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Enrol up!

The case for strengthening auto-enrolment enforcement

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Summary

Automatic enrolment (whereby eligible workers must opt out of, rather than opt in to, a workplace pension) is widely regarded as a policy success. Since its introduction in 2012, over 10 million workers have been automatically enrolled in a pension scheme, guaranteeing them a better standard of living in retirement. But lauding auto-enrolment does not mean we should ignore ongoing challenges – and as with any policy, auto-enrolment can only benefit workers if the rules are followed. With the policy now fully rolled out, the time is right to take a closer look at the performance of firms when it comes to auto-enrolment. Are all employers complying with the requirement to enrol eligible employees, for example? Are they paying their employer contributions in full? Failure to abide by auto-enrolment rules does not leave workers out of pocket in terms of take-home pay today, meaning many may be unaware that they will be short-changed in the future. When it comes to this key labour market right, which was introduced precisely because most people don't actively engage with their pensions, the case for pro-active enforcement by the state is clear.

The Pensions Regulator (TPR) is the body tasked with ensuring that firms comply with auto-enrolment requirements today. The regulator requires firms to self-certify that they are conforming with the rules, and in 2018-19, more than half (58 per cent) of the anomalies it detected stemmed from employers' failure to submit such a declaration. Currently, proactive investigation accounts for very little of TPR's caseload: less than 1 per cent of issues were flagged through analysis of real-time information (RTI) from HM Revenue and Customs' (HMRC's) payroll data, for example. TPR takes a risk-based view and does not pursue enforcement action – or even investigate – in all cases. Moreover, employers who flout the rules are not fined unless they fail to make amendments after receiving an initial notice.

To date, then, the regulator's approach when it detects non-compliance has been focused on educating and supporting firms. With rollout now complete, however, it is worth assessing whether this strategy is still the right one. The answer to this question depends to a large degree on just how big a problem non-compliance is when it comes to auto-enrolment. As always, estimating the level of unlawful behaviour is fraught with challenge. But even when we use the most conservative of methods, data from the 2019 Annual Survey of Hours and Earnings (ASHE) suggests that close to one-in-twenty employees are currently not getting the pension they deserve.

To begin, we estimate that around 3 per cent of eligible employees are not enrolled in a pension scheme by their employers, and have not opted-out. Even more instructively, we can identify the types of workers that appear to be at greater risk of not being auto-enrolled. We find clear evidence that part-time and temporary workers are more than

twice as likely not to be in a workplace pension than their full-time and permanent counterparts, and more than one-tenth of agency workers have not been auto-enrolled. Likewise, non-enrolment is more prevalent in lower-paying sectors where other labour market violations are often found, such as hospitality (6 per cent), administration (7 per cent), and personal services (5 per cent).

Using enforcement data from TPR, we can compare these industry results with the enforcement activity taken by the regulator when firms fail to submit a declaration of compliance. At more than 300 compliance notices per 10,000 businesses, firms in the hospitality sector receive warnings from the regulator at twice the average rate. But while non-compliance in hospitality appears to be effectively picked up, TPR issued only 16 compliance notices per 10,000 businesses in the agriculture industry, despite this sector having the fifth highest non-enrolment rate in our ASHE analysis.

But the enforcement challenge does not end when a business enrols its workers and declares it has done so: in 2018-19 two-fifths of TPR's enforcement activity arose from non-payment or underpayment of contributions. Again, data constraints mean assessing underpayment is problematic. Nonetheless, we estimate that between 1.6 per cent and 1.7 per cent of workers who were enrolled in a workplace pension were not receiving the appropriate level of employer contributions in 2019. While this is low overall, contingent workers are again disproportionately affected: more than 2 per cent of agency workers and employees paid at the national minimum wage are underpaid contributions. Workers in the hospitality and administration sectors are also among the most likely to receive less than the minimum contribution rate.

Altogether, the emerging picture on auto-enrolment non-compliance is not dissimilar to what we have found previously when looking at other types of labour market violations. But low earners face a separate challenge when it comes to pension provision: those that earn below £10,000 a year are not eligible for auto-enrolment at all. While not an enforcement issues, this has important implications for women (one-quarter of women workers do not reach the salary threshold), temporary workers (more than one-half of whom miss out), and those working in micro-businesses (two-fifths of whom are ineligible). And ineligible employees often have characteristics that put them at higher risk of non-compliance when they are eligible – so plans to extend auto-enrolment eligibility may increase enforcement pressures in the years to come.

Overall, then, while auto-enrolment is undoubtably a credit to TPR who have worked hard to ensure that employers of all types understand the rules, pockets of non-compliance remain. With close to one-in-twenty workers not getting the pension contributions they are entitled to, a more hands-on approach to enforcement appears justified as auto-enrolment moves to a steady state. Moreover, the risk of non-compliance will increase as the economy weakens and firms come under financial pressure in the aftermath of the coronavirus crisis – and future plans to extend eligibility to younger and lower-paid workers, although welcome, will bring into scope more of those workers who are at the highest risk of being short-changed. While it could require more resource, we recommend that TPR should shift to undertake more proactive enforcement of the auto-enrolment rules.

With overall levels of non-enrolment and underpayment low, how can the regulator find the needle in the haystack? Our analysis points to two strategies. First, ongoing enforcement activity should focus on the types of businesses and workers identified as most vulnerable to enforcement challenges: sectors such as agriculture and hospitality, contingent workers, and the smallest businesses, for example. Second, employers that are investigated for another form of labour market violation, such as minimum wage underpayment, should be prioritised for investigation for auto-enrolment non-compliance. Finally, given that regulator has been held up as a model of good practice when it comes to employer engagement, it is plausible that much non-compliance we have identified is deliberate rather than accidental. While it is right to continue to focus on supporting businesses to comply in the first instance, the time may have come for TPR to get tougher, quicker when anomalies are detected.

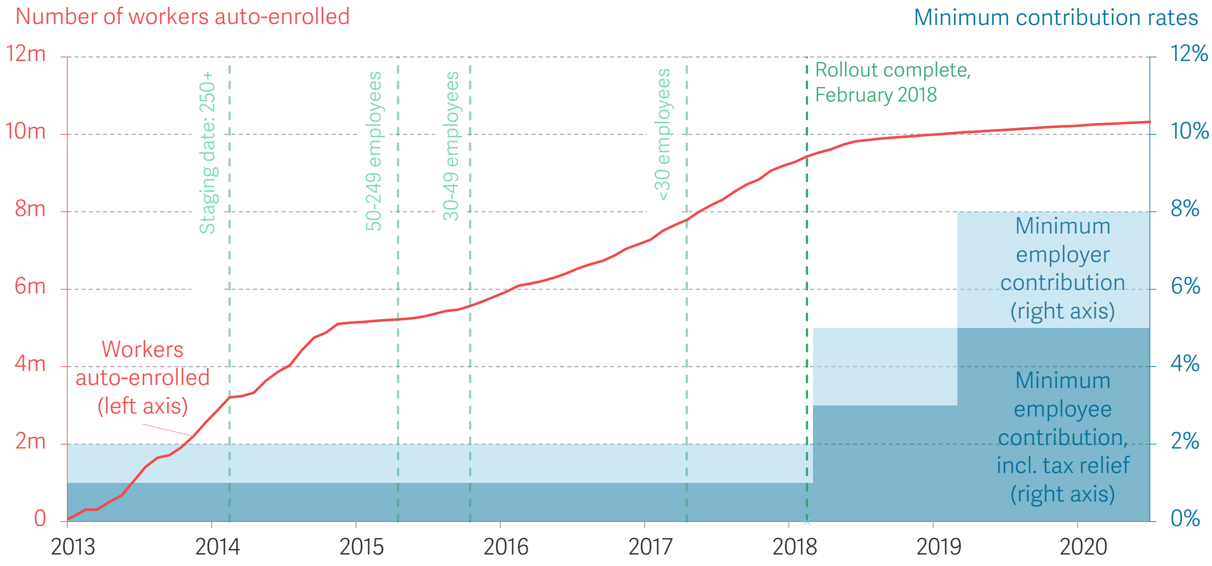
With auto-enrolment now fully rolled out, attention can shift to worker protection

Auto-enrolment, the landmark pensions policy that obliges employers to enrol workers into a pension scheme by default, is rightly seen as a success. The policy was introduced in 2012 and then slowly staged across firms of different sizes. Since that point, more than 10.2 million workers have been automatically enrolled in a workplace pension, and today receive employer contributions of up to 3 per cent of qualifying pay as well as saving themselves (see Figure 1). This has driven up pension participation substantially, with particular increases among lower earners, women, and younger workers.[1] As a result, millions more employees will benefit from improved living standards in retirement.

1 Department for Work and Pensions, Automatic Enrolment evaluation report 2019, February 2020. 'Eligible employees' are defined as employees who meet the automatic enrolment age (currently 22 to State Pension Age) and earnings criteria (currently over £10,000 p.a.), including employees who are already a member of a workplace pension scheme.

FIGURE 1: **Over 10 million employees have been automatically enrolled since 2012**

Number of workers automatically enrolled in a pension scheme, minimum contribution levels, and employer staging dates: UK, 2013-2020



NOTES: Businesses in each size group were staged gradually according to their PAYE reference number, and the staging dates shown here are the final dates for each business size. New employers were staged between April 2017 and February 2018, at which point the rollout was complete. A version of this figure first appeared in: L Gardiner & D Willetts, More ambition, less risk: Building on the success of auto-enrolment, Resolution Foundation, April 2019.
SOURCE: The Pensions Regulator, Automatic enrolment declaration of compliance report.

But as with all rights, effective enforcement is crucial to ensure that all eligible workers benefit from auto-enrolment. To date, the labour market enforcement debate has focused exclusively on issues that affect workers' living standards in the here and now, such as minimum wage underpayment and the failure of firms to offer holiday pay entitlement. In contrast, non-compliance with automatic enrolment has received minimum attention. However, a failure to enrol eligible workers, or the underpayment of contributions for those who are enrolled, will hit living standards in the years to come. Moreover, with the Pensions Ombudsman expressing concern that firms struggling with the impacts of the coronavirus pandemic may have more of an incentive not to comply,[2] and the labour market expected to weaken still further over the coming months,[3] the time is right to take a long, hard look at the topic.

