

**ENFORCING THE MINIMUM WAGE:  
THE EXPERIENCE OF WORKERS  
AND EMPLOYERS**

**A Research Report for the Low Pay Commission**

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## **CONTENTS**

<b>Executive Summary</b>	<b>4</b>
<b>Terms of Reference</b>	<b>7</b>
<b>Chapter 1. Introduction</b>	<b>8</b>
<b>Chapter 2. The Enforcement Process</b>	<b>10</b>
<b>Chapter 3. Research Methodology and Structure of Sample</b>	<b>20</b>
<b>Chapter 4. Employers' Experiences of the NMW Enforcement Process</b>	<b>22</b>
<b>Chapter 5. Workers' Experiences of the NMW Enforcement Process</b>	<b>36</b>
<b>Chapter 6. Main Research Findings and Conclusions</b>	<b>47</b>
<b>Appendix 1. Schematic Summary</b>	<b>52</b>
<b>Bibliography.</b>	<b>54</b>

## EXECUTIVE SUMMARY

This research project, funded by the Low Pay Commission and conducted with the assistance of the Inland Revenue NMW Compliance Team, investigates the experiences and perceptions of both employers and workers who have been through the NMW enforcement process.

The NMW enforcement process is unique in British employment legislation in allowing a dual system of enforcement. Workers can find remedies by either taking cases individually to employment tribunals or the civil courts to obtain arrears or through Inland Revenue compliance officers either responding to complaints from workers or taking proactive investigative action against employers suspected of being at risk of not paying the minimum wage.

The research was qualitative and involved telephone and face-to-face interviews with a sample of employers and workers that had been through the NMW enforcement process. This is the first research project to investigate the impact of the enforcement process and, because of the nature of this research among low paying employers and low paid workers, we encountered some problems. These included the fact that none of our final sample of 70 interviews included any paired employer/worker interviews for the same case. We were therefore unable to triangulate our research by getting the perspective of the two parties on the same case. Nor were we able to interview the compliance officers involved in the cases. It was also the case that none of our sample of employers had had a penalty notice issued against them. In this respect we are only looking at those employers who complied without a fight. Lastly, we were unable to get equal numbers of employers and workers to respond, giving a significant bias to the employer data. We interviewed 43 employers and 27 workers. In addition, more detailed face-to-face interviews were conducted with six employers and six workers from our original sample.

Our main research findings are as follows:

### *Employers*

- Overall, employers were content with the enforcement process if not always with its outcome. In general the IR compliance officers were felt to be fair and courteous.
- Many employers claimed to be unclear about the detail of the NMW and hence claimed to have underpaid their workers through ignorance rather than intent.
- Some employers claimed that the official information on the NMW was deficient in some way or not relevant enough to their own situation.

- Most employers thought that they knew how the case against them had been initiated.
- For the majority of the employer sample, the IR visit had come as a surprise but five said that they expected a visit.
- Employers seemed generally unaware of the penalties involved in non-payment of the NMW before they had been visited.
- Over half of our employers had pay records that were found to be deficient in some respect.
- A major benefit of the IR visit was seen by some employers as the opportunity to receive advice on their pay records.
- The range of arrears owed in our employer sample was between a few pence and over £12,000.
- Most employers did not find difficulty in paying the arrears but in nine cases the employers had found difficulty in meeting the cost.
- Eighteen of our employers had used professional advisers, mainly accountants, in dealing with the cases.
- Some employers complained about the length of time that the enforcement process took.
- The main suggestion for improvement was improved information to employers about their legal duties.

### *Workers*

- Like employers, most workers were happy with the enforcement process if not always the outcome. The IR compliance officers were seen to be helpful and courteous.
- Awareness of the existence of the minimum wage was generally good among a majority of our worker respondents. The most common source of information was though family, friends or neighbours. Even where workers were aware of the existence of the NMW, however, they were not always clear about the detail of the wage nor their eligibility.
- Seventeen of our 27 workers had spoken to their employer about their underpayment before making a complaint to the IR. Most had received a negative response from their employer. Seven of the workers had left the employer before making a complaint and this had often played a part in their decision to leave.
- Thirteen of the 27 workers had been aware that the IR could speak to their employer on their behalf and 20 said they knew how to contact the IR. Twenty-three of our workers actually contacted the IR. Most of our worker cases had thus been instigated by the worker, rather than through proactive work by the IR.
- In the majority of cases, the worker was not the only worker found to be underpaid.

- Some workers suspected, perhaps erroneously, that their confidentiality had been breached in some way.
- All workers, except one, had received at least some of the arrears owing. The amount of arrears owed in our worker sample ranged between £6.50 and £10,889. It was not always clear, however, that the arrears had been paid in full. In two cases workers had been pressurised by employers into falsifying records that they had been paid their arrears in full and in one case the worker had not received the full amount but had not complained. In four cases, individuals had contacted the IR about non-payment and in three cases ET cases had resulted.
- Some workers experienced hostility from fellow workers as a result of taking action.
- Workers made less use of third party advisers than the employers. Not a single worker mentioned help from a trade union but one had used the Citizens' Advice Bureau.

## **Conclusions**

Apart from these main findings above, our research indicated three broad conclusions from the research.

- Part of the problem with the enforcement process is the relative complexity of the NMW regulations that leads to employers making 'silly mistakes' on the one hand and workers failing to claim their entitlement on the other. A single NMW rate would clearly be easier to disseminate and easier to enforce, although it is recognised that the complexity of the regulations derives in part from the complexity of actual pay practices and payment methods.
- There appears to be a need for more attention to the post-enforcement period to ensure that workers receive their full arrears. Relying on payment by the employer to the worker appears fraught with problems and payment via a third party might be more reliable.
- The fact that many employers found the enforcement process helpful in improving their overall pay records administration suggest that an inspection process can be of benefit – rather than a burden - to employers, especially those in low paying sectors, in helping them to meet their legal obligations.

## **TERMS OF REFERENCE**

The aims and objectives for this research project (Ref No. 5/12) were laid down in the original invitation to tender as follows:

### **Aims and Objectives**

The aim of this project is to provide a detailed picture of workers', ex-workers' and employers' experiences of the enforcement process by interviewing people who have been through it.

Specifically, the research should explore:

- Their experience of the enforcement process, including the outcome in their particular case.
- Their views on its effectiveness, in particular whether any aspects of the process caused them any difficulty or could be improved, and whether any aspects were particularly helpful.
- The consequence(s) of the enforcement action:
  - a) Where non-compliance was found, whether workers/ex-workers were now getting the minimum wage and whether arrears has been paid.
  - b) For employers who were found to be non-compliant, whether they were now complying with the minimum wage.
- The impact of the enforcement action on their future behaviour:
  - a) For workers and ex-workers, whether they would complain again if they were being underpaid or if their experience of the enforcement process has discouraged them from doing so.
  - b) For employers who were found to be non-compliant, whether they were now complying with the minimum wage.

The research should cover both complaint-based and proactive investigations and investigations with different outcomes.

## CHAPTER 1: INTRODUCTION

The effective enforcement of the National Minimum Wage has been a central concern of the Low Pay Commission and the Government since the inception of the minimum wage. Without effective enforcement workers and ex-workers would be unable to enforce their rights to the minimum wage and illegal practices would continue, to the detriment of the great majority of employers who meet their legal obligations. This research was commissioned by the Low Pay Commission in preparation of its 2005 report. It is the first such research on how the NMW is being enforced. The aim of the project was to provide a detailed picture of workers', ex-workers' and employers' experiences of the enforcement process by interviewing people who had been through this process. The research explores the experiences and perceptions of both parties in the enforcement process, including the outcomes of the process. Respondents were asked for their views on the effectiveness of the process, the consequences of the action and the impact of the action on their future behaviour. We were asked to include both complaint based cases and those arising from proactive action by the IR compliance officers.

Researching the experiences and views of low-paid workers and employers in low paying sectors of the economy is not an easy task. Both workers and employers may be reluctant to discuss their experiences if these are seen as negative. Contacting workers and ex-workers is especially difficult as most need to be contacted at their homes, rather than the workplace and this limits the times of day when they can be contacted. While employers are more easily contacted during working periods, the fact that they have been found in breach of the law may deter them from giving their views. For both sides there may be suspicion that the research has some wider Government agenda.

The research project was therefore designed around telephone interviews and some face-to-face interviews. The use of a postal questionnaire was rejected on the grounds that this would impose too much of a burden on the respondents; might be difficult where workers and employers had poor English, literacy skills or experience of completing such questionnaires; and would not yield sufficient texture in the data. It had been our original intention to select a cross-section of NMW enforcement cases and then interview the parties concerned but this proved impossible, largely because the details of the cases and the parties involved were covered by the Data Protection Act. It was therefore decided that the Inland Revenue would despatch letters to a structured sample of employers and workers who had been through the process, asking for their permission for the researchers to contact them. The Inland Revenue selected 1,163 names and distributed the letter with a reply paid slip to provide the respondents' permission to be contacted and giving suggested days of the week and times of day when this would be convenient. Of this Inland Revenue sample of 1,163 names, a

significant majority were employers. Exactly 100 replies were received, approximately 60 per cent of whom were employers.

The researchers then attempted to contact those employers and workers who had replied, using separate interview formats for both parties. These formats had been agreed with the Low Pay Commission and the Inland Revenue Compliance Team. Of the original 100 replies, the researchers were able to contact 70.

Our research findings are divided into two separate chapters, one dealing with the employer experience (Chapter 4) and the other with the worker experience (Chapter 5). We also provide a concluding chapter providing our overall conclusions. Chapter 2 provides the context for our research by reviewing the previous literature on the legislative features of the NMW before describing the enforcement process and the role of the Inland Revenue compliance officer with it. Chapter 3 describes the research methodology and the problems encountered. Appendix 1 summarises the responses to our telephone interviews.

