

TUC action plan to reform labour market enforcement



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Labour market enforcement overview

The principal organisations responsible for enforcing employment rights are:

HMRC National Minimum Wage enforcement team

- enforces the National Minimum Wage for workers
- ensures unfair deductions are not taken from a worker's pay.

Employment Agency Standards Inspectorate (EAS)

- makes sure an agency worker is paid what they are entitled to and doesn't have their wages withheld
- ensures an employment agency does not charge a fee for finding an agency worker assignments
- ensures an agency worker is given written information relating to the type of work that an employment agency will find for the worker and also relating to each assignment that an agency worker undertakes
- makes sure an agency worker is not forced into paying for additional services from the agency
- ensures an agency worker has a safe environment to work in.

Gangmasters and Labour Abuse Authority (GLAA)

- investigate all aspects of labour exploitation in England and Wales
- ensures gangmasters operate with a licence
- ensures labour users only use gangmasters with a licence
- makes sure gangmasters comply with licensing standards, which ensure that agency workers:
 - o are provided by a gangmaster who is considered to be a 'fit and proper person'
 - o receive the National Minimum Wage
 - o are provided with safe accommodation and transport services
 - o are prevented from physical and mental mistreatment.

Health and Safety Executive (HSE)

- HSE is a government organisation that works to protect the health, safety and welfare of workers by enforcing health and safety law and offering advice and support.
- ensures workers are not required to work more than 48 hours per week, on average
- ensures night workers do not have to work more than eight hours in a 24-hour period, on average

- ensures night workers are given free health assessments prior to commencing work and at regular intervals from then on.

Report overview

1. For too many workers, basic employment rights are illusory. This is because they are not being enforced effectively.
2. The scale and nature of non-compliance with basic workplace rights is staggering. One key indicator is that the Low Pay Commission estimates that over 420,000 workers received less than the national minimum wage in April 2019, before the pandemic¹.
3. The labour market enforcement system is under-resourced. There are approximately 40,000 employment agencies operating in the UK.² The Employment Agency Standards Inspectorate is expected to regulate the agency sector with just 19 inspectors³.
4. The International Labour Organisation (ILO) benchmark for inspectors, which it recommends all countries meet, is one labour market inspector per 10,000 workers⁴. The ILO also stated that labour inspection systems should “be efficient and effective, with workplaces visited as often as possible”. The ILO pointed out that “comprehensive inspection coverage is required for the control and functioning of the labour market”.
5. Unique TUC analysis⁵ of labour market enforcement statistics shows that the UK would need an additional 1,797 labour market inspectors to meet the ILO benchmark. In addition to the inadequate number of labour market inspectors, TUC analysis⁶ shows that show just one in 171 workplaces had a safety or labour rights inspection during the pandemic so far (between March 2020 and April 2021). The UK is failing to meet ILO benchmarks.
6. The UK is potentially breaching the UK-EU Trade and Cooperation Agreement. The agreement stipulates that “each Party shall have in place and maintain a system for effective domestic enforcement and, in particular, an effective system of labour inspections in accordance with its international commitments relating to working conditions and the protection of workers”.⁷

¹ (May 2020). “Non-compliance and enforcement of the National Minimum Wage”, The Low Pay Commission.

² (March 2021). “Labour Market Intermediaries”, Chartered Institution of Taxation.

³ The Department for Business, Energy and Industrial Strategy answer in response to written parliamentary question (UIN 122725).

⁴ (November 2006). “Strategies and practice for labour inspection”, Committee on Employment and Social Policy, International Labour Organisation.

⁵ Office for National Statistics, A01 and EMP17 data tables

⁶ (September 2020). Office National Statistics: UK business; activity, size and location.