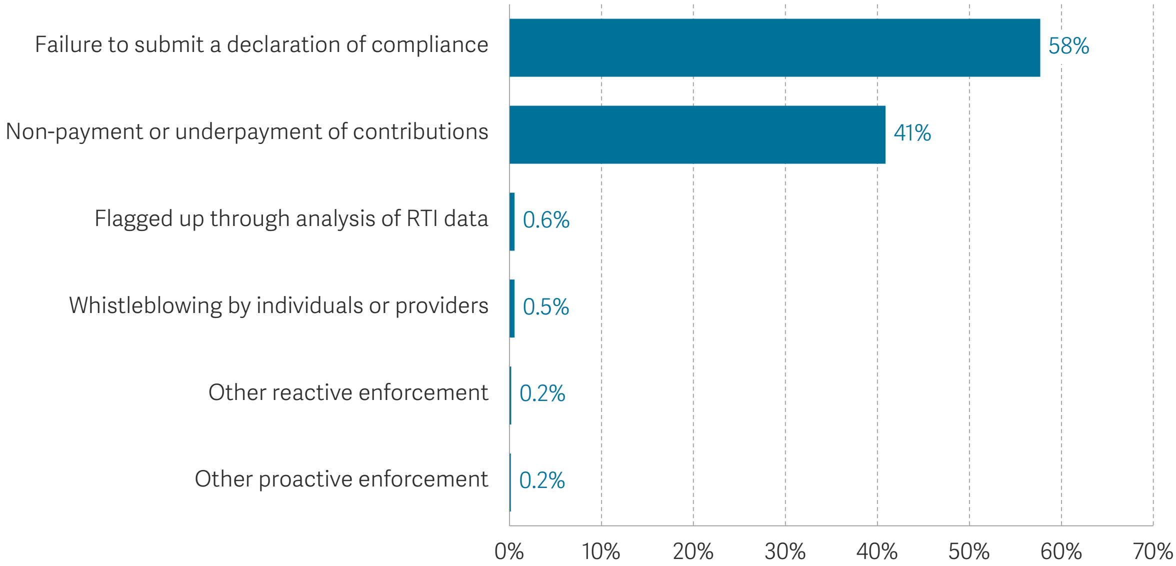
2 J Cumbo, Watchdog fears UK employers will seek to cut pensions bill, Financial Times, July 2020.
3 Office for Budget Responsibility, Fiscal sustainability report, July 2020.

The regulator's risk-based approach leaves some room for employers to flout the rules

Since auto-enrolment was introduced in 2012, enforcement has been the responsibility of the Pensions Regulator (TPR), a public sector body that also provides guidance and support to employers and providers. For many firms, their main interaction with TPR will be submitting a 'declaration of compliance', confirming they have auto-enrolled their eligible workers. If they fail to submit such a declaration, they will receive a compliance notice from the regulator which if they wilfully ignore, eventually may result in a fine. In some ways, this makes TPR more interventionist than many other enforcement bodies – it has a built-in mechanism to detect at least some non-compliance

FIGURE 2: **More than half of enforcement activity stems from employers failing to submit a declaration of compliance**

Initial enforcement action by the Pensions Regulator, by channel: UK, 2018-19



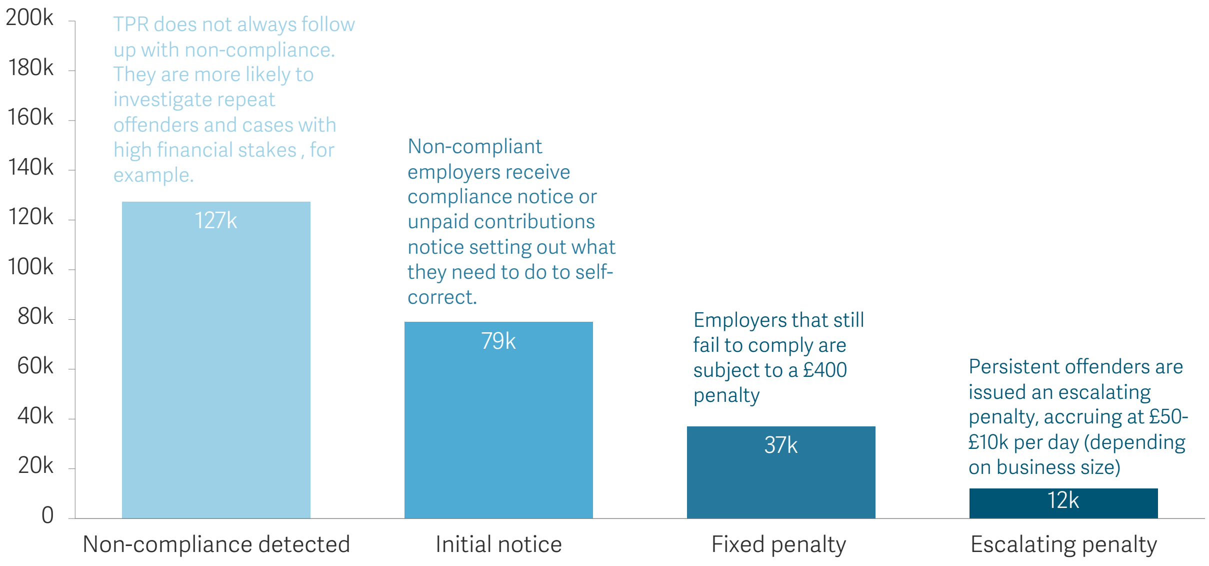
SOURCE: Data request to the Pensions Regulator, June 2020.

As Figure 2 shows, following up with employers who fail to submit a declaration of compliance accounts for more than half (58 per cent) of TPR's initial enforcement action. Two-fifths of enforcement activity results from non-payment or underpayment of contributions, which must be flagged up by pension providers after 90 days. But very little enforcement activity takes place through truly proactive channels, such as identifying high-risk businesses through data analysis or targeted inspections – just 0.6 per cent is flagged through analysis of real-time information (RTI) from HM Revenue and Customs' (HMRC's) payroll data, for example. Finally, a very small share of cases come to TPR's attention because of whistleblowing from individuals themselves – unsurprising perhaps given that few people actively engage with their pensions or fully understand what their employer should offer when it comes to auto-enrolment.

Figure 3 shows the process that the Pensions Regulator takes when they detect that an employer has not enrolled its eligible employees or has not paid contributions owed. Two points stand out. First, TPR does not pursue action in every case – they are less likely to investigate cases where they believe the employer is already acting to remedy their non-compliance, and more likely to investigate when there are high financial implications of non-compliance. This applies to both the decision to investigate and the decision to take enforcement action when non-compliance has been identified. Secondly, there is effectively no financial penalty for non-compliance, as long as the employer corrects its behaviour (including back paying any missing contributions) within the timescale given in the compliance notice[4] – though as Figure 3 shows, a relatively high proportion (15 per cent) of initial notices proceed all the way to an escalating penalty notice.

FIGURE 3: **The Pensions Regulator fines more than one-in-seven firms when non-compliance is detected**

Enforcement process for firms who have failed to automatically enrol eligible workers or who have underpaid enrolled workers' contributions, and number of notices issued: UK, 2018-19



NOTES: The figure for detected non-compliance refers to cases closed in the period, which may have begun in the previous year. The 'initial notice' category includes both compliance notices and unpaid contributions notices: employers who have not auto-enrolled their employees will initially receive a compliance notice; those who have not paid contributions for employees who have been enrolled will receive an unpaid contributions notice.
SOURCE: The Pensions Regulator, Compliance and enforcement policy for employers subject to automatic enrolment duties, June 2016; The Pensions Regulator, Automatic enrolment: commentary and analysis 2019, October 2019.

4 This is somewhat similar to minimum wage underpayment, where firms pursued through HMRC need only pay 100 per cent of arrears if they pay within 14 days. See: L Judge & A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation, January 2020.

TPR is one of very few enforcement bodies that explicitly choose not to follow up every case,[5] instead following a 'risk-based approach' that takes a decision based on the perceived severity of each case.[6] While it is common practice to tailor the scale of sanctions to account for mitigating factors, TPR chooses to pursue no further action even in some cases where it identifies non-compliance.[7] In part, this is because resource constraints mean the regulator has to prioritise its enforcement action: in 2018-19, TPR spent £34.8 million on its auto-enrolment activities,[8] a considerable sum compared to other enforcement bodies, perhaps, but with a much larger group of firms to police.[9] But all else equal, a lower chance of being punished reduces firms' incentive to comply.

Although major cases such as employers fraudulently withdrawing their workers from a pension scheme are only rarely uncovered,[10] TPR issued over 11,000 compliance notices and more than 10,000 unpaid contributions notices in the first quarter of this year alone.[11] And given high rates of self-declared compliance, the regulator may well feel assured that the enforcement gap is minimal. However, based on other areas of labour market enforcement, TPR's enforcement activity is unlikely to represent the full scale of non-compliance. For example, in 2018-19, the Low Pay Commission estimated that 424,000 workers were underpaid the minimum wage, of which only 220,000 cases (52 per cent) were picked up by HMRC.[12] The question remains how closely this enforcement activity, reflecting detected non-compliance, matches the underlying prevalence.

Aside from the nine per cent who opt out, three per cent of eligible workers are not in a workplace pension

Of course, not every eligible employee will choose to take part in a pension scheme. Employees can choose to opt out within four weeks of being automatically enrolled, or they can stop paying in later (known as 'cessation'). Data from the Employers' Pension Provision survey shows that 9 per cent of all workers enrolled in 2018-19 chose to opt out

5 The Health & Safety Executive follows the same approach. See: Citizens Advice, The need for a Single Enforcement Body for employment rights, August 2019.
6 The Pensions Regulator, Our approach to regulating, accessed April 2020.
7 For example, the Gangmasters and Labour Abuse Authority (GLAA) may issue an advisory notice of offences or a warning instead of pursuing a prosecution. See: Gangmasters & Labour Abuse Authority, Enforcement Policy Statement, May 2019.
8 The Pensions Regulator, Corporate plan 2019-22, May 2019.
9 For example, TPR's compliance and enforcement strategy puts more of a focus on maintaining a pro-compliance culture than other enforcement bodies, including publishing in-depth guidance and conducting awareness sessions. And while its caseloads are high (127,400 in 2018-19, compared to HMRC's 3,000 for minimum wage underpayment), this is partly explained by the fact that more than 80 per cent of employees are eligible to be auto-enrolled (Figure 14), whereas only 7 per cent are covered by the minimum wage – and more of TPR's activity is light-touch, such as issuing a compliance notice to an employer who has not submitted their declaration of compliance, than other bodies. See: The Pensions Regulator, Automatic enrolment compliance and enforcement strategy, June 2016; The Pensions Regulator, Automatic enrolment: commentary and analysis 2019, October 2019; Low Pay Commission, Non-compliance and enforcement of the National Minimum Wage, June 2020.
10 See, for example: The Pensions Regulator, Court hands recruitment firm largest fine and first custodial sentences to follow a TPR prosecution, October 2018.
11 The Pensions Regulator, Compliance and enforcement quarterly bulletin January to March 2020, June 2020.
12 See: Low Pay Commission, Non-compliance and enforcement of the National Minimum Wage 2020, May 2020.

within one month,[13] and analysis of HMRC's payroll data reveals that older workers and the highest earners (over £60,000) are most likely to do so.[14]

But there are less benign reasons why people might not be enrolled in a pension scheme – most worryingly, if their employer has failed to auto-enrol them. Previous Resolution Foundation research looking at agency workers found that almost none of the focus group participants had a workplace pension, raising questions about whether there are many workers who are not being auto-enrolled.[15] As with other areas of labour market enforcement, identifying non-compliance with the available data is imperfect. Our main data source, the Annual Survey of Hours and Earnings (ASHE), is a business survey – and it stands to reason that employers are unlikely to wittingly disclose unlawful behaviour. Moreover, the questions on auto-enrolment contain a degree of ambiguity. Nonetheless, ASHE remains the best data we have on the issue and is therefore the one to which we have turned to investigate non-compliance (see Box 1 for more details).

