliance with the NMW has a negative impact across society. It is part of a shadow economy that lowers the incomes and damages the wellbeing of individuals who are directly affected, drags down the local labour market, and enables rogue employers to out-compete good businesses who play by the rules.

In 2012 Newham Council commissioned Ipsos MORI and Community Links to conduct qualitative research on the impact of NMW underpayment. They spoke to 30 individuals who were living or working in Newham and earning less than the NMW. Quotes from those underpaid workers are included below, and their anonymised case studies are spread throughout this report.¹⁸

Participants reported that being employed without fixed terms and at below the legal minimum made them vulnerable to a reduction in pay in an economic downturn. They were often asked to work long hours without overtime pay, making financial planning difficult.

“Sometimes he keeps our pay and he says ‘we’ve got no money’. And [the next week] when he has to give us money for two weeks he’s not happy to pay all the money, he keeps some of the money... I am 52, I have to live, I get depressed and stressed and everything.”

Male, Construction Worker, West Ham

As well as the financial impacts, the research found negative effects on personal wellbeing. Respondents reported that the difficulty of surviving on low pay contributed to mental health problems such as stress, that the social stigma of working informally could be humiliating, and that the worry of being found out was a constant pressure for some. People working unregulated, long hours in

physically demanding jobs reported withdrawing from the community as an impact of their low pay.

“Sometimes I don’t even want to meet friends that I have because I don’t feel like I’m in a position where I can really enjoy myself because I’m thinking about all this [working long hours]. And even sometimes when I try to stop thinking about it, it’s always in the back of your head. It prevents you from having a good time. When you’re not in a good mood and you’re finishing work at these times it just doesn’t leave you in a state of mind where you want to go out, and want to have fun”.

Male, Window Fitter, Upton Park

Case study: Construction worker, 33-years old, various sites

Danny has been working in construction for the past six months: He is registered with an agency that sends him to sites around London, and sometimes also works casually for a friend’s father’s construction firm in Stratford. He works four or five days a week, and the physically demanding nature of the work leaves him very tired by the end of the day.

Since he began labouring in construction, Danny socialises a lot less. He is often too tired to go out in the evenings, and does not have much money to spend on leisure activities. He also feels ashamed of taking a menial job, believing that it reflects his failure to complete further education. For this reason he prefers not to discuss his job with his wider social circle.

“Not even too many people know that I’m doing construction. If I was at a better level – like supervision, or more qualified – then it could be something that I’d speak about freely. But right now this [is] just to pay bills. For me anyway, ‘cause I’ve got plans, and this is not part of them”. ¹⁹

¹⁸ Ipsos MORI/Community Links, (2012) Non-compliance with the National Minimum Wage in Newham: a research report for the London Borough of Newham, Ipsos MORI: London

¹⁹ Ipsos MORI/Community Links, (2012) Non-compliance with the National Minimum Wage in Newham: a research report for the London Borough of Newham, Ipsos MORI: London

Supporting good businesses

As well as impacting on their employees, rogue businesses who choose not to pay the NMW undermine those who do follow the law. Major employer representative bodies, like the CBI, are on record supporting better enforcement of the law as being good for business, arguing that it reduces the ability of ‘cowboy’ employers to undercut the responsible majority.²⁰

Leading businesses in Newham have come out in support of local enforcement:

“Westfield is committed to the communities in which it operates and has created 18,000 permanent new jobs for London. Westfield believes local authorities can play an active role to support their community and help enforce businesses to comply with the legal minimum wage.”

John Burton, Westfield Director
of Development

“The impact of non-compliance with NMW has a negative effect on individuals, their families and the communities in which they live. More must be done to force rogue employers to comply with their legal and social obligations and local authorities should have full investigatory and enforcement powers to tackle this issue. ExCeL London aspires to paying a living wage and would encourage other employers to adopt a similar ethos.”

Adam Chircop, Head of HR, ExCeL London

In addition to the impact on individuals and businesses, non-payment of the NMW further stretches limited public finances. Often individuals who are underpaid the NMW are reliant on benefits and tax credits to make up the shortfall of their reduced incomes.

There is a complex picture around the relationship between underpayment of the NMW and the public purse. Detailed work by Laura Gardiner and Dr Shereen Hussein for the Resolution Foundation estimates that the additional gross wage costs from increasing all jobs in the social care sector alone to the National Minimum Wage would be £129m. Of this, they estimate that 47% of these additional wages paid would be taken by the Exchequer as withdrawn benefits, or as Income Tax and National Insurance. This does not take account of whether these savings would in turn reduce other taxes, such as Corporation Tax on company profits.²¹

²⁰ CBI Press Release, 19th May 2014, <http://www.cbi.org.uk/media-centre/press-releases/2014/05/cbi-comments-on-labours-national-minimum-wage-proposals/>; CBI Press Release, 10th August 2001, <http://www.personneltoday.com/hr/cbi-supports-enforcement-of-minimum-wage/>

²¹ Gardiner, L., and Hussein, S., (2015), *As If We Cared: The costs and benefits of a living wage for social care workers*, Resolution Foundation: London

Who Enforces the National Minimum Wage?

