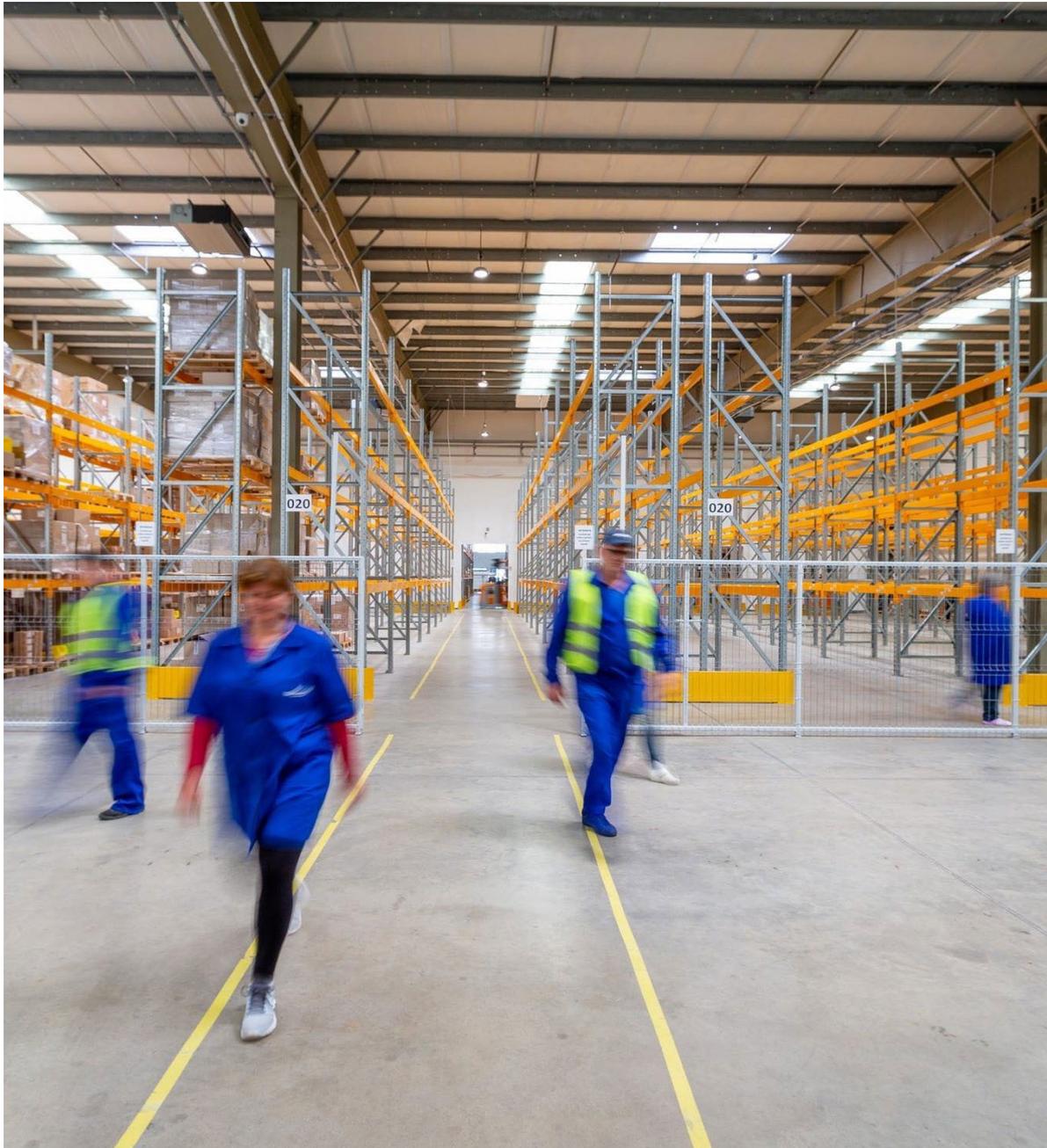


# Briefing:

## Labour market enforcement gap

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## Introduction

The Government's expectation is that intensifying labour shortages can work in the favour of workers by increasing competition and, in this way, force employers to offer higher wages and invest in productivity. Whilst many have questioned whether the evidence supports this strategy,<sup>1</sup> what is certain is that a transition towards a high-wage economy will only be possible if it's underpinned by strong rules and an enforcement system which can uphold them.