BOX 1: **Measuring non-enrolment in ASHE**

As with many other areas of labour market enforcement, data on auto-enrolment non-compliance is difficult to come by. As well as the usual challenge that firms are unlikely to tell a government survey that they are not abiding by the rules, there may be inconsistencies in the way that the ASHE questionnaire picks up auto-enrolment.

To identify cases where eligible employees have not been automatically enrolled, we use two variables in the ASHE dataset:

- Automatically enrolled in a pension scheme (autopen), which identifies whether an employee has been automatically enrolled into a workplace pension by their organisation; and
- Type of pension scheme (tpen), which tells us whether the individual had a pension with their employer.[16]

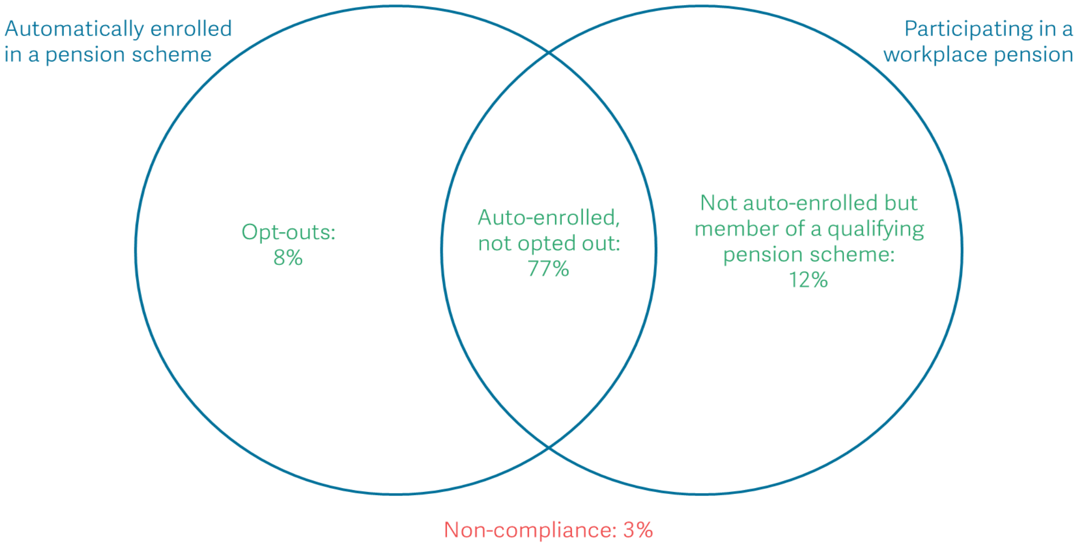
As well as those who have been flagged as auto-enrolled, we also count employees who are not flagged as having been auto-enrolled, but are nonetheless participating in a

13 Department for Work and Pensions, Automatic enrolment evaluation report 2019, February 2020.
14 Department for Work and Pensions, Automatic enrolment evaluation report 2018, December 2018. These breakdowns use HMRC RTI data and count people who have made a first contribution to a workplace pension but stopped contributing within six weeks. There were no differences by gender, which is the only other characteristic that appears in RTI data.
15 L Judge, The good, the bad and the ugly: The experience of agency workers and the policy response, Resolution Foundation, November 2018.
16 For further information on the variables in ASHE, see: UK Data Service, Annual Survey of Hours and Earnings (ASHE) dataset notes, October 2017.

workplace pension scheme, as having been auto-enrolled as long as they are receiving the minimum auto-enrolment employer contributions. In other words, our non-enrolled group comprises the 3 per cent of workers who fall outside the Venn diagram in Figure 4.

FIGURE 4: **Eight per cent of employees opted out of a workplace pension in 2019, while three per cent experienced suspected non-compliance**

Pension participation status of employees who are eligible for auto-enrolment: Great Britain, 2019



NOTES: Not to scale. Figures exclude businesses with only one employee.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [19/08/20], 16th Edition, UK Data Service, SN: 6689.

We should be cautious with our interpretation, however. The questionnaire asks businesses:

On 10 April 2019, had the employee been automatically enrolled into a workplace pension by your organisation before this date? Answer this question even if the employee does not currently pay into, has opted out of, or is no longer a member of a pension scheme. [17]

If someone has opted out, then, they should still count as having been auto-enrolled. But there is some ambiguity in the question: some businesses may be misinterpreting the question and flagging opt-outs as non-enrolled. We find that 9 per cent of employees who are flagged as having been auto-enrolled (i.e. if we were to only focus on those workers within the left circle of Figure 4, rather than all eligible workers) are no longer participating

17 For further information on the ASHE questionnaire, see: Office for National Statistics, Annual Survey of Hours and Earnings (ASHE) methodology and guidance, February 2016.

in a pension scheme – the same as DWP's published opt-out rate,[18] giving us some reassurance that our measure is not wide of the mark. But we should nonetheless be cautious about putting too much weight on the absolute level of non-compliance we find in ASHE.

If businesses are indeed misinterpreting the question, we should also consider the possibility that this misinterpretation is more common in some types of business than others. For example, micro businesses, which show up in Figure 6 as having a very high non-enrolment rate on our measure, are conceivably more likely to misinterpret the question as they do not have large, specialist finance and HR departments filling out the ASHE questionnaire. As a sensitivity check, therefore, we replicated our analysis in this section excluding the smallest businesses (four or fewer employees) to see whether the patterns we see in industries or contingent workers still held. They did – while the level of non-enrolment was slightly lower, as we'd expect from taking out a group of employees with such high rates of non-enrolment, there were no substantial changes in the order of the industries in Figure 7, or in Figure 5's differentials between workers in contingent and more typical forms of employment.

Overall, we estimate that over and above opt-outs and cessations, 3 per cent of eligible employees have not been auto-enrolled. Although this represents almost 600,000 workers, at first glance a 3 per cent non-compliance rate is low (ASHE analysis also suggests that around 22 per cent of workers paid at or close to the minimum wage are underpaid, for example).[19] But as we shall see, non-compliance is much more prevalent in some areas of the labour market than others.

Contingent workers and those employed in small businesses are most likely not to have been enrolled

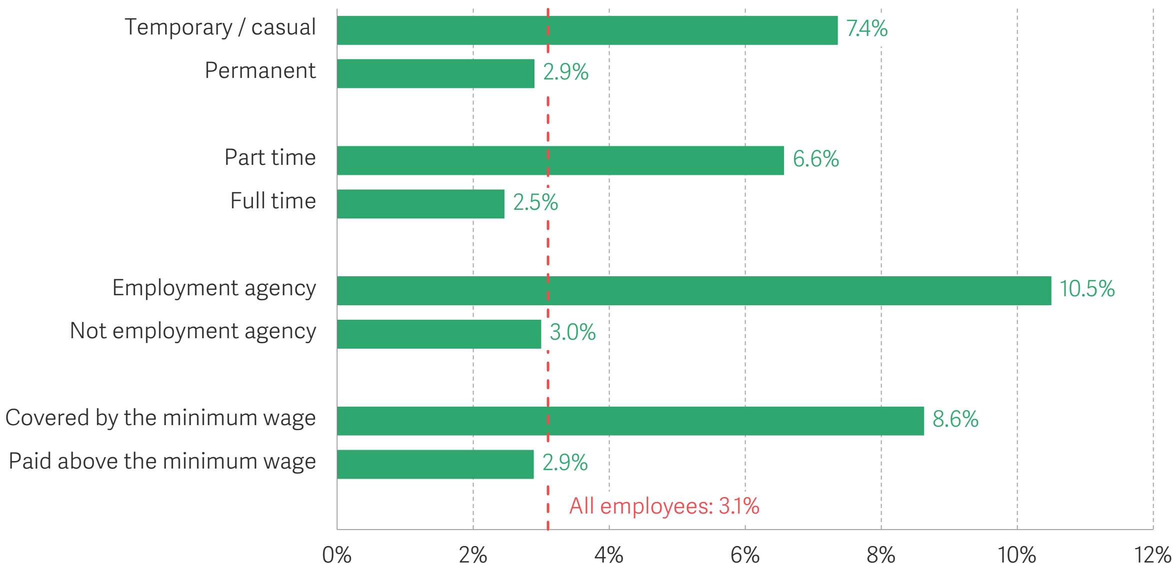
It is important to look beyond the level of non-compliance and also consider its relative prevalence. Are there specific groups of workers where the data in ASHE raises 'red flags', for example? Given that, as noted above, previous Resolution Foundation research suggests agency workers may be at particular risk from auto-enrolment non-compliance, Figure 5 looks first at contingent workers.[20] Our theory is borne out in the data: more than

18 Department for Work and Pensions, Automatic enrolment evaluation report 2019, February 2020.
19 Low Pay Commission, Non-compliance and enforcement of the National Minimum Wage, June 2020.
20 All charts in this section cover only those employees who meet the eligibility criteria (aged between 22 and state pension age and earning more than £192 per week) and who have been in their job for more than three months. Employers can defer enrolling their workers for up to three months – known as 'postponement' – so for the purposes of this briefing note we consider workers in post for three months or less to be ineligible. For more on postponement, see: The Pensions Regulator, Assessing and enrolling staff: Postponement, accessed 20 August 2020.

one-in-ten eligible agency workers have not been automatically enrolled, while part-time and temporary workers are more than twice as likely not to be enrolled as their full time and permanent counterparts. And the lowest-paid workers, too – those earning around the wage floor – are three times more likely to face non-compliance.

FIGURE 5: **Part-time, temporary and agency workers are less likely to be enrolled than more conventional types of workers**

Proportion of eligible employees who have not been auto-enrolled, by type of job: Great Britain, 2019



NOTES: Base = all employees who meet the eligibility criteria for auto-enrolment and have been in their job for more than three months. Employees who have opted out are classed as enrolled. Includes employees' main jobs only. Excludes businesses with only one employee. 'Covered by the minimum wage' refers to workers paid less than the minimum wage plus 5 pence.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [05/08/20], 16th Edition, UK Data Service, SN: 6689.