## **CHAPTER 2: THE ENFORCEMENT PROCESS**

The NMW legislation adopts broadly a twin track approach to enforcement. The 1998 NMW Act created a number of individual rights for workers but it also provided for administrative enforcement by 'officers'. Criminal sanctions underpin both the basic obligation to pay workers at the NMW rate and the related administrative obligations together with the officers' powers to enforce them (Simpson 1999). These provisions mirror, to some extent, those provided under the old Wages Council legislation but the individual rights in particular are much more extensive and in large part integrated within the structures of the Employment Relations Act 1996. Skidmore (1999:429) argues that 'both the procedural and substantive elements in the 1998 Act represent a significant departure from previous statutory interventions in labour law in the United Kingdom' because of the twin-track enforcement mechanisms. The obligation on the Secretary of State for Trade and Industry to arrange publicity about the NMW is also new. Simpson (1999:20) comments, however, that: 'Perhaps the most striking feature of this wide range of provisions is the total absence of any collective dimension' in the process, unlike the Wages Councils and Agricultural Wages Boards where there was representation from employers, unions and independents. While the Low Pay Commission membership is drawn from employers, trade unions and academics, membership of the LPC does not indicate representational rights and all members are independents in their own right.

It was decided that the Inland Revenue would undertake the enforcement inspection role through teams of 'Compliance Officers' (except in the agricultural sector where the NMW is enforced, along with the agricultural minimum wage, by Agricultural wages inspectors). There are two ways in which the NMW can be enforced – through individual enforcement by the worker or through administrative enforcement by Inland Revenue Compliance Officers.

### **Individual Enforcement**

A distinct feature of the NMW as an individual right is that the assertion of a right to be paid the minimum wage by an individual worker in a court or tribunal is not seen as the principal means by which the right is to be enforced. As Simpson (2004:35) comments: 'The enforcement powers of the Inland Revenue as the designated body under section 13 of the NMWA are properly seen to be of far more greater importance than the rights given to individual workers'. There are two types of enforcement rights given to individual workers. The first comprises two mechanisms for directly enforcing the right to be paid the NMW. Section 17 of the NMWA gives all workers who are entitled to the minimum wage a contractual right to the difference between the 'relevant remuneration received' in a Pay Reference Period (PRP) and their NMW entitlement for the PRP. The

individual enforcement of this right can be achieved either through an employment tribunal or through the civil courts. The second type concerns the right for workers not to suffer detriment by the employer as a result of instigating proceedings against their employer (similar to the rights under health and safety legislation) and protection against unfair dismissal.

If an individual worker believes that he or she is entitled to the NMW and is not receiving the correct amount, the worker can require the employer to show him or her the pay records. The worker must ask the employer in writing and can inspect and copy the records. The employer must produce the records within 14 days of the request (or within the time agreed between the worker and the employer). A worker is entitled to be accompanied by another person of his or her own choosing. If the employer refuses to let the worker see the records, or fails to produce the records, the worker can take the complaint to an employment tribunal. If a complaint is upheld, a tribunal declaration must be accompanied by an award of a sum equal to 80 times the current NMW rate (DTI 2004).

A worker is also entitled to bring a claim before an employment tribunal to recover any money which he or she believes is owed as a result of not receiving the NMW. Alternatively a worker can go to a civil court to recover the money due to him or her. A worker may also claim unfair dismissal or victimisation if his or her employer sacks him or her or takes some other action against the worker for trying to ensure that he gets paid the NMW - or simply because the worker is (or is going to become) eligible for the NMW.

In civil cases the burden is on the employer to prove that he or she has paid the NMW to the worker, rather than for the worker to prove underpayment. Where a case is taken to an employment tribunal, an ACAS conciliation officer has a duty to seek to encourage a settlement. There is normally a three month deadline, as with other ET cases, for a worker to bring a case to an employment tribunal.

### **Administrative Enforcement**

Under Section 14 of the Act, Compliance Officers are given a full range of powers including the right to enter premises and require production and explanation of records kept by employers, in order to establish whether the Act is being complied with. Under Section 19 enforcement officers are given the power to issue enforcement notices and Section 20 gives them the power to sue on behalf of workers. Section 19 of the Act was amended in 2003 under the National Minimum Wage (Enforcement Notices) Act to plug a legal loophole whereby workers who were no longer employed by the offending employer could not claim arrears of pay due. This loophole was discovered through a decision of the Employment Appeal Tribunal in the case of *IRC v Bebb Travel plc* in 2002 and

led to a reduction in the number of enforcement and penalty notices in the period 2002-2003 (Lourie 2002).

These powers are stronger than those existing previously under the Wages Councils where an inspectorate also existed. Inspectors could enforce the Wages Council rates but could not take action on behalf of employees. For most of the period of the Wages Councils existence - until the last seven years before abolition - there was also no industrial tribunal system to which a worker could take a case. Furthermore, there was no protection for a worker taking a case against an employer before a County Court.

### **The Process of Administrative Enforcement**

Enforcement of the NMW is subject to a Service Level Agreement (SLA) between the DTI (customer) and the Inland Revenue (service provider). Under this agreement, the IR is required to provide information, inspection and enforcement services; to respond to enquiries and complaints from workers and their representatives and from employers; and to ensure that employers comply with the NMW legislation.

The main elements of the service set up from 1 April 1999 are:

- A Helpline based in Longbenton near Newcastle handles requests for leaflets, guidance and complaints of underpayment. This Helpline operates from 8am to 6pm Monday to Friday with all calls charged at local rates. Since 1 April 1999 the Helpline has responded to more than 333,000 enquiries and handled over 10,000 complaints about non-payment of the NMW. A new feature of the Helpline in 2002 was the introduction of a fully supported e-mail system available via the DTI and IR web-sites. In the year 2002/3 some 962 emails were received and answered.
- A Central Information Unit (CIU), situated alongside the Helpline in Longbenton, provides technical support to the Helpline call agents by dealing with some of the more complex cases, collates statistical data which is provided to the DTI on a monthly basis, and has responsibility for collating and analysing data received from various sources including third party information and tax credit data. The CIU is developing from a processing unit into more of a risk and research unit working alongside IR colleagues to identify employers thought to be more at risk of not paying the NMW than others. An example is the relationship with the Tax Credit Office (TCO) which has led to improved referrals, both quantitatively and qualitatively, in Working Tax Credit cases. The Helpline asks callers to provide their date of birth to inform the particular circumstances and the advice given. Many anonymous complainants, however, are evidently reluctant to give personnel details.

- Customer Responsive Outreach Work (CROW) is undertaken by a small team of eight compliance officers who provide talks and presentations, at the request of organisations, on the NMW. These organisations include voluntary organisations representing various trade sectors, community organisations representing ethnic minorities; citizens' advice bureaux; low pay units; trade unions; and large employer groups.
- A Compliance and Enforcement Service (consisting of 16 compliance teams, each with 3 to 8 officers, based in fourteen towns and cities throughout the UK), investigates complaints and carries out proactive (targeted) visits to a sample of employers about whom no complaints have been made, based on risk assessment and other information passed on to them. Compliance teams are required to deal with complaints of non-compliance; achieve compliance of employers; and enforce the NMW legislation where an employer fails to comply. (DTI 2003).

Complaints received by the CIU can be of two types: 1) those direct from workers who believe that they have not been paid the NMW and 2) third party complaints received from relatives or friends of the worker; anonymous complaints about a particular employer; an employer's competitor; or another Government department.

If a Compliance Officer (CO) believes that an employer has failed to pay at least the NMW to a worker, there is a sequence of steps to be taken.

- The officer may serve an enforcement notice which requires the employers to start paying the NMW and to make good previous underpayments for each named worker. The employer may appeal against the enforcement notice.
- If an employer ignores the enforcement notice, the officer may serve a penalty notice. The penalty notice imposes a financial penalty on the employer for each day from the time the enforcement notice was issued, and for each worker named in the enforcement notice who has not been paid the money due. The penalty notice does not recalculate the amount owed to the worker but penalises the employer for non-compliance with the notice. The original enforcement notice remains in force pending the outcome of any appeal by the employer. The employer may appeal against the penalty notice.

If these steps do not result in the employer complying with the enforcement notice, the CO can:

- Encourage the worker to take the employer to an employment tribunal or court to recover the money owed (if the worker has not already done so);
- Take a case on behalf of the worker;

- Prosecute the employer. Deliberate refusal to pay the NMW is a criminal offence.

There are six criminal offences relating to the NMW, with fines up to £5000 for each offence. These six offences are as follows:

- Refusal or wilful neglect to pay the NMW
- Failing to keep NMW records
- Keeping false records
- Producing false records or information
- Intentionally obstructing an enforcement officer
- Refusing or neglecting to give information to an enforcement officer.

COs can act in response to complaints by workers or others that an employer is not paying the NMW. They can also decide to make inspections of an employer's premises at any time.

### **The Process of Investigation**

Under the NMW Act and the terms of the SLA, compliance officers process all complaints of failure to comply with the NMW legislation; issue enforcement and penalty notices; collect and account for fines and penalties levied; and prepare and present cases before employment tribunals in certain circumstances. Officers can, as a last resort, instigate criminal proceedings against an employer. Similar arrangements exist for the agricultural sector, where agricultural wages inspectors enforce the NMW.

On receipt of the case papers from the CIU, the compliance team:

- records all relevant details;
- checks whether there are any earlier complaints and if so the result; and
- registers information about the employer (size of company, trade or trade classification, whether the business is still trading, and whether or not the employer belongs to a group of companies).

The compliance officer then reviews the case details and carries out the necessary research. If a telephone number is given, the CO contacts the worker to obtain as much information as possible prior to the employer visit. Unless the CO finds that in fact the legislation is being complied with, he or she will then telephone the employer to arrange a visit (IR 2002).

Initial contact can only be made with:

- The employer in a sole proprietor business

- A partner in a partnership
- A director or other senior officer in a limited company

Unless the complainant has given their permission for their name to be disclosed, the employer should be advised that the CO is conducting a routine visit to check whether the NMW is being complied with (IR Training Office, undated). It should be made clear to the employer that the visit is not necessarily the result of any complaint from a worker. Even if an employer claims to have rectified the problem, a visit is still normally conducted as there is a need to establish whether the law has been complied with in respect of all the workers in the workplace. Similarly, offers to comply by employers will still require a visit. If an employer refuses to make an appointment with the CO, the papers are passed to the Compliance Team (CT) leader with a full report of the telephone call for further action. The CT leader will then arrange for a letter to be sent to the employer giving approximately 14 days notice of a visit.

COs must show a warrant or similar identity document on request in order to gain entry to an employer's premises. They have various powers to obtain information such as:

- Requiring an employer or people working for him or her to produce and explain records about NMW pay;
- Enter the employer's premises in order to interview the employer; and
- Require an employer to attend for interview at the Inland Revenue's offices.