⁷ TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART, Clause 6.3

7. 420,000 workers received less than the minimum wage in April 2019 before the pandemic⁸. This rose to 2 million employees⁹ in April 2020, partly because the Job Retention Scheme allowed employers to pay furloughed workers 80 per cent of wages. There is a particular need to boost enforcement as coronavirus support is withdrawn. Many furloughed workers have been on less than minimum wage and many have not received this year's increases in the minimum wage rates. It is important that they are not underpaid as they return to work and that there is action against employers who fail to honour the minimum wage.
8. Significant reforms are needed to make sure that all workers (and especially low paid, insecure workers) have a viable route to enforce their basic workplace rights. Our principal recommendation is that enforcement agencies are given significantly increased resources so they can recruit additional labour market inspectors. Our report highlights how the enforcement system can generate additional funding, so some of the costs for the labour market enforcement system are borne by the employers who breach basic workplace standards.

The scale of non-compliance with basic employment rights in the labour market highlights the need for reform

9. The scale and nature of non-compliance in the labour market is staggering.
10. Non-compliance with national minimum wage rates is rife. The Low Pay Commission estimates that over 420,000 workers received less than the minimum wage in April 2019 before the pandemic.¹⁰
11. Recent TUC analysis¹¹ revealed that 2 million workers are not receiving their legal entitlement to holiday pay, missing out on £3.1bn per year.
12. Bogus self-employment is prevalent in the gig economy and sectors such as construction. Individuals are being misled by employers as to their true employment status. This denies them employment rights, such as holiday pay and the minimum wage. Citizens Advice estimated there are just under half a million people¹² bogusly self-employed in the UK.
13. Furthermore, fragmentation of employment relationships (outsourcing, franchising, use of labour market intermediaries) has made it even more difficult for many workers to enforce their rights.¹³ Workers can struggle to identify their employer due to complex supply chains. Organisations are using a range of strategies to transfer accountability to other parties, meaning they have little legal responsibility for the people who do

⁸ Ibid. 1

⁹ Smith, R. (November 2020). "Low and high pay in the UK: 2020", Office for National Statistics.

¹⁰ Ibid. 1

¹¹ (July 2019). "2 million workers not getting legal holiday entitlement, warns TUC", TUC.

¹² (2015). "Bogus self-employment costing millions to workers and Government", Citizens Advice.

¹³ (April 2018). "Shifting the Risk", TUC.

work for them. The TUC explores these issues in more depth in our recent report, “Shifting the Risk”.¹⁴

14. It’s been estimated that there could be at least 100,000 victims of modern slavery in the UK victims of modern slavery in the UK¹⁵. Modern slavery is the severe exploitation of other people for personal and commercial gain. In addition to the degrading and barbaric conditions that modern slavery victims have to endure, little is done to compensate them for the breaches of core employment standards. Home Office research suggests that a victim of labour exploitation is missing out on £121 of wages per day and that the median duration of labour exploitation will last 274 days.¹⁶ This implies that the average victim of modern slavery should be recovering around £30,000 in stolen wages.
15. The recent Director of Labour Market Enforcement strategy report noted that core employment standards are breached in many sectors. Many of them employ large numbers of workers such as the care sector, construction, and hospitality. The table below, from the recent DLME strategy, identifies that in many mainstream labour market sectors, workers are still being paid below the correct national minimum wage rates.

Table 1: Sectors identified as key risks of labour exploitation

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

16. According to UNISON research¹⁷, almost half of homecare workers believe that they are not paid for all the hours that they work. This equates to 165,910 workers. Poor quality or misleading payslips are a major contributor to this problem. In April 2019 legislation came into force requiring employers to list the hours that workers have been paid for

¹⁴ Ibid. 13

¹⁵ (October 2020.) “2020 UK Annual Report on Modern Slavery”, HM Government.

¹⁶ (July 2018). “The economic and social costs of modern slavery”, Home Office.

¹⁷ (June 2019). “UNISON evidence to the Low Pay Commission on minimum wage rates for 2020”, UNISON.

on their payslips where the pay varies by the amount of time worked. However, employers in this sector routinely issue payslips that mask non-compliance with the national minimum wage. UNISON found that two thirds of social care workers cannot tell from their payslips whether they have been paid properly. This is frequently because, even where hours are recorded, they often do not reflect all hours worked. Instead, the payslip shows only the scheduled contact hours which do not correspond to the hours worked in practice, nor do they include time spent travelling. The union also found that despite the new law, 54 per cent of care workers on variable hours receive payslips that do not set out the number of hours that they have worked.