To some extent, this could reflect administrative difficulties and delays: for example, contingent workers are more likely to work variable hours that take them above the auto-enrolment threshold some, but not all, of the time.[21] In addition, the short contracts of temporary and casual workers mean they are more than three times as likely to be around the three-month postponement threshold.[22] To some extent, then, their non-enrolment rates could reflect those who have only just become eligible and whose employers are a few weeks late in enrolling them, rather than more deliberate non-compliance – 9 per cent of employees who have been in post for four months have not

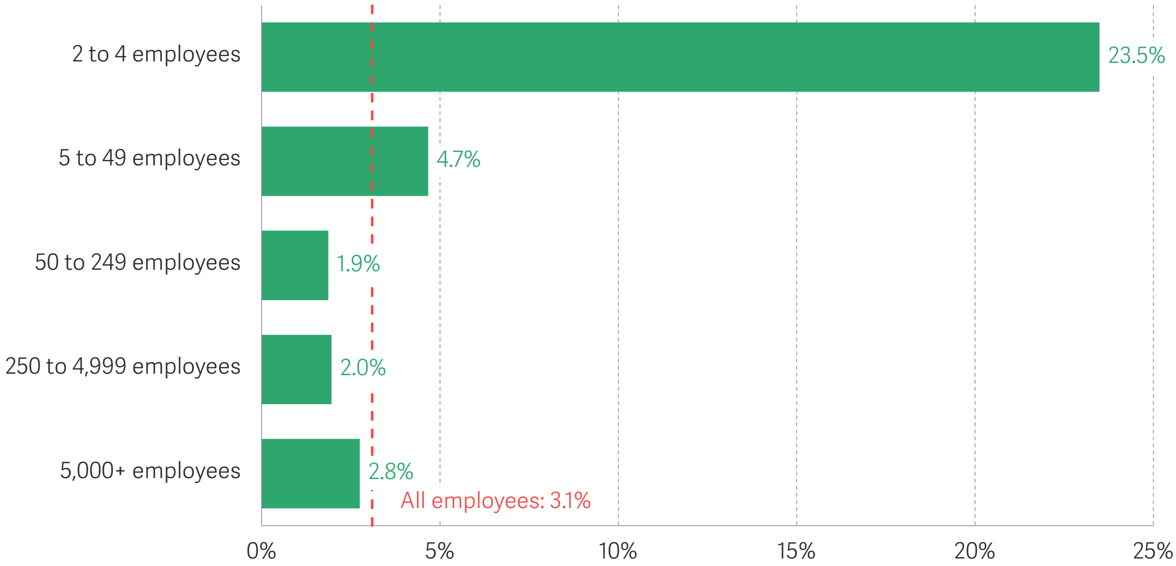
21 Temporary and agency workers are more likely to have variable hours than their permanent and non-agency counterparts. Source: RF analysis of ONS, Labour Force Survey.
22 Of workers who are eligible for auto-enrolment, 15 per cent of temporary workers have been in their job between four and six months (i.e. have just passed the three-month postponement period) compared to 4 per cent of permanent workers. Source: RF analysis of ONS, Annual Survey of Hours and Earnings.

been auto-enrolled, decreasing to 3 per cent of those who have been in their job for a full year.[23] But even if this is the case, the fact remains that contingent workers are disproportionately not being automatically enrolled – and employers should be taking these factors into account to ensure that all workers get the benefits they are entitled to.

There are also significant differences in enrolment rates by business size, with almost a quarter of eligible employees working in micro businesses (4 or fewer employees) not enrolled, as shown in Figure 6, compared to less than 5 per cent in any other business size. Some of this may reflect owner-directors, who will be over-represented as a proportion of workers in small businesses, although we account for this to some extent by excluding one-employee businesses.

FIGURE 6: **Small firms are the least likely to enrol their employees**

Proportion of eligible employees who have not been auto-enrolled, by size of employer: Great Britain, 2019



NOTES: Base = all employees who meet the eligibility criteria for auto-enrolment and have been in their job for more than three months Employees who have opted out are classed as enrolled. Includes employees' main jobs only. Excludes businesses with only one employee.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [19/08/20], 16th Edition, UK Data Service, SN: 6689.

Moreover, as noted in Box 1, small employers may be more likely to say that employees have not been enrolled when in fact they have opted out. But there is evidence that smaller employers may respond differently to automatic enrolment than larger businesses.[24] For example, there is evidence that the smallest businesses find auto-enrolment more administratively burdensome: micro businesses are more likely than

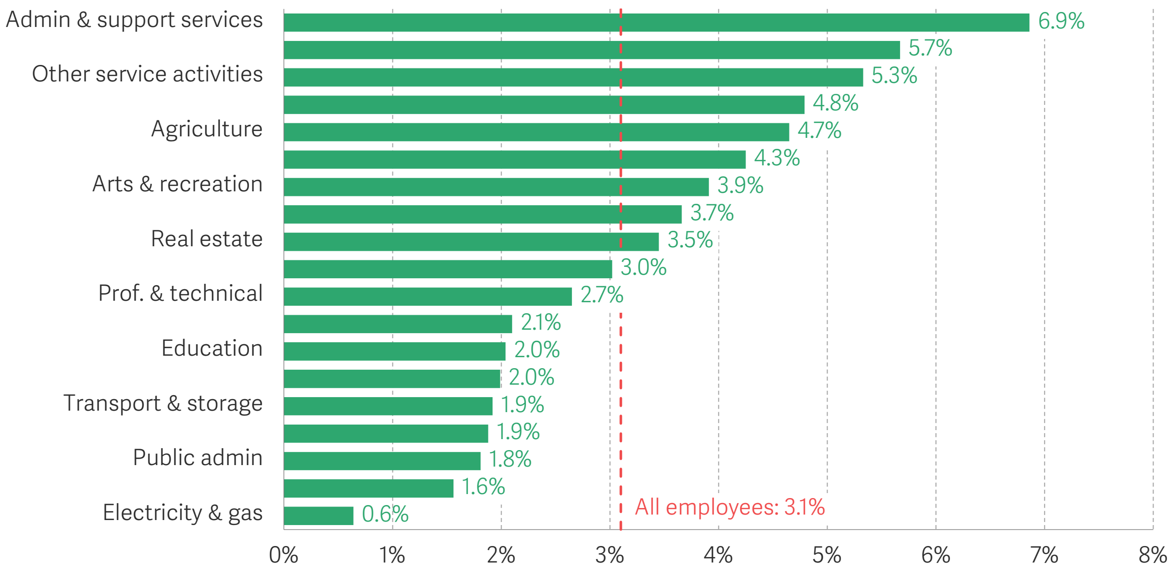
23 Source: RF analysis of ONS, Annual Survey of Hours and Earnings.
24 For more on small businesses and auto-enrolment more widely, see: J Cribb & C Emmerson, The effect of automatic enrolment on employees working for small employers, Institute for Fiscal Studies, March 2019.

larger businesses to agree with the statement 'My organisation finds it difficult to keep up with its ongoing duties around automatic enrolment', and are also less likely to be fully aware of their ongoing duties.[25] And smaller businesses, without the economies of scale and large finance departments of bigger companies, may be more likely to be non-compliant by accident.[26]

At the industry level, Figure 7 backs up previous Resolution Foundation findings about the sectors that are more prone to violation of labour market rights such as the minimum wage and holiday pay.[27] Broadly, workers in the industries flagged in Figure 7 as having high rates of non-enrolment (admin and support services, hospitality, and agriculture, for example) tend to be lower-paid, as well as much more likely to fall victim to other forms of non-compliance.

FIGURE 7: **Industries that are commonly home to other labour market violations have the highest non-enrolment rates**

Proportion of eligible employees who have not been auto-enrolled, by industry: Great Britain, 2019



NOTES: Base = all employees who meet the eligibility criteria for auto-enrolment and have been in their job for more than three months. Employees who have opted out are classed as enrolled. Includes employees' main jobs only. Excludes businesses with only one employee.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [19/08/20], 16th Edition, UK Data Service, SN: 6689.

It is notable that the hospitality (hotels and restaurants) sector has the second highest rate of underpayment because hospitality is frequently home to other labour market violations. It has one of the highest levels of minimum wage underpayment,[28] and a

25 The Pensions Regulator, Employer automatic enrolment ongoing duties survey: Winter 2019, October 2019. However, TPR does work with payroll providers to make it easier for small businesses to comply.
26 W Lovegrove, Auto-enrolment is a success – the data proves it! But data also reveals a few other things..., LinkedIn, April 2018.
27 N Cominetti & L Judge, From rights to reality: Enforcing labour market laws in the UK, Resolution Foundation, September 2019.
28 Low Pay Commission, Non-compliance and enforcement of the National Minimum Wage, June 2020.

higher prevalence than any other sector of workers saying they receive no paid holiday and those who do not receive a payslip.[29]

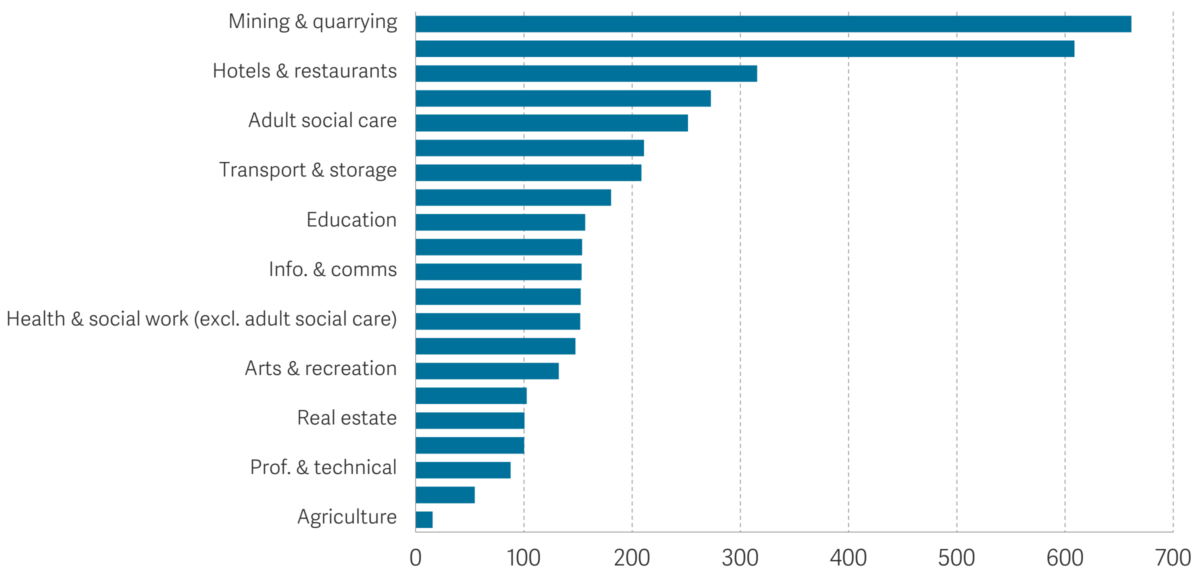
Compliance activity is not always concentrated in the sectors we identify as high risk

It is insightful to compare the high-risk industries flagged up by our analysis with data from TPR on the issuance of compliance notices, the first step in the enforcement procedure when an employer has failed to comply with its duties.[30]

As Figure 8 shows, there is some evidence that the high-risk sectors identified in Figure 7 are being targeted by enforcement action. Employment agencies (here, separated from the rest of the admin and support services sector) and hospitality face particularly high rates of enforcement action compared to other industries. But other sectors highlighted in Figure 7, such as personal services, construction and agriculture, do not appear to have been targeted by enforcement action to the extent we might expect.