This is currently far from the truth. Despite the Government's commitment to strengthening workplace protections and the introduction of some policies to support this goal,<sup>2</sup> too many labour market trends are moving in the wrong direction.

Whether by underpayment of the minimum wage or the prevalence of unsafe workplaces, the evidence shows that infringements are more common, and that labour exploitation is intensifying. Employer non-compliance with minimum wage requirements is increasingly widespread as shown by the Low Pay Commission's recent report which found that over 420,000 workers were receiving less than their entitlement in April 2019.<sup>3 4 5</sup> Around 360,000 workers entitled to the National Living Wage (NLW) did not receive it, though it is unclear if this was solely due to non-compliance. This potentially equates to one-fifth of all workers covered by the rules. The failure to enforce the National Minimum Wage is not just a driver of poverty. It is likely that employers who fail to pay the minimum wage are more likely to ignore other aspects of employment law.

Progress on workplace health and safety has either stalled or worsened in many sectors. Nearly three-quarters of a million employees in Britain suffered non-fatal workplace injuries in 2019/20, and around 1.6 million suffer from work-related ill-health<sup>6</sup>. Work-related injury and ill-health cost Britain over £16 billion in 2019 – a figure which has remained broadly the same since 2010.<sup>7</sup>

The fact that these abuses are intensifying at a time when policies and regulations in relation to the quality and security of work are high on the political agenda is testament to the fact that the enforcement of laws has become weakened, and that under-resourced labour market enforcement agencies are struggling to keep up.

This briefing shows how under-funding of enforcement agencies persists and is having a direct impact on how these agencies operate. Because all of the key agencies now operate on reduced inspection regimes, they struggle to deal with inquiries from employees when concerns arise.<sup>8</sup> In response to reductions in funding, inspectorates are increasingly focusing on compliance over deterrence.<sup>9 10</sup> This means that focus has shifted away from active inspections and towards activities such as the provision of information and awareness-raising which do little to ensure that those employers who knowingly break the law are sanctioned. Indeed, since the outbreak of the pandemic, some enforcement agencies have resorted to so-called 'virtual enforcement' to check on employers. For example, the Gangmasters and Labour Abuse Authority now carries out employer licensing application inspections primarily online, and the Health and Safety Executive's Covid workplace inspections were performed over the phone using an outsourced company.<sup>11 12</sup> Of greatest concern is the fact that agencies are now primarily reliant on workers themselves to report employer violations of labour market rules.

There will always be scope for legislative improvements and evolution. But these will amount to little without effective enforcement. Ultimately, workplace protections are only as strong as the enforcement which underpins them. **The UK labour market is now subject to a serious and widening enforcement gap.** The cost of this gap isn't just to the economy but to all the working people who rely on these protections to keep them safe and ensure that they are paid fairly.

This briefing, co-authored by Focus on Labour Exploitation (FLEX) and Unchecked UK, outlines the extent of the UK labour market's enforcement gap. It shows that the resourcing and staffing of UK enforcement agencies are unfit for purpose and highlights the gaps affecting key sectors of the economy where workers are most vulnerable. Finally, it sets out the need for effective resourcing of the crucial agencies which are tasked with enforcing the rules that govern the UK labour market.

### **A more complex labour market with higher levels of vulnerability**

There has never been a greater need to address worker protections. **Trends in the labour market, such as the increased reliance on outsourcing, subcontracting and self-employment, are making it harder to scrutinise employers.**<sup>13</sup> In addition, the growing complexity of supply chains makes it more difficult to identify where responsibility lies when abuse occurs.