Governmental responsibility for the NMW is split between the Department for Business, Innovation, and Skills (BIS) and Her Majesty's Revenue and Customs (HMRC). BIS is responsible for setting policy on compliance and enforcement of the NMW. HMRC is operationally responsible for enforcement through a Service Level Agreement with BIS.

There are five tools available to HMRC to enforce the NMW, which could be made available to local authorities if enforcement is devolved.²²

1. Repaying Arrears: When a non-compliant employer is uncovered through investigation, they are issued with a Notice of Underpayment.²³ This lays out the arrears they owe to workers, which are to be repaid at the next payday. These arrears have to be repaid at the current rate, not the historical rate, of the NMW for the age that the employee was when they were underpaid.

2. Civil Penalty: The Notice of Underpayment also stipulates a civil penalty that the non-compliant employer has to pay (this arrangement came into place in 2009 – previously there was a break between the Notice of Underpayment and a penalty). The penalty is currently set at 100% of the underpayment made to all workers identified in the notice, with a minimum penalty of £100 and a maximum of £20,000 per business. This penalty was increased from 50% of the underpayment in March 2014, and government legislation is currently in the House of Lords to make the maximum £20,000 penalty apply to each employee instead.²⁴

3. Court Debt: Where employers do not comply with the terms of the Notice of Underpayment, HMRC enforcement officers can pursue the debt in either an Employment Tribunal or the civil courts.

4. Naming and Shaming: In January 2011 BIS established a 'naming and shaming' scheme for the NMW. Due to initially overly stringent criteria, only one employer was named by the middle of 2013. As a result, the rules were 'toughened up' to increase compliance and enforcement in the Summer of 2013 and a reused naming and shaming scheme was introduced. As of October 2013 all employers issued with a Notice of Underpayment are meant to be named and shamed, unless their arrears are less than £100 or unless they stop the process through a 28 day appeal period to HMRC followed by a further 14 day appeal period to BIS.

There were 680 notices of underpayment issued in the last financial year. Yet as of February 2015 – a year and five months since the scheme began – only 162 employers have been named and shamed under this policy.²⁵ This low level of naming and shaming suggests that this tool may not currently be used to its full potential.

5. Criminal Prosecution: The most severe form of enforcement against NMW non-compliant employers is a criminal prosecution in the Magistrates' Court. The 1998 Act introduces criminal offences where:

1. An employer refuses or wilfully neglects to pay the NMW
2. A person fails to keep or preserve NMW records
3. A person knowingly causes or allows false entry in NMW records
4. A person produces or furnishes false NMW records or information

²² Department for Business, Innovation, and Skills (March 2014), Policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break national minimum wage law, and Hull, A., (2013), Settle for Nothing Less: enhancing National Minimum Wage compliance

and enforcement, Centre for London
²³ Prior to changes in 2008 legislation, an initial notice was given detailing the arrears required. Only if repayments were not made was a follow-up notice with a penalty issued.

5. A person delays or obstructs a NMW compliance officer
6. A person refuses or neglects to answer any questions, furnish information or produce documents when required to do so.

Criminal prosecution can currently result in a maximum fine of £5,000.²⁵ Prosecution is conducted separately to the process of ensuring arrears are repaid to individuals.

²⁴ The Small Business, Enterprise, and Employment Bill 2014-15, available at <http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

²⁵ BIS press release, 24th February 2015 <https://www.gov.uk/government/news/government-names-and-shames-largest-ever-number-of-national-minimum-wage-offenders>

National Enforcement: the current picture

HMRC's staff in 2013 comprised a central team of 20 staff in London, and ten regional teams across 17 locations.²⁶ Latest figures show that funding was increased from £9.2m in 2014/15 to £12.2m in 2015/16.²⁷ Table 1 below shows the most recent information on the number of people employed in NMW enforcement across the country.²⁸

Table 1: HMRC staff involved in NMW enforcement

Financial year	Number of HMRC staff involved in NMW enforcement
2008-09	149
2009-10	154
2010-11	159
2011-12	162
2012-13	173
2013-14	181

Enforcement activity can be initiated through complaints by workers, including to the Pay and Work Rights helpline, or through risk profiling leading to targeted enforcement in low paying sectors initiated by HMRC. Approximately 60% of enforcement activity results from complaints by workers.²⁹

Table 2 below profiles the enforcement work of HMRC since 2009.³⁰ The unified penalty scheme, where civil penalties are issued at the same time as the Notice of Underpayment, rather than leaving a gap between the two notices, was introduced in 2009, and has led to the large increase in the number of penalties issued and their value after that year.