FIGURE 8: **Employment agencies and the mining and hospitality sectors received the most compliance notices in 2018-19**

Auto-enrolment compliance notices issued by the Pensions Regulator per 10,000 businesses: UK, 2018-19



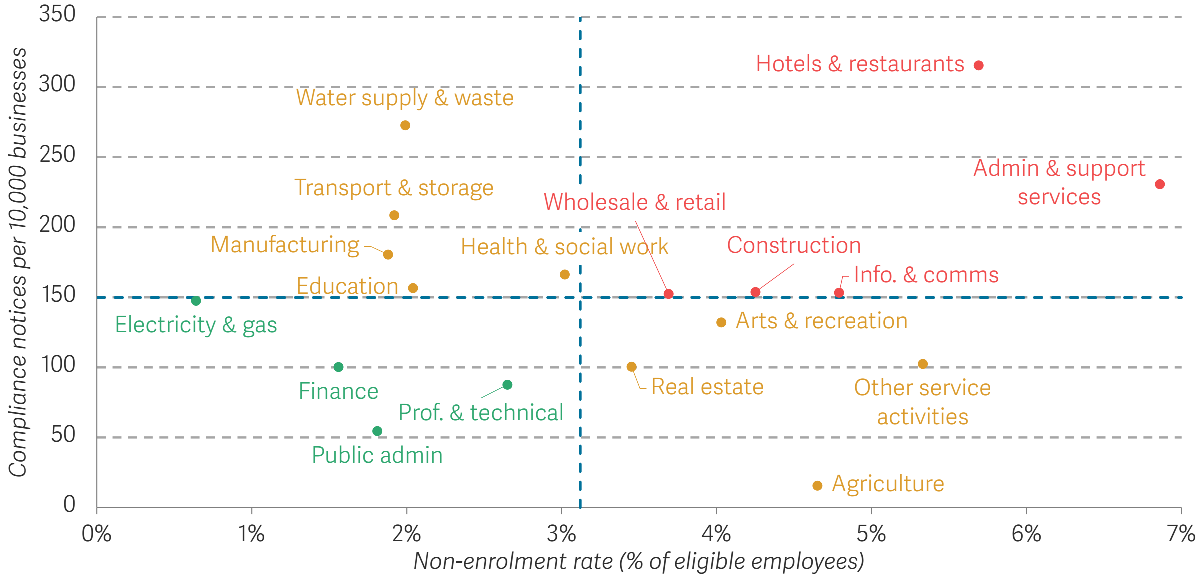
NOTES: Data on compliance notices excludes businesses that were not matched to a standard industrial classification (SIC) code. Where a business has more than one SIC code, the first description has been used.
SOURCE: RF analysis of data request to the Pensions Regulator, June 2020; ONS, UK Business Counts.

29 N Cominetti & L Judge, From rights to reality: Enforcing labour market laws in the UK, Resolution Foundation, September 2019.
30 Issuing a compliance notice is the initial enforcement action taken against businesses that do not enrol their workers, or that breach regulations in other ways such as inducing workers to opt out. However, businesses that underpay contributions for enrolled workers receive an 'unpaid contributions' notice instead. See Figure 3 for more detail, or: The Pensions Regulator, Compliance and enforcement policy for employers subject to automatic enrolment duties, June 2016.

All else equal, we would expect a positive relationship between the two – the more non-compliance exists in an industry, the more enforcement activity should be targeted there.[31] Yet as Figure 9 makes clear, there is almost no relationship between a sector's non-enrolment rate and how many compliance notices it has been issued.[32]

FIGURE 9: **There is no correlation between detected non-compliance and enforcement activity**

Proportion of eligible employees who have not been auto-enrolled, and compliance notices issued by the Pensions Regulator per 10,000 businesses: Great Britain/UK, 2018-19



NOTES: Data on compliance notices excludes businesses that were not matched to a standard industrial classification (SIC) code. Where a business has more than one SIC code, the first description has been used. Non-enrolment rate includes employees' main job only, excludes businesses with only one employee, and classes employees who have opted out as enrolled. The mining and quarrying sector has been excluded as its rate of 660 compliance notices per 10,000 businesses make it an outlier. Compliance notice rates cover the UK and relate to 2018-19; non-enrolment rates cover Great Britain and relate to April 2019. The blue dashed lines represent the overall average for each metric.
SOURCE: RF analysis of data request to the Pensions Regulator, June 2020; ONS, UK Business Counts; Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [19/08/20], 16th Edition, UK Data Service, SN: 6689.

Why might this be? Two possible explanations spring to mind. First, compliance notices can be used for forms of non-compliance other than firms not enrolling their workers, while not every instance of non-compliance is followed up, creating some noise in the data. And second, there are reasons why effective enforcement might cause a negative relationship between non-enrolment and enforcement activity: cracking down on non-

31 As a pinch point for compliance notices is when a new business is created, we also repeated the analysis shown in Figure 9 using a measure of compliance notices per business birth. This showed a very similar pattern between sectors, with a weak negative correlation (R-squared = 0.06). We also note that the rates of compliance notices issued in each industry could be affected by the average size of businesses in each industry – all else equal, smaller average business sizes in a sector would mean more compliance notices issued for the same number of non-enrolled workers, as they would be spread across more firms.
32 R-squared = 0.03.

compliance in a high-risk sector should bring down the rate of violations. Nonetheless, it is surprising to find no relationship at all.

The data does not allow us to infer causality in either direction. It is more insightful, perhaps, to focus on where each sector falls on the chart. We should be most concerned about the industries on the right-hand side of Figure 9, which have above-average non-compliance. While the high non-enrolment rates in the sectors in the top-right quadrant (such as hospitality and support services) are at least matched with high rates of enforcement activity, those in the bottom-right (such as agriculture) may be missed opportunities for TPR where they could be deploying more resource.

On the other hand, sectors on the left-hand side should be less worrying for TPR as they have below-average rates of non-compliance. Again, we cannot identify causality – sectors in the top-left (transport and storage, for example) could have low rates of non-compliance precisely because they are effectively targeted by enforcement activity, or they could be areas where TPR should expend less resource. But it is reassuring to see that there are some industries, such as public administration, where non-compliance appears low on both measures.

In 2019, around one-quarter of a million workers did not receive their full entitlement of employer contributions

Unfortunately, being auto-enrolled is no guarantee that a worker will get all the benefits they're entitled to. As Figure 2 showed, two-fifths of enforcement activity results from non-payment or underpayment of contributions (though TPR's data cannot distinguish between the two). Given that the ASHE reference date is only four days after the contribution thresholds rose, we wanted to account for a lag in firms' uprating contributions. We have therefore used the previous minimum contribution rate to calculate underpayment (see Box 2 for more detail). Our estimates of underpayment, then, should be thought of as conservative. And again, the non-compliance that we have picked up is concentrated among particular groups of workers.

All pay and pension contribution data in ASHE relates to the pay period covering 10 April 2019 – four days after the main automatic enrolment minimum contribution rates had increased to 3 per cent of qualifying earnings for employers and 5 per cent for employees. While employers should be making every effort to keep their employees' pension contributions up to date, we choose to apply the 2018-19 minimum contribution rates to all employees when analysing underpaid contributions. This means we do not conflate endemic non-compliance with a few days' delay in increasing the contribution rate – but our estimates of underpaid contributions may therefore be a conservative estimate.[33]

In 2018-19, the auto-enrolment minimum contribution rate was 2 per cent of qualifying earnings (those between £116 and £892 per week, or equivalent).[34] However, to make it easier for pre-existing schemes to self-certify as meeting the auto-enrolment requirements, employers could use an alternative threshold of 3 per cent of pensionable pay (which may, for example, exclude bonuses and overtime). If pensionable pay constituted at least 85 per cent of total earnings, on average, across all members of the employer's pension scheme, this could be lowered to 2 per cent of pensionable pay.[35]

We want to count employees as receiving below the minimum contribution rates only if their contributions fall short of all these rates. In ASHE, however, it is impossible to know whether an individual employee is subject to a threshold of 2 per cent or 3 per cent of pensionable pay, as we don't know the earnings of everyone in the pension scheme. For this reason, we show a range of estimated non-compliance rates – a lower bound, which would hold if every employee was subject to a 2 per cent contribution rate based on pensionable pay, and an upper bound, which would hold if everyone was subject to the 3 per cent rate.

Using ASHE data, and the conservative estimation method outlined in Box 2, we estimate that between 1.6 and 1.7 per cent of auto-enrolled workers were not getting

33 Employers can also delay transferring their contributions into the pension scheme until the 22nd day of the following month, so they may still be basing their contribution rates on the previous month's thresholds. See: The Pensions Regulator, Code 05: Reporting late payment of contributions to occupational pension schemes, accessed 26 August 2020.

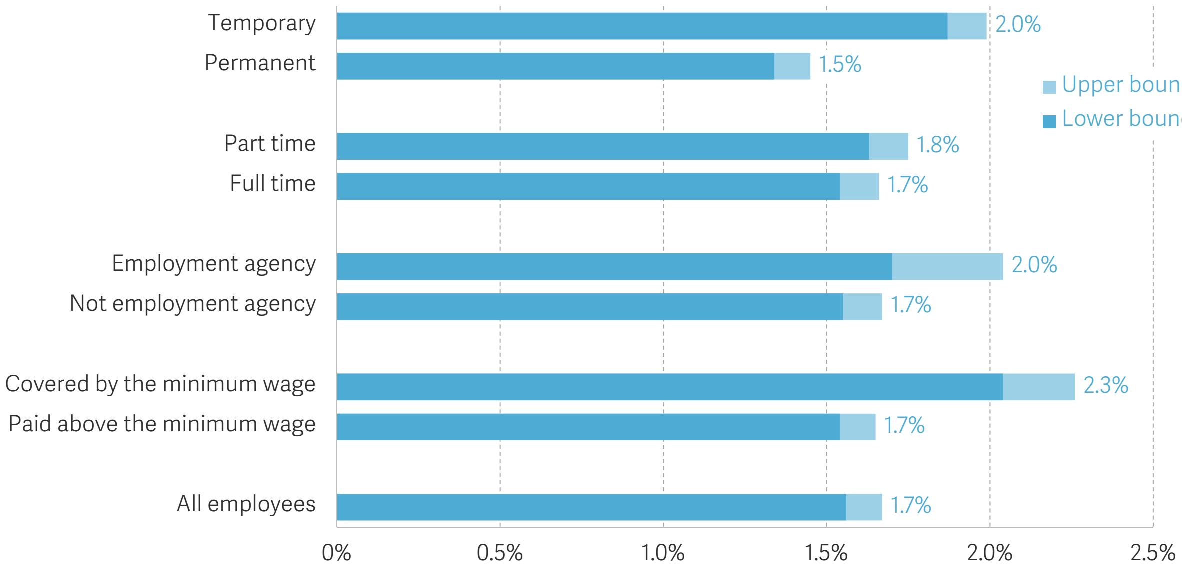
34 The Pensions Regulator, Knowing your client's ongoing duties: Earnings thresholds for previous tax years, accessed 19 August 2020.

35 The Pensions Regulator, Detailed guidance for employers, 4: Pension schemes, April 2020; The Pensions Regulator, Detailed guidance for employers, 4: Pension Schemes, Appendix B: The phasing in of contributions for certification, April 2017.

the minimum employer contributions of 2 per cent of qualifying earnings in 2019 – equivalent to 250,000 employees.[36] Around three-quarters of these employees received zero contributions in the reference period, with the rest receiving some contributions. Again, contingent workers are more likely to lose out. Figure 10 shows that up to 2 per cent of temporary workers and people employed through an agency receive employer contributions below the legal minimum, compared to 1.7 per cent of their permanent counterparts. Of course, workers on less secure contracts are more likely to have fluctuating earnings, and this could make it more complex for employers to calculate the correct pension contribution each month.[37] Nonetheless, this is no excuse for non-compliance.