17. The examples above are an indication of the scale of non-compliance with employment rights in the labour market. When 420,000 people are not receiving the National Minimum Wage, it's clear that the enforcement system is broken.
18. The scale of non-compliance with health and safety rules has been exposed during the Covid-19 pandemic. TUC research showed widespread failures to implement safety measures, with 1 in 4 managers working in the food and drinks industry unaware of a Covid risk assessment in their workplace.¹⁸ Despite this, the Health and Safety Executive has issued comparably fewer enforcement notices (just 0.01% of cases resulting in action) and no prosecutions.¹⁹

Why do we need an effective labour market enforcement system?

19. An effective labour market enforcement system is important because it:
 - upholds the framework of employment rights. Employment rights that exist on paper, will be rendered meaningless if they are not enforced.
 - gives workers a speedy, affordable route to enforcing their employment rights and supports those workers who are unable to take a case to employment tribunal.
 - creates a level playing field for employers, by making sure that rogue employers can't flout employment laws to undercut other employers and gain an unfair advantage.
 - facilitates proactive investigations into labour market offences so labour market inspectors investigate situations where workers might be too afraid to raise complaints. It's likely that the most egregious exploitation is occurring where workers are being intimidated and are afraid of raising complaints.
 - leads to higher productivity, a decline in the number of accidents and an increase in the motivation of the labour force.²⁰
 - helps countries to reach a sustainable reduction in poverty levels²¹.

¹⁸ (March 2021). "Workplace safety representatives sound alarm as survey reveals widespread Covid-secure failures, TUC

¹⁹ Wall, T. (January 2021). "Firms accused of putting workers' lives at risk by bending lockdown trading rules", The Guardian.

²⁰ Ibid. 4

²¹ Ibid. 4

What's the key problem with our labour market enforcement system?

20. To put it bluntly, our labour market enforcement system is under-resourced. There are not enough labour market inspectors to investigate and enforce breaches of employment rights in the labour market.
21. International Labour Organisation Convention No. 81 on Labour Inspection, which is ratified by the UK, calls for countries to ensure that there are a "sufficient number" of labour market inspectors to do the work required. In its policy and technical advisory services, the ILO has suggested that there should be one labour market inspector per 10,000 workers in industrial market economies.²²
22. TUC research shows that we fall well short of this benchmark. To hit the ILO benchmark of one inspector per 10,000 workers, the UK would need 3,287 inspectors. There are currently 1,490. Another 1,797 labour market inspectors need to be recruited.
23. The ILO also stated that labour inspection systems should "be efficient and effective, with workplaces visited as often as possible". The ILO pointed out that "comprehensive inspection coverage is required for the control and functioning of the labour market". The previous Director of Labour Market Enforcement, Sir David Metcalf, acknowledged that UK workplaces are not inspected regularly and that inspection coverage is not comprehensive. Sir David flagged up that the resources and inspectors available to the national minimum wage enforcement team mean that employers are only likely to be inspected once every 500 years.²³
24. TUC analysis shows that every year only one in 171 workplaces is subject to an inspection from one of the key labour market enforcement bodies.
25. Current funding models do not allow regulators to adequately prepare for the future. As a result of the Covid-19 pandemic in 2020, the UK government provided the Health and Safety Executive (HSE) with additional funding for one-year only. The HSE awarded contracts worth a total of £7 million to two debt-collection firms, Marston Holdings and CDER to employ spot-check support officers. While contractors have increased HSE presence in workplaces, officers are unwarranted, employed on a short-term basis only and have not received the level of training as inspectors.²⁴ The UK's safety inspectorate number has seen one of the largest declines in Europe in recent years²⁵.