The CO will look at the employer's pay records to establish if there is sufficient information held before any attempt is made to identify the pay records of the person or persons who have made the complaint. If the records are considered insufficient, the employer is told that the onus is on them to prove that they have paid the NMW and that their records are considered insufficiently detailed. The CO calculates the amount of the NMW due based upon the worker's information and the employer is asked to agree the amount or provide alternative figures. If the employer's pay records are sufficient, the CO will attempt to identify the records of the person or persons who have made the complaint.

If, on inspection of the employer's pay records, it appears that the employer is compliant, the CO will check ten further pay records selected at random (or all of them if there are fewer than ten employees). A decision is then made on whether there is no cause for complaint or the wage records appear to be false. In order to ascertain whether wage records are false or not, the CO will check the wage records against copies of pay slips, cash books, cheque stubs and petty cash books or vouchers.

If the records appear to be false, the CO either makes detailed notes or takes copies of the records. The CO then leaves the premises without challenging the employer on the issue. Such a case is referred to the CT team leader for further action.

If there is no evidence of non-compliance, the CO informs the employer that they may need to contact some of the workers to verify the information obtained at the inspection. On return to the office the CO writes to the worker using a standard draft letter but stating the reasons why the employer is actually compliant. The worker is also asked to contact the IR if further supporting evidence of their case comes to light. If this happens, the worker is asked to send in the new evidence. If no such further evidence is forthcoming, a letter is sent to the employer thanking them for their assistance and closing the case.

Where the wage records indicate that the employer is non-compliant, the CO will attempt to calculate underpayment from 1 April 1999 or the commencement of employment of the complainant. The wage records of other workers will then be checked and, if further evidence of non-compliance is found, the CO will take details of those records or photocopies where possible. The CO will then present their findings to the employer and have the provisions of the NMW Act explained to them. The CO will ask the employer to repay the worker(s) the arrears owing as soon as possible.

If the employer agrees to rectify the situation, both for the complainant and any other worker who has been underpaid, the CO will tell the employer that the situation must be rectified at the earliest opportunity, either the next pay day or, if this too close, the following one. The visit is then concluded.

On return to the office the CO writes to the employer confirming the details of the case and his findings. The letter also states the arrears of salary due to the worker(s) by the agreed date. The CO also writes to the worker(s) concerned to let them know the result of the enquiry. The papers are then brought forward to a date 14 days after the agreed date for payment. If no further complaint is received on expiry of this period, the case is closed and the CIU notified.

If the employer refuses to comply the CO refers the employer to the Code of Practice and explains the provisions of the NMW Act relating to enforcement, penalties and criminal prosecution. On return to the office the CO will issue an enforcement notice to the employer. The CO will also write to the complainant telling them that the employer has been told to comply by a certain date and for them to inform the NMW Office if this does not happen. If there is no contact from the complainant after the brought forward date, the worker is contacted to confirm that the employer has now complied. If this is the case, the case is closed.

## Enforcement and Penalties

Workers have three months to submit an NMW case to an employment tribunal (Employment Rights Act), unless the Tribunal accepts that it was not reasonably practicable to bring a case to the tribunal before the expiry date. In cases where the worker has left employment, including through dismissal or resignation, the three-month deadline starts from the date the last underpayment of the NMW occurred. If the three month deadline elapses enforcement notices can still be issued and the case pursued through the civil courts.

Enforcement notices are issued where:

- An employer agrees to rectify non-compliance but subsequently fails to correct the deficiency, or
- Refuses to rectify the matters following a further visit or telephone call from the compliance team.

A detailed computation of the amount owing to each worker is prepared, listing the names and amounts underpaid for each and for which pay reference period the non-compliance applies. An enforcement notice (NMW notice 114), signed by the compliance team manager, is issued to the employer detailing the monies due. The employer has 28 days to appeal from the date of serving this notice. This appeal is forwarded direct by the employer to the ET Service on a form provided by the IR. Where an employer decides to appeal, the case is heard before an ET and the case papers submitted to the relevant authorities. The CO may be required to appear before the ET hearing (and the worker!). If the case is found in favour of the worker the ET directs the employer to settle the arrears and comply in future.

If the employer does not comply with the enforcement notice, nor make an appeal to the ET, there are two options available to the CO:

- Present a complaint under Section 23(1)(a) of the Employment Rights Act 1996 to an ET in respect of the sums owed to the worker under the NMW Act 1998 (separate but similar legislation applies in Northern Ireland) and commence other civil proceedings for the recovery of the arrears, **or**
- Issue a penalty notice requiring the employer to pay a financial penalty in respect of the period covered by the enforcement notice.

The penalty notice must be approved by the Compliance Team manager and is computed from the date payment was required by the enforcement notice to the date of issue of the penalty notice. Penalties are currently fixed at the NMW rate of £4.85 X 2 = £9.70 per worker per day.

Where an employer refuses to comply criminal prosecution may result, with any such prosecution being taken by the IR Special Compliance Office. Fines of up to £5000 can be imposed for each offence.

### **The Outcomes of Enforcement**

As the Low Pay Commission's fourth report comments, '...while the Office for National Statistics produces estimates of the number of jobs paid below minimum wage rates, neither of the surveys on which its estimates are based – the Labour Force Survey (LFS) and the New Earnings Survey (NES) – is designed to monitor compliance with the minimum wage' (LPC 2003:157). Neither of these surveys can identify those who can legally be paid below the NMW, such as apprentices, those undergoing training and those eligible for the accommodation offset. The LPC goes on to comment that the IR statistics on enquiries, complaints received and investigations conducted gives a starting point but 'these figures do not say anything about non-compliance not reported to the Inland Revenue' (LPC 2003:158). The information available does not give a quantitative indication of under-payment of the NMW. This fact should be born in mind when reading the statistical data below.

Enquiries to the NMW Helpline were running at some 53,000 in 2002/2003, down from 119,000 in 1999/2000 (DTI 2003). Of these, some 2000 were complaints about non-payment of the NMW. As the National Minimum Wage annual report makes clear, the volume of calls received tends to reflect the amount of publicity about the NMW. The volume of calls tends to increase when a new rate comes into force in October each year. In 2002/3 the number of complaints about employers not paying the NMW received increased slightly. This was partly due, say the IR, to the work undertaken with external partners in targeting particular sectors. Helpline agents have also been encouraging callers to expand on their initial enquiries, thereby turning more enquiries into actual complaints.

In 2002/3 some 6,238 investigations were conducted by compliance officers, an increase of 500 on the previous year. This partly reflected an increase in the number of compliance officers in post. Investigations during 2002/3 fell into three categories:

- Cases which are investigated as a result of complaints received.
- Tax credit referrals, gathered from the IR Tax Credit Office.
- Other cases investigated as a result of analysis work done by the CIU.

Since 1999 the balance of investigations has altered, as shown in the table below, with an increase in the importance of investigations arising from Tax

Credits and other cases and a decline in the importance of complaints from workers and third parties.

**Table 1: Number of employers subjected to a completed investigation**

	1999/2000	2000/2001	2001/2002	2002/2003
Complaint and third party	3509	2519	1763	1953
Tax credits	N/A	1908	2567	2940
Other	2532	7256	5368	6238
Total	6041	7256	5368	6238

*Source: NMW Annual Report. 2003.*

In 2002/2003 the number of employers found to be in non-compliance with the NMW as a proportion of total investigations was 32 per cent.

Since 1999 compliance officers have secured some £13 million of pay arrears for workers. The amount of arrears identified through investigations decreased in 2002/2003 from a high in 2001/2002. This is explained by the IR as partly due to the effects of the Bebb EAT case and the small increase in NMW rates in 2002. Arrears in 2002/2003 totalled £3.6 million, with the largest amount the result of individual and third party complaints (£2.5 million). Average arrears per worker in 2002/2003 were just short of £500.

The number of enforcement notices issued by compliance officers fell in the year 2002/2003, as a result of the Bebb EAT case, from 86 in 2001/2002 to 26 in 2002/2003. Similarly the number of penalty notices issued fell from 65 in 2001/2002 to 20 in 2002/2003.

The age of complainants (where known) indicates that the largest group is between 22 and 59. The IR statistics do not give a more detailed breakdown of the age ranges between 22 and 59. Complaints received are equally split between males and females, which is surprising given the known gender bias towards females in terms of low pay. In terms of trade sectors, the number of complainants is highest in retail, hospitality, market service and 'other' services, largely reflecting the size of these sectors within the economy as a whole. The largest number of complaints is registered in Yorkshire/Humberside and the North West. In 2002/2003 the number of complaints increased in all regions except Merseyside, with the largest increase in the East and South West.

## **CHAPTER 3: RESEARCH METHODOLOGY AND STRUCTURE OF SAMPLE**

This research project was the result of a call by the Low Pay Commission in 2003 for research projects covering a number of issues associated with the NMW, one of which was research into the enforcement process. The bid submitted by the research team drawn from the Universities of Cranfield and Greenwich was accepted by the Commission, subject to detailed discussions with the LPC and the Inland Revenue NMW Compliance Team.

A literature review found that little had been published on the issue of enforcement of the NMW apart from the LPC's own reports and the annual DTI NMW reports. The IR provided us with the IR guidance manual for training Compliance Officers, annual IR reports from the enforcement team, and other training material. Interviews were also conducted with COs and heads of compliance teams.

Our original proposal envisaged the selection of a structured sample of cases for interview. We envisaged a number of telephone interviews with the people involved in individual enforcement cases (the complainant, the employer and any third party involved). We also envisaged interviewing the relevant IR compliance officers concerned with the cases. These telephone interviews would be followed up by a further series of more in-depth face-to-face interviews. We had assumed that the IR would be able to provide us with a structured sample of cases.

In discussion with the LPC and the IR it became apparent that our original wish for a structured sample of triangulated case studies would not be possible. This was largely because our sample would have to be drawn from a wide geographical base, making concentrated research in particular locations more difficult, but more importantly because the IR records of all those who had been through the enforcement process (workers and employers) were covered by the Data Protection Act. This meant that all potential respondents in the research would have to be asked for their permission for us to contact them about the research.

It was therefore decided that the IR would write to a structured sample of 1000 people who had been through the enforcement process, explaining the nature of the research, asking them to complete a reply slip if they were willing to be interviewed, and guaranteeing them confidentiality. This initial sample of 1,163 names was biased towards employers (832 employers compared to 331 workers/ex-workers). This was because there was an attempt to pair up employers and workers from the same case but in many cases, because of confidentiality rules, the Inland Revenue often does not have the details of the worker who complained. In many cases, furthermore, the investigation is not the

result of a worker complaint. The Inland Revenue records therefore hold details of many more employers than workers. Our sample was also concentrated in particular geographical labour markets (at our request) – see chart below of employer distribution – but across the United Kingdom. Table 2 shows the distribution of this original employer sample.