FIGURE 10: **Temporary, agency and low-paid workers are less likely to receive the minimum employer contributions into their pension pots**

Proportion of employees who are auto-enrolled but receiving below the minimum employer contribution, by type of job: Great Britain, 2019



NOTES: Base = all employees who have been auto-enrolled and are participating in a workplace pension scheme (i.e. have not opted out or ceased contributing). Includes employees' main jobs only. Excludes businesses with only one employee. Underpayment is measured relative to the 2018-19 minimum employer contribution thresholds; the dark blue bar is a lower bound estimate and the light blue bar is an upper bound estimate (see Box 2 for more detail).
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [19/08/20], 16th Edition, UK Data Service, SN: 6689.

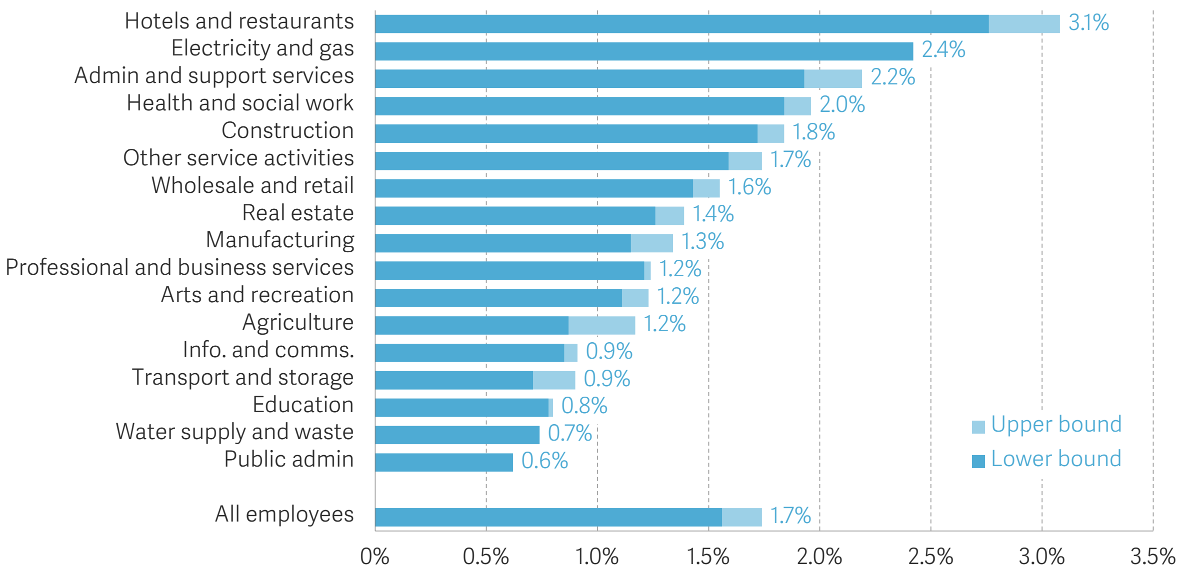
Many of the same sectors shown in Figure 7 as having high rates of non-enrolment appear again in Figure 11 as being more likely to underpay contributions for those

36 In this section, we only look at employees who are flagged as having been auto-enrolled and who are participating in a pension scheme, i.e. unlike the previous section, we exclude employees who had not been auto-enrolled but were participating in a qualifying scheme.
37 A Coleman, The challenges of auto-enrolling weekly-paid employees, Employee Benefits, November 2013.

workers who are enrolled. Workers in sectors such as hospitality, administration and support and construction are more likely than average to be underpaid their employer pension contributions – as before, hospitality appears high up the ranking of underpaying sectors. However, finance stands out as an anomaly: while most non-compliance, in auto-enrolment and elsewhere, tends to be in lower-paying industries, finance – one of the highest-paying industries[38] – has by far the highest rate of underpaid contributions (5.9 per cent).[39] While finance is only an outlier in the 2019 data, it has an above-average underpayment rate in 2018 and 2017 too. There is no clear explanation for this unexpected result, though regression analysis indicates that those finance workers in the 'sales and customer service' occupation group are somewhat more likely to be underpaid.

FIGURE 11: **Finance, hospitality and administration workers are most likely to experience underpayment**

Proportion of employees not receiving the minimum employer contributions, by industry: Great Britain, 2019



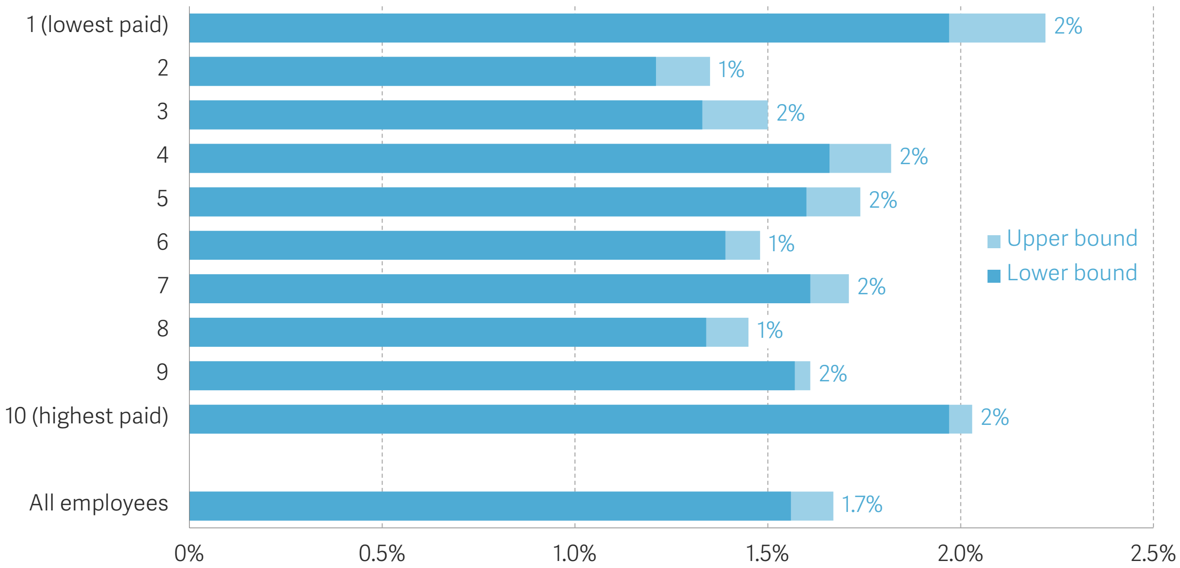
NOTES: Base = all employees who have been auto-enrolled and are participating in a workplace pension scheme (i.e. have not opted out or ceased contributing). Includes employees' main jobs only. Excludes businesses with only one employee. The bar for the finance industry is excluded as it is an outlier, but finance is included in the overall average. Underpayment is measured relative to the 2018-19 minimum employer contribution thresholds; the dark blue bar is a lower bound estimate and the light blue bar is an upper bound estimate (see Box 2 for more detail).
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [19/08/20], 16th Edition, UK Data Service, SN: 6689.

38 Finance is the third highest-paying sector, in terms of median gross weekly pay, after the mining and quarrying and electricity and gas sectors. Source: ONS, Earnings and hours worked, industry by two-digit SIC: ASHE Table 4, October 2019.
39 We have excluded the finance bar from Figure 11 because it is such an outlier (though finance is included in the overall average).

The industry pattern we see in Figure 11 is likely to be linked to the lower pay in these sectors.[40] As Figure 12 shows, employees with the very lowest hourly pay rates are most likely to have their contributions underpaid (although the top decile are also at high risk). Again, this could reflect the fact that lower-paid workers tend to have more variable earnings, which may complicate matters for employers calculating ever-changing levels of pension contributions.[41] But the resulting hit to future living standards for low-paid workers – who are also less likely to be eligible for auto-enrolment in the first place – compounds the burden of low pay today.

FIGURE 12: **Underpayment is most common for the lowest-paid workers**

Proportion of employees not receiving the minimum employer contributions, by hourly pay decile: Great Britain, 2019



NOTES: Base = all employees who have been auto-enrolled and are participating in a workplace pension scheme (i.e. have not opted out or ceased contributing). Includes employees' main jobs only. Excludes businesses with only one employee. Underpayment is measured relative to the 2018-19 minimum employer contribution thresholds; the dark blue bar is a lower bound estimate and the light blue bar is an upper bound estimate (see Box 2 for more detail).
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [19/08/20], 16th Edition, UK Data Service, SN: 6689.

According to ASHE, then, just under one-in-twenty employees are not getting the pension contributions they are entitled to. Non-enrolment is more common than underpayment of contributions – but how does that line up with TPR's enforcement activity? We estimate that non-enrolment is 2.4 times as prevalent as underpayment,

40 See, for example: T Bell, N Cominetti & H Slaughter, A new settlement for the low paid: Beyond the minimum wage to dignity and respect, Resolution Foundation, June 2020.
41 D Tomlinson, Irregular payments: Assessing the breadth and depth of month to month earnings volatility, Resolution Foundation, October 2018.

while TPR issued 2.8 times as many compliance notices (which primarily target non-enrolment) as unpaid contributions notices. Especially considering that compliance notices can be issued for other reasons than non-enrolment, these two ratios are reassuringly similar: TPR appears to be striking the right balance between the two sides of the enforcement coin.

Aside from enforcement issues, five million employees are not eligible for auto-enrolment at all

The main focus of this note is non-compliance, but given that we have found that eligible low-paid workers are at higher risk of both not being enrolled and of being underpaid contributions, it would be remiss to ignore t(separate) issue that many of their peers are not eligible for auto-enrolment at all. As outlined in Box 3, eligibility for auto-enrolment primarily depends on age and earnings – though proposed reforms mean this may change in the years to come.[42] There may be good reasons for setting limits on auto-enrolment, preventing automatic deductions from being taken away from those workers who can least afford it (especially when the lowest earners' contributions would likely be too small to make much difference to their pension pots). But the eligibility criteria mean that 4.7 million employees (19 per cent) are currently outside of auto-enrolment – and some groups of workers have systematically lower eligibility rates as a result.[43]

BOX 3: **Who is eligible for auto-enrolment?**

Workers who meet the following criteria are eligible for automatic enrolment:

Aged at least 22 but under state pension age;

Are working or ordinarily work in the UK under their contract; and,

Earn at least £10,000 per year (or a weekly/monthly equivalent).[44]

Employers may also defer enrolling a worker for up to three months from the date they join the company or become eligible, known as 'postponement' – an option that one-in-five businesses takes up.[45] For the purposes of this analysis, we count employees in this three-month postponement period as ineligible (though, as this section will

42 Department for Work and Pensions, Automatic enrolment review 2017: Maintaining the momentum, December 2017.
43 As above, this figure still excludes businesses with only one employee.
44 The Pensions Regulator, Automatic enrolment detailed guidance, April 2017.
45 In 2019-20, 19 per cent of businesses enrolling new employees made use of postponement. Source: RF analysis of data request to the Pensions Regulator, June 2020. For more on postponement, see: The Pensions Regulator, Assessing and enrolling staff: Postponement, accessed 20 August 2020.