Since 2009 HMRC has reduced the number of inspections it completes, and the instances of non-compliance it finds. This means that it is in effect reducing the service provided to employees who are underpaid, and reducing the effectiveness of enforcement as a deterrent. Numbers of criminal prosecutions remain negligible, with two in the last five years and

Table 2: HMRC enforcement action 2009/10 to 2013/14

Financial year	Completed inspections	Inspections which identified Non-compliance	Total Arrears identified (£)	Individuals receiving arrears	Penalties issued	Value of penalties (£)	Criminal prosecutions
2009/10	3,643	1,256	4,390,023	19,245	381	111,183	0
2010/11	2,904	1,140	3,818,396	22,919	934	520,568	1
2011/12	2,534	968	3,582,685	17,371	906	766,807	0
2012/13	1,693	736	3,974,008	26,519	708	776,517	1
2013/14	1,455	680	4,600,000	22,610	652	815,269	0

²⁶ Hull, (2013), Ibid

²⁷ BIS press release, 24th February 2015

²⁸ Response to Parliamentary Question asked by Stephen Timms MP dated 30th January 2015 <http://www.theyworkforyou.com/wrans/?id=2015-01-07.219984.h&s=HMRC+staff+national+minimum+wage#g219984.r0>

²⁹ Response to Parliamentary Question asked by David Lammy MP dated 8th October 2013 <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131008/text/131008w0006.htm>

nine since the introduction of the National Minimum Wage Act. The number of complaints has also risen in recent years according to the 2015 Low Pay Commission report.³¹

At the same time, HMRC has increased the amount of arrears that it collects. It is likely that it has achieved this primarily through identifying higher value arrears for more individuals using better intelligence. As a result, it has increased the amount brought in through penalty charges as reforms to this system have bedded in. This figure is likely to increase with the change in the civil penalty rate from 50% of arrears to 100%, and the rise to a £20,000 per employee limit.

The level of enforcement remains significantly below every estimate of the numbers of workers paid below the level of the NMW. The amount of arrears identified is about an eighth of the independent estimate of lost wages in Newham alone.

Case study: Hairdresser, 37-years old, Stratford

Yasmin has been a hairdresser for 15 years, and has a NVQ level 3 in hairdressing. She is currently at her 34th salon. She really enjoys her work and feels that she's making people happy, but by staying in a poorly-paid industry she has had to accept certain constraints on her lifestyle.

For example, her morning commute involves taking two buses and then walking a substantial distance, as her salon is in the next zone and she cannot afford to travel directly.

Yasmin's weekly food budget is £20 per week, which means **“you end up with less healthy food; [instead] you get three cakes for £1”**. She often pays bills late and cannot afford any luxuries.³²

³⁰ Response to Parliamentary Question asked by Emily Thornberry MP dated 6th May 2014 <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140506/text/140506w0004.htm#1405073000135>, Hull (2013), Ibid., Response to Parliamentary Question asked by Stephen Timms MP dated 8th January 2015, <http://www.theyworkforyou.com/wrans/?id=2014-12-10.218082.h&s=national+minimum+wage+complaints#g218249.q2>, and HMRC

Press Release, 5th June 2014 <https://www.gov.uk/government/news/hmrc-secures-record-46m-minimum-wage-arrears-for-underpaid-workers>

³¹ Low Pay Commission, (2015),Ibid.

³² Ipsos MORI/Community Links, (2012) Non-compliance with the National Minimum Wage in Newham: a research report for the London Borough of Newham, Ipsos MORI: London

Why Are So Few Prosecutions Completed?

Following the introduction of the Act, initial Government policy was to not prosecute. This changed in March 2006, and the first prosecution was against a nursery in 2007.³³ A total of nine prosecutions have been completed since the Act was introduced, two of which occurred after 2010.³⁴

HMRC states that their prosecutions cost a minimum of £50,000, compared with a cost of £1,850 for a standard investigation resulting in arrears and penalties repayments.³⁵ They view prosecutions as a rarely-to-be-used deterrent:

‘HMRC and BIS will operate a policy of selective and exemplary criminal investigations to bolster our overall enforcement strategy. “Selective” means that HMRC will investigate only the most serious cases; “exemplary” means that HMRC will investigate cases across the whole range of available offences and in a range of trade sectors. The intended effect is to encourage and improve voluntary compliance with the provisions of NMW legislation across the business community as a whole.’³⁶

HMRC states that common features of cases that they select for criminal investigation include at least five workers being involved, and a previous instance of failure to pay. They will not generally prosecute cases where only false record keeping offences are committed, and usually require two or more examples of delaying or obstructing an officer or refusing to answer questions to prosecute.

This approach has resulted in the low prosecution rates above. With so few prosecutions being enacted it is unlikely that they are viewed by employers as a deterrent. However, the Low Pay Commission states, that ‘It is right that prosecutions will not be appropriate in the majority of cases of non-compliance.’³⁷

BIS states that prosecutions are reserved for ‘the small minority of employers that are persistently non-compliant and refuse to co-operate with compliance officers’. However, HMRC’s own analysis suggests that ‘around 15% of employers previously investigated by HMRC are still not compliant.’ As 4,780 cases of non-compliance were identified from 2008/9 to 2013/14, that suggests that 717 employers already investigated may be serially non-compliant – yet only nine have been prosecuted.³⁸

This clearly suggests that Central Government is being overly cautious in pursuing so few prosecutions.