**Table 2. Initial Distribution of Employer Sample provided by Inland Revenue**

Region	City	Complaints	Proactive	Total
N.Ireland	Belfast	20	31	51
East Midlands	Leicester	48	40	88
	Nottingham	15	7	22
	Derby	5	6	11
	Lincoln	3	1	4
Scotland	Glasgow	21	43	64
North East	Newcastle	17	29	46
	Sunderland	8	5	13
	Durham	4	5	9
North West	Preston	9	8	17
	Manchester	23	32	55
	Carlisle	4	2	6
London	London	50	142	192
West Midlands	Wolverhampton	11	8	19
	Birmingham	22	11	33
East	Cambridge	3	10	13
York/Humber side	Sheffield	15	7	22
	Bradford	15	27	42
	Leeds	10	15	25
	Hull	19	12	31
<b>Total</b>	<b>All</b>	<b>368</b>	<b>464</b>	<b>832</b>

The IR sent out these letters in February 2004. Exactly 100 responses from those willing to be interviewed were received, of which 39 were workers and 61 were employers. The gender breakdown was as follows: 56 male and 44 female. Because of the bias towards employers in the original sample, our sample was similarly skewed towards employer responses and we only received 39 responses from workers willing to be interviewed. There were also few examples of paired respondents (i.e. worker and employer from the same workplace).

Most importantly, none of the respondent employers had had enforcement or penalty notices issued against them – they had all complied following the investigation by the IR.

Following receipt of these reply slips - which suggested convenient times for the researchers to contact the respondent - all 100 were followed up for telephone interview. Of the initial 100 only 70 could actually be contacted, due to such problems as respondents having moved address, not being available at the times suggested or simply having changed their mind about being interviewed. Of this final sample of 70, 43 were employers and 27 workers. The gender balance was as follows: 17 female and 26 male employers; 14 female and 13 male workers.

Interview schedules were drawn up and agreed with the LPC and IR. These were structured in such a way as to elicit some factual data (including bio-data) as well as more discursive questions. Researchers at both the Universities of Cranfield and Greenwich conducted the interviews. All telephone interviews were taped where possible (i.e. where agreed) and the results entered into SPSS for analysis. The telephone interviews lasted up to forty minutes each with the questions covering both the process of enforcement and the outcomes.

Following these telephone interviews, a further 12 interviews were conducted face to face with respondents drawn from our original 70 (six employers and six workers), based on their willingness to be further interviewed, using a more detailed interview plan. The interview plans were again agreed with the LPC and the IR.

## CHAPTER 4: EMPLOYERS' EXPERIENCES OF THE NMW ENFORCEMENT PROCESS

In this chapter we report on our telephone and face-to-face interviews with employers and employees. We discuss the research findings under the following headings:

- Awareness of the NMW
- Expectations prior to investigation
- The investigation
- Payment of arrears
- Use of advisers
- Overall Evaluations of the Enforcement Process
- Suggestions for Improvement
- Views of likelihood of re-investigation

### (1) Awareness of the NMW

A central plank of the minimum wage policy is self-regulation, whereby the majority of employers comply because of the NMW's legitimacy and their wish to be seen as socially responsible employers. This premise clearly rests on employers having a clear understanding of the law and what compliance entails. We therefore asked employers whether they thought that they had a clear understanding of the NMW requirements.

Most employers claimed to understand the NMW rates, their application and their operation. All of the employers, however, had clearly had their understanding improved by involvement in the enforcement process. Of the six employers interviewed in person, all knew the current adult rate and all but one could name the rate from October 2004. There is some evidence, nonetheless, that some employers find the existing situation unclear and complex, especially in relation to the applicability of rates other than the main adult rate. One employer simply claimed not to know that there was a minimum wage at all before being taken through the enforcement process. Five employers mentioned aspects of publicity as a problem needing attention. Their responses were as follows:

*'The government should send out packages about legislation updates'*

*'NMW information was badly advertised initially'*

*'Perhaps a letter to employers setting out legislation to make it clear'*

*'Put more onus on the government to make small businesses aware of changes and the implications for their own sector. The information is too vague, there's not enough information given by the government'*

*'Set better guidelines for training wages, ages and also make colleges aware of the law'*

'When new legislation comes in they should have sections of ATTENTION (emphasis original) and implications for specific sectors. There are too many gaps in advice so generally it should be made clearer'.

The official information to employers was often experienced as inadequate. The last respondent, a hairdressing employer, suggested that advice targeted at specific sectors was needed.

In most cases, however, employers found the IR a useful source of information and advice. The IR has an important advice and information role, and frequently sends out information to employers, especially during and after the investigation process. In two cases, employers went back to the IR for further advice, after a case had been closed, for further advice or information. Two employers, however, remarked that the COs were perhaps themselves unclear about how the law should be applied in novel or complex cases.

Eight of the sample's 43 employer respondents had languages other than English as their mother tongue. Several of them had difficulty with the spoken English language and though they were able to answer our questions after several attempts to explain them, this tends to suggest that they may have similar difficulties with reading official publications in English.

Employer statements concerning a lack of information cannot be taken entirely at face value since 17 of the 27 workers in our sample had queried their pay but the employer had not responded to their inquiry by paying the NMW. Typical responses were as follows below:

*'He said it was the right amount'*

*'He agreed but did not pay'*

*'Refused to pay'*

*'Said it didn't apply because I was training'*

*'Said that was the norm'*

*'Said we could leave if we wanted to'*

*'If you don't like it, go somewhere else'*

Responses of the latter type were common when direct requests for payment were made, sometimes repeatedly.

A large majority (38 out of 43) of employers had not expected to be visited by the Inland Revenue and their expectations of enforcement were therefore low. Obvious pragmatic reasons for refusing to investigate complaints when they were made were, in a few cases, underpinned by criticisms of the law itself. Most employers passed no comment on the law, and some had no wish to be identified as in breach of the law, but a few openly said they disagreed with it. One said, *'The legislation itself is awful, it makes it very difficult for small businesses'*. Another argued that although the NMW was a flat-rate payment employees in fact produced at different rates and should therefore be paid piece rates without any guaranteed minimum. A third associated his lack of knowledge with criticism of the law: *'I was not aware that the minimum wage applied to apprentices. It is bad legislation and a deterrent to taking on apprentices in the future'*.

Although our sample is not a matched sample of employers and workers from the same workplaces, the worker responses regarding complaints that the NMW was not being paid are at odds with the responses from employers. Only one of the employers in our sample reported a worker complaint, and this was made in writing after a complaint to the IR had already been made.

### *Origins of the Cases*

While there was often some uncertainty around the question as to how the case had arisen, 37 of the 43 employers in our sample thought they knew who had initiated the case. Twelve thought it was from a worker complaint. Typical examples of their responses were:

*'It was a complaint from an employee who was probably put up to it by his father because of financial problems'*

*'A complaint by a sacked employee'*

*'Probably a complaint from the girl's mother to IR'*

Two employers voiced the opinion that anonymous complaints should not be allowed.

Ten employers thought that the case might have arisen from pro-active IR work, described by employers as 'random' or 'spot checks'. In one case an employer complained that there were two separate investigations by two different COs *'who appeared to be picking organisations out of the Yellow Pages at random, neither of whom knew about the other'*.

Seven employers thought the investigation was because they had been identified by other information, such as applications for tax credits. The responses were:

*'Information on tax form that wife completed incorrectly'*

*'Housing benefit picked it up'*

*'Worker was getting tax credits'*

*'He claimed benefits and they checked his wages from us as the previous employer'*

*'Referral from job centre'*

*'Picked up from previous employee's benefit form'*

*'Perhaps when two employees who were new to the UK went to get an NI number and they showed their wage slips'*

The remainder of the employers who said that they thought how the investigation was originated could or would not explain how this had occurred.

## **2) Expectations prior to Investigation**

The majority of employers in our sample had not initially expected a visit from an IR Compliance Officer. Only five had expected a visit. Within the latter group, the expectation arose either from the fact that they were relatively large

employers of unskilled labour locally, or because the IR had been in contact with them about other matters such as tax. A typical response, characteristic of the majority group, was that *'it never occurred to me'*. The typical response was frequently accompanied by a statement indicating that they did not know they were in breach of statutory requirements. A more unusual response in the same category was that there were *'too many thousands of other businesses out there'*.

In almost all cases (41 respondents) employers were contacted by letter from the IR, saying that they wished to make a visit. The letters were generally (35 cases) considered 'business-like' and to give adequate information about the process. There was almost universal understanding that an investigation would take place and that they would have to produce their wage records. Most employers proceeded to look at these records, except for a few who referred them to their accountant. A few also did as one employer *and 'got the wages records more up to date'*. Four employers did nothing and two reported that they spoke to workers about the situation.

A small group of employers in the sample had become familiar with the IR's procedures through regular visits. These employers tended to be relatively large employers of unskilled labour in their area. The account of one such employer respondent follows.

#### Account 1

The employer ran a sizeable printing company employing about one hundred people. He knew what to expect when the IR contacted him as he had already had several visits from them, although he said that the IR *'needed to be seen to be monitoring employers because of the publicity hype about the minimum wage'*. He described their visits as following a 'standard procedure' of looking at records. On this occasion, he owed £500 in arrears to each of five workers. The CO sent him a 'standard, clear' letter about the arrears which he then paid. The CO 'ensured good practice' and was 'fair to both sides'. He took advice from his solicitor throughout the process and did not find it difficult to pay the arrears. He said that he had to comply with the NMW because of the company's profile.

Employers had varying understandings of COs powers and the potential penalties attached to non-compliance. Only eighteen expected a fine or legal action to be taken against them if arrears were not paid, for example. Among those who were unaware of penalties, assumptions also varied from the employer who thought he might be given a warning to one who said, *'God knows! Jail?'*.

### 3) The Investigation

Employers generally found the approach taken by COs to be courteous and helpful. Forty of the 43 employers in the sample regarded at least one aspect of the process as helpful, normally because of the information and advice they received, either on the NMW or on keeping proper wage records. In general, COs were felt to take an approach that did not assume any guilt on the employer's part. Typical quotations were:

*'The IR were very helpful'*

*'Very straightforward and pleasant'*

Most employers in the sample did not wish to be seen as having broken the NMW legislation and a few protested that they had done nothing wrong, even though they also agreed that they had not been in compliance. This might be called the 'genuine mistake' argument.

