CIPD

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REVAMPING LABOUR MARKET ENFORCEMENT IN THE UK

Report

October 2020

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IES is an independent, apolitical, international centre of research and consultancy in public employment policy and HR management. It works closely with employers in all sectors, government departments, agencies, professional bodies and associations. IES is a focus of knowledge and practical experience in employment and training policy, the operation of labour markets, and HR planning and development. IES is a not-for-profit organisation.

Acknowledgements

This report was written by Ben Willmott, Head of Public Policy, and Rachel Suff, Senior Policy Adviser, CIPD, in collaboration with Duncan Brown, Zofia Bajorek and Catherine Hogan of the Institute for Employment Studies (IES).

The CIPD is very grateful to the following organisations, experts and people professionals who gave their time to support this research:

- Jennifer Beckwith, Head of Employment Policy, CBI
- Jill Bottomley, Director, The HR Dept
- Ian Brinkley, Associate, the Work Foundation, IES Fellow, and former Interim Chief Economist, CIPD
- Patrick Brione, Head of Policy and Research, IPA
- Andrea Broughton, Associate Director, Ecorys
- Nita Clarke, Director, IPA
- Mathew Creagh, Employment Rights Policy Officer, TUC
- James Davies, Partner, Lewis Silkin
- Gill Dix, Head of Strategy, Acas
- David Frost, Organisational Development Director, Total Produce plc
- Jane Grattan, Head of People Policy, British Chambers of Commerce
- Sian Moore, Professor in Employment Relations and Human Resource Management, Director, Work and Employment Research Unit, University of Greenwich
- Matthew Percival, Director, People & Skills, CBI
- Geoffrey Podger, non-executive director, Senior Visiting Research Fellow, Kings College, former chief executive in various public health and regulatory organisations, including the Health and Safety Executive
- Simon Rice-Birchall, Partner, Eversheds-Sutherland
- Dr Diane Sinclair, Group Employee Relations Director, Coca-Cola Hellenic Bottling Company
- Paul Wallace, Director of Employment Relations and Reward, NHS Employers
- Sheila Wild, Founder, Equal Pay Portal, and former Director of Employment Policy at the EOC and EHRC
- Tony Williams, Independent Board Advisor, Mentor and Certified Executive Coach and former Chief Operating Officer Global HR, HSBC
- Tony Wilson, Director, IES

Publication information

When citing this report, please use the following citation:

CIPD. (2020) *Revamping labour market enforcement in the UK*. London: Chartered Institute of Personnel and Development.

Introduction

This report is the culmination of research carried out by IES on behalf of the CIPD, investigating the state of labour market enforcement in the UK and how it can be improved. The three questions it aimed to address are:

1 **Current state:** What is the UK's enforcement regime and is it fit for purpose?

2 **Alternative states:** What can we learn from how other countries implement and enforce employment rights?

3 **Future state:** How can the UK best develop and implement the optimal enforcement approach?

Effective enforcement of employment rights has become more critical, but also more difficult to achieve, in our contemporary, fast-moving and varied UK labour market. While the structure of employment has changed surprisingly little over the last two decades, the growth in employment overall over this period has seen increasing numbers of people working in low-paid, lower-skilled roles and in non-permanent employment. This has meant there is a growing cohort of working people with little bargaining power in the labour market who are most vulnerable to exploitation.

The challenges of enforcing employment rights have been significantly exacerbated as a result of the pandemic and the ensuing recession, which has meant that employers have been facing a whole range of complex employment relations issues, such as furloughing workers, returning staff safely to the workplace and having to make redundancies. Many employers – particularly smaller employers – will struggle to manage these issues and comply with employment law, because of a lack of resources or expertise or both, meaning there is likely to be a surge in the number of workers whose rights are breached. This will lead to further pressure on the UK's labour market enforcement bodies and tribunals and an increasing proportion of workers who have been treated unfairly and don't have access to justice or compensation.

The pandemic is having an unequal effect on many employee groups and individuals at work, particularly those who are already most disadvantaged. The looming economic crisis and accompanying large-scale job loss will only exacerbate their situation and adds urgency to the need to improve enforcement. For example, research by Citizens Advice on why workers need better enforcement of their rights following COVID-19 found that demand for their advice on people's rights at work is 'soaring', with redundancy and discrimination particular concerns. It highlights the 'highly disrupted' impact of the crisis on employment tribunals, the main way workers enforce their rights, which was already dealing with a backlog of 400,000 cases.

The need to improve labour market enforcement was highlighted by the *Taylor Review of Modern Working Practices*, which emphasised the importance of enhanced enforcement in creating fair and decent work for all. This was followed by the creation of the Director of Labour Market Enforcement role and office in 2017 and the consultation in autumn 2019 on the creation of a single enforcement body (SEB) in the UK.

In advance of the government response, this paper is designed to inform the public policy debate and thinking about how to improve the effectiveness of labour market enforcement to protect people's employment rights and enhance their job quality.

Evidence in this report shows that the scale of non-compliance by employers is significant, highlighted by the doubling of the caseload of the Employment Agencies Standards

Inspectorate (EAS) over the prior 12 months and the non-payment of tribunal fines and penalties awarded. It is also demonstrated by the billions of pounds estimated to be 'stolen' by employers from low-paid workers through underpayment of the National Living Wage and statutory holiday payments.

This report considers how the UK's regime needs to evolve in the context of the recent consultation proposing the creation of an SEB. To do this it draws on a range of international comparisons which show how a number of other countries have approached labour market regulation and enforcement and the changes they are making to improve their enforcement approach. For example, should the UK follow Ireland and over time move to a single labour market inspectorate model, given the apparent improvements resulting there in co-ordination and information provision?

Is there a case to go further and significantly increase the resourcing of state enforcement, perhaps to levels of budget and staffing evident in Sweden and France, which are more than three times the current UK enforcement spend?

Or is a more intermediate, balanced reform programme the best way forward, as in New Zealand, consisting of strengthened legislation and phased inspectorate expansion, with an emphasis both on better information provision/education (for the uneducated) as well as stiffer penalties and deterrence (for the unscrupulous)?

And will the creation of an SEB address all of the current issues, or are other, more fundamental changes required?

This report considers whether a more progressive approach to enforcement, based on a much greater focus on supporting businesses – particularly small firms – to comply, could support efforts to improve the quality of work and boost productivity more widely across the economy.

It draws on a wide range of interviews with expert stakeholders including academics, employers and representatives from employer bodies and trade unions to consider these issues and make recommendations for improving the UK's system of labour market enforcement.

Policy recommendations

Strengthen state and individual enforcement

- Introduce a well-resourced single enforcement body (SEB) as proposed in the Government's consultation.
- Increase the number of labour market enforcement inspectors to one per 10,000 workers.
- The inspectorate function should be set the objective of ensuring 60% of inspections are proactive and 40% reactive, based on an assessment of highest-risk workplaces.
- The Government should take full responsibility for compensating employees and taking action against employers for non-payment of employment tribunal awards.
- The SEB should be adequately resourced and have the power to make decisions on a range of areas such as employment status where this is in dispute, with Acas tasked to mediate between parties where required.
- Introduce joint responsibility measures to help enforce employment rights in a supply chain. This would mean that the brand name (at the top of the chain) bears a level of

responsibility for non-compliance with employment rights found further down its own supply chain.

- Government, working with organisations such as Acas, Citizens Advice, trade unions and professional bodies, should run a high-profile 'know your rights' campaign which would highlight people's employment rights, as well as where to go if they have concerns or want to make a complaint.

Boost compliance and raise employment standards

- Double Acas's budget to boost its ability to advise small employers and individuals on people management, workplace conflict and employment rights. Have SEB inspectors allocated on a regional as well as sectoral basis to work locally with Acas and local business advisers, for example, accountants to ensure that local employers and their staff are made fully aware of relevant employment legislation and rights and are supported to deliver them effectively.
- Give Acas the resources to provide a free annual HR 'MOT' to small firms with fewer than 50 staff. This could potentially reduce their liability in any subsequent claim against them at an employment tribunal. However, this would need to be consulted on and developed.
- The Government should reinstate the ability for employment tribunals to make wider recommendations to employers to improve their people management practices, but this should cover all aspects of employment rights, not just equality issues. The employer would be required to work with Acas or a professionally qualified HR adviser to improve their people management practices. The SEB or other relevant enforcement body such as the HSE or EHRC would be responsible for following up these orders to monitor compliance, with power to fine employers not meeting their obligations.
- Invest £13 million a year in England to provide high-quality HR support to small firms via the Local Enterprise Partnership/Growth Hub network to support efforts to improve compliance and boost job quality and workplace productivity at a local level. Provide consequential funding to Scotland, Wales and Northern Ireland to improve the availability of accessible HR support for small firms across the UK.
- Amend the Employment Rights Act 1996 to enable CIPD-qualified HR consultants to sign settlement agreements so as to increase the availability of professional advisers qualified to do this and to lower the cost for individuals.