The few prosecutions that have been carried out to date have not resulted in large fines, as the 1998 Act prescribes a maximum fine of £5,000.³⁹ However, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 contains provisions for these fines to be either uncapped, or for the Secretary of State to apply a higher cap – this part of the Act is yet to receive a commencement order, but the Government has indicated it plans to bring one in shortly. If the Government pursues this change it could correct the discrepancy of civil

³³ Business Advice Database, 1st November 2007, ‘First National Minimum Wage Prosecution’ http://businessdatabase.indicator.co.uk/business_advice_directory/articles/news___minimum_wage/first_national_minimum_wage_prosecution/UKTAPSAR_EU091909/88/?q=&t=47&k=257

³⁴ Response to Parliamentary Question from Lisa Nandy MP, 27th February 2015, <http://www.theyworkforyou.com/wrans/?id=2015-02-24.225245.h&s=national+minimum+wage+prosecutions#g225245.q0>

³⁵ Hull, 2013

³⁶ Department for Business, Innovation, and Skills, March 2014

³⁷ Hull, 2013

³⁸ Department for Business, Innovation, and Skills (2012a), National Minimum Wage: Policy on HM Revenue and Customs enforcement, prosecutions and naming employers who flout national minimum wage law

³⁹ HMRC, ‘SPIR1060 - Introduction - Monetary penalties in HMRC legislation’, accessed 13th March 2015 at <http://www.hmrc.gov.uk/manuals/spirmanual/spir1060.htm>

penalties currently being higher than fines from convictions.⁴⁰ We welcome the move in this direction, and call for the Government to move quickly to put the change into legislation.

Three of the prosecutions to date were offences where an employer refused or wilfully neglects to pay NMW, and the remaining prosecutions were for multiple obstruction and record-keeping offences.⁴¹

HMRC's figures suggest that 15% of the employers they investigate may, in the long-run, be repeatedly breaking the law. Criminal prosecutions will not be appropriate in all of these cases, but it is reasonable to estimate that up to a tenth of cases may be eligible to go to court. Councils will be able to recoup some court costs should they choose to prosecute, although prosecutions are likely to represent a cost overall. However, it is a cost that many local authorities will be prepared to bear as an investment in creating a stronger and fairer local economy.

The enforcement gradient for the first two years of Newham Council's private rented sector licensing scheme provides a comparison, demonstrating that local authorities can introduce effective and proportionate enforcement with an element of prosecution. Of 35,799 properties, 8,226 were suspected to be non-compliant. The majority, 77%, applied for a licence on receiving warning letters, leaving 1,889 who were visited, resulting in 472 prosecutions related to 351 properties, and the local authority issuing 243 simple cautions related to 243 properties.

Why prosecute?

In the majority of cases where businesses are not compliant with the NMW, civil penalties will be the right option – for example, where the underpayment is likely to have arisen due to lax accounting or mistakes, or where it is the first time a business has been found to have broken the law and they co-operate with enforcement. If businesses rectify inadvertent underpayment before they are investigated, they are not liable for penalties or prosecution. Councils could support businesses who want to do the right thing by providing advice on how to remain compliant, if they are contacted in advance of enforcement action.

However, where businesses repeatedly fail to comply, or obstruct enforcement officers, it is absolutely right that they should be subject to criminal prosecution. Taking rogue businesses to court offers the prospect of higher fines than the formulaic civil penalty, a criminal record, and the ignominy of a day in court. Local authorities' experience of enforcement in other areas suggests that well-publicised criminal prosecutions will have a strong deterrent effect, influencing other employers to follow the law.

⁴⁰ Response to Parliamentary Question from Stephen Timms MP, 16th December 2014 <http://www.theyworkforyou.com/wrans/?id=2014-12-11.218355.h&s=stephen+timms+minimum+wage#g218355.q0>

⁴¹ Response to Parliamentary Question by Chris Ruane MP, 7th February 2013 <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130207/text/130207w0003.htm>

The Case for Local Enforcement

This report proposes that local authorities should be an integral part of an effective enforcement regime against businesses that are non-compliant with the NMW.

It advocates that the Secretary of State for Business, Innovation and Skills empowers local authorities to receive the full enforcement powers outlined in this report (see 'Who enforces the National Minimum Wage' and 'How Would Local Authorities Deliver It'), in order to investigate non-compliance, obtain evidence, issue Notices of Underpayment, and instigate criminal proceedings where appropriate.

Devolution of these powers needs to cover more than just investigation. If councils are only able to investigate, and not enforce with the retention of civil penalties, there would be no sustainable source of funding for activity and central government would need to transfer resources – which this report does not propose. Furthermore, Newham Council believes that the current approach to enforcement is too weak. Simply feeding our evidence into the national system will not lead to the step change our residents need. Local authorities should be able to develop an enforcement and prosecution policy tailored to local circumstances.