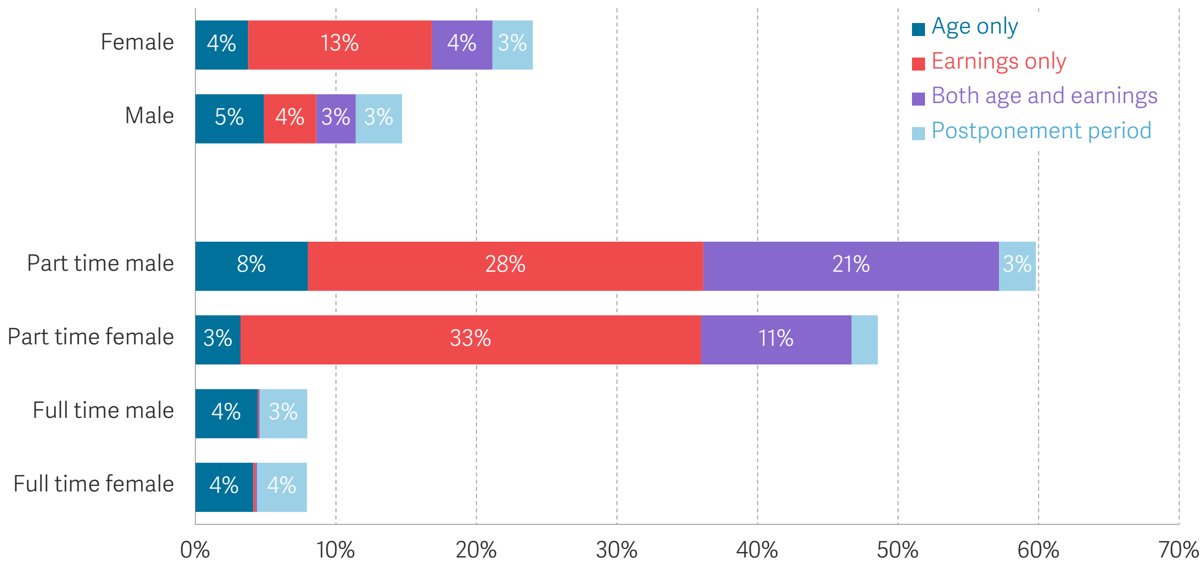
show, this group makes up a minority of ineligible workers).

Lower earners are not completely excluded from the pensions landscape – employees earning at least £6,240 a year can ask to be part of their employer's pension scheme.[46] But these workers miss out on employer contributions unless their employer chooses to contribute, as well as the benefit of being nudged into saving, which has driven the rises in pension participation since 2012.

It comes as no surprise, given the eligibility criteria, that low earners are less likely to be eligible. More than three-fifths (63 per cent) of workers in the bottom decile of hourly pay are not eligible to be auto-enrolled, compared to just 6 per cent of workers in the top three deciles. And just over half (51 per cent) of part-time workers are ineligible, largely because they need a higher hourly pay rate to reach the weekly, monthly, or annual earnings trigger.[47] But this has troubling implications for some groups of workers.

FIGURE 13: **A quarter of female employees are ineligible for auto-enrolment**

Proportion of employees not eligible for auto-enrolment, by sex, whether full- or part-time, and reason for ineligibility: Great Britain, 2019



NOTES: Includes employees' main jobs only. Excludes businesses with only one employee.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [05/08/20], 16th Edition, UK Data Service, SN: 6689.

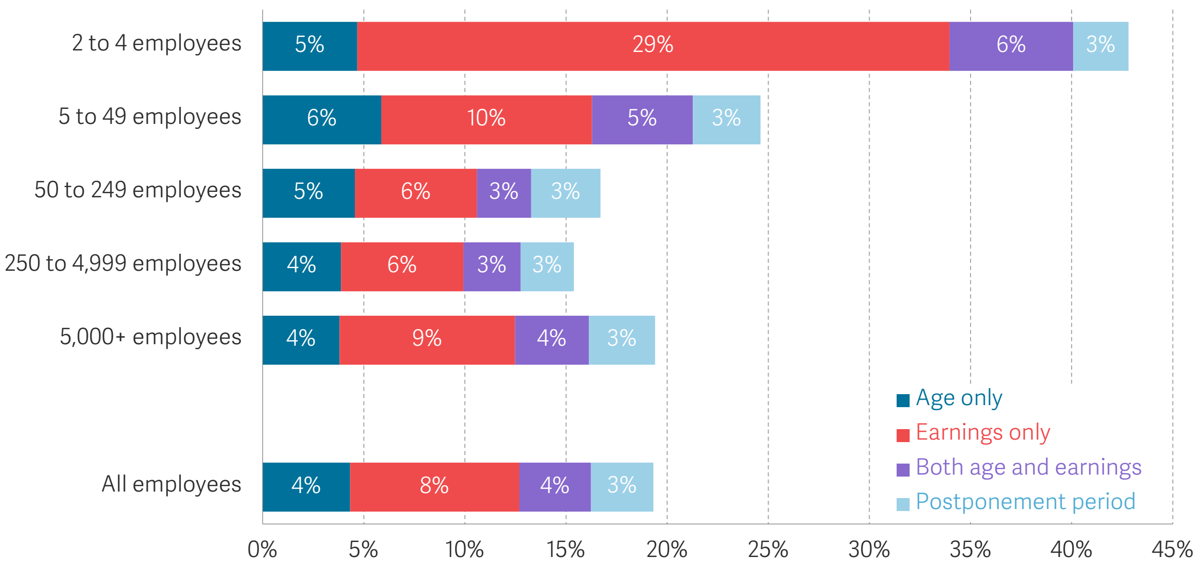
46 The People's Pension, What's an entitled worker?, accessed July 2020.
47 Source: RF analysis of ONS, Annual Survey of Hours and Earnings.

Strikingly, 24 per cent of women are ineligible for auto-enrolment, compared to just 15 per cent of men. As Figure 13 shows, this is primarily because women are much more likely to work part time.[48] Even if part-time working is only temporary, for example while a parent has young children, being deprived of pension contributions for years at a time can have an exponential impact on workers' pension pots and future living standards – and a policy that excludes almost a quarter of women by design is clearly a cause for concern.

As others have noted, carers (who are more likely to be women) are particularly vulnerable to being excluded from auto-enrolment.[49] Many carers can only work part-time, and will be included in Figure 13, while others may take time out of the labour force, during which time they will not be earning pension contributions at all. Experts have (rightly) proposed that the unpaid work done by carers should count towards a pension.[50]

FIGURE 14: **Small businesses disproportionately hire people who are not eligible to be auto-enrolled**

Proportion of employees not eligible for auto-enrolment, by employer size: Great Britain, 2019



NOTES: Includes employees' main jobs only. Excludes businesses with only one employee.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [05/08/20], 16th Edition, UK Data Service, SN: 6689.

Meanwhile, when it comes to firm size, ineligibility is most prevalent in the smallest businesses. As Figure 14 shows, 35 per cent of employees in micro-businesses (with

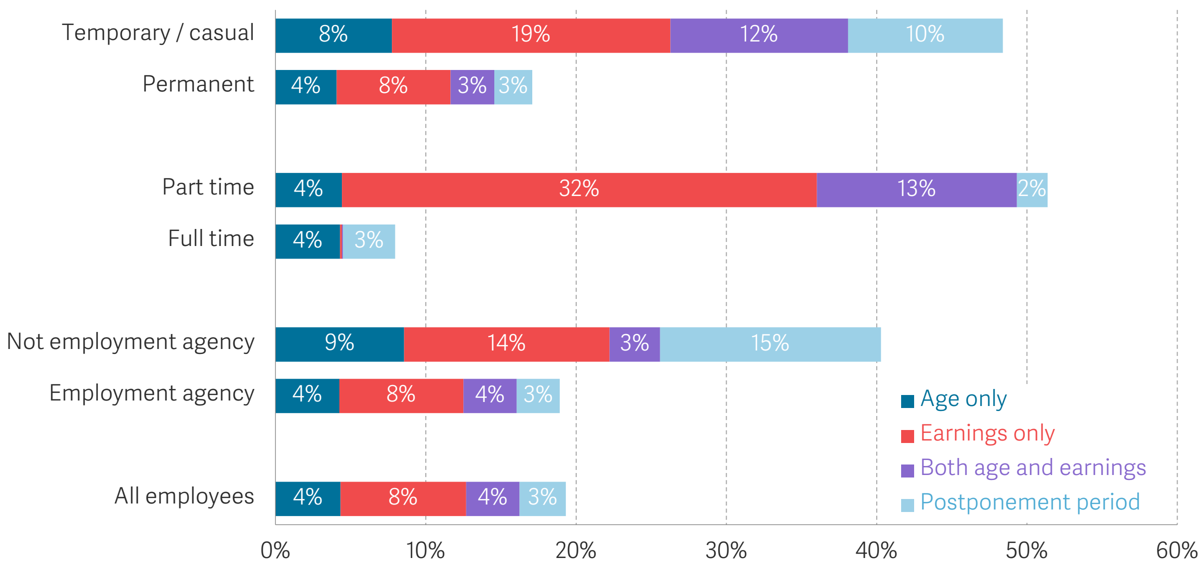
48 In Q4 2019, 39 per cent of female employees worked part time, compared to 11 per cent of male employees. Source: Office for National Statistics, Full-time, part-time and temporary workers (seasonally adjusted), March 2020.
49 See, for example: D Silcock, Automatic enrolment: A success worth building on, Pensions Policy Institute, March 2020.
50 For example, former member of the Pensions Commission Baroness Jeannie Drake, quoted in: NOW: Pensions, UK pension system short-changing women, claims research by NOW: Pensions and Pensions Policy Institute, March 2020.

four employees or fewer) will be ineligible for auto-enrolment – almost all of whom are ineligible because they earn less than the salary threshold. This is consistent with the fact that the smallest businesses employ the highest proportion of workers on low pay: 18 per cent of employees in businesses with 0-9 employees were paid at or below the minimum wage in 2018, compared to just 7 per cent of employees overall.[51]

Temporary and agency workers are much less likely than their permanent counterparts to be eligible for auto-enrolment – and with 1.9 million employees on a temporary contract and 480,000 employed through an agency, as counted by ASHE, this is no small issue.[52] As Figure 15 shows, almost half of temporary workers and two-fifths of agency workers are ineligible for auto-enrolment. These employees are much more likely than the average worker to be impacted by the requirement to have been in post for three months, which is particularly the case for agency workers. But they are more likely to be impacted by the earnings criteria, while temporary workers in particular are more likely to be excluded on the basis of age.

FIGURE 15: **Contingent workers lose out on auto-enrolment**

Proportion of employees not eligible for auto-enrolment, by type of job: Great Britain, 2019



NOTES: Includes employees' main jobs only. Excludes businesses with only one employee.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [05/08/20], 16th Edition, UK Data Service, SN: 6689.