Labour market enforcement in the UK: fit for purpose?

How is employment legislation currently enforced?

There are two main pathways in the UK for enforcing employment rights: in the form of individual enforcement of employment rights through the employment tribunal system; and state-based enforcement through a number of key enforcement bodies.

The majority of employment rights in the UK, from unfair dismissal claims through to discrimination claims, are enforced through the first route and require an individual to take their employer to an employment tribunal. Before an individual can do so there is a statutory requirement to notify Acas of the dispute so that its conciliators can attempt to resolve it via the early conciliation process. However, taking part in conciliation is not mandatory and either party can turn down the opportunity. Remedies for individuals who successfully argue

they have been treated unfairly and have had their employment rights breached include redress (unpaid wages or redundancy payments), reinstatement, compensation and cost orders.

In contrast, state-based enforcement is the responsibility of a number of government-funded bodies:

- **HM Revenue and Customs (HMRC):** responsible for the enforcement of holiday pay and National Minimum and National Living Wage.
- **Gangmasters and Labour Abuse Authority (GLAA):** responsible for preventing modern slavery and wider serious labour market exploitation, including abuses of people's human rights and acts of criminality.
- **Employment Agency Standards Inspectorate (EAS):** responsible for the enforcement of the Employment Agencies Act 1973 and other regulations that apply to recruitment and employment agencies
- **Health and Safety Executive (HSE):** responsible for enforcing parts of the Working Time Regulations 1998, including the maximum weekly working time limits, night work limits, as well as health and safety laws requiring employers to ensure, as far as reasonably practicable, the health, safety and welfare at work of their workers.
- **Equality and Human Rights Commission (EHRC):** responsible for enforcing equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The penalties available to these bodies for breaches range from civil penalties to criminal prosecution leading to imprisonment in the most serious cases.

How effective is labour market enforcement?

We consulted a panel of expert stakeholders (including employer bodies, senior HR professionals, trade unions, professional bodies and policy organisations, academics and researchers, and employment lawyers) to help inform this paper. There was widespread acknowledgement among our interviewees of the current weaknesses and shortcomings of labour market enforcement in the UK and a unanimously recognised need for action to address this. The near-unanimous view was that low-skilled/low-paid/non-unionised workers, on the edges of the labour market, and those working in SMEs are among those most at risk of breaches of many aspects of employment legislation.

The effectiveness of the UK's labour market enforcement framework was considered as part of the *Taylor Review of Modern Working Practices* that was published in the summer of 2017.

Individual enforcement of employment rights

The review highlighted concerns that the 'odds are stacked against people' taking the individual route to enforce their employment rights through the employment tribunal system:

> *From the decision to initiate action to receiving any financial award, individuals can find themselves having to fight hard every step of the way, even when they have been treated unfairly.*

The Taylor Review broke down the individual enforcement of employment rights into four stages, flagging obstacles and drawbacks in the system and making a number of recommendations to improve this process:

- **Deciding to take action:** It is not always clear when a worker has been wronged, or an employer has broken the law, and although it is expected by many that speaking to their manager would be an appropriate form of action, for some this could be difficult and lead to unfair consequences.
- **Employment tribunal fees:** These were raised as a significant barrier for some in bringing a case against an employer; however, they were subsequently abolished following a case brought by Unison in 2017.
- **Making a case:** The review suggested that the system should not mean that the onus is on the individual to prove their employment status, but that there should be a presumption of employer or worker status; and so the burden is on employers to prove this is not the case.
- **Winning or losing, including the appeals process:** If successful, the tribunal award should include redress and/or further compensation, but the review reported that the cost of tribunal fees should also be covered. There were also concerns of the level of tribunal awards that are left unpaid by employers – government-commissioned research found that in England and Wales, 34% of tribunal awards remained unpaid, as pointed out in Taylor's review.
- It was recommended that the Government should make the enforcement process simpler for employees and workers by taking direct enforcement action against employers who do not pay tribunal awards without the individual having to fill in extra forms or pay an extra fee to initiate additional court proceedings. It was also recommended that the Government should establish a 'naming and shaming' scheme for those employers who do not pay employment tribunal awards within a reasonable timescale.

Following the Taylor Review and the recommendations proposed, the Government responded by supporting many of the proposals put forward, and agreed to:

- establish a naming scheme for employers who do not pay employment tribunal awards, and seeking views on how it can best achieve this
- increase the aggravated breach penalty limit to at least £20,000
- accept the case for the state taking responsibility for enforcing a basic set of core rights for vulnerable workers, and gathering information to help determine the best next steps.

The Government also said it accepted that strong action should to be taken against employers who repeatedly ignore both their responsibilities and the decisions of employment tribunals, and would consult on how to take forward the review's recommendations. In addition, the Government pledged to undertake wide-ranging and comprehensive reforms of the process for civil claims and judgments across the courts and tribunals systems.

These planned reforms are welcome but don't address all the fault lines in the system for the individual enforcement of employment rights. There is strong evidence that the vast majority of breaches of employment rights are never enforced via the individual route. For example, there were about 46,000 claims for discrimination in England and Wales across all jurisdictions in 2018–19 according to the official statistics published by the Ministry of Justice. However, the CIPD's *UK Working Lives 2019* showed that, in all, 6% of workers reported they had experienced discrimination in the previous 12 months because of a protected characteristic (that is, gender, race, disability, sexual orientation, religion or belief, or age). This suggests that nearly 2 million people believe they were discriminated against in

the workplace during 2018. Of course, it's likely many of these cases would not necessarily meet the required burden of proof to succeed at an employment tribunal; however, if just 25% met this standard, it would mean that nearly half a million workers face workplace discrimination without recourse to justice or compensation.

In addition, the *UK Working Lives* report found that 22% of workers, equating to about 7 million people across the UK workforce, reported they suffered from anxiety or depression that was either caused or exacerbated by work. However, in total across all employment tribunal jurisdictions in the year 1 April 2018 to 31 March 2019, 121,111 employment tribunal applications were made.

The data suggests that many employers are not being held accountable to their duty of care for the mental and physical wellbeing of their staff through the employment tribunal system.

Even when individuals do submit a claim to an employment tribunal, they are likely to face a significant delay before their case is heard. The latest employment tribunal statistics from the Ministry of Justice (January–March 2020) show that the average time it now takes for a single employment claim to be dealt with from point of claim is 38 weeks. The data shows that the number of single claims has increased steadily since the abolition of employment tribunal fees and the outstanding caseload at 32,000 has almost reached the peak levels seen in 2009–10.

Some workers treated unfairly by their employer now face waiting up to two years for legal redress, because a backlog of cases in the employment tribunal system has become much worse during the coronavirus lockdown, according to an article in the *Financial Times* published in June this year. Research by Citizens Advice raises similar concerns.[1]

Improve individuals' access to professional HR advice on employment disputes by amending the Employment Rights Act 1996

The CIPD believes there is a strong case to amend the Employment Rights Act 1996 to allow independent CIPD-qualified HR consultants to advise individuals on making and responding to employee relations allegations and claims and signing off settlement agreements in the same way that trade union representatives can.

Currently, in accordance with the Employment Rights Act 1996, independent HR consultants are permitted to represent individuals at the employment tribunal if they are registered and regulated by the Financial Conduct Authority (FCA). However, they are barred from representing and advising individuals in the workplace and signing settlement agreements, despite the fact that providing this service requires the same skills, experience and in-depth knowledge of the law as representing an individual or business at a tribunal.

Enabling suitably qualified HR consultants to take on these tasks would increase the availability of specialist advice available to individuals on employment disputes and ensure they understand their employment rights and the options available to them.

The CIPD as the professional body for HR and people development has a strict qualification criteria and continuing professional development (CPD) requirements for membership, which ensures that CIPD-qualified independent consultants have the professional knowledge and expertise to advise individuals in relation to employment disputes.

[1] Smith, C. and McCloskey, S. (2020) *An unequal crisis: why workers need better enforcement of their rights*. London: Citizens Advice.