In two cases, employers felt they could detect a change in approach by the IR. In the first, the employer said that: *'the IR have changed their approach and it is much better and fairer to both sides. Perhaps the second time we were just lucky with the IR man we had!'* In the other case, the employer reported two separate investigations two years apart by the same CO. In the first, *'I felt intimidated and judged but the second time was more supportive. I was told that compliance with the NMW when paying a trainee for the first year is NOT (emphasis original) necessary'*. In the second of these cases, it appears that the CO's information was more favourable to the employer and the approach may also have been judged in this context.

In the following account, an employer highlights the helpfulness of IR staff and the amount of effort the IR put into interpreting the employer's records to ascertain arrears.

## Account 2

The respondent was general manager at an arts centre operating a cinema, art galleries and a bookshop in a large provincial town. The case related to underpayment of some casual staff employed as cinema ushers. The ushers had been paid a flat amount for a shift but, if films were long, then the hourly rate fell below the NMW. One of the workers involved went directly to the IR and a Compliance Officer contacted the company. The employer did not contest the case. The manager commented that *'we were actually shocked to find we'd broken the law'*. Commenting on the CO, she said:

*'The enforcement officer was very good. He seemed to accept that it was a genuine mistake and showed a real interest in what we do here...It couldn't have been better really'*.

Rather than 'put an additional burden' on the employer, the CO took all the relevant time sheets away to work out how much each member of staff was owed. She commented that: *'We're eternally grateful he did this. It was such a big job. He had to match each employee with the right film and check its duration. He wasn't helped by the fact that some timesheets only had the employee's first name, so he had to double-check it was the right Paul, for instance'*.

Over half (26) of the employers in our sample had records or wages systems that were inadequate in some respect for the purposes of the NMW. COs therefore had to deal with situations where there were difficulties in assessing the actual wages and/or the amounts of any arrears owing. It was reported that COs frequently advised employers how to improve their records. Many employers regarded improvements to their wage recording procedures (along with the advice on the NMW and related issues) to be the main benefit they obtained from the investigation. In response to a question about the action they had taken to comply in future, some typical responses were as follows below:

*'We changed procedures and system to flag up ages of apprentices'*

*'We changed systems'*

*'We changed procedures'*

*'We improved monitoring of hours and pay so that any underpayments can be rectified before any complaints are made'*

*'It has led to more communication with accountant. Take more responsibility'*

#### **4) Payment of arrears**

Despite often poor records, COs were able to identify that arrears were payable. COs send letters to employers and workers stating the arrears the CO thinks payable, requesting payment by the next pay day and proof that the arrears have been paid. In some cases, the CO effort required was considerable. In one case, the CO gave an employer a contact in the IR to explain how to fill in a form.

In almost all cases (37 out of 43 cases), employers agreed that arrears were in fact payable. Employers were generally persuaded of the fact that they did owe arrears by the CO's explanations, often including their spreadsheets. In one case, the employer's accountant told him that he had 'no choice' but to pay the amount requested. In a few cases, the employer disputed the amount and in one complained that the CO had taken a worker's diary as evidence in the absence of any other proof of the hours worked.

The amount of arrears varied from a few pence in one case to over £12,000 in another. The median amount, according to our employers' evidence, was £300. Arrears were in many cases (19) owed to one worker. In eight further cases, they were owed to two workers. The largest number of workers owed arrears was 600.

The IR letters were described in different ways by employer respondents. In the words of one respondent, the letter was 'just standard stuff and clear' or, in another's words, 'official and explanatory'. Two employers described the letter as 'aggressive' or 'stropy'.

Most employers in our sample did not experience difficulty in paying the NMW or the arrears owed. Typically, they described it as 'easy'. This was not always the case, however, and there was mention of difficulty in nine cases. Typical quotations from those mentioning difficulty of some sort were as follows:

*'Difficult. I had to cut working hours and make redundancies'*

*'Difficult. I reduced receptionist's hours and reduced training time. I realised that investing in young people is costly'*

*'We had to borrow money from the bank and change training provider'*

*'It was difficult to pay—we are a small business. We paid in two or three instalments. But we didn't make any other changes to people's terms and conditions'*

Employer respondents were also asked what they thought would happen if they did not pay the arrears. Eighteen of the 37 employers thought that some sort of action would be taken and knew what types of action could be taken if they did not pay the arrears. Most of the remainder did not know what action could be taken, and on occasion thought this might be serious, such as the employer who answered *'God knows! Imprisonment?'* It may be that COs gave more detail in some cases than in others, preferring to leave the matter open in certain cases, as other researchers have reported regulators doing under some circumstances (Ayres and Braithwaite, 1992).

Under the NMW Act, and as employers and workers are informed in official letters, the arrears should be paid in full at the next pay day. However, some employer respondents indicated that they did not always do this. Twenty-six of the 37 owing arrears reported that they definitely paid *'all at once'*. Six employers said that they paid in instalments, typically in two or three instalments, although in one case an employer reported that he made the repayment over a twelve month period. The remaining employers did not answer this question. This was a relatively high proportion declining to answer one of the researchers' questions and it is possible that some of these did not answer because they had paid in instalments and realised that this was unlawful. Payment by instalments raises the question of the nature of the proof of payment provided by the employer to the IR, since an accurate method would have revealed the method of payment.

The group of nine employers who found it difficult to pay or had to make changes to other terms and conditions of employment contained four of the six who also paid in instalments. It seems likely that the cause of these employers paying by instalments was therefore a degree of financial difficulty.

One employer had an Employment Tribunal case brought to recover the arrears; he settled immediately before the ET hearing.

## 5) Use of Advisers

Employers were asked whether they had made use of any professional advisers or intermediaries when they were notified of the IR investigation. Eighteen employers responded that they had used a professional adviser. Most of the remainder did not use an adviser because they felt the case was straightforward and they did not need one. One employer replied that the business could not afford to do so. Of those who used an adviser, twelve used accountants. Those employers who had used advisers gave their reasons for doing so for three reasons:

- because accountants held their wage records and/or
- to gain a deeper understanding of the law, and/or
- for reassurance.

Typical quotations were:

*'The accountant gave a professional insight and knowledge of the legislation'*

*'He was helpful in explaining what should be done'*

*'Just reassurance'*

Three employers responded that their use of an adviser had brought no benefits.

## 6) Overall Evaluations of the Enforcement Process

Employers were asked about their reaction to the enforcement process overall. Most employers were broadly happy with the conduct of the IR and continued to use them after the case to check their practices. Forty of the 43 respondent employers were able to identify a particularly helpful aspect of the process. Twenty four of these mentioned information or advice given by the IR, frequently with book-keeping and accounting practices. Other comments included the following quotations:

*'Thorough, fair, informative, professional'*

*'Not surprising but helpful'*

*'Professional, courteous and efficient conduct. No surprises'*

Thirteen employers made negative comments of some kind about the role of the IR in the process. Typical quotations were as follows:

*'I didn't like the way that both investigators just rang up and left a message with a member of staff. They should have spoken or written to myself'*

*'I found it rather aggressive and stressing. I felt I was guilty until proven innocent'*

*'It was a horrible experience. I lost sleep and it was very intimidating'*

*'The Inland Revenue dealt with us in a straightforward and courteous way, but it was disproportionate. For £35.54 a letter would have sufficed'*

*'I was surprised that the IR took the ex-employee's word against mine'*

*'I was not happy with the competence of the investigator'*

*'I was surprised by the severity and the limited time to pay arrears'*

*'Terrible representative who was too aggressive and dealt with it badly'*

Some negative comments derived from standard practice, as in the case where a CO *'took the ex-employee's word against mine'*. In this case, the worker had a better record of hours worked than the employer and the CO therefore took the worker's record as the basis of calculation. In a case where £35.54 was owed, the IR investigated on the basis of this individual case but was unable to ascertain whether any further amounts were payable.

Other causes of negative comments shown above were a feeling that there was a presumption of guilt on their part, a perception that the CO had dealt with them in an aggressive way or that the CO was incompetent or insensitive.

A further cause of discontent was the time taken by the process of investigation. The main issue here was the time taken. One employer commented that the *'IR spent a whole day going through the books'*, while another remarked that the investigation was *'very slow and ponderous'*.

In every case, the employer's discontent with the role of the IR was associated with other matters, for example with the worker's behaviour or the time taken by the investigation overall. These discontents were therefore probably inter-related, and one may have caused the other. Alternatively, different aspects of discontent may interact with each other to create a multiplier effect in evaluating the overall process.

### Account 3

This account comes from a sizeable company of solicitors operating in a major provincial town. The respondent was a retired chartered accountant working part-time for the company to manage the payroll. The case related to underpayment of a staff member whose date of birth had not been entered into the 'basic' software package used by the company. Record keeping has now been improved. The CO's approach was criticised by the respondent as seeming *'confused, not competent, lacking in confidence'*. When the respondent was made aware of the underpayment during the IR investigation, he informed the employee that she had been underpaid and that she would receive a payment of about £100. However, the initial calculation was incorrect, causing the respondent *'much embarrassment'*. A second figure of £259.65 was also wrong. The final figure was £284.62. The CO took a long time to go through the relevant records, and *'we expected to be given the right figure in the first place'*. The respondent suggested that the case could have been settled on the day the CO visited. He suggested providing all officers with laptops with suitable software or access to an on-line system so that they can make calculations *'on the spot, rather than the current long drawn out process'*.

### Account 4

The following account of an employer's experience provides an example of both praise and criticism of a CO.