51 N Cominetti, K Henehan & S Clarke, Low Pay Britain 2019, Resolution Foundation, May 2019.
52 Source: RF analysis of ONS, Annual Survey of Hours and Earnings. Excludes businesses with only one employee. Data covers Great Britain. Note that data constraints mean that ASHE can only pick up a subset of agency workers, and previous Resolution Foundation research gave a much higher estimate of 865,000 agency workers in the UK in 2016. See: L Judge & D Tomlinson, Secret agents: Agency workers in the new world of work, Resolution Foundation, December 2016.

Other forms of insecure work matter on the eligibility side too too. For example, the eligibility criteria have a particular impact on people with more than one job. Because the salary threshold is applied separately in each job someone has, someone with multiple jobs could remain below the £10,000 salary threshold in each individual job, despite earning more than £10,000 in all their jobs combined. Our analysis shows this is the case for 82,000 people with more than one employee job.[53] Finally, it's worth noting that the self-employed, including workers in the gig economy, miss out entirely from auto-enrolment. With research from the Pensions Policy Institute in 2018 finding that expanding auto-enrolment to gig workers could be worth up to £22,000 in employer contributions over a working life,[54] auto-enrolment policy compounds what many studies have shown to be a precarious and often very vulnerable employment status.[55] While most of this note has focused on enforcement, these eligibility issues are also important for auto-enrolment more widely – not least because any expansion of the eligibility criteria would bring more workers into TPR's remit.

Industries with large numbers of ineligible workers are more likely to failing to enrol their staff who are eligible

Figure 16 shows that there is a strong correlation between eligibility and enrolment at the industry level – the sectors that disproportionately employ people who are not eligible for auto-enrolment are also much more likely to fail to enrol the people who are eligible.[56] Most concerningly, the top-right quadrant shows that industries such as hotels and restaurants, arts and recreation, and administration and support services have high rates of non-eligibility coupled with above-average rates of non-enrolment. Employees in these sectors face a double disadvantage when it comes to their pension.

This finding has important implications for TPR. The eligibility criteria for auto-enrolment remain subject to review: in 2017, the Government stated its intention to remove the lower earnings limit for entitled workers and to change the lower age limit from 22 to 18.[57] As we have noted before, these changes are welcome, and would bring millions more people (particularly lower earners and those with multiple jobs) into scope of automatic enrolment.[58] But in such an event, a significant number of the new workers brought into the auto-enrolment fold are exactly of the type that our analysis suggests are at highest risk of not being enrolled by their employer, or being underpaid contributions. The compliance and enforcement challenge for TPR would increase dramatically as a result.

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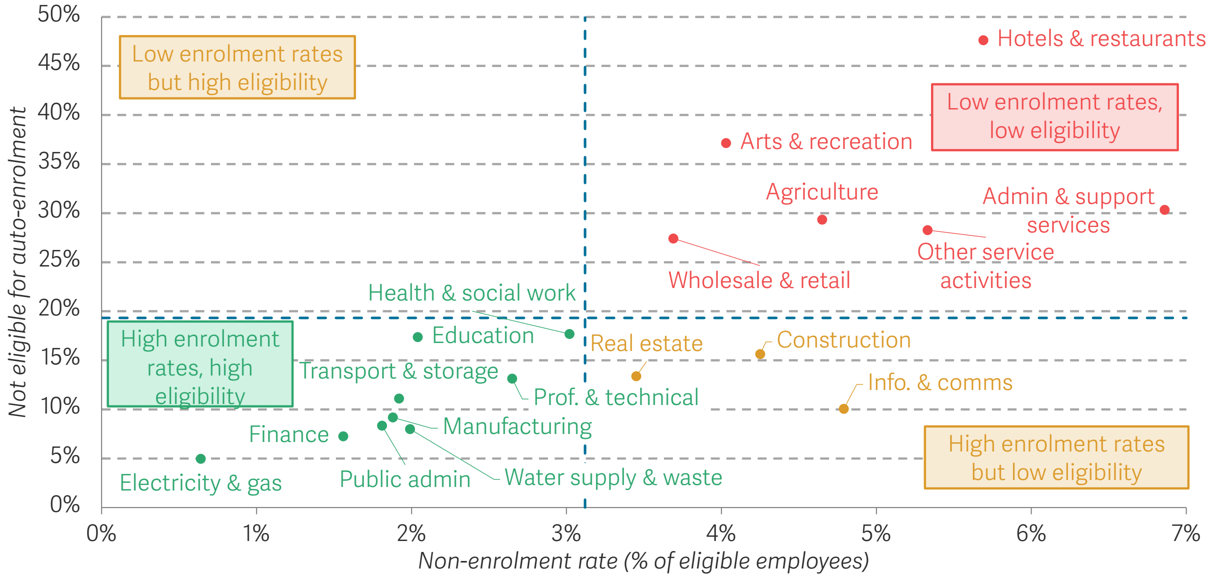
53 Excludes businesses with only one employee. Source: RF analysis of ONS, Annual Survey of Hours and Earnings.
54 J Adams, Automatic enrolment in the gig economy, Pensions Policy Institute, February 2018.
55 See, for example: D Tomlinson & A Corlett, A tough gig? The nature of self-employment in 21st century Britain and policy implications, Resolution Foundation, February 2017.
56 R-squared = 0.59.
57 Department for Work and Pensions, Automatic enrolment review 2017: Maintaining the momentum, December 2017.
58 D Willetts & L Gardiner, More ambition, less risk: Building on the success of auto-enrolment, Resolution Foundation, April 2020.

FIGURE 16: **Hotels and restaurants and other service activities are among the industries with the lowest rates of both enrolment and eligibility**

Proportion of employees not eligible for auto-enrolment, and proportion of eligible employees not enrolled, by industry: Great Britain, 2019



NOTES: Includes employees' main jobs only. Excludes businesses with only one employee.
SOURCE: RF analysis of Office for National Statistics, 2020, Annual Survey of Hours and Earnings, 1997-2019: Secure Access, [05/08/20], 16th Edition, UK Data Service, SN: 6689.

The time is right for a step-change on auto-enrolment enforcement

Auto-enrolment has undoubtedly been a policy success, increasing the number of people saving into a pension. Moreover, overall compliance is high, reflecting TPR's significant efforts to ensure firms understand their obligations. However, with roll-out now complete, a looser labour market increasing the risk of non-compliance and the likelihood of more marginal workers being brought into the remit of auto-enrolment in future years, the time is right to consider how compliance can be improved still further.[59] So how could current practice be improved?

To begin, **TPR could arguably undertake more proactive enforcement**, in line with the shift towards ongoing monitoring now that only new businesses are enrolling their workers for the first time. As we have shown, proactive investigations by TPR are relatively limited but as enforcement more widely is pushed to be more proactive, TPR should consider moving in the same direction.[60] Of course, this will come at a cost, but this cost can pay off as demonstrated by the increase in resource that allowed HMRC

59 R Moss, Matthew Taylor: Covid-19 increases temptation of non-compliance, Personnel Today, July 2020.
60 D Metcalf, United Kingdom Labour Market Enforcement Strategy 2018/19, Department for Business, Energy and Industrial Strategy, May 2018.

to increase its enforcement activity from 26,000 to 200,000 workers in just three years.[61] Moreover, to achieve the best value for money, this additional proactive enforcement should be targeted particularly at the employer types identified as highest risk.

Our analysis suggests two strategies in particular are worthy of consideration. First, we have shown there are clear areas of the labour market where non-compliance is most likely to be found. Non-compliance is most prevalent among small businesses, contingent and low-paid workers, and sectors such as hospitality and agriculture. Taking a similar approach to other enforcement bodies, which base at least part of their activity on risk models, **we recommend that the Pensions Regulator's ongoing enforcement activity focus on these high-risk areas in particular**.[62] Employers could clearly be given more guidance to navigate tricky areas such as volatile earnings and temporary staff, but greater scrutiny could also be directed at firms in our high-risk categories.

Second, given that similar groups are vulnerable to auto-enrolment non-compliance as are subject to other labour market violations, **the Pensions Regulator should prioritise collaboration with other enforcement bodies.** Automatic enrolment looks set to sit outside the scope of the new single enforcement body – but that should not deter join-up and data sharing between the different areas of enforcement.[63] HMRC already shares real time payroll data with TPR, allowing them to detect non-compliance. This data sharing should continue and be expanded to include employer contributions, which are currently not available to TPR. They should also coordinate enforcement activity itself: given that there is substantial crossover in the types of firms where labour market violations occur, businesses that are investigated for one labour market violation, such as minimum wage underpayment or agency worker rights, should be checked by the Pensions Regulator. There is precedent for this kind of collaborative working between other enforcement bodies, such as joint operations between HMRC's minimum wage unit, the Employment Agency Standards Inspectorate (EAS) and the Gangmasters and Labour Abuse Authority (GLAA).

Moreover, it is worth thinking about whether the time is right for **TPR to get tougher, quicker** with firms that are flouting the rules. As we have shown in the context of the minimum wage, there is little financial incentive for firms to comply with legal requirements in the absence of robust financial sanctions.[64] The regulator has been

61 Department for Business, Energy and Industrial Strategy, National Living Wage and National Minimum Wage: Government evidence on compliance and enforcement, 2018 to 2019, February 2020.

62 See, for example: Employment Agency Standards Inspectorate, Employment Agency Standards (EAS) Inspectorate: enforcement policy statement, June 2017; Department for Business, Energy & Industrial Strategy, National minimum wage: government evidence to the Low Pay Commission on compliance and enforcement, 2017, July 2017.

63 Early consultation documents for the Single Enforcement Body explicitly refer to collaboration with the Pensions Regulator. See: Department for Business, Energy & Industrial Strategy, Good work plan: Establishing a new single enforcement body for employment rights, July 2019.

64 L Judge & A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation, January 2020.

identified as one, if not the best performer when it comes to clarity of communications and guidance given to firms.[65] Given this, it is arguable that much of the non-compliance identified is deliberate rather than accidental, suggesting that firms should be taken to task more quickly than is currently the case.

Finally, while enforcement is the main focus of this paper, eligibility for automatic enrolment is just as important for ensuring that the policy benefits as many people as possible. Previous Resolution Foundation work has recommended extending auto-enrolment to lower earners, lowering the salary threshold to the equivalent of 15 hours a week on the National Living Wage – now equivalent to around £6,800 a year.[66] As others have noted, this would benefit people with multiple jobs in particular by making it more likely that they reach the eligibility criteria in any individual job.[67] We have also recommended bringing self-employed workers into a form of auto-enrolment (for example, by introducing default saving through the tax system) to ensure they too reap the benefits of auto-enrolment.[68] This briefing note has focused on employees, and so has not explored the impact on self-employed workers – but as noted above, research suggests that expanding auto-enrolment to gig workers, among the lowest-paid self-employed workers, could be worth up to £22,000 over a working life in employer contributions alone.[69] As the Chancellor considers equalising tax structures for the self-employed following unprecedented support during the coronavirus crisis,[70] he could usefully incorporate pension contributions into those reforms.

Conclusion

The Pensions Regulator