State-based enforcement

Unfortunately, evidence suggests that the state-based enforcement of employment rights also has considerable challenges and drawbacks, and is unable to compensate for the failings in the individual enforcement of employment rights.

A key issue is whether the enforcement bodies have sufficient inspectors and other resources to be proactive and also to deter employers from failing to meet their obligations. The UK Government's *Labour Market Enforcement Strategy 2018 to 2019* highlighted that that the average employer could expect an inspection on National Minimum Wage/National Living Wage enforcement around once every 500 years, rising to once in 200 years in low-paid sectors such as accommodation and food services. It estimated that an employment agency could expect a visit from the EAS every 20 years.

In practice, the chances of employment rights breaches being picked up by the state are slightly higher than the above estimates suggest, because investigations are intelligence-based and targeted on employers more likely to be non-compliant, and inspection resources have increased since the assessment was made.

However, the more recent *Labour Market Enforcement Strategy 2019 to 2020* concluded that overall *'the current system is complex and fragmented and is clearly sub-optimal for workers needing employment protection.'*

The TUC commented that *'it's important that enforcement agencies are properly resourced so that they can carry out their work effectively. There should be a review of the resources at the enforcement agencies' disposal to determine whether they have adequate resources to fulfil their enforcement obligations.'* It highlighted a number of areas of concern:

- The EAS is inadequately resourced, having a total of 12 full-time-equivalent staff, and only a budget of £725,000, to ensure that nearly 24,000 recruitment agencies comply with Conduct Regulations. Sir David Metcalf recognises that this is unsustainable, and has a commitment to increase EAS inspector resources by 50% – but this is only for business-as-usual activity, and not for further challenges that the EAS may deal with, including the enforcement of umbrella bodies that will come under their remit in future.
- The estimated target for the NLW is predicted to raise coverage from around 5% of the labour force to 14% by 2020, meaning that there will be a larger proportion of the workforce to monitor and the number of breaches, unwitting or otherwise, is almost certain to increase.
- The new remit of the GLAA means that they are responsible for enforcing labour market offences for approximately 10 million working people (when they previously covered 500,000 workers in licensed sectors).

  A recent inspection of investigative powers by the GLAA reported that there was sufficient staffing, but this was only as a result of the recruitment of Labour Abuse Prevention Officers (LAPOs). However, the inspection added, *'this is not to say that we consider the GLAA's resources adequate to deal comprehensively with the full extent of labour abuse, or those forms of modern slavery which the GLAA is responsible for dealing with…. So the GLAA's resources appear to be as stretched as those in other public services.'*

  The inspection also reported that capacity issues meant that quality assurance work in some investigations was not taking place as early in the investigations as the unit would have wished, creating pressures further down the line.

- There are ongoing issues regarding staffing levels at Acas – which the Government advises should be the first source of advice for workers and employers regarding enforcement regulations, guidelines and systems.
- There is a need for an increase in resources for the employment tribunal service. The number of cases submitted to employment tribunals has increased, yet the system has not been provided with sufficient additional resources to spend on the additional workload. This can lead to delays in cases, which could have a consequential impact on the employment relationship.

It was also reported by Focus on Labour Exploitation (FLEX) that the UK has one of the worst-resourced labour inspectorates in Europe (see Figure 1).[2]

Figure 1: Resourcing levels of labour inspectorates in selected European countries

*Including health & safety

The report highlights that the ILO recommends a target of one inspector for every 10,000 workers. FLEX reported that the UK's labour inspection capacity falls well below the ILO target and far behind other countries such as Ireland and Norway. They argue that this can have obvious negative effects on the protection for workers, highlighting the 'disconnect' between weakened labour inspection and enforcement, and government commitments to end modern slavery and to combat trafficking for labour exploitation.

FLEX also highlights the importance of a greater focus on proactive inspection as part of preventative approaches to labour market enforcement.

The FLEX survey revealed that proactive inspection and investigation forms a central part of preventive enforcement strategies in many national contexts, including Canada, Poland, Norway, the Netherlands, and Brazil. Some inspectorates, such as the Norwegian Labour Inspection Authority, dedicate as much as 90% of their inspection activity to proactive inspections. Such inspections targeting high-risk sectors of the labour market, particularly when combined with powers to enforce penalties immediately, can provide a strong disincentive to non-compliance for businesses, as well as enabling the detection of violations before they develop into severe exploitation. However, the UK currently lags far behind many of its European counterparts. The Migration Advisory Committee, for example, has

[2] FLEX. (2017) *Risky business: tackling exploitation in the UK labour market*. London: Focus on Labour Exploitation.

warned that *'on average, a firm can expect a visit from HMRC inspectors once in every 250 years and expect to be prosecuted once in a million years.'*[3]

Improving the system

Growing recognition of the flaws in the current enforcement system have led to calls for a more integrated approach to state enforcement and significant structural changes. To help improve state enforcement the statutory role of the Director of Labour Market Enforcement was created in 2016 and Sir David Metcalf appointed in 2017, with the aim of producing an annual enforcement strategy to set the strategic direction of three key enforcement bodies: the GLAA, EAS and HMRC.

To improve coordination and intelligence-sharing between the three bodies, a Labour Market Enforcement Board was established, which has senior representation from each of these three labour market bodies that report to the Director of Labour Market Enforcement, as well as the two sponsoring government departments (BEIS and the Home Office).

The Government subsequently in autumn 2019 launched a consultation on the creation of a single enforcement body which would bring these three enforcement bodies together in one organisation – we discuss the challenges and implications of this proposed reform in the 'Would an SEB improve enforcement?' section of this report.

Based on the existing evidence, wide-ranging reform is needed to achieve a better balance between individual and state enforcement, which is far too heavily weighted on individuals having to seek redress. The state should proactively lead the overall enforcement of employment rights, and strengthen the individual enforcement route through the tribunal system.

Stronger state enforcement could help to overcome the barriers that vulnerable workers experience in enforcing their rights via an employment tribunal. It would also help to 'level the playing field' for businesses, particularly those operating within tight profit margins – companies that diligently comply with employment regulation should not be undercut when competing for business by unscrupulous companies that are able to offer more competitive prices because, for example, they are not paying workers the statutory payments to which they are entitled.

Aside from the strong reliance on individuals to enforce their own rights, there are other factors contributing to the lack of effective enforcement that need to be addressed, including:

- a lack of knowledge about employment rights on the part of many line managers – in March/April 2019 the CIPD surveyed 2,104 senior UK HR professionals and decision-makers as part of its regular *Labour Market Outlook* research and asked them, 'How would you rate managers' knowledge of people's employment rights?' While the majority did rate it as good/very good/excellent, nearly three in ten respondents (29%) said it was only 'poor' or 'fair' – suggesting there's room for improvement in many organisations
- the complexity and inadequacy of employment legislation and regulations in a modern, fast-moving economy (for example, calculating holiday pay and SSP entitlements)
- the UK's increasingly flexible and dispersed labour market and emphasis on lower-skilled, lower-paid work in some sectors

[3] MAC. (2014) *Migrants in low-skilled work*. London: Migration Advisory Committee.

- the absence of an effective HR function in many organisations, together with the decline in unionisation and collective bargaining in the private sector
- poor enforcement of employment rights within companies' supply chains.

Strengthening the power of supply chains

There is a strong argument to strengthen companies' responsibilities for their supply chains in terms of their adherence to employment rights. This is something that was suggested by the Director of Labour Market Enforcement (DLME) in the *Labour Market Enforcement Strategy of 2018 to 2019*.

The DLME called for the introduction of joint responsibility measures, which would mean the brand name (at the top of the chain) bears responsibility for non-compliance found further down its own supply chain. The Government in its response decided against going down this route in favour of more informal discussions between enforcement bodies and organisations heading up supply chains where there are serious breaches. However, the recent case of supply chain mismanagement and the mistreatment of garment workers in Leicester by a well-known retail brand, which came to light in July 2020, suggests more needs to be done to support enforcement in this area.

As we noted in the CIPD's submission on the setting up of an SEB, a 'brand' company has ultimate responsibility for its procurement activities and for ensuring compliance and ethical employment practice across its supply chain. However, we recognise the complexity in many supply chains and also their diversity; in the interest of its reputation and maintaining procurement arrangements with small businesses in particular, the company should be able to work with its supplier(s) to rectify breaches before any public naming and shaming of both the 'brand' and its supplier. Therefore, we recommend that the Government works with stakeholders to establish how best a company can work with its supply chain to develop good practice in different high-risk sectors across a range of different supply chain scenarios.