The respondent was operations director of a sizeable survey organisation employing freelancers. The complaint was brought by a freelance worker, was complex and related to payment for travel and work time. The organisation had to 'dig deep' to find all the relevant records, causing some delay in the process. The organisation has since tightened up its record keeping. The respondent commented of the CO's approach as follows:

*'The officer handled the process in a very professional, low-key way. She did not come in making accusations, but treated it more like trying to resolve a problem. She wasn't sure what the rules were a couple of times. I think she was thrown by the situation, which she hadn't come across before.'*

## 7) Suggestions for Improvements to the Process

Respondents were asked for suggestions of how to improve the enforcement process. Sixteen replied that improvements could be made. The largest single group (five) of these was concerned with information, and are referred to above in the section about information. A second category concerned increasing the time taken by investigations or the time taken to settle cases:

*'Streamline and introduce a sense of proportion'*

*'The first meeting was much longer than I anticipated'*

*A third category concerned the origination of complaints:*

*'The Job Centre should have asked more questions before referring the case to the Inland Revenue'*

*'Employers should be told why they are visiting. Is it random, or because of a complaint?'*

*'There should be a procedure to advise the employee to approach the employer first to avoid wasting the Inland Revenue's time'*

## 8) Views on the Likelihood of Re-Investigation

Twenty-two employers, or half of our sample, thought there was a good chance of their being contacted again by the IR about the NMW. This was generally because they felt themselves to be 'in the system'. Employers appear to draw a distinction between being above and below a certain level of visibility.

Some employers also felt that the IR was more likely to interest themselves in larger employers, where larger gains could be made through a single investigation. As one employer said, in response to a question about possible further visits: *'No chance because we are doing everything right and we are a small company'*.

## CHAPTER 5: WORKERS' EXPERIENCES OF THE NMW ENFORCEMENT PROCESS

In this chapter we consider workers' perceptions of the enforcement process. We consider our research findings under the following headings:

- Awareness of the NMW
- Making a complaint
- Experiences of the investigation process
- Anonymity
- Other workers' reactions to the claim
- Payment of arrears
- Use of advisers
- Overall evaluation of the process
- Future action to claim the NMW

### 1) Awareness of the NMW

Twenty of our 27 worker respondents knew that they were being paid less than the NMW at the time of the investigation. Many could not remember how they knew (typical quotations were: '*Just had an idea about what the NMW was*' and '*Just knew the law*'), but those who knew had learned of the NMW in a number of different ways. The most common method was through word of mouth from relatives, friends or neighbours, but a wide range of sources was in evidence. Representative quotations follow:

*'I found out from my parents and grandparents'*

*'Read it somewhere'*

*'Saw in on TV'*

*'A notice in a magazine'*

*'A neighbour told me'*

*'I'd read the literature previously on employment matters'*

*'I suspected at the interview that they were underpaying so I checked with the Job Centre who confirmed it to be correct'*

*'Sometimes I wasn't paid at all so I went to the Citizens' Advice Bureau who referred me to the minimum wage people'*

Simply because workers might know the level of the NMW rate does not mean that they consider themselves eligible for it. There were several cases in which part-time women workers and working retired people said that they thought the NMW would not apply to them as they did not have a 'proper job'. Their perceptions of their work activity led to them ruling themselves out of an imagined mainstream in which the law applied and placing themselves in a marginalised group which could not expect legal rights.

In this small sample, women claimed to be better informed than men: twelve of the fourteen women respondents as opposed to eight of the thirteen men respondents said that they knew they were being paid less than the NMW. In the cases involving women, most (10) thought there were other workers underpaid at their workplace, whereas this only applied to six of the thirteen men. The issue dealt with below - of whether these other workers were also covered by the process - was therefore especially relevant in the women's cases.

It should be recalled here that our sample contained only people describing their ethnic origin as 'British, English, White or White British'. This contrasts with the employer sample, which contained a group describing themselves in some other way. Our worker sample's access to publications in the English language, and links to English language verbal exchange, were therefore probably better than that of the complainant population as a whole.

## **2) Making a Complaint**

Seventeen of our worker respondents reported that they spoke to the employer about their pay. Men in our sample were more likely to do this than women: ten of the 13 men did so compared to seven of the fourteen women. This may be linked to the fact that women were rather more aware that the IR could speak to their employer (eight of fourteen women compared to five of thirteen men). This did not, however, always take the form of a direct request to be paid the NMW, but was sometimes a query couched in general terms (or 'polite inquiry about the pay' as one respondent put it). In a few cases, even though a complaint was made, the case was conducted largely by a worker's relative. For example, in one case the worker's brother was involved - *'because my brother is of limited mental capacity'*. In another case a mother pursued a case on behalf of her son (whom she described as very dyslexic). In these cases, where the worker was felt by those close to him or her to be unlikely or unable to formulate or prosecute a case because of their vulnerability, the complaint was made on their behalf by relatives.

As detailed previously in Chapter 4, of the 17 respondents who spoke to their employer about their pay, the majority received a negative response. Ten of

these workers were still working for the employer, but seven had left before making the complaint. In several cases, the intention of claiming the NMW played a significant role in the worker leaving employment. Workers fear a negative response from the employer because they have 'reported' the employer. One employer reported that a worker *'left at the point that she went to the Inland Revenue. If she had rung me and said "Hey, I worked for you and you paid me wrong," I'd have given her it then. Instead she fell out with me.'* It was often difficult for respondents to disentangle their wish to make a claim from other discontent with terms and conditions. At the time of the survey, only seven of the 27 worker respondents still worked for the same employer from whom they had claimed the NMW. This was partly due to high levels of turnover in the industries they worked in, but it was also frequently inextricably linked to both the NMW claim and to wider discontents about the work conditions.

Among the worker respondents as a whole, thirteen knew that the Inland Revenue could speak to the employer on their behalf and twenty of the 27 said that they knew how to contact them. Twenty-three of our worker respondents actually did so, but of those who said that they did not, one contacted the Low Pay Commission and one contacted the NMW Helpline. In one case, the Job Centre was reported as not being able to advise the worker about who to contact about the NMW. He contacted the ACAS Helpline, who warned him that he might lose his job if he complained to the IR.

Thus, the great majority of the cases covered by our worker sample began as complaints rather than as the result of pro-active measures by the IR. In the majority of cases (16), the individual concerned was not the only worker found to be underpaid.

Workers were asked what happened when the IR contacted their employer? One reported that their pay was increased immediately, but five reported a negative reaction from the employer in terms of them having 'shopped' the employer to the IR or, as one worker whose story is told below said of her employer, *'stabbed in the back'*. In these cases, employers took steps to ascertain who had complained. In two cases, dealt with in more detail below, the worker reported that their name was given to the employer as the complainant.

### **3) Experiences of the Investigation Process**

Workers' experience of the investigation process was often positive. This was particularly the case for workers who had left the employer, since the case was handled by the IR. As one respondent said, *'They handled everything and I could just leave it to them'*. Typical reactions to the investigation were as follows:

*'The IR made a positive contribution to dealing with the problem'*

*'Good communication'*

*'The IR were friendly and efficient, no problems'*

The difficulties caused to COs by poor employer records were reflected in the worker experiences. A relevant case is provided in the following account where the issue of records constituted a major point of dispute between the worker and the employer and apparently brought about his departure from the employment.

#### **Account 5**

The account brings together three related issues evident in other cases: records of time worked, the nature of the workers and managers involved and the intertwined issues of the NMW and workers leaving their jobs before making complaints. The employee was a manager in a restaurant. Employees were paid for two and a half hours for each meal served, but since it took considerably longer to serve the meal and clear up afterwards, their wages fell below the NMW when calculated on the actual hours worked. The manager mentioned this to his superiors, but their response was blasé. *'They knew full well what was what, it wasn't news to them...What they do is, usually the youngsters, the parents or someone, contact them and they say you can't have it so it seems to be a company thing. They tell all these youngsters, and some of the parents are not too bright, they're talked down to. And when they're told, "You can't have it," they accept it. And they want to keep their jobs, so they don't want to complain.'* The answer given to the manager was that the employees should work faster. The company refused to pay for the extra time but the manager insisted on recording it, despite his superiors' objections that he should only record the shift worked: *'I was always getting told off for doing that...I kept on about it and eventually they made it impossible for me to stay there'*. Eventually, the manager left and made a claim himself for the NMW afterwards. Asked why he left, he replied that it was because of the pay and conditions and because he wanted to make a claim for the NMW. He successfully obtained his arrears, but only up to the value of the NMW and not to the amount he was owed since he had been nominally paid above the NMW.

#### **4) Anonymity**

In many cases, there was a degree of uncertainty about the number of hours worked. There appears to be a link between weak evidence and another issue

with important consequences for workers, that of anonymity. In four cases, workers alleged that confidentiality had allegedly been breached. In the following account, the worker believed this to have occurred, but the worker was not especially concerned because she had left the employment.

#### Account 6

The worker had been a waitress in a pub. When she discovered that other workers were paid more than her, she decided to complain to the IR. A young woman colleague told the respondent that she could not claim the NMW because she was under 22, and this alerted her to the fact that she could claim. She raised the issue with her employer *'in a way'*, but not explicitly. She raised the different pay rates among the different workers but the response was that the pub managers were buying a villa in Spain and could not afford to put the wages up. The respondent did not raise the matter with other workers as she did *'not want to cause an incident'*. She handed in her notice after working in the pub for nine months and then made her complaint, because she did *'not want to cause an atmosphere but wanted what I was entitled to'*. The employers were told that they could be taken to tribunal if they did not pay. The worker did not realise that she could be called to give evidence in a tribunal case. The case took four to five months to process. The employers initially delayed payment, but finally paid, the respondent thought, because of possible publicity and the risk of a fine. The respondent was *'quite happy with the process'*.

In one case, where only one worker was employed, the worker was told that the IR would tell the employer that they were making a spot check, and that their identity would not be revealed to the employer. Although the employer may have guessed the worker's identity from circumstantial evidence, in these cases the workers involved insisted that their names were given to their employer. In one case, the worker was sacked; in another she experienced a *'bad atmosphere'* at work for some time afterwards, although this later dissipated.

In several other cases, COs asked workers' permission to give information that would reveal their identity as being the only way that their cases could effectively be pursued. If workers refuse, standard practice is for the CO to drop the case, but COs may be reluctant to do so. This raises the question of how many cases have to be terminated because workers refuse to give their permission, since all of our respondents were involved in cases where arrears were identified.

It might be argued that ultimately anonymity cannot be preserved because payments have to be made to someone, or because workers may have to appear

in ET cases. Cases involving one worker may, however, be represented as 'spot checks'. Cases involving more than one recipient of arrears decrease employee risk of detection by the employer in proportion to the number of workers paid. Although it is ultimately the case that workers might have to testify in ET cases, the number of such cases is tiny.