Three fundamental reforms are needed (further, supplementary measures recommended below)

26. Firstly, we need to address the inadequate funding of the state-led enforcement system. The system needs further long-term resources, more inspectors, more proactive investigations and more enforcement actions. We fall well short of the benchmark

²² Ibid. 4

²³ O'Connor, S. (December 2017). "Bigger fines urged for employers who underpay staff", Financial Times.

²⁴ Knutt, E. (March 2021). "HSE OUTSOURCES COVID-SECURE SPOT CHECKS", IOSH magazine.

²⁵ (April 2021). "Huge fall in labour inspections raises Covid risk", ETUC press release.

established by the International Labour Organisation. The result is widespread non-compliance.

27. Secondly, the ties between immigration enforcement and employment rights enforcement should be severed. Currently, there are close working relationships between employment rights enforcement agencies and immigration enforcement. Intelligence sharing and joint investigations are commonplace. The government's recent single enforcement body consultation commits to closer working between immigration enforcement, the benefits fraud office and enforcement agencies. This is counterproductive as there is clear evidence²⁶ that workers are deterred from making complaints as they fear being referred to immigration enforcement. Joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established.
28. And thirdly, we need new, innovative strategies to tackle non-compliance in the labour market. Traditional employment relationships have become increasingly fragmented, with business strategies, such as franchising, outsourcing, lengthy supply chains and the use of labour market intermediaries enabling organisations to shirk their employment rights obligations. Large contractors should be liable for breaches of core employment rights in their supply chains. We also propose that trade unions are granted new rights to access workplaces so they can inform workers about their rights and enforce rights where they're being breached.

Trade unions have first-hand experience of commonplace workplace issues and the reforms that are needed to effectively enforce employment rights

29. Trade unions are the first and foremost safeguard for workers, preventing breaches of employment rights. Unions play a vital role making sure that employment rights are respected and upheld, by:
 - a) negotiating improved terms and conditions for working people and putting in place mechanisms to remedy breaches of these terms and conditions where necessary
 - b) raising employers' awareness of their employment responsibilities, including when new employment rights are introduced
 - c) resolving employment disputes using grievance and disciplinary procedures and the right to be accompanied
 - d) where merited, supporting members to take cases to employment tribunal
 - e) supporting strategic cases which clarify legal duties and set the norms to be followed by employers in similar workplaces and sectors.

²⁶ Barnard, C, Ludlow, A, Fraser-Butlin, S. (July 2018). "Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers", Industrial Law Journal.

Evidence of union impact and reach into workplaces

The extent of trade union reach into the workplace and impact on industrial relations is demonstrated by some key indicators.

30. The TUC estimates that unions organise around 130,000 union representatives. Union reps have a unique workplace insight and experience of common workplace issues, including non-compliance with basic workplace rights. Union reps represent members on an individual and collective basis, negotiating with employers to resolve workplace issues. They are the first and foremost safeguard that prevents breaches of employment rights. Union reps also play an invaluable role in the workplace by making sure that people are informed about their employment rights.
31. 26 per cent of the workforce is covered by a collective agreement that has been negotiated by a trade union. These agreements will put in place mechanisms so that workplace issues can be raised and resolved.
32. There are 6.4 million trade union members in the labour market²⁷. Union members feedback workplace issues to their union reps, giving unions a first hand, contemporary experience of workplace issues.
33. Collective bargaining remains the best way to protect and enforce workers' rights. There is a strong correlation between collective bargaining and greater compliance with employment rights. In 2015, only 2.7 per cent of workers covered by a collective agreement reported no paid holiday entitlement, compared with 6.1 per cent of those who were not covered. The government should introduce mechanisms to boost collective bargaining, including at sector level, giving trade unions the role of raising standards and enforcing rights in a particular sector.

This wealth of experience means that unions should have a formal role in shaping the labour market enforcement system and in determining the future strategies. The best way for this to happen is for unions to be given a formal position in labour market enforcement structures.