In-work poverty is at record levels<sup>14</sup> and an estimated one in six UK workers are in insecure employment, a trend that has been intensified even further by the Covid pandemic.<sup>15</sup> Workers on low incomes are finding it harder to assert their rights at work as a consequence of the erosion of the power and reach of trade unions, which traditionally played a key role in monitoring and enforcing labour standards, particularly as they applied to the most vulnerable. In short, labour market regulations and their enforcement are more necessary than ever.

### **Cutting enforcement is unpopular**

Addressing the flaws in the current regulatory regime will deliver real benefits for the UK - helping decent businesses to thrive, reducing labour shortages, boosting productivity, and rebuilding public confidence in a labour market that fairly rewards people for their work.

Polling by Unchecked UK shows strong public support for robust workplace protections among voters across the political spectrum. A YouGov poll of Welsh voters for Unchecked UK, found that 70% of voters wanted more regulation of big business with just 4% expressing a view that deregulation was preferable. When it came to enforcing workplace protections, 72% of respondents said it was necessary to ensure businesses operate fairly, 65% said it was necessary for ensuring a level playing field for businesses and 62% supported regulations to 'protect people like me'.<sup>16</sup> Unchecked UK's survey with young Leave voters found that 74% wanted health and safety rules to be increased or maintained and 60% wanted to tighten regulations on working hours.<sup>17</sup> Recent focus groups by Unchecked UK have shown that these views are consistent and strong among 'new' Conservative voters.<sup>18</sup>

Investing in ensuring that employers who don't follow the rules are held to account will be the most effective way of persuading the public that the Government is serious about fostering a high-wage, high-productivity economy. However, as we show in the next section, the trend is currently in the opposite direction.

## The labour market enforcement gap

The erosion of labour market enforcement capacity over the last decade has been significant and holds true across all the UK regulatory bodies tasked with employee protections. In this briefing, we survey the main agencies: the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards Inspectorate (EASI), the HMRC Minimum Wage unit, the Equality and Human Rights Commission (EHRC), the Health and Safety Executive (HSE) and local authorities (in relation to their health and safety enforcement duties).

There has been limited increases in funding for some enforcement bodies in recent years. However, such increases by and large disguise the fact that they have been accompanied by expanded remits and powers. Moreover, when considering the erosion of regulatory capacity that has taken place over the course of a decade, it's unlikely that these limited increases can cover the losses sustained in that period. Finally, the effects of disinvestment have been compounded by poor coordination between agencies, the de-prioritisation of prevention, and an overall shift to reactive, rather than pro-active, enforcement activity.

“There is no conceivable future in which the resources [currently] dedicated to compliance and enforcement match the scale of the problem we are trying to tackle.” **Matthew Taylor, former Director of Labour Market Enforcement**

Today, the UK's overall ratio of inspectors to workers is approximately **0.4 inspectors per 10,000 workers**. This is less than half the International Labour Organisation's recommended ratio of 1 to 10,000.<sup>19</sup> In practice this means that **a UK employer can on average expect an inspection by the HMRC National Minimum Wage team just once every 500 years.**<sup>20</sup>

The picture becomes bleaker when looking at specific agencies. The GLAA has a total of just 137 staff with only one servicing the whole of Scotland. It is responsible for the

inspection and licensing of the entire UK agriculture, food processing and packaging and shellfish industry combined.<sup>21</sup> The GLAA's remit also includes tackling modern slavery, a crime which the National Crime Agency has warned is increasingly widespread.<sup>22</sup> For example, in 2020, the Low Pay Commission raised serious concerns about garment manufacturing in Leicester. The endemic lack of compliance with minimum wage rules was an open secret locally, with journalistic exposés, academic investigations and Parliamentary enquiries all highlighting the problems but with no resulting enforcement.