Our research has considered the enforcement frameworks of several overseas countries, including New Zealand, where debate over recent reforms highlight many of the same issues as those currently being debated in the UK.

What can we learn from New Zealand?

New Zealand is widely regarded as one of the world's leaders in the enforcement and protection of labour rights and obligations. The Employment Relations Act 2000 is the major employment law statute there, with core provisions including the Employment Relations Authority and labour inspectors. As in the UK, equality issues are addressed separately, as is health and safety, which is dealt with by a distinct body, Worksafe.

The Labour Inspectorate is the main regulator consisting of labour inspectors and the Labour Standards Early Resolution Team (LSERT). A key aim is to promote fair competition between businesses, and detect and combat anti-competitive practices that rely on the exploitation of workers.

The inspectorate ensures compliance with employment standards by proactively identifying and investigating breaches and taking enforcement action, and by providing informal early resolution assistance for one-off breaches. It also works with industry and sector leaders to strengthen the systems that underpin employment standards' compliance. The LSERT determines which employment matters are more appropriate for higher-level investigation by labour inspectors or those for lower-level 'guided self-resolution' by labour standards officers.

The past three years have seen legislative action to strengthen employment legislation and improve enforcement. This followed a government consultation that highlighted the growing limitations of the existing enforcement regime and non-compliance levels, including evidence that 10% of employers didn't have written employment agreements for all employees and 17% of employees reported not receiving one or more minimum statutory entitlements. There was concern that breaches were becoming more serious, systematic and widespread. Other concerns (very similar to the UK situation) included:

- a lack of understanding by employers and employees of their rights and responsibilities
- sanctions that weren't adequate to deter serious and systematic non-compliance
- an inability for labour inspectors to access sufficient information from employers and regulators to identify and investigate breaches of employment standards
- resourcing constraints, including in the area of employers needing information and advice.

A wide range of reforms have since been introduced, including:

- stronger sanctions for serious breaches
- clearer definition of standards and record-keeping requirements
- better provision of information to employers and employees on their rights and obligations
- increasing the number of labour inspectors and the powers and tools available to them, for example to request information from employers and other government agencies
- since April 2017, employers who don't comply with employment law are prevented from recruiting migrant workers for up to two years, which is seen by some as having a significant deterrent effect on businesses in sectors that rely on migrant skills.

While New Zealand's context and recent reforms have a range of parallels with the current situation and consultation on enforcement in the UK, New Zealand's experience also illustrates some of the risks of making changes, in particular the difficulty of striking an effective balance between maintaining a flexible and competitive labour market, and protecting and more effectively enforcing employment rights. More recent legislative changes have aimed to level the playing field for good employers, so that they are not undercut by unfair employment practices by competitors. However, employer support for these 2019 industrial law reforms, such as strengthening collective bargaining and union rights and restoring protections for vulnerable workers regardless of employer size, seems to have fallen away strongly.

Other useful learning for the UK includes:

- making employment law and enforcement changes as multi-stakeholder-supported as possible, rather than risk it becoming something of an employment relations and political 'football'
- the advantages of a wider range of actions available to address the full spectrum of breaches, from uninformed mistakes through to deliberate and serious malpractice
- the need to focus on practice 'on the ground' rather than just policy
- the importance of adequate funding and staffing for an inspectorate function.

Urgency for high-quality information, advice and guidance

A key underlying cause of non-compliance including unpaid wages (such as holiday pay) is lack of awareness on the part of both employers and workers in relation to employment rights, which is also a major barrier for people seeking redress. Providing clearer, more accessible and higher-quality guidance and support for both workers and employers should therefore be a core focus of enforcement going forward. More focus on the proactive provision of high-quality guidance and support to aid employer compliance with employment rights in the first place would free up more resources for the state to focus on the more hardened cases of non-compliance.

Acas report that their helpline for employment guidance receives a high volume of queries on wide-ranging issues. Acas notes that the nature of the most common queries included low basic awareness and/or understanding among some employers and confusion about the relevance of specific contractual or personal circumstances. According to Acas, despite stakeholders such as BEIS and trade unions playing an important role in recent years in attempting to improve both the availability and quality of such guidance, more needs to be done in this area.

Although trade unions are an important source of information regarding employment rights, it has been well reported that levels of union memberships have reduced in recent decades across the UK, making it increasingly difficult for non-unionised workers, who again may be working in low-paid and vulnerable areas, to access good-quality information and advice. In the majority of non-professional sectors men are more likely to be in unions than women, and union membership is also low among the self-employed. Some sectors have particularly low levels of unionisation (such as hospitality, domestic work and care).

Consequently, there is the need for greater investment and focus by the Government on raising awareness of employers' compliance obligations and workers' rights, particularly in sections of the labour market that are high risk in terms of non-compliance for the most vulnerable workers. New and existing communication channels should be used to reach those operating in 'high-risk' sectors of the labour market where employers are most likely to abuse workers' rights by not paying, or underpaying, NMW, SSP, holiday pay, and so on.

The CIPD has consistently urged the Government, working with organisations such as Acas, Citizens Advice, trade unions and professional bodies, to run a high-profile 'know your rights' campaign (similar to the successful one run previously by the Government to promote pensions auto-enrolment), which would set out information on the employment rights people should expect in relation to basic employment rights, as well as where to go if they have concerns or want to make a complaint. This could be supported by communications from Companies House and HMRC sending out clear guidance on core employment rights to every new business that registers and then completes its annual tax return.

We believe that Acas plays a key role in providing information, advice and guidance for workers and employers, and also in referring potential breaches of employment rights to the enforcement bodies; adequate resourcing should be made available so that it can continue and enhance its role in promoting good practice, as well as providing conciliation. However, we also note the comments about Acas in the *Labour Market Enforcement Strategy 2019 to 2020* – that immediate awareness and recall of Acas as a support service is currently low and that more must be done to raise its public profile through digital awareness-raising campaigns, a recommendation we believe the Government has accepted.

Effective awareness-raising needs to hit the right spot

In 2018, the Department for Business, Energy and Industrial Strategy (BEIS) embarked on a project to *'improve worker and employer awareness of the minimum wage rates, and promote compliance, dedicated to stopping underpayment from the outset by changing the behaviour of employers and workers'*.

A £1.48 million media campaign was launched to encourage workers to check their pay and take action if they are underpaid, and to build an understanding amongst workers, especially those in high-risk sectors, about the methods through which underpayment can occur, and the routes of enforcement action they can use. The media campaign was targeted at both workers and employers (via radio, posters, and so on), and in the following month a further 670 complaints were made. But the onus was still on the individual to check their pay, and this presumes that workers understand the contracts they are on, their worker status and their full entitlements.

This was still predominantly a reactive, rather than a proactive, method of enforcement. To meet this challenge, the HMRC NMW enforcement team has seen its resourcing effectively double from £13 million to £25.3 million between 2015/16 and 2017/18. Between 2009/10 and 2014/15, funding for NMW enforcement had been broadly flat at around £8 million a year. HMRC NMW's budget for 2018/19 is £26.3 million. Staff numbers have also increased in line with funding. Between 2008/09 and 2012/13, HMRC NMW had around 140 staff (measured on a full-time equivalent (FTE) basis); this increased to 183 in 2014/15, then to 257 in 2015/16 and to 389 in 2017/18. This increase in resourcing has facilitated a significant increase in the pursuit and prosecution of NMW non-compliance.

Improving workers' ability to seek redress

We believe improving the UK's enforcement framework also requires much more focus on raising workers' awareness of enforcement mechanisms and how to seek redress. This view is reflected in the comments of the Director of Labour Market Enforcement in his *Labour Market Enforcement Strategy 2019 to 2020*. He points out that his recommendations to bolster awareness of workers' rights have yet to be implemented and that *'awareness-raising remains an area of concern for stakeholders'.* Whether an SEB makes it easier for workers to raise a complaint depends on what action is taken on this front, for example by providing information about rights and how to raise a complaint through innovative ways at key touchstone points as suggested and addressing key gaps in worker awareness (*Labour Market Enforcement Strategy 2019 to 2020*).

Acas has reported limited awareness and understanding by claimants of their enforcement options in relation to the enforcement of the payment of tribunal awards. In their research, only 26% of those eligible for the fast-track payments scheme knew this was available to them. Acas argues that higher awareness of the available options could lead to higher levels of settlement payments.