TUC Action Plan – full list of measures needed to reform the labour market enforcement system

New trade union rights

34. In recognition of the vital role that unions perform in the workplace, the TUC believes that unions should be given new powers and responsibilities that would help them to drive up and enforce workplace terms and conditions. We set out our proposals for reform in our recent report, "A Stronger Voice for Workers"²⁸. These include:

²⁷ (May 2020). "Trade Union Membership, UK 1995-2019: Statistical Bulletin", BEIS.

²⁸ (September 2019). "A stronger voice for workers", TUC

- Unions to have access to workplaces to tell workers about the benefits of union membership and collective bargaining (following the system in place in New Zealand).
- New rights to make it easier for working people to negotiate collectively with their employer, including simplifying the process that workers must follow to have their union recognised by their employer for collective bargaining and enabling unions to scale up bargaining rights in large, multi-site organisations.
- Broadening the scope of collective bargaining rights to include all pay and conditions, including pay and pensions, working time and holidays, equality issues (including maternity and paternity rights), health and safety, grievance and disciplinary processes, training and development, work organisation, including the introduction of new technologies, and the nature and level of staffing.
- The establishment of new bodies for unions and employers to negotiate across sectors, starting with hospitality and social care
- Trade unions should be actively involved in labour market inspections. There should be tripartite labour inspection audits (involving union and employer representatives as well as state officials) to help governments identify and remedy weaknesses in labour inspection. Trade unions should be consulted about the nature and scope of these tripartite investigations.

Increasing the resources for state led enforcement agencies

35. Enforcement agencies can only do their job effectively if they are allocated sufficient resources.
36. The TUC is calling for a comprehensive evaluation to ascertain the level of resourcing that is needed for enforcement agencies to discharge their responsibilities effectively. In line with the International Labour Organisation (“ILO”) convention 81 on Labour Inspection Article 10, which states that the number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate, the TUC believes that the independent review into enforcement agency resources should take into account:
 - the importance of the duties which inspectors have to perform, in particular;
 - the number, nature, size and situation of the workplaces liable to inspection;
 - the number and classes of workers employed in such workplaces; and
 - the number and complexity of the legal provisions to be enforced;
 - the material means placed at the disposal of the inspectors; and
 - the practical conditions under which visits of inspection must be carried out in order to be effective.
37. A properly resourced state enforcement system would act as a deterrent to rogue employers, as they would fear being investigated and sanctioned for non-compliance

with basic workplace rights. The TUC believes that the enforcement agencies are not carrying out enforcement activity proportionate to the levels of non-compliance in the labour market. Consequently, some employers feel free to act with impunity.

38. Government funding for EAS in 2019/20 was £1.525m²⁹, enabling it to employ just 19 inspectors to regulate the agency sector, comprising 40,000 recruitment agencies.
39. A paper³⁰ by Catherine Barnard and Sarah Fraser Butlin, has highlighted the limited action undertaken by both EAS and GLAA. Their examination of annual reports published by the EAS between 2009 and 2016 found a fluctuating, but overall falling, level of enforcement activity. Most enforcement activity was warning letters.³¹ Very few were prohibited or prosecuted and any proceedings were protracted.³² The current list of prohibited individuals stands at just 11.³³
40. There are approximately 40,000 recruitment agencies operating in the UK. It is not possible for 19 inspectors to effectively monitor this number. In 2017 alone, agency workers collectively missed out on as much as £500 million of unpaid holiday pay.³⁴ For agency workers, state-led enforcement is not working.
41. The GLAA's remit has been significantly expanded to give it responsibility for tackling exploitation across the labour market. It is now responsible for upholding the rights of 10m workers. Previously it oversaw 500,000 workers in licensed sectors such as horticulture, food processing and shellfish gathering. There has also been a shift in focus with the GLAA heavily promoting its work tackling modern slavery. But the increase in resources it received appears insufficient for it to carry out all its new responsibilities, as well as enforce a robust licensing system.
42. Improved funding can lead to better enforcement outcomes. A review of HMRC national minimum wage (NMW) enforcement resourcing levels demonstrates that increased funding can lead to improved enforcement outcomes. HMRC's budget to enforce the minimum wage rose to £26.3 million in 2019/20, up from £13.2 million in 2015/16.
43. This has led to more criminal prosecutions and greater civil enforcement. There have been 15 successful prosecutions by the HMRC since 2007. Arrears recovered were consistently between £3.2 million and £4.6 million per year from 2009/10 to 2015/16. However, this increased to over £20 million in 2019/20.
44. Nevertheless, underpayment of the National Minimum Wage remains rife. The TUC believes that HMRC NMW enforcement, despite recent budget increases, needs further