Meanwhile, the 13 staff employed by the Employment Agencies Standards Inspectorate (EASI) oversee the activities of the UK's 18,000 employment agencies, a sector that has grown and become increasingly complex over the past decades.<sup>23</sup>

**In recognition of these weaknesses, the 2019 Conservative manifesto<sup>24</sup> committed to the creation of a single agency responsible for enforcing employment law, merging three main agencies, and consolidating enforcement capacity.** Following a consultation period in July 2019, the long-awaited Government response was published in June 2021.<sup>25</sup> The response confirms the commitment to establish a Single Enforcement Body for Employment Rights that will bring together the GLAA, the HMRC's National Minimum Wage enforcement teams, and the EASI. In addition, the new body will have an extended remit and additional powers.

Although the response recognises the risk of under-resourcing, it makes no clear commitment to reversing cuts to the overall enforcement regime.<sup>26</sup> Meanwhile the post of Director of Labour Market Enforcement, held by Matthew Taylor until January 2021, remains vacant. Serious concerns

therefore remain as to whether the agency will be given sufficient power, funding and independence to tackle abuses effectively. Moreover, the omission of the Employment Bill in May 2021's Queen's Speech has boosted concerns about the Government's commitment to improving efforts to ensure worker's protections are effectively enforced.<sup>24</sup>

Recent announcements to increase the National Minimum Wage are a positive step but, without suitable enforcement, these increases will mean little to those thousands of workers who are already paid less than they are legally owed. Indeed, as these rates increase, the incentive for those employers who flout the rules could increase as the likelihood of getting caught declines.

The next section sets out the trends in both the levels of investment into enforcement activities both in terms of funding and staffing. We also set out how cuts have translated into substantial falls in enforcement activity.

## Enforcement in the workplace: a decade of decline

Over the past decade the UK labour force has grown significantly, including among those paid the minimum wage. The latter have gone up from approximately 1.5 million workers in 2015 to 2 million in 2019. Resources have not kept pace with this expansion, meaning that enforcement agencies are having to do more with less. This section sets out some of the most key trends over the last decade.

### *Funding and staffing for agencies tasked with enforcing equality and human rights, and health and safety, % change, 2009-20<sup>27</sup>*

- Equalities and Human Rights Commission funding: **down 78%**; staff numbers: **down 54%**
- Health and Safety Executive funding: **down 60%**; staff numbers: **down 37%**
- Local Authority spending on health and safety: **down 33%**; Local Authority Health and Safety Inspectors: **down 57%**

### *Enforcement activity, changes, 2009-20*

- National Minimum Wage investigations completed by HMRC: **down 9%**
- Number of employers successfully prosecuted by HMRC for underpaying minimum wage: 15 (since 2007) with an average fine of just over £2,500 each<sup>28</sup>
- Number of targeted enforcement underpayment of minimum wage cases opened by HMRC in 2019/20: 2,505<sup>29 30</sup>
- Number of convictions brought by the Gangmasters and Labour Abuse Authority since 2009: 100 convictions.<sup>31</sup>
- Number of licenses revoked by the Gangmasters and Labour Abuse Authority: **down 21%**
- Gangmasters and Labour Abuse Authority-led compliance inspections: **down 36%** (2009-19)
- Employment Agency Standards Inspectorate complaints cleared: **down 7%** (2009-2019)
- Warning letters issued by the Employment Agency Standards Inspectorate: **down 36%** (2009-19)

### *Health and safety enforcement activity, % change, 2009-20*

- Proactive health and safety inspections by Local Authorities in England, Scotland, Wales: **down 94%**
- Proactive Health and Safety Executive inspections to construction sites: **down 44%** (2012-20)
- Enforcement notices issued by the Health and Safety Executive: **down 27%**
- Total Local Authority health and safety visits in England, Scotland, Wales: **down 78%**
- Health and Safety Improvement Notices served by Local Authorities in England, Scotland, Wales: **down 75%**
- Prosecutions by the Health and Safety Executive and, in Scotland, the Crown Office and Procurator Fiscal Service: **down 46%** (2015-2020)