Citizens Advice research shows that not knowing where to go was a significant barrier for workers seeking redress, with almost a third (29%) of respondents saying they hadn't heard of any of the enforcement agencies. This confusion leaves individuals ill-equipped to enforce their rights.

There are also deeper-seated issues affecting the awareness and confidence of workers to make a complaint that need to be addressed. Aside from lack of awareness of their rights, these include those who may be in fear of losing their jobs and/or being unsure of their right

to work in the UK. A FLEX report shows that, while 'gateways' do exist for certain vulnerable groups (especially migrant workers), these may not be suitable for those in the most precarious situations. For example, advice lines can become inaccessible for those with poor language skills, and those who work irregular hours may not be able to access advice during opening hours. With reference to the GLAA hotline that can be used by migrants, the evidence in the report suggested that the hotline is not widely advertised in migrant communities, and thus not commonly used, even though this is a confidential line that has specialist knowledge. There is also an associated risk of mixing up immigration and employment policy and rights, causing further confusion.

The number and diversity of different channels whereby workers can raise a complaint can also be confusing; hopefully this is one area for improvement, for example if a new single body acts as a high-profile and accessible point of contact to raise complaints across the range of employment rights breaches.

Supporting the small business sector

We need to highlight in particular the challenges small firms face across all sectors in terms of awareness and compliance with employment regulation, and their need for better-quality advice and business support in this area. This has considerable implications for the development of the UK's labour market enforcement strategy.

The near-unanimous view among our panel of expert stakeholder interviewees is that low-skilled/low-paid/non-unionised workers, on the edges of the labour market, and a high proportion of smaller firms are among those most at risk of breaches of many aspects of employment legislation. The insights from our panel of experts are also supported by previous research by Acas, which found that SMEs find compliance with employment regulation more challenging than larger firms that have more resources and in-house HR teams and support.

More recently, the CIPD's *Employment regulation in the UK: burden or benefit?* from 2017 on employers' views of employment regulation provides further evidence that small firms (employing fewer than 50 people) in particular struggle with awareness and understanding of employment law. The study, based on a survey of 1,000 employers, found that a quarter (24%) of small firms reported they don't inform the workforce about employment regulation, in contrast with 9% of medium-sized firms (employing between 50 and 249 staff) and just 3% of large firms (250-plus employees).

In addition, small firms are more likely than larger firms to cite a number of obstacles to the successful implementation of employment regulation. For example, 49% cite a lack of resources as an obstacle compared with 44% of medium-sized firms and 41% of large companies. Similarly, 41% of small firms cite a lack of awareness of changes to legislation as a barrier to implementation, while just 32% of medium-sized companies and 27% of large organisations report this as a problem.

The CIPD's research into building HR capability in small firms highlights the typically low level of people management capability among small firms with fewer than 50 employees. It found many small firm owner-managers needed support to enable them to comply with employment rights and get the very basics of people management in place, such as written employment contracts, terms and conditions, written objectives and job descriptions.

The CIPD has developed a successful model for delivering basic HR support to owner-managers in small firms employing between one and 50 employees, which was initially funded by the JP Morgan Foundation. The funding was used to run three HR business support pilots in Glasgow, Stoke and Hackney, East London, over the course of 12 months,

via partnerships such as chambers of commerce, Local Enterprise Partnerships and local authorities.

In each area, small firm owner-managers were able to access up to two days' worth of free face-to-face and telephone information, advice and guidance via local CIPD-qualified and experienced HR consultants. However, while the typical type of support delivered to SMEs through the People Skills service was fairly transactional, the evaluation found evidence that the initiative added significant value to participant organisations. For example, the data from the pilots suggest that owner-managers were more likely to report that their organisation was better or much better than similar organisations in their sector on measures of workplace relations, labour productivity and financial performance after using People Skills.

We believe there's a need for a much closer relationship between enforcement and the availability of good-quality business support on people management (the 'carrot and stick') in order to reach more hard-to-reach – mostly small – firms that are not talking to Acas or a member of any form of business network, membership body or supply chain.

There's a compelling need to improve the quality of business support to small firms on HR/people management at a local level delivered via key stakeholders such as Local Enterprise Partnerships and Growth Hubs and through providing additional resources to Acas. Consideration should be given to the single labour market enforcement body working with Acas through its regional office network to provide support at the local level, to educate employers on compliance.

The CIPD also believes there should be consideration of the feasibility of rolling out a 'People Skills' HR support service to small firms across the UK. In our view, the cost of doing so would not be prohibitive and would be the most effective way of helping owner-managers of small firms to improve their people management capability, at the same time considerably boosting compliance with employment rights. The CIPD estimates that providing a People Skills HR support service to small firms in all 38 Local Enterprise Partnerships in England would cost £13 million a year, including evaluation costs.

The importance of more bespoke tailored advice to small firms was also a key finding from the Acas research mentioned above, which concluded:

> *What employers said they wanted was more practical problem-solving advice, expressed in non-legalistic language, which addressed a particular issue and took account of the small business context. The need for advice tailored to the needs of smaller organisations and, ideally, provided from a personal adviser familiar with the business was a recurrent theme. It was widely felt that any advice and support services should be publicly funded support for small businesses. The rationale was that as the government introduced the employment legislation, it had a responsibility to help SMEs lacking internal expertise and HR resources to make sure they had the support needed to keep within the law.*[4]

Supporting recovery from the pandemic

The need for better support for small firms on HR and people management has been further raised as a result of the pandemic and the ensuing recession, which means that employers are having to grapple with a range of complex employment relations issues including furlough, the safe return to the workplace, safeguarding vulnerable employees and

[4] Harris, L., Tuckman, A., Snook, J., Tailby, S., Hutchinson, S. and Winters, J. (2008) *Small firms and workplace disputes resolution*. London: Acas.

redundancies. These issues are all highly context-specific and mean that owner-managers need tailored advice from an expert in HR and people management. Without this there is a risk that many small firms will breach their employees' employment rights because they lack resources and knowledge of how to respond fairly in light of relevant employment legislation. Besides the ethical and legal risks, poor employment relations will take up a disproportionate amount of management time and have a negative impact on morale, employee engagement and productivity.

Raising employment standards and boosting workplace productivity

The provision of much improved information, advice and guidance to small firms on people management would also support efforts to boost workplace productivity. As cited above, the CIPD's People Skills pilots suggested that providing good-quality face-to-face or telephone advice on the basics of people management to small firm owner-managers was associated with reported improvements to labour productivity and financial outcomes to firms. Longer term, recovery from the recession will depend on increasing productivity, and unless more is done to support small and medium-sized firms to improve their people management capability, wider efforts to address this key issue will continue to be significantly undermined.

Raising employment standards through labour market enforcement in Sweden

Swedish culture, employee relations and labour market regulation are very different from the situation in the UK. For example, Sweden has an extensive welfare state characterised by universal coverage, high levels of social protection and a large public sector. The labour market is largely regulated through collective agreements between the social partners, with nine in ten employees covered by a collective agreement. Self-regulation through collective bargaining is therefore a strong tradition in the Swedish labour market, with much less reliance on employment legislation and state and legislative enforcement compared with many countries in Europe.

However, the UK can still take inspiration from Sweden's approach to raising employment standards beyond legal compliance through enforcement and other labour market interventions.

The system of employment protection and its enforcement in Sweden across large parts of the economy is based on relatively simple, generic legislation with the details contained in legally binding national, sectoral and local collective agreements. Enforcement activity is focused on raising standards in areas such as health and safety and equality, which are covered by distinct agencies.

Health and safety, both physical and psychosocial, is regulated in the Work Environment Act (1977). It is the employer's responsibility to take the precautions necessary to prevent illness and accidents in the workplace. The employer must systematically examine and evaluate psychosocial risks and occurrences and must take all necessary measures to prevent the employee from being exposed to illness or accidents.

Discrimination in Sweden is regulated by the Discrimination Act (Diskrimineringslagen 2008), which prohibits unlawful discrimination in the labour market. The employer has a duty to ensure the workplace is free of discrimination, which includes sexual harassment. So as in the UK, equality is regulated and enforced in a different way from other areas of employment legislation.

The Swedish Work Environment Authority (Arbetsmiljöverket) is the main and largest labour market inspectorate. The Authority's goal is *'to reduce the risks of ill health and accidents in working life, and to improve the work environment from a holistic perspective'*. In 2015, the Authority had 555 employees and a budget of €46 million. The enforcement agencies are responsible for disseminating and gathering relevant information and, with

relatively few breaches evident by European standards, are able to focus on raising employment standards.