### **5) Other Workers' Reactions to the Claim**

In all cases except one, workers reported that they were paid the NMW after the investigation. Clearly investigations were largely effective in the sense that they usually ensured that the worker making the complaint was paid the NMW after the investigation. Just because one case was brought, however, it did not mean that other workers were paid either the NMW or any arrears. One reason for this is that other workers did not always know that an NMW claim had been made; two worker respondents reported that this was the situation at their workplace. In the employers' responses, there were also claims in two cases that the other workers did not know of the claim. In three cases, employers suggested that other workers were hostile to the complaint:

One said that *'they felt bad that we were being investigated'*. In another case, an employer reported that other workers *'were disgusted with the employee who had complained'*.

In these cases, the workers' identification with the employer could have a significant effect on the investigation process in terms of their willingness to help further the claim by providing evidence to the IR, or possibly by colluding with the employer. It also seems likely that they would provide testimony in support of the employer rather than the ex-worker at an ET.

In one case, a woman successfully obtained the NMW but, although the other workers were given the relevant papers by the CO, they were *'too scared'* to make claims themselves. On the other hand, both employers and workers in our sample provided examples in which workers were pleased with the CO intervention. Employers mentioned three such cases and workers mentioned two. Overall, the circumstances under which workers identified with the employer rather than the complainant require further investigation, since these are likely to have a major impact on NMW enforcement.

The impact of cases on other workers may on occasion be linked to the Inland Revenue's approach. One worker respondent reported that, in his case, there seemed to be more possible claimants than the group of workers checked by the CO: *'The IR checked on certain staff and those were the only ones who got the adjustment to their wages. It wasn't applied to all staff.'*

In this case, as in some others touched on above, the perception of workers is that the impact of the investigation appears to have been limited to a specific individual or group, rather than generalised more widely in the workplace. The reasons for this are not entirely clear, but of course it is possible that all workers records were investigated by the CO but only a minority were in breach of the Act.

## **6) Payment of Arrears**

The IR normally specifies any arrears to be paid in correspondence to both the employer and the worker involved. It does not itself collect arrears and does not always follow up to check that arrears have been paid (see Chapter 3 for a description of the guidelines for COs). Respondents occasionally reported that the CO advised them to take the employer to an ET if the arrears were not paid. In 25 of our cases, arrears were owed to the worker. The amount of arrears varied between £6.50 and £10,889. The median amount was £1,100. Whether arrears were recovered often depended on the quality of the information available. In several cases, workers reported that it was too difficult for the IR to prove the arrears. The next worker's account is of a case alleging an employer who tried to conceal his underpayment from the outside world, an abuse of the training rate and how false recording led to an inability to claim the full amount of arrears. This was a case of a woman worker.

### Account 7

INTERVIEWER: *Did you know you were being paid less than the minimum wage?*

RESPONDENT: *At that stage I didn't realise that he couldn't put me on the training wage because of my age. After two weeks, because I explained that I was qualified and I'd already got the experience anyway, he said "Yeah, I'll put the wages up to £2.50," which I knew was above the minimum wage, so I was quite happy for a few weeks. I thought I'd let it go, but it got on to be months. He said to me "Don't ever tell anybody what I pay you."*

INTERVIEWER: *So from the beginning you were meant to be on a trainee wage?*

RESPONDENT: *Yeah, and I could tell him his job. I gave it (IR documentation about the NMW: authors) him to read and everything, in which case he got a bit stroppy but he did change my wage...I think the words were if you can do it first it's less hassle rather than you going through them and him feeling like he's been stabbed in the back. Mind you, we didn't tell him, when we had a word with them. We also gave him the book because it says in there that you're entitled to the back pay. And he was umming and aahing about that, so that's when we did put the complaint in he told me, "Have you been talking to anybody?"*

INTERVIEWER: *Were you owed arrears of pay?*

RESPONDENT: *Yes.*

INTERVIEWER: *Do you remember how much?*

RESPONDENT: *No. I knew he'd fiddled records and made me sign them, so that went against it anyway.*

INTERVIEWER: *Did you get these arrears back?*

RESPONDENT: *No. It was probably £150, £200. It wasn't a great deal of money. That wasn't the point.'*

In the account given above, the worker explained that her colleague also made a successful claim for the NMW and received some arrears.

There were eight cases of workers not receiving the full amount of arrears. In two cases workers were pressured by employers to sign falsified records to say that they had received the money when that was not in fact the case. In these cases, the IR clearly could not take further action. In a third case, the employer only paid part of the arrears; the worker *'did not want to take it further so settled for what they paid'*. In this case, the amount of arrears could not be agreed by all parties due to lack of verifiable information but he added *'I got the impression that they (i.e. the IR) don't bother too much about that'*. A fourth case involved £6.50 owed to one worker that the IR did not think worth pursuing. A fifth complicated case took four years to resolve and the worker accepted a payment of £5,000 prior to an ET case. The worker commented that: *'The IR did everything possible to help but was not backed up by the DTI who said case closed'*. The sixth case was of a young worker whose builder employer *'keeps promising he will pay in instalments'*. In the other cases, the workers involved did

not wish to pursue the matter. Four of the individuals concerned contacted the IR when the arrears were not paid in full, and in three cases ET cases were initiated and the employers settled prior to the hearing.

As detailed in Chapter 4 previously, negotiation also occurs between employers and workers about payment by instalments. Even on the negative assumption that workers misrepresented the amounts owed them, this cannot apply to the payment by instalments. Moreover, even if this assumption proved entirely correct (which appears unlikely) the existence of a sizeable group of workers who were prepared to say that they had not been paid arrears represents a considerable disincentive on others in a similar situation to make claims.

## **7) Use of Advisers**

Workers made less use of professional advisers than did employers. Help, advice and support came mainly from friends and relatives rather than from professionals of any sort. There was no mention by any respondent of a trade union providing him or her either with information or assistance. There was only one mention of involvement with a Citizens' Advice Bureau. There was no mention of contact with ACAS by any worker respondent other than the one who contacted the ACAS Helpline. In this sense, the workers' sample was more dependent on the compliance team than employers, who referred to professionals such as accountants if they felt the need. Though the professionals only provided reassurance, this may itself be seen as a benefit in what many experience as an emotionally difficult process.

The following account is of a complex case raising a number of different issues, including that of legal costs for workers bringing their own cases to an ET.

### Account 8

The respondent was married to a worker employed as a sales consultant for a double-glazing company. The case was brought after he left the company and turned largely on whether he was self-employed or an employee. The case lasted for four years (*'I mean it's been a real palaver'*). The respondent went to the Citizens' Advice Bureau and was referred to the IR, who decided after an investigation that the sales consultants were employees, and eventually issued an Enforcement Notice on the company which it had to withdraw because of the Bebb case. After the law was altered to allow a retrospective case, the company refused the IR access to records. The respondent reported that: 'The minimum wage (sic) couldn't actually take the case for us, we had to do it alone'. The family could not afford to take the case, and used a 'no win, no fee' solicitor. The solicitor advised the family to settle out of tribunal because he felt the outcome was uncertain. The family agreed because they feared an award of costs against them. The family paid the solicitor £1,700 out of the settlement. The respondent was later advised by the DTI that they would have been eligible for legal aid because of the nature of the case, but the department had not been obliged to tell them that prior to the case.

### 8) Overall Evaluation of the Process

Mirroring the question put to the employer group, worker respondents were also asked their evaluation of the enforcement process. Twenty of the 27 respondents felt that there had been helpful aspects of the process. The two largest groups of responses in this category were a) the contribution to resolving the problem (5) and b) good communications (7). Others simply referred to receiving increased pay or arrears (e.g. *'I got the money back that I was owed'*). In many cases, the IR staff were described (as employers also described them) as courteous and helpful.

In terms of the length of the process, there was no difference in response between workers and employers: employers objected to the time taken by the investigation whereas workers objected to the time taken for them to receive payment. Some workers felt that, despite the time scale generally provided by the IR, the process had been slow. There were seven workers who mentioned the length of time taken to conclude their case. The periods in question were eighteen months, *'five to six months'*, two years, *'too long'*, six weeks, *'lengthy'* and four years. In one case, a woman respondent reported that the CO dealing with her case had periods of illness, resulting in 'big gaps' in communication. In another case, the long time taken had material consequences, as a woman worker was eventually paid arrears in the following tax year, meaning that she

had to pay more tax on the amount than if she had been paid in the previous year.

Ten worker respondents reported difficulties with the process. Two concerned a 'lack of confidentiality', two concerned the long time taken to resolve the case and five concerned problems with payments (e.g. *'The IR said I should receive the arrears in one lump sum but I didn't and it concerned me'*). In respondents' replies to both the helpful and unhelpful aspects of the process, relationships to both the initial problem and to its resolution were often evident and affected their view of the process. When respondents referred to good communications, slowness or lack of confidentiality, however, their replies are probably more reliable as these were more clearly separated in their own minds from the problem and outcome than, for example, difficulties with payments. These are also areas in which the IR may be able to exercise some control, rather than objective difficulties.

Respondents were also asked whether they could suggest any improvements to the process. Eight replied that they could not; five replied that it could be speeded up; one referred to improving confidentiality; and seven made varied disparate suggestions, including the following:

*'At the beginning I sent a letter and received no acknowledgement from the IR'*

*'Just felt they could have done more about pay arrears'*

*'Better information about who to contact about minimum wage'*

*'Localised offices would help'*

*'They need more staff to cut down on time'*

With the exception of the comment about publicity above, there may be something of a common thread running through them to do with the pressures on the IR staff and the way that they are organised, deployed and managed.

## **9) Future Action to Claim NMW**

Workers were also asked what they would do in the future if they thought they were being paid below the NMW. It should be recalled here that questions about future hypothetical actions should be treated with some caution as circumstances are unspecified and are highly likely to affect actions.

Seven respondents replied that they would speak to the employer; twelve said that they would contact the IR with a view to taking action; and of the remainder, several were similar to the worker who replied, '*I would not take the job in the first place*'. Twenty-five of the 27 replied that they would contact the IR again, generally for information or advice. The great majority of respondents regarded the IR as the definitive source of relevant information. Despite any difficulties that may have arisen, there was, as one respondent put it, '*not much choice*'.

## CHAPTER 6: MAIN RESEARCH FINDINGS AND CONCLUSIONS

In this chapter we provide the major findings and conclusions from our research and make suggestions for future research. Our conclusions are based on an inquiry conducted over several months, with the co-operation of the LPC and IR, based on a combination of telephone and face-to-face interviews of seventy people – employers and workers - who had been involved in an NMW enforcement case. The research is the first attempt to examine the experiences, perceptions and attitudes of the actors in the enforcement process and its results are therefore clearly significant. Nevertheless, there are a number of shortcomings with the research. These include the fact that our case interviews are individual employers and workers and not based on matched pairs of employers and workers in the same cases, since there were none in the final group of respondents interviewed. Nor is the sample large enough to make comment on issues such as regional or sectoral variations. Most importantly, our research did not include any cases where a penalty notice had been issued. In this respect, all of our employer respondents had ‘come quietly’ rather than resisted.