### *Labour market enforcement agency budgets, changes, 2009-20*

- Employment Agency Standards Inspectorate funding: **down 26%**
- Gangmasters and Labour Abuse Authority funding: **up 18%** – **but** remit has significantly expanded in 2017 to cover **Modern Slavery across all sectors of the economy**.<sup>32</sup>
- HMRC's National Minimum Wage Enforcement Unit has seen an **increase** in its budget to £26m a year. Despite this increase, **employers can expect to be inspected on average once every 500 years and this year 151 companies were prosecuted for failing to pay the correct minimum wage to 34,000 workers.**

### *Total labour market enforcement agency staff, % change, 2009-20*

- Employment Agency Standards Inspectorate staff numbers: **down 1%** (after years of steady decline, staff numbers remain below 2009-10 levels)

### *Equalities enforcement activity, % change, 2009-20*

- Equality and Human Rights Commission legal cases take on: **down 32%**

## Impacts

Evidence that the UK's labour market enforcement system is under-resourced is extensive. Government studies have shown marked increases in the number of workers being paid below the minimum wage, for example (up by 13% between 2016 and 2019). Modern slavery has grown in certain sectors,<sup>33</sup> and, following decades of improvement, the total number of workdays lost due to ill health or workplace injuries has plateaued in the last decade.<sup>34</sup>

This section presents evidence from four key industries: agriculture, cleaning, hospitality, and construction.

### A. Agriculture

Agriculture is a high-risk sector. The work is often highly physical and typically carried out in isolated conditions away from the public eye. Its seasonality means that workers are most likely to be employed on a flexible basis. In the UK, agriculture is considered a 'priority sector' by the Health and Safety Executive due to the sector's poor record of managing health and safety risks.<sup>33</sup> **The number of fatal injury rates are the highest of all industrial sectors (21 deaths in 2019/2020) and have increased in the past year (more than doubling since 2019/20).**<sup>35 36</sup>

#### Box 1 - The Seasonal Worker's Pilot (SWP)

The SWP scheme was launched as a pilot to help alleviate chronic labour shortages in the agricultural sectors. Since EU exit, the number of work visas has been expanded, without a promised evaluation, from 2,500 to 10,000 workers in 2020 and to 30,000 in 2021, in response to concerns raised by growers about labour shortages.

Research by FLEX on the SWP found that workers on the scheme are highly exposed to abuse and at high risk of 'unfree recruitment'. Their position is linked to the fact that many lack information, are forced into debt in order to access the scheme, lack translation, face pressure to sign contracts, are placed on zero-hour contracts, and fear deportation.

The agriculture sector has grappled with labour shortages for decades and has been highly reliant on migrant workers.<sup>37</sup> In response, the Government recently expanded the number of work visas awarded to the sector (see box 1). Recent announcements regarding temporary visas for poultry workers and pork butchers in the run up to Christmas, and the strong evidence of intensifying labour shortages in agriculture, make further expansions more likely in future.

International experience shows that temporary labour migration programmes of this kind create a high risk of abuse and exploitation. Workers on these programmes are highly dependent on their employers and therefore vulnerable to exploitation.<sup>38</sup> Programmes of this kind require enhanced government oversight and enforcement. Yet, despite the mounting evidence that the SWP has been open to abuse – and the Government's original commitment to extend the scheme only if evaluations showed it was not leading to increases in exploitation – this oversight is currently lacking. Research by FLEX in Scotland shows that only 9% of SWP workers had been asked to speak to someone outside their work about their employment conditions.<sup>39</sup> Investment into greater oversight and

enforcement of the rules attached to the scheme has not been forthcoming. Indeed, FLEX's surveys of workers participating in the SWP in Scotland show that a significant majority see inspections as the best way of ensuring they are more protected.

Given the increased risks created by the SWP scheme in what was already a high-risk sector, labour inspectorates must be appropriately resourced to carry out proactive inspections. Bodies need to be able to address the issues, provide better support for workers affected, and prevent exploitative practices from becoming entrenched.