Critics argue the Swedish model is too inflexible for the modern world of work and changes are being made and considered in areas such as employment protection. And yet Swedish GDP growth has been ahead of the UK for the last decade and levels of equality are some of the best in Europe.

Learning points for the UK include:

- the value of high levels of employee involvement in preventing disputes and the need for enforcement by the courts and government bodies through securing employee understanding and agreement to their employment conditions and by ensuring employers fully recognise the importance of their employee stakeholders
- the benefits of a straightforward framework of employment legislation that is relatively easy to communicate and enforce, with the detail left to collective agreements that are legally binding and in the main self-regulating and self-enforcing
- the employer and government emphasis on raising employment standards, rather than just driving down employment costs, as the route to higher added value and productivity growth in the economy.

Would an SEB improve enforcement?

In autumn 2019, under its Good Work plan, the Government launched a consultation on the creation of a single enforcement body (SEB) that would bring the three main enforcement bodies together in one organisation (excluding HMRC, which covers NMW enforcement).

In theory, a single enforcement body would seem to offer greater opportunities for a more holistic and joined-up enforcement approach. However, we query whether the lack of integration and coordination of the existing bodies is the major cause of the current problems with the UK's dual enforcement framework. There are far more deep-seated issues at play, as set out in the 'Labour market enforcement in the UK: fit for purpose?' section above. Therefore, the proposals for a single enforcement body could either be viewed as a logical progression from where we are now, or as an unnecessary diversion from the progress being made and evidenced in the *Labour Market Enforcement Strategy 2019 to 2020*.

A single enforcement body *could* be more effective than the current system, but this would not be an automatic outcome. As the former Director of Labour Market Enforcement said in his *Labour Market Enforcement Strategy 2019 to 2020*:

> *While the option of a single enforcement body may be attractive at a theoretical level … this is a substantial step change from the current UK system … The practicalities, time and resources required to bring together the three organisations would be significant*.

Our research considers the enforcement frameworks of several overseas countries, including Ireland, where the creation of a single body (the Workforce Relations Commission) in 2015 appears to have met with some success (see below).

What can we learn from Ireland?

The employee relations and legislative context for enforcement in Ireland has shifted in recent years from a UK-style voluntarist approach to a more continental model of labour market regulation. The growing volume of employment legislation and the breakdown of national agreements created an environment in which identifying and addressing breaches of employment rights, handled by five agencies, was complex, slow and expensive.

The system for enforcement and resolving individual disputes faced other criticism, including:

- five overlapping enforcement bodies with different objectives and logistics
- a single set of circumstances could give rise to a number of claims processed through different forums
- an overly legalistic approach with many users incurring significant legal costs.

There was widespread consensus on the need for reform, which resulted in the creation of the Workplace Relations Commission (WRC). Set up as an independent, statutory body in 2015, the WRC assumed the roles and functions previously carried out by the former five bodies. It is now the sole body responsible for all industrial relations disputes and complaints, as well as for employment rights compliance and inspections. The WRC provides information and advice, as well as mediation, conciliation, facilitation and advisory services. It deals with equality and discrimination claims, but health and safety enforcement is dealt with by a separate body.

The aim was to provide a better service at less cost to the state, employers and employees. It was envisaged that, when completely bedded in, the reforms would result in a 20% reduction in staff and a 10% reduction in budgets, freeing up those resources for other needs. These reforms represented the biggest reforms to the state's employment rights and industrial relations machinery in 70 years. The project was implemented internally by staff in the government department and in the five bodies concerned, as well as external stakeholders including unions and employer groups.

The WRC's *Statement of Strategy 2019–2022*, published in May 2019, acknowledges that they have faced many challenges that should not be underestimated, including difficulties in the initial operational phase. However, successes were achieved across a range of activities, including fully integrating the initial separate constituent bodies and creating a dynamic, distinct and publicly recognised workplace relations organisation. The Inspection and Enforcement Division completed inspections in over 15,358 workplaces and successfully rolled out the innovative compliance measures contained in the Workplace Relations Act 2015, in a manner that ensures overall compliance is achieved in the overwhelming majority of cases without a requirement to prosecute.

Other useful learning for the UK from the Irish example in moving towards a single enforcement body include:

- the potential benefits of the integration of inspection bodies in terms of more and improved inspections, better co-ordination, clearer information across a wide range of employment areas, and greater efficiency and speed in dealing with claims
- the provision of information and advice is at least as important to the success of enforcement activity as inspections and imposing penalties
- the process of widespread stakeholder and public consultation helped to ensure that the WRC was established with a high level of understanding and support across the employment arena.

Assessing the risks…

There are a number of risks associated with the formation of a single enforcement body, a view shared by our panel of expert stakeholders. First and foremost, we have reservations about whether the new organisation would be adequately resourced, and the potential diversion of effort and resources that might well be involved – for example, if this reduced the budgets of the formerly distinct bodies on supposed efficiency grounds. This view is partly based on past experiences of merging regulatory organisations and the creation of multi-agencies. The formation of the new body could be a difficult and time-consuming undertaking. Other risks include:

- the potential dilution of specialist expertise and knowledge in particular sectors and aspects of employment law
- the loss of focus on specific areas of enforcement
- the distraction of time and resources involved in the difficult task of forming the new body and loss of attention and resources on the core task of enforcing employment legislation
- increased rather than reduced bureaucracy and reduced overall enforcement budgets
- the risk of the enforcement body being drawn in too closely with the activities of the immigration authorities, which could dissuade individuals from raising breaches of employment rights if they were fearful of being at risk of deportation.

… as well as the opportunities

However, a well-functioning, well-led and well-funded SEB could potentially bring a number of significant benefits to the employment market in the UK, most notably:

- a more strategic, prioritised, efficient and focused approach to enforcement
- the strong message it would hopefully send to employers that compliance matters and that the risks of non-compliance for them are significant, including more focus on ‘bad’ employers across the entire spectrum of employment rights
- better coordination of good work and employment standards to help employers move above the minimum legal requirements
- the potential for greater prioritisation of compliance activity across government, as well as across the economy
- improved information-sharing on levels of compliance and key areas of weakness to focus on
- the application of new enforcement powers, for example in supply chains
- improved information and support provision to employees and employers, raising awareness of employment rights, breaches to them and how these should be addressed and by whom
- faster and more effective action to address identified issues.

Relationship with other areas of enforcement

We welcome the Government’s commitment to extend state enforcement of holiday pay for vulnerable workers and regulate umbrella companies operating in the agency worker market, and anticipate a role for the new body in both of these areas. However, a new SEB

could also play a key role in the enforcement of the Working Time Regulations 1998, as this is an area that's not adequately or proactively covered in terms of protecting vulnerable workers, for example there is a gap in terms of enforcement of workers' statutory paid annual leave entitlement.

It's imperative that there's close and effective coordination between the new SEB and the other enforcement agencies.

Statutory sick pay

We fully agree with the need for more effective enforcement of SSP by HMRC as emphasised in the *Taylor Review of Modern Working Practices* and reiterated in the current 'Health is everyone's business' consultation. We believe there is a strong case for enforcement of SSP in a similar way to the enforcement of the NMW. As we pointed out in the CIPD's response to the Department for Business, Energy and Industrial Strategy's Consultation on enforcement of employment rights, the majority of non-compliance in this area is hidden, and because the current enforcement regime relies primarily on individuals asserting these rights and seeking redress, non-compliance only comes to light when there is a complaint. We believe there is a widespread lack of awareness by employers *and* workers of SSP entitlements as well as both accidental and deliberate non-compliance on the part of some employers. If created, an SEB would therefore be in an ideal position to take on enforcement of statutory sick pay (SSP).

We believe there should be much more proactive, risk-based state enforcement for SSP rather than relying primarily on individual-based enforcement as is currently the case. A key advantage would be that state enforcement could help to overcome the barriers that vulnerable workers experience in enforcing their rights by approaching the HMRC statutory payment dispute team. As such it would provide a more balanced approach to enforcement that covers both individual and state enforcement. Stronger state-led enforcement of SSP would also hopefully raise awareness and provide greater support for employers to encourage compliance.