²⁹ Parliamentary question, UIN 122725, tabled on 30 November 2020

³⁰ Barnard, C & Fraser-Butlin, S. (April 2020). "Where criminal law meets labour law: the effectiveness of criminal sanctions to enforce labour rights", Oxford Scholarship Online.

³¹ (July 2016). "EMPLOYMENT AGENCY STANDARDS INSPECTORATE Annual Report 2015-2016", BIS.

³² (August 2018). "EMPLOYMENT AGENCY STANDARDS (EAS) INSPECTORATE Annual report 2017 – 2018", BEIS.

³³ (2020). "EMPLOYMENT AGENCY STANDARDS (EAS) INSPECTORATE Annual Report 2018 – 2019", BEIS.

³⁴ (November 2018). "The good, the bad and the ugly: the experience of agency workers and the policy response", The Resolution Foundation.

budget increases. It should be part of the independent review into the resources available to enforcement agencies.

Supplementary measures to increase resources available to the enforcement agencies

45. Employers who are subject to an investigation by an enforcement agency and are subsequently found to have breached employment law should bear the costs of that enforcement activity. This echoes a recommendation made by the previous Director of Labour Market Enforcement:

I recommend that, where appropriate, employers found to be non-compliant should be charged a fee for intervention to allow the enforcement bodies to recover some of their enforcement costs.

46. In line with the recommendation in the recent DLME strategy document³⁵, we agree that GLAA licensing fees should be reviewed:

"I endorse the previously announced plan by Government to review GLAA licensing fees. Full financial self-sufficiency needs to be regained as soon as possible and I find it unacceptable that the taxpayer is footing half of this bill at the moment."

Director of Labour Market Enforcement, 2019/20 Strategy document

47. The TUC believes that licensing fees should be increased, which would give GLAA additional resources, enabling it to expand the licensing scheme into more sectors where non-compliance with basic workplace rights is rife.
48. Where enforcement agencies find that employers have breached employment law and impose fines to sanction this non-compliance, the TUC believes that these fines should be recycled back into the system. Money from fines should be used to bolster the resources of enforcement agencies and fund further enforcement work.

Safeguards to prevent closer working between enforcement agencies and immigration enforcement

49. There should be a firewall between immigration enforcement and the labour market enforcement bodies. This includes no joint investigations. Intelligence sharing and joint investigations between employment rights enforcement agencies and immigration enforcement are commonplace. The government's recent single enforcement body consultation commits to closer working between immigration enforcement, the benefits fraud office and enforcement agencies. This is counterproductive as there is clear evidence³⁶ that workers are deterred from making complaints fearing referred to immigration enforcement. Joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established.

³⁵ Metcalf, D. (July 2019). "Executive Summary: United Kingdom Labour Market Enforcement Strategy 2019/20", HM Government.

³⁶ Ibid. 26

Wider powers for tribunals, including enforcement of tribunal awards

50. The government should reinstate the power for employment tribunals to make recommendations where employers are found to have breached employment standards. The power to make recommendations should not be limited to claims brought under the Equality Act 2010 but should apply to all statutory employment rights. This would require employers to take remedial action that would change the terms and conditions for the whole of the workforce and remove the burden on individuals to bring claims against their employers.
51. The current system for enforcing employment tribunal awards is not fit for purpose. Successful claimants must take further action to receive their award if the employer chooses not to pay. More than a third (35 per cent) of successful claimants do not receive any compensation.³⁷ It can cost a successful claimant over £320 to pursue the compensation they have been awarded. The BEIS Penalty Scheme, created in 2016, is inadequate as it fails to recoup any award for the claimant. Instead, penalties issued against non-compliant employers are paid to the state.
52. There should be proactive enforcement of unpaid tribunal awards. The most effective way to enforce employment tribunal awards would be to empower employment tribunals themselves, to monitor and enforce the payment of tribunal awards. New powers should be introduced enabling employment tribunals to recover compensation owed to workers and to impose sanctions on employers who do not pay tribunal awards.