We propose devolution of powers, not a duty. Some local authorities will identify more of a problem with underpayment of NMW in their area than others, and some will simply be more willing and equipped to take action. This proposal would only increase resources in local authority areas where the council chooses to make use of these powers: it would not lead to reductions in any area. This may mean the enforcement levels differ in different areas. But if we are serious about localism and respecting

the will of local people to select priorities then we must accept that the solutions will not always be neat. Our priority should be responding to local needs, not maintaining simplicity for Whitehall.

Recommendation: Devolution of the full suite of powers to enforce the National Minimum Wage to local authorities, giving them the freedom to tackle non-compliance.

A continued central role

We believe there is a continued role for HMRC to play in enforcing against businesses, especially those with a national presence, and based on intelligence from central tax records and the national helpline.

Examples like the recent naming and shaming of major nationwide companies for systematic payroll errors show that there will be cases which would not be caught solely by local enforcement. HMRC will also have an important role to play in information sharing – between different local authorities who are enforcing, and using tax data to enable local activity.

This continued central function, and good joint working between local and national enforcement, will be key to ensuring that there is no duplication of investigations which might otherwise lead to excessive red tape for businesses. We believe that the likelihood of duplication between local authorities and HMRC activity is already low, given the low and decreasing numbers of investigations by Central Government.

Recommendation: HMRC to continue targeted enforcement, maintain the national helpline, and support local enforcement through information sharing and co-ordination across local authority areas.

The resources to act

Council enforcement officers are in the best position to know which local businesses are likely to be paying their employees too little, as a result of shared information within the organisation about non-compliance in other areas, such as licensing and waste management.

In addition, enforcement of the NMW is partly reliant on effective reporting of infractions by the public and other businesses. Local authorities bring to the table positive working relationships with businesses that are playing by the rules, which are more likely to approach them to report competitors who drag down local markets. In addition, most councils benefit from high levels of trust from their residents, which will be vital in increasing reporting and obtaining witness statements from underpaid individuals, and good relations with trade unions who will also contribute grassroots knowledge of non-compliance.

In Newham we have over a hundred enforcement officers or officers with direct contact with businesses:

- 23 full time equivalent officers in planning, licensing, trading standards, hygiene, trade waste and health and safety.
- 50 ASB and law enforcement officers
- 40 section 92 police officers (co-funded and jointly tasked by the local authority).

Food Standards Agency benchmarking for London suggests that in food safety and food hygiene alone there are currently 285 staff working across the capital.⁴² Figures on gaming and alcohol licensing suggest that in a sample of 14 boroughs there are 107 staff working with businesses in this area.⁴³

These officers already conduct joined-up work across departments to achieve the aims of their local authority, and will be able to contribute

knowledge and expertise to comprehensive enforcement of the NMW at a local level.

In addition to possessing these resources, councils have a wide range of clear motivations to act where the NMW is not paid. Through the new business rate retention scheme, local authorities are invested in business growth, and underpayment enables rogue businesses to undercut legitimate competition. They will see savings in benefits and enhanced individual resilience that will accrue from a better paid workforce. And more importantly, councils have a duty in terms of the personal wellbeing of their residents.

The offer to businesses

Local and national governments are committed to reducing unnecessary red tape on responsible businesses, whilst continuing to meet their duties to their citizens. Localising enforcement of the NMW offers an opportunity to streamline this area of enforcement into the regulatory process at a local level.

Councils will be able to save employers time by building visits into existing enforcement work – fewer visits from a co-ordinated team covering health and safety, trading standards, and other areas, rather than an additional disparate area of enforcement.

Councils will also be able to offer real support to businesses that want to follow the law on the NMW but need advice to get it right. This support, combined with local NMW enforcement will help businesses to thrive, compete on a level playing field, and provide residents with secure employment opportunities.

⁴²Food Standards Agency, FOI response to London Borough of Newham dated 11 November 2014

⁴³London Borough of Newham, London-wide benchmarking exercise

Experience of enforcement

Critics may claim that councils do not have the skills or experience to enforce the NMW. However, this is belied by the extensive enforcement activity that is already happening at local authority level across the country. Some object that NMW enforcement is too multifarious to be conducted locally, yet councils already have experience in investigating complex fraud cases. Combined with existing knowledge and experience of financial audit processes that is contained within local government, many of the resources to act are already present at a local level.

There are already fantastic examples of innovative enforcement activity by local government that is transforming the lives of residents. A key example is the insight that Newham Council can bring from the first borough-wide mandatory PRS licensing scheme in the country. Since January 2013 all private landlords have had to apply for a licence to let their property, signing up to basic, decent standards when they do so. Over 35,000 properties have been signed up so far. Licensing has gone hand in hand with evidence-led enforcement against landlords who refuse to play by the rules.

NMW enforcement has a number of similarities with enforcement against rogue landlords in the PRS. In both cases, offenders are often likely to be working outside the law in a number of other areas. With bad landlords it is often non-payment of Council Tax, high anti-social behaviour, or high service demands from overcrowding. It is likely that businesses that are non-compliant with the NMW will be ignoring regulations that councils currently enforce, such as trading standards, food safety, trade waste and planning rules.