Discrimination and harassment, and health and safety

One of the other questions asked in the consultation on the creation of an SEB was whether the new body should have a role in enforcing the provisions of the Equality Act 2010 relating to the workplace to address any gaps in the existing enforcement tools and approach available to the EHRC, and whether a new SEB would provide a route to address these gaps.

On balance, the potential advantages of having all areas of enforcement overseen by one body are outweighed by the risks at this stage. In theory, if we were establishing a new employment rights framework from scratch, in tandem with a robust and holistic framework to enforce those rights, it could make sense to house these under one regulatory roof. However, we are not starting with a blank slate and need to build on the progress that has been made so far.

We concur with much of the rationale set out in Professor Sir David Metcalf CBE's letter sent to, and published by, the Women and Equalities Committee on this issue in May 2019. In his view, discrimination and labour exploitation are not necessarily aligned in terms of:

(a) the employers who are the target for enforcement

(b) the workers who are most likely to be victims, and

(c) the mechanism for enforcement.

We think there is some overlap in terms of (a) and (b) as many employers who are not complying with basic employment rights are not likely to be fostering inclusive workplaces with cultures that, for example, prevent harassment. However, infringements with regard to equalities law also cover a much wider section of the labour market and we agree that current enforcement mechanisms, including the powers and penalties used, are very different in this area compared with enforcement of minimum standards. There is also a concern about the potential dilution of specialist expertise and focus needed for the enforcement of equalities and discrimination law, if included at this stage in a single enforcement body.

The Government has ruled out incorporating the enforcement activity carried out by the HSE into the new body because of concerns that a focus on high-harm incidents may lead to a shift in priorities resulting in less activity to tackle other types of breaches.

However, it's crucial that the enforcement bodies, and a new SEB if created, continue to work on improved coordination and joint activity across these different areas of enforcement, for example in sharing intelligence. The different bodies need to be clearer about their respective enforcement responsibilities and to be pursuing a jointly agreed strategy, for example with more proactive inspection activity and better proactive education and support of good practice by employers, as well as being properly resourced for enforcement work.

This also applies to fostering closer joint working between the EHRC and the HSE: we fully agree with the Women and Equalities Committee during its inquiry into sexual harassment, that sexual harassment (and other forms of harassment) are worthy of the HSE's attention. Given the potential impact of harassment and discrimination on people's psychological wellbeing and the HSE's responsibility for ensuring that employers provide healthy and safe working environments, there is a clear overlap with the HSE's enforcement activity. The EHRC may be the lead regulator in this area, but it can only improve awareness and strengthen compliance if other regulators also play their role as part of a holistic approach. We welcome the steps set out in the Government's response to the Committee's inquiry, to engage directly with regulators to ensure they are taking appropriate action to address sexual harassment in their areas, and welcome the more formal liaison arrangements established between the two regulators.

Enforcement of employment tribunal awards

An unacceptably high proportion of individuals who pursue their rights via an employment tribunal do not even receive the award to which they are entitled. A new SEB should therefore play a firm role in the enforcement of employment tribunal awards, and we welcome the transfer of responsibility of the existing BEIS penalty scheme to the new body.

However, as in line with our response to the previous government consultation on enforcement of employment rights, we are concerned that the current proposals are not wide enough in scope to address the Taylor Review recommendations in this area. This is a view shared by Acas in its response to the same consultation, wherein it said:

> *In Acas' view, the availability of a simple and effective enforcement process for the payment of awards is a matter of key importance both in terms of an effectively functioning employment tribunal system and as integral to the promotion of good employment relations more widely*.

We need more far-reaching reform to address the concerns we have about individuals having to navigate the complex different legal routes available to seek redress for non-payment of their employment tribunal award. It is therefore not surprising that only a small percentage of claimants pursue enforcement action to recoup their award, having already

undergone court proceedings to enforce their employment rights in the first place. Therefore we urge the Government to undertake a more fundamental consideration of how the various avenues currently open to claimants wishing to pursue enforcement of their unpaid award could be simplified and/or reduced, and more responsibility taken by the state for enforcement at this stage.

Critical success factors for an SEB

We support the aim, in establishing an SEB, to review enforcement across the full spectrum of non-compliance, from lack of good practice and minor breaches to very serious abuses. This could support a consistent and proportionate approach, with appropriate tools and strategies to identify and rectify 'accidental' infringements through guidance and better awareness, as well as strong deterrent tactics (such as more robust penalties) to foster much better compliance at the more flagrant end of the spectrum. However, the new body's success in developing and applying an effective compliance/deterrence model across the full spectrum of non-compliance will depend on a number of factors, such as a clear strategy for the new body in this regard, and achieving the right balance between compliance and deterrence.

There are other key points to consider in terms of the new body's remit and approach to developing an effective compliance/deterrence model:

- to foster incremental change – we are not starting from scratch and so have to be pragmatic and realistic – keep it simple and understandable to achieve the highest level of compliance from employers and the best level of awareness and redress from employees
- at least an equal emphasis should be placed on supporting and promoting awareness and good practice in employment as on detecting and punishing breaches of regulations, but both need to be prioritised and resourced.

The increased effectiveness of enforcement arising from the creation of an SEB (for example, a more holistic and reduced silo approach) would be dependent on a number of critical success factors, therefore, such as:

- a clear purpose and strategy for the new body, which should determine its structure
- sufficient resources, including an increase in the number of inspectors to a minimum of one per 10,000 employees
- at least an equal emphasis on promoting awareness and good practice in employment as on detecting and punishing breaches of regulations
- addressing the lack of information and advice for employers and workers, particularly for SMEs and non-unionised and low-paid employees
- strong political emphasis and influence to counter the possible reduced emphasis on employment rights and enforcement post-Brexit
- tailoring actions to suit stakeholder needs sector by sector
- a balance of strategic action at the centre in terms of political involvement and action on multinationals, international supply chains, migrant worker abuse, and so on, combined with local, on-the-ground, sharp-end involvement with local employers, SMEs, and so on
- adequate funding for the new body for the long term.

Conclusion and recommendations

The analysis in this report makes clear that the UK's existing system of enforcement is inadequate in a number of different ways and requires significant reform to ensure that people's employment rights are protected. The creation and work of the previous Director of Labour Market Enforcement and his strategy recognised many of these shortcomings and made a start on addressing some of them. But this work needs to go much further and faster. Neither the individual nor state systems of enforcement currently work effectively, nor do they support each other. This means far too many people and particularly the lowest paid and most vulnerable are experiencing damaging repercussions, such as loss of employment rights, discrimination, unfair treatment, underpayment and mental or physical ill health as a result of their work.

This report suggests that there are some significant potential advantages to the creation of an SEB; however, its effectiveness would depend on a clear purpose and strategy, effective co-ordination across different areas of enforcement and adequate funding.

A particular theme that has emerged from our research is the need for a much more progressive system for the enforcement of employment rights that places greater emphasis on helping employers – particularly small firms – comply with employment regulation through the provision of much improved access to high-quality information, advice and guidance.

Such an approach would also help drive up employment standards, job quality and workplace productivity. This needs to at one end of a spectrum of proportionate actions, with more proactive investigation and a wider range of much tougher penalties for serial and serious offenders at the other.

Labour market enforcement: is the UK system fit for purpose?

The current system of enforcing employment rights is failing, with both individual enforcement through the employment tribunal system and state-based enforcement through bodies such as HMRC, HSE and EHRC failing to adequately prevent loss of rights and protections, discrimination, unfair treatment or ill health caused by work.

The employment tribunal system has certainly not improved since the Taylor Review concluded in 2017 that *'[f]rom the decision to initiate action to receiving any financial award, individuals can find themselves having to fight hard every step of the way, even when they have been treated unfairly.'*

Indeed, if anything, the system has deteriorated further since then, with a significant increase in waiting times for tribunal hearings, meaning that even before COVID-19 and lockdown, claimants had to wait an average of 38 weeks from lodging a claim to resolution, according to the latest Ministry of Justice figures.

Even where individuals do prevail and win a case against their employer, the non-payment of tribunal awards is extremely common and existing forms of redress are not sufficient for individuals nor penalties for offenders.

There is also strong evidence to suggest that only a very small proportion of individuals whose employment rights are breached ever go on to make an employment tribunal claim and receive any form of redress.

Unfortunately, the state-based system of enforcement is also significantly flawed. This is partly because the different enforcement bodies are hugely under-resourced (with the notable exception of HMRC) and fail to work together as effectively as they should. This led

the *Labour Market Enforcement Strategy 2019 to 2020* to conclude that overall *'the current system is complex and fragmented and is clearly sub-optimal for workers needing employment protection*.'