We consider our findings under the following headings:

- *Awareness of NMW*
- *The reasons for non-payment of the NMW*
- *How did cases arise?*
- *Contacting the IR*
- *Outcomes for employers and workers*
- *Breaches of confidentiality*
- *Future use of IR services*

### 1) Awareness of NMW

Awareness of the NMW rates and the terms of its application are clearly central to enforcement. It seems clear that there is a strong relationship between the NMW getting into the news and awareness. Many workers could not say how they knew about the NMW; those who could remember named a wide range of sources. One difficulty for workers is not simply the ‘headline’ NMW rate, but a perception that if they are not doing ‘proper jobs’ then they are not entitled to the NMW, i.e. they rule themselves out of the NMW. From employers there was a common view that they did not understand the detail of the law but most knew that a minimum wage existed. There was some evidence from employers that advice was insufficiently detailed and not based enough on the particular needs of particular sectors. There was also evidence that rates other than the headline NMW main adult rate were the source of considerable confusion.

## **2) The reasons for non-payment of the NMW**

In our sample the reasons for the NMW not being paid were numerous. In some cases, employers were clearly not aware of how rates worked. In others, there was evidence that monitoring systems were inadequate so that when workers crossed age thresholds and became eligible for the higher adult NMW these workers were not identified. Another identifiable group was where workers were paid for a fixed number of hours when in fact they worked for longer than those hours. There were also cases where employers appeared to wish to minimise wage costs, and/or to maintain differentials between different workers. In some cases, the question of whether workers should be defined as workers or self-employed arose. Finally, there were cases where employers expressed opposition to the NMW in principle.

## **3) How did cases arise?**

In our sample, the great majority of worker respondents' cases arose through their complaints rather than through pro-active IR enforcement. Many of these cases were brought by workers no longer in the employment of the employer involved in the case. In many cases, workers had raised the issue of the minimum wage with their employer although this was not always in a direct way. Most of our employer respondents appeared to be unsure why their case had arisen but some had a clear idea of who had complained.

## **4) Contacting the IR**

Many worker respondents said that they knew how to contact the IR, even before they took a case. Occasionally they contacted ACAS instead. When workers and employers came into contact with compliance officers (COs), they normally found them to be professional, courteous and helpful. In some cases there was a perception among our respondents of COs showing considerable determination and persistence in investigating cases, sometimes giving rise to some employer discontent. COs often provided a good deal of information and advice to both the parties concerned. There were, however, a few exceptions to this experience. Employers sometimes complained about the amount of time taken to investigate complaints but how far complaints about conduct in fact reflect complaints about outcomes is difficult to tell.

## **5) Outcomes for employers and workers**

The outcomes of the enforcement process were clearly different for employers and workers. The main beneficial outcome from the enforcement process for employers was improved record keeping. Employers often reported satisfaction at the improvements to their pay records made as a result of CO visits. Most said that they found it easy to pay the NMW and arrears. Few said that they had to adjust working arrangements or other terms and conditions as a result of having to pay the NMW but a small minority had found problems in paying the arrears.

Outcomes for workers were much more varied. In most cases, workers reported that they were paid the NMW after the CO's intervention, though it should be borne in mind that the majority of our worker respondents were no longer working for the employer against whom the case was brought. In a number of cases this did not necessarily mean that other workers in the same workplace were paid the NMW after the CO intervention. Some workers did not receive the full amount of arrears, suffered delays or were paid by instalments. There were some complaints about COs not keeping workers informed of the progress of their cases. In some cases, workers complained of the time taken by the whole process, which was on occasion longer than the time specified by the IR.

## **6) Breaches of confidentiality**

There were four cases in which workers were adamant that their names had been revealed to the employer by the CO, and in two of these cases the workers were dismissed. It is difficult to ascertain whether the name was in reality given by the CO or whether the employer had been able to discover who had made the complaint by some other method, but none of the workers involved were convinced that the latter was the case. There was no evidence in our sample of co-operation between the IR and ACAS on cases.

## **7) Future use of IR services**

Many of our worker respondents said that they would use the IR again if they found that they were being underpaid, although some said that they would in future raise the matter with their employer directly or not take such a low paid job in the first place.

We found that employers had often continued to use the IR as a source of information and advice post-investigation. They generally believed that they

would be visited again by COs, because they perceived themselves as now 'in the system'.

Overall, experiences of the enforcement process showed considerable uniformity in relation to the way that COs, and the IR more generally, handled their everyday relations with the public. On the other hand, there was considerable variation in outcomes for workers claiming the NMW.

### **Further research**

All research tends to generate more sophisticated questions, and this project is no exception. There are five areas in which future research might be considered: how far our results can be generalised; different types of interactions between workers; employers and the Inland Revenue; gender effects; the role of third party advisers in the process; and the issue of 'knock-on' effects of cases on other workers.

This research has produced indications of the relationship between processes and outcomes in enforcing the NMW. However, how far our sample has been subject to bias (for example did it contain a disproportionate weighting of people with a complaint to make, or did it on the other hand contain a disproportionate weighting of people who were happy with the process?) is open to question. A larger scale survey might be appropriate to test out how widespread some of the phenomena we describe are in a larger sample.

It may also be useful to understanding the enforcement process more fully to look at a set of cases where all three perspectives - those of employers, workers and compliance officers could be matched. It might be possible from this to build a typology of cases that would be helpful for IR training and policy discussions.

It would also be helpful to have more information on the role of third party advisers to both workers and employers in the enforcement process. None of our sample of workers referred to assistance from trade unions but some had used other sources of help. The major source of assistance appeared to be other family members. In the case of employers, solicitors appeared to be the major source of help, rather than employers' or trade associations or chambers of commerce.

One of the stated interests of the Government is how far the NMW is contributing to changing the pay gap between men and women. The enforcement process is especially significant in this regard since the indications from our small sample are that, although women appear to be more aware of the NMW than men, they are less likely to complain to the employer. This appears to be confirmed by the IR's own statistics which indicate that complainants are divided fairly evenly

along gender lines whereas earnings data indicates that overwhelmingly it is females who are likely to be paid below the NMW. Women appear to be aware that the IR can speak to the employer on their behalf and are more likely to approach them than men. This seems worth further investigation, particularly since the women in our sample were less likely to be individual cases than the men, i.e. more workers were potentially affected by their cases.

Another area requiring more investigation is the ‘knock-on’ effect of NMW investigations on other workers. Some of our workers reported negative reactions from fellow workers when they made a complaint. Under what circumstances do other workers react negatively to complaints being made, and vice versa? The answers could cast more light on how knock-on effects are maximised and minimised.

## **Conclusion**

Our research indicates that, overall, both employers and workers were satisfied with the enforcement process and the role of the COs in the process, if not the results. There were, however, a number of issues arising from the research that require further attention. These include the following:

- The relative complexity of the NMW legislation clearly can lead less informed employers to make mistakes about NMW entitlement, rather than wilfully disobeying the law. The number of different NMW rates and the methods for calculating the hourly rate clearly lead to some of the enforcement problems we encountered. A single rate would clearly make it easier to enforce the NMW but greater access to employment advice, especially among small businesses, would also help.
- There appears to be a need for greater attention to be paid to the post-investigation period to ensure that the worker receives the correct amount of arrears owed promptly and in full, rather than by instalments. Relying on payment by the employer to the worker seems prone to problems. Payment of the arrears via a third party might be more effective.
- The fact that many employers found the enforcement visits helpful in improving their pay records (and in some cases complying with other aspects of the law), and that they continued to make use of the IR services afterwards, suggest that inspection can have a developmental – rather than simply regulatory – role for the type of employers involved in low-paying firms. The experience of enforcing the NMW might indicate that similar inspection regimes for other areas of employment legislation might benefit employers as well as workers.

## APPENDIX 1

<b>SCHEMATIC SUMMARY OF EMPLOYERS' AND WORKERS' EXPERIENCES</b>	
EMPLOYERS [N=43]	
<b>Issues</b>	<b>Number of cases</b>
Call for better publicity	5
English not respondent's mother tongue	8
Expected to be visited by IR before investigation	5
Knew who had initiated case	37
Case initiated by worker complaint	12
Case arose from IR pro-activity	10
Contacted by IR by letter	41
IR letter considered sufficiently informative	35
Expected fine or legal action if arrears not paid	18
Found some aspect of investigation helpful	40
Records on wage systems inadequate	26
Employer agreed arrears payable	37
Arrears owed to one worker only	19
Paid arrears 'all at once'	26
Paid arrears in instalments	6
Unclear how arrears paid	5
Had some difficulty paying or changed other terms and conditions	9
Used professional adviser	18
Identified helpful aspect of investigation process	40
Found information or advice from Co helpful	24
Made negative comment about IR role	13
Suggested improvements to investigation process	16
Thought re-investigation likely	22

**SCHEMATIC SUMMARY OF EMPLOYERS' AND WORKERS'  
EXPERIENCES**

WORKERS [N=27]

<b>Issues</b>	<b>Number of cases</b>
Knew they were paid less than NMW	20
Thought other workers at their workplace paid less than NMW	16
Spoke to employer about pay	17
Left employer before making complaint	7
Still working for employer from whom they claimed NMW	7
Knew IR could speak to employer	13
Knew how to contact IR	20
Contacted IR	23
Paid NMW when IR contacted employer	1
Alleged breach of confidentiality by IR	4
Alleged dismissal because of IR breach of confidentiality	2
Paid NMW after investigation	26
Other worker remained unclear despite individual case	4
Still working for employer from whom they claimed NMW	7
Knew IR could speak to employer	13
Arrears owed to worker(s)	25
Did not receive full arrears	8
Signed false records to say they received arrears	2
Contacted IR if arrears not paid in full	4
Identified helpful aspects of investigation	20
Mentioned length of time taken to process	7
Identified difficulties with process	10
Identified possible improvement to process	5
Would speak to employer if there was a problem in future	7
Would contact IR if there was a problem in future	12
Would contact IR again (including for information or advice) if there was a problem in the future	25

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