**“I don’t think there has been much inspection going on, that came up with some of our producers. They hadn’t had any inspections specifically to do with the SWP.”**

**Peter Loggie, Policy Manager, Crops, NFUS**

Source: FLEX, *Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot*, 2021.

International evidence shows that inspection needs to be a fundamental part of successful schemes targeting migrant labour.<sup>40 41</sup> Workplace inspection has been identified as a key priority by farmers’ associations and migrant workers themselves.<sup>42</sup> International experience (such as in New Zealand and Sweden) shows that investment into effective compliance of labour standards is essential. Without it, seasonal worker schemes become a breeding ground for exploitation.<sup>43 44 45</sup> Quote reference<sup>46</sup>

## B. Cleaning

General building cleaning – i.e., routine, non-specialised cleaning of buildings such as offices, shops, banks, hospitals, and other public and commercial spaces – is a growing industry in the UK, dominated by large firms and multinational corporations.<sup>47</sup> The ongoing growth of the sector is largely explained by a shift in recent years from managing cleaning ‘in-house’ to outsourcing. This

**“When I worked in the train station, the cleaning firm that had won the bid to be the cleaning contractor for the station constantly tried to keep costs down. I had to wear [the same] disposable gloves multiple times and clean up things like vomit and urine.**

**Because the client company wanted to keep costs down, [the cleaning company] didn’t allow us to change bin bags but asked us to manually remove rubbish from bins so they could reuse the same bag. Even though I wore gloves there were syringes in there, which alarmed me.”**

**Focus group participant working for an outsourced cleaning company**

Source: FLEX, *“If I could change anything about my work...”: Participatory research with cleaners in the UK*, 2021.

trend has been shown to undermine pay and employment conditions.<sup>48 49 50</sup> Client companies contracting cleaning services can leverage their purchasing power to negotiate the lowest possible prices. This situation forces cleaning contractors to compete for business mainly on cost. The result is downward pressure on wages and working conditions.

Recent research carried out by FLEX gathered responses from 99 workers employed in cleaning. It showed widespread abuses in relation to wages, and health and safety regulation compliance in the sector. Almost two-thirds of the workers surveyed (61%) had experienced issues with their pay, ranging from late payments, to being illegally paid below the national minimum wage, to not being paid for all hours worked or holiday time.<sup>51</sup>

In addition, 60% reported having experienced dangerous working conditions, including being asked to work without proper equipment (38%) and without the necessary personal protective gear (34%). These dangerous working conditions have a severe impact: 86% of the workers who responded to the survey reported having experienced health issues related to their work, including back, neck or joint pain (64%); skin

problems (53%); slips or trips (27%); burns or scalding from chemicals (15%) and from heat (9%). These findings are echoed in other research which documents similar abuses in the sector, including the unlawful deduction of wages, underpayment of the minimum wage and denial of sick pay.<sup>52</sup>

There is a clear need for further independent evidence on these issues, as well as for improved oversight of supply chains in service sectors such as cleaning. The nature of this industry, the low levels of union presence, and the composition of a workforce that is feminised and relies heavily on migrant workers makes proactive inspections an imperative. Yet the evidence suggests that **employers in the Administrative and Support Services Activities sector – which includes cleaning – can expect to be inspected by the HMRC NMW team just once every 389 years.**<sup>53</sup> Quote reference<sup>54</sup>

## C. Hospitality

The hospitality sector is one of the largest industries in the UK, encompassing a variety of different sub-sectors, including the hotel industry and food and beverage services, such as bars, pubs and restaurants, and event catering. Elementary occupations in the sector make up 45% of the workforce, almost three times more than in the wider economy.<sup>55</sup>

Workers in the hospitality sector are amongst the worst paid, and most likely to be paid below the minimum wage in the UK.<sup>56</sup> FLEX's survey of 115 hospitality workers shows that other forms of abuse are also widespread.<sup>57</sup> Workers reported high levels of work-related physical and mental illness related to work. A third of respondents reported being asked to work in dangerous conditions and large proportions highlighted fear of dismissal as a consequence of either calling in sick (44%) or complaining about work conditions or pay (38%).