In addition, the UK's enforcement bodies are significantly under-resourced compared with international norms, with too few inspectors to proactively enforce employment rights. The rise in NMW prosecutions and focus employers now place on ensuring compliance highlights what a well-resourced, trained, targeted and proactive compliance and enforcement regime can achieve.

Reforming the system

It is against this context that the Government launched its consultation into the creation of a single enforcement body, which our research suggests could potentially help improve the state-based enforcement of employment rights. However, this would depend on the establishment at the outset of a clear purpose and strategy for the new body, which should determine its structure, as well as sufficient resources to enable it to both reactively and proactively enforce employment rights.

An effective, new, labour market SEB would also need to play a stronger role in supporting the individual system of employment rights enforcement through the employment tribunal system.

It would require at least an equal emphasis on promoting awareness and good practice in employment as on detecting and punishing breaches of regulations. This could be achieved with the provision of additional resources to Acas and to support local approaches to providing enhanced business support on people management issues to small firms.

This, besides supporting much wider understanding and compliance with employment rights, would also support efforts to boost job quality and workplace productivity and meet the Government's aspiration of making the UK the best place to work in the world.

CIPD recommendations

Strengthen state and individual enforcement

- Introduce a well-resourced single enforcement body (SEB) as proposed in the Government's consultation.
- Increase the number of labour market enforcement inspectors to one per 10,000 workers.
- The inspectorate function should be set the objective of ensuring 60% of inspections are proactive and 40% reactive, based on an assessment of highest-risk workplaces.
- The Government should take full responsibility for compensating employees and taking action against employers for non-payment of employment tribunal awards.
- The SEB should be adequately resourced and have the power to make decisions on a range of areas, such as employment status where this is in dispute, with Acas tasked to mediate between parties where required.
- Introduce joint responsibility measures to help enforce employment rights in a supply chain. This would mean that the brand name (at the top of the chain) bears a level of responsibility for non-compliance with employment rights found further down its own supply chain.

- Government, working with organisations such as Acas, Citizens Advice, trade unions and professional bodies, should run a high-profile 'know your rights' campaign which would highlight people's employment rights, as well as where to go if they have concerns or want to make a complaint.

Boost compliance and raise employment standards

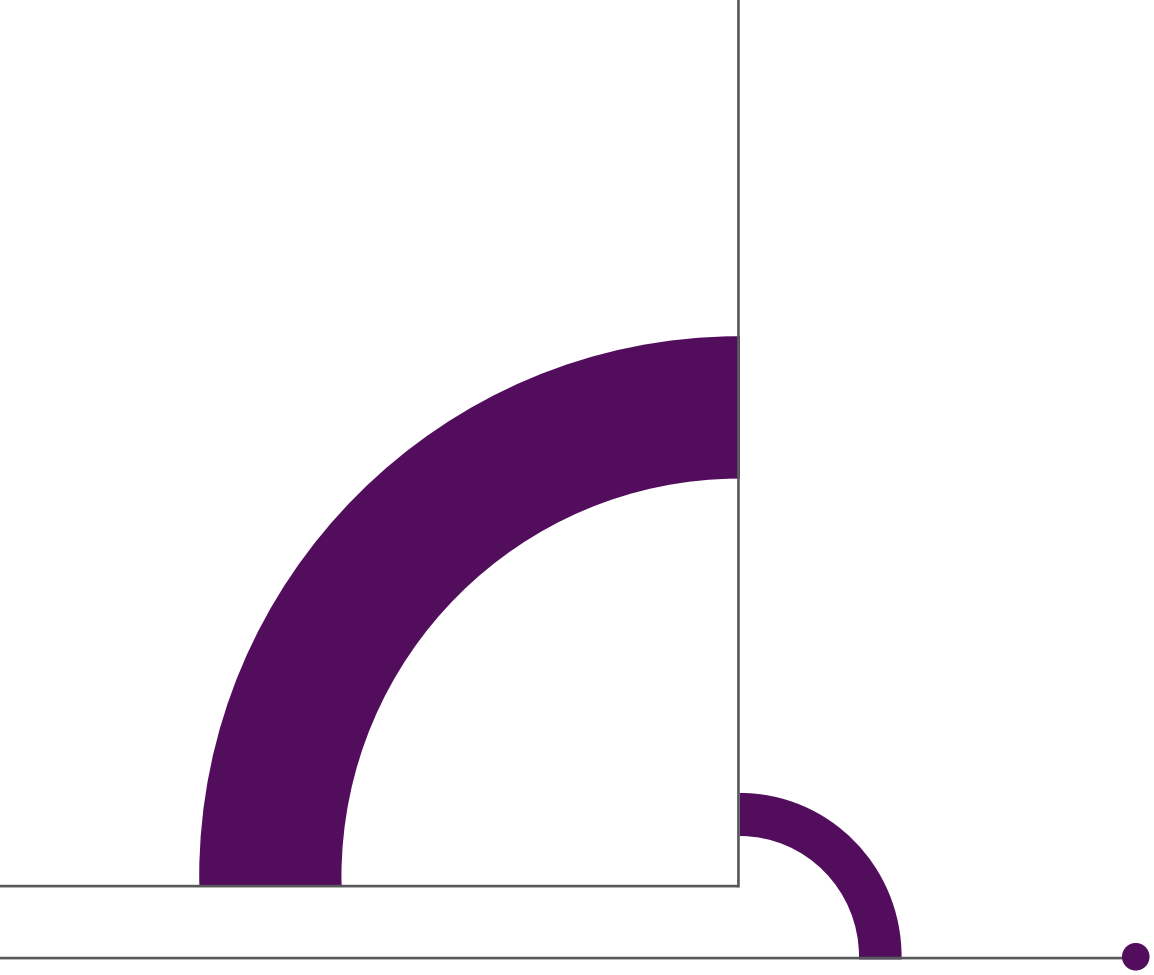
- Double Acas's budget to boost its ability to advise small employers and individuals on people management, workplace conflict and employment rights. Have SEB inspectors allocated on a regional as well as sectoral basis to work locally with Acas and local business advisers, for example, accountants, to ensure that local employers and their staff are made fully aware of relevant employment legislation and rights and are supported to deliver them effectively.
- Give Acas the resources to provide a free annual HR 'MOT' to small firms with fewer than 50 staff. This could potentially reduce their liability in any subsequent claim against them at an employment tribunal. However, this would need to be consulted on and developed.
- The Government should reinstate the ability for employment tribunals to make wider recommendations to employers to improve their people management practices, but this should cover all aspects of employment rights, not just equality issues. The employer would be required to work with Acas or a professionally qualified HR adviser to improve their people management practices. The SEB or other relevant enforcement body, such as the HSE or EHRC, would be responsible for following up these orders to monitor compliance, with power to fine employers not meeting their obligations.
- Invest £13 million a year in England to provide high-quality HR support to small firms via the Local Enterprise Partnership/Growth Hub network to support efforts to improve compliance and boost job quality and workplace productivity at a local level. Provide consequential funding to Scotland, Wales and Northern Ireland to improve the availability of accessible HR support for small firms across the UK.
- Amend the Employment Rights Act 1996 to enable CIPD-qualified HR consultants to sign settlement agreements so as to increase the availability of professional advisers qualified to do this and to lower the cost for individuals.

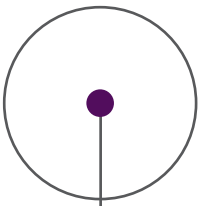
Background to the report

This report draws on a range of research using the following methodologies:

- A rapid evidence review of relevant literature to document the current state of UK labour market enforcement, how it has evolved and its main strength and weaknesses – we have also used the information more widely to consider the evidence on what supports effective enforcement of employment legislation.
- The views of key stakeholders inside and outside of the HR profession were gathered in two ways. First, the CIPD surveyed a sample of employers in its regular *Labour Market Outlook* survey. Second, we interviewed a range of key stakeholders including HR directors, lawyers and policy experts. A further consultation meeting was held with a number of them.
- The structures and experiences of labour market enforcement in four selected countries (France, Ireland, New Zealand and Sweden) were gathered as part of our

literature and evidence review, and are referenced within the report where relevant. While approaches differ substantially in these different countries, all appear to be grappling with the spread and challenges of more flexible employment models in the context of relatively low levels of productivity growth.





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Issued: October 2020 Reference: 8065 © CIPD 2020