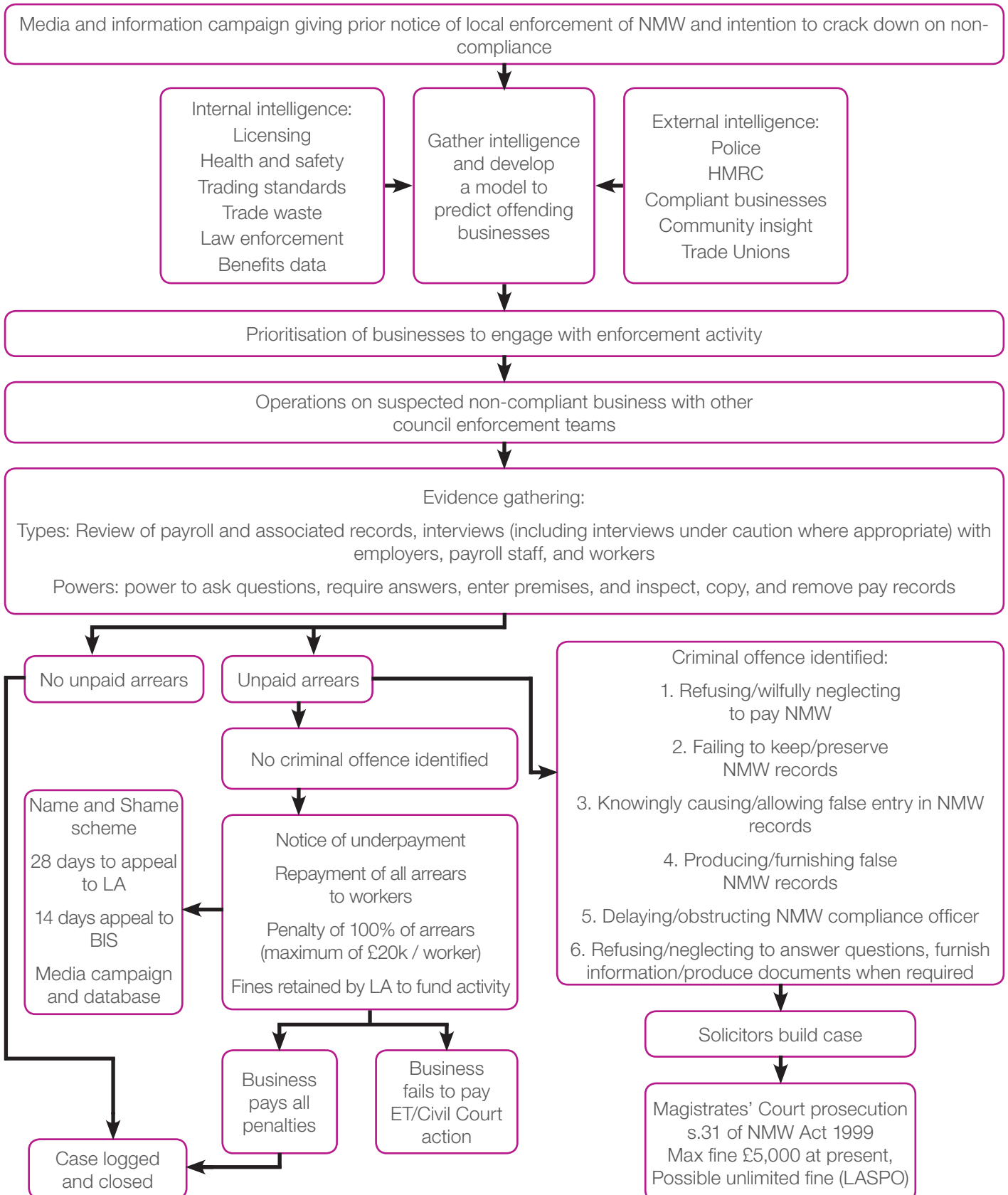
Outlining the enforcement process

Local enforcement activity would follow the pattern used by Newham Council for PRS licensing. It would be:

- **Intelligence-led**
PRS licensing uses specially developed statistical models drawing together data from across the council to estimate the likelihood that a residence is an unlicensed PRS property.
- **Joined up**
Our PRS enforcement model incorporates staff from other council services, Central Government departments, and the police and fire services, on joint operations at properties.
- **Rigorous**
Focussed on watertight evidence gathering to inform enforcement action and prosecution. Through the PRS licensing scheme Newham has undertaken 472 prosecutions since the beginning of 2013, providing an insight into effective prosecution of criminal businesses which could be shared nationwide.

The flowchart shows the proposed local enforcement process. Following a local media and information campaign, local authorities would build a strong and evolving model of likely non-compliant businesses. This would feed into targeted operations, focussed on gathering the evidence that will lead to penalties and more frequent prosecutions, where the law enables it, of non-compliant businesses.