Extension of the licensing scheme

53. The TUC would like to see the licensing model currently used by the GLAA, in the shellfish-gathering, food processing, agriculture and horticulture sectors, extended further across the labour market. We believe there is a strong case for extending the GLAA's remit so that new sectors such as social care, construction and hospitality come within the licensing scheme. There are high proportions of workers in these sectors who are vulnerable to exploitation because of their employment or migrant worker status and there is evidence of exploitative working practices being routinely used.
54. The inspections and routine monitoring of standards that licensing entails would help prevent exploitation, improve intelligence gathering and ensure that criminal prosecutions are targeted at the worst cases. Licensing requires organisations operating in a particular sector to prove that they can comply with minimum employment standards. This involves providing evidence of compliance with core labour standards through initial and ongoing inspections. However, extending licensing should not just be a tick box exercise, it needs to include robust physical checks with the necessary training and staff numbers employed to do this.
55. The TUC would like to see the extension of licensing to sectors where exploitation of workers is prevalent. We would support the introduction of pilot projects first. This

³⁷(2013). "Payment of Tribunal Awards", IFF Research, BIS.

would enable the GLAA to set the licence fee at a level which enabled them to recover the costs of licensing a new sector.

56. The extension of licensing has also been supported by the previous Director of Labour Market Enforcement, Matthew Taylor.

"I have concluded now that the only answer to the endemic nature of non-compliance and abuse is to establish a mandatory national licensing scheme for hand car washes."

Matthew Taylor, speech to Resolution Foundation³⁸

Establishing a system of joint and several liability throughout supply chains for basic employment standards

57. Parts of UK employment law already provide for joint and several liability arrangements. We provide an overview in our report "Shifting the Risk"³⁹. The TUC is calling for this approach to be extended, so that organisations who use strategies to transfer their obligations to other parties, can still be found liable for any breaches of the core employment rights of the people who do work for them. This would bring the following benefits:

- Joint and several liability ensures that in phoenixing cases, where company directors put companies into insolvency to avoid their employment and tax obligations, workers would still have a course of action to enforce their rights.
- Widening liability would ensure contractors are more diligent and careful in choosing their subcontractors.
- Widening liability would strongly incentivise the lead contractor to risk assess, monitor and tackle potential breaches of employment standards in their supply chains.
- Joint and several liability may also have the benefit of incentivising the creation of more secure, permanent employment, as fewer contractors take the risk of working with subcontractors who might create liabilities for them.

The role of trade unions in existing/future labour market enforcement systems

58. Trade unions should be given a formal, strategic, oversight role in the labour market enforcement system. They should have a say in setting the priorities and strategic direction of labour market enforcement bodies.
59. The TUC believes that trade unions should be allocated board seats in existing enforcement bodies and any future enforcement bodies. As we set out above, trade unions have a unique understanding of workplace issues and commonplace issues of non-compliance. Given their everyday presence in workplaces, unions are able to spot

³⁸ Taylor, M. (February 2020). Resolution Foundation Speech.

³⁹ Ibid. 13

emerging trends. This first-hand knowledge should be utilised to shape enforcement strategies.

More proactive investigations

60. Most enforcement activity is triggered by complaints made to the state enforcement agencies. While complaint-based work is important, a supplementary, targeted, proactive approach to enforcement could also reap enormous benefits, as HMRC's results show. This is particularly true in sectors where workers are unaware of their rights or too afraid to raise complaints through fear of reprisals.