In addition, the insecurity associated with the widespread use of zero-hour contracts means that many workers have no protection against unfair dismissal and that employers can change the allocation of working hours at will, putting workers in the position of being unable to take time off sick, or push back against / report exploitative practices for fear of losing work.

Despite the widespread evidence of abuse in the sector, **employers in the Accommodation and Food Services activities can expect to be inspected by the HMRC national minimum wage team just once every 200 years.**<sup>58</sup>

## D. Construction

Construction is a volatile industry. Fluctuating demand for labour and pressure on costs means that the construction sector has come to rely on a high degree of flexibility in its workforce, with jobs often lasting just a few days or weeks, and employment status offering little protection for workers. The need to balance labour requirements against these fluctuations has led to the widespread use of self-employment as the preferred contracting arrangement. This offers workers significantly fewer rights and protections. At the lower-paid end of the sector, it creates a high level of insecurity for workers who have little or no legal recourse in cases of abuse, leaving them at significant risk of exploitation.

FLEX's research on London's construction sector, based on 134 worker responses, found concerning evidence of non-compliance with labour rules.<sup>59</sup> Over half of the respondents (53%) were being made to work in dangerous conditions, while a similar proportion (50%) had no written contract. Underpayment of wages affected 36% of the workers and 33% had also experienced either verbal or physical abuse while at work.

According to analysis by the Office of the Director of Labour Market Enforcement, **employers in the construction sector can expect to be inspected by the HMRC NMW team only once every 1,194 years.**<sup>57</sup>

## Conclusion and recommendations

The labour shortage crisis has exposed important weaknesses in the UK labour market. Despite the Government's commitment to creating a high-wage economy, failure to resource enforcement bodies is increasingly at the heart of poor working conditions and widespread exploitation. Addressing this challenge will be key to unlocking the potential of the UK workforce, boosting wages and productivity, and creating a labour market that is fit for the 21<sup>st</sup> century.

The UK public understands this. Unchecked UK's research has found that public opinion is strongly on the side of strengthening rather than weakening labour market protections and their enforcement.<sup>60 61 62</sup> And yet, despite some progress, this briefing shows that things are moving in the wrong direction and the UK's labour market enforcement gap continues to widen. Indeed, the minimal levels of enforcement in sectors of the labour market where high levels of exploitation are well-known, suggests we have a long way to go. Yet all too often, increases in funding have been awarded alongside an expansion of the responsibilities of already over-stretched enforcement agencies. In many cases, such as in relation to health and safety, cuts in resources have intensified considerably. This has slowed down, and in many cases reversed, the progress which the UK had achieved over decades, if not centuries.

The Government's plans to reform the labour market need to be matched with real commitment to resourcing the agencies in charge of governing it. Increases to the minimum wage or improvement to worker protections will amount to little or nothing without a significant investment into ensuring that employers follow these rules.

We call on Government to **conduct and publish an assessment of the resourcing needs of the Single Enforcement Body and other labour market enforcement agencies.** Any efficiencies derived from the proposed merger of different agencies should be reinvested into greater enforcement capacity and a focus on deterrence over compliance. In addition, operations of labour inspection authorities should be prioritised based on the evidence of risk, with greater targeting of sectors where there is chronic low pay, high levels of insecurity, and widespread use of outsourcing and agency work. A good target would be for **the UK to aim to meet the ILO target of one inspector for every 10,000 workers within the next decade.**

Investing in the enforcement of the rules that govern our labour market is not a party political issue. Strengthening and properly enforcing labour market protections, as well as strengthening safety and dignity at work, will be key to addressing chronic labour shortages that have resulted in empty supermarket shelves, queues at petrol stations and shuttered restaurants this autumn. It is not only the right and the popular thing to do, but a vital part of any plan to delivering the high wage, high productivity labour market we all aspire to.

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