Pay By the Rules: Local Enforcement of the National Minimum Wage



What is Required to Bring a Case?

Local authorities' experience of years of effective enforcement with successful prosecutions in areas from planning enforcement to alcohol licensing demonstrates that they are more than capable of building a strong evidence base for prosecutions against non-compliant businesses to protect residents' interests.

Insight from Newham Council's PRS licensing scheme, which is likely to be the most comparable example of local enforcement, suggests that witness statements from underpaid workers will be key to successful prosecutions. Gaining these statements will require a specialist skill set to ensure underpaid workers are supported to give evidence. The rate of successful prosecutions under the PRS scheme in Newham suggests that it can be achieved. In addition, many local authorities have highly effective employment schemes in place – joint working with these can offer a way out to residents who are found to be paid under the NMW but are hesitant to divulge information for fear of being unemployed.

Local authorities will take a different approach to that of HMRC, pursuing more prosecutions in order to make the law a functional deterrent. These may include a greater number of prosecutions for record-keeping and obstruction offences, rather than just wilful underpayment.

It is clear that whilst current local authority licensing and enforcement staff will be vital partners in tackling underpayment of the NMW locally, the actual process of enforcement will require a specialist team, with auditors and financial investigators working closely with lawyers and the police. These will draw information from across other enforcement

teams, and being part of an overall local enforcement structure will provide NMW teams with organisational resilience and efficiency.

The current HMRC compliance teams investigate employers' businesses to establish whether an NMW offence has occurred. HMRC's policy document states that this will usually include a review of payroll and associated records, interviews with employers and payroll staff, and interviews with workers.

Under the National Minimum Wage Act 1998 and the Employment Act 2008, compliance officers have the power to ask questions of employers and relevant staff, to require answers, enter premises and to inspect, copy, and remove pay records. This power will be used by local authority enforcement teams to build a case for prosecution under the offences outlined above.

In terms of the penalties associated with a Notice of Underpayment, these are issued in all cases where a compliance officer finds that arrears were outstanding at the start of the investigation, which is defined as the first contact by a compliance officer with the employer. If an employer repays arrears to the worker after the start of the investigation, a penalty is still due.

Compliance officers may already be officers of 'any Minister, department, or body' performing functions on behalf of the Crown – such as local government officers – as designated by the Secretary of State. Prosecutions may be brought against individuals who are employers, and against individual officers of a body corporate if the offence is proved to be committed with their consent or connivance, or is attributable to any neglect on their part.

How Would Local Authorities Deliver?

Roll-out

This report proposes a change in the law that would enable any council that wants to, to be able to enforce the NMW. It would be reasonable, initially, to focus joint working efforts between HMRC and willing local authorities on those areas with likely high non-compliance. These areas would be able to develop an effective operational model and share their learning in order to bolster enforcement across the nation.

Local enforcement officers would benefit from knowledge sharing with current HMRC staff on secondment during the initial introduction of the scheme, as well as ongoing engagement to continue to use HMRC data which suggests likely non-compliant businesses.

Funding

Andy Hull's 2013 research suggests that local enforcement of the NMW could be self-funding if local authorities are enabled to retain the full sum of fines income.⁴⁴ This assumes that local authorities are able to increase the proportion of investigations that result in penalties.

Current HMRC enforcement costs for civil penalties are estimated at £1,500 per case. As outlined in Appendix 1 through the example of Newham Council's PRS licensing scheme, local authorities already have experience with the costs of enforcement. NMW enforcement is likely to have higher costs given the increased complexity and need for auditor or financial investigator time to examine companies' payroll and compare with employee statements. Our experience gives us good reason to believe that local enforcement costs would be comparable to the level nationwide.

A further factor affecting sustainability is the level at which fines are set. Current civil penalties are set at 100% of the underpaid wages. Whilst this is an improvement on the previous level of 50%, it still means that for many employers non-compliance may represent a reasonable gamble – if you do not pay your employees properly, the worst that might happen is that you have to pay them twice. Proposed increases in the maximum penalty from £20,000 per employer to £20,000 per employee are relatively ineffective at increasing this deterrent, as few instances of enforcement activity reach this upper limit.

In 2013/14 HMRC enforcement activity, at 50% of underpayment as a civil penalty, cost £8m and brought in £0.8m in penalties. Penalties at 200% of underpayment could have brought in £3.2m in 2013/14. With increased efficiencies in costs at a local level through more effective joint working and use of existing capacity, and the removal of caps on fines, local enforcement could begin to approach financial sustainability.

Recommendation: In order to create a sustainable funding model without additional funding from Central Government, local authorities should retain all civil penalty income generated through enforcement.

Recommendation: Government to legislate to double the percentage of unpaid wages that can be levied as a civil penalty to create a real deterrent to rogue businesses.

⁴⁴ Hull, (2013) Ibid

What legal change is needed?