61. Barnard and Fraser Butlin make the point that enforcement agencies do not have adequate resources to carry out proactive enforcement work:

Enforcement agencies are not resourced or operated in ways that do enough proactively and systemically to protect the rights of vulnerable workers against 'everyday' mistreatment as distinct from some of the most egregious behaviours that are covered by the Modern Slavery Act 2015.

Third party complaints

62. There should be greater sharing of information with trade union reps who handle complaints to an enforcement agency, on behalf of their members or workers. Unions have flagged up that reporting non-compliance could be made easier if there was greater scope to involve trade union reps. Union reps play a key role supporting exploited workers and give trade union members confidence and assistance in making sure their employment rights are upheld.

63. Union officers and representatives suggest that when they make complaints on behalf of workers or support complaints, they only receive a short line by email stating that the matter will be passed to someone and investigated. Further attempts to get an update from the enforcement agencies are thwarted by their duty of confidentiality, meaning they are unable to share any further information with the officer or representative.

64. Union officers and reps also report that they do not receive any basic report on the conclusion of any investigation. This is unsatisfactory as many workers/members will be relying on their union rep/officer to support them and their complaint. Lack of feedback on third-party complaints is discouraging union officers from bringing information forward, as they feel that it simply vanishes.

65. It would be helpful if the agencies could at least give some basic information to union officers and representatives, like key steps taken, and certainly a brief report on the outcome when the investigation/case is concluded. Personal data could be protected by giving general information, especially to the union which has reported it, which may be in a position to help further or provide more information.

66. Unions could play a big part in assisting these agencies, and they would be much more disposed to do so if they can see that their complaints lead to action and good outcomes.

67. The TUC believes that the 2016 LPC recommendation for a third-party compliant protocol should be implemented at the earliest opportunity:

"We recommend that the government establishes a formal public protocol for HMRC to handle third party whistleblowing and on breaches of the NMW, which should include arrangements from giving all possible feedback to relevant third parties and appropriate continuing involvement in any resulting casework."

Increased penalties for non-compliance

68. The TUC supports the recommendation, put forward by the Director of Labour Market enforcement in his 2018/19 strategy report, that there should be a significant increase in the size of civil penalties⁴⁰.

69. The use and imposition of much more severe financial penalties would act as a greater deterrent against non-compliance.

70. The Director of Labour Market Enforcement has flagged up recent changes to the Sentencing Council guidelines for the Health and Safety Executive, linking financial penalties to the company's annual turnover, which means that large organisations can be fined in excess of £10 million for severe offences. The government rejected this recommendation in their response to the 2018/19 strategy. The TUC urges the government to reconsider this recommendation and carry out a review of the civil penalties available to enforcement agencies and whether these have a sufficient deterrent effect.

Increased funding for the employment tribunal system

71. Official figures show that the backlog in employment tribunal cases is growing quickly. than new cases.

72. Backlogs were rising even before the coronavirus pandemic took hold (30,600 single cases were waiting to be heard as of March 2020).

73. In September 2020, the Ministry of Justice published data showing that 39,100 single claims and 5,900 multiple claims were now outstanding in the employment tribunal. There are reports of some cases being listed for dates through 2021 and even into 2022.⁴¹

74. This is not good for workers seeking justice on issues ranging from unpaid holiday pay to discrimination and who are more likely to be pressured into accepting low-ball settlements.

75. Delays cause problems for employers, workers and unions and can have a detrimental impact on employment relations. The Ministry of Justice needs urgently to identify

⁴⁰ Metcalf, D. (May 2018). "United Kingdom Labour Market Enforcement Strategy 2018/19", HM Government.

⁴¹ Sharp, T. (September 2020). "Employment tribunals need resources, not a sticking plaster", TUC.

additional resources, notably for administration, to ensure that working people and employers can secure swift resolution of workplace disputes.

The role of public procurement

76. Public bodies could improve compliance with labour standards if there was a coordinated effort to change commissioning practices and make sure that any publicly funded contracts included provisions requiring compliance with employment standards and measures to provide compensation to workers where they fail to meet these standards.