Enforcement powers

The National Minimum Wage Act 1998 section 13 states that:

(1) *The Secretary of State —*

(a) *may appoint officers to act for the purposes of this Act; and*

(b) *may, instead of or in addition to appointing any officers under this section, arrange with any Minister of the Crown or government department, or any body performing functions on behalf of the Crown, that officers of that Minister, department or body shall act for those purposes.*

Enabling local enforcement powers would not require a change to this primary legislation, so it could be enacted without the delay of a lengthy parliamentary procedure.

The level of civil penalties

The relevant legislation is Section 19A of the NMW Act 1998 as amended by the Employment Act 2008. This states that:

(4) *The amount of any financial penalty is, subject as follows, to be 50% of the total of the amounts referred to in subsection (5) below.*

(5) *Those amounts are the amounts specified under section 19(4)(c) above for all workers to whom the notice relates in respect of pay reference periods specified under section 19(4)(b) above which commence after the coming into force of this section. [This refers to the amount of underpaid wages]*

(8) *The Secretary of State may by regulations— (a) amend subsection (4) above so as to substitute a different percentage for the percentage at any time specified there;*

This means that the Government only needs to introduce regulations – not a lengthy change to primary legislation – to increase the level of civil penalties to make them a real deterrent. This is evident in the fact that the level of penalties has been changed from 50% (as in the Act above) to 100% through secondary legislation.

Retaining civil penalties

Section 19A of the NMW Act 1998 as amended by the Employment Act 2008 also states that:

(11) *A financial penalty paid to the Secretary of State pursuant to this section shall be paid by the Secretary of State into the Consolidated Fund.*

This means that income from financial penalties has to be paid to the Secretary of State, and then into the Consolidated Fund (the Government's main bank account). A direct recouping of penalties by the local authority would require a change to primary legislation, but this could be handled through a transfer from the Consolidated Fund to local authorities in the meantime.

Conclusion

The real value of the National Minimum Wage has begun to rise in the last year, with political will seemingly in favour of greater increases. As its value increases relative to overall wages, non-compliance is likely to increase. Effective enforcement will become even more necessary.

Government figures, which are likely to be an underestimate, suggest that 236,000 people are being underpaid the NMW in the UK. In Newham alone, independent estimates suggest that almost a fifth of workers are underpaid. The hardship this causes is clear from case studies in this report. This underpayment also presents a challenge to businesses who are undercut by rogue employers who do not pay the legal minimum.

HMRC's approach to enforcement has been too cautious, only prosecuting two businesses in the last five years and the number of

investigations have been reducing. Central Government alone does not have sufficient resource or on-the-ground knowledge to tackle underpayment of the NMW.

Local authorities should be given the freedom, not the duty, to tackle non-compliance where they identify it as an issue in their area. They will be able to take advantage of connections to local businesses and the community and joined-up enforcement teams to increase the scale of activity and get more workers their due.

To make local enforcement a stronger deterrent this report proposes that civil penalties are increased, and to make it financially sustainable it proposes that penalty income is kept by councils. These changes could be introduced quickly after the next election, many of them without a new Act of Parliament, to provide a greater level of enforcement activity which will ensure that more employers pay by the rules.

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Appendix 1: Costs of Local Enforcement

This appendix outlines the Newham Council process for PRS licensing enforcement to design and cost local enforcement of the NMW.

The approach with PRS licensing is to criminalise rogue landlords through enforcing on key offences such as failure to license, breach of HMO Management Regulations, and breach of licensing conditions. For these crimes the enforcing authority must demonstrate to the court, beyond reasonable doubt, that the person(s) being prosecuted committed the crime. They must also be satisfied that there is a reasonable prospect of conviction and that it is in the public interest to prosecute. Newham Council believes that enforcement has a halo effect, that is, enforcing against one offender will encourage those surrounding them to comply.

The table below shows the PRS licensing process and costs per case for court-based enforcement.

Process	Time	Staff requirements	Costs
Co-ordinate and target offenders	1-2 hours	Supervisor and intelligence support	£28.48 x 2
Gather evidence, including statements from employees, payslips etc	2-4 hours	Police assistance and Senior Enforcement Officer	£28.48 x 4
Build a criminal case for prosecution	6 hours	Senior Enforcement Officer with assistance from supervisor	£28.48 x 6
Lay and present case to court	6 hours (dependant on defendant's plea)	Senior Lawyer	£95 x 6
Total	18 hours		£911.76

The evidence collection and audit requirements for NMW enforcement are likely to be more onerous than a housing prosecution, so it is likely that the cost of gathering evidence may be greater. The costs below are likely to reflect those for bringing civil penalties where an employer is not obviously guilty of one of the criminal acts listed in the National Minimum Wage Act.

Where a criminal prosecution involves more cases or is more complex, costs are likely to be higher. Newham Council has considerable experience of pursuing trading standards and licensing cases to court. In these cases, the cost of prosecution is usually between £3,000 and £5,000. This reflects our estimate of the cost of taking relatively uncomplicated NMW non-compliance cases to a full prosecution.

www.newham.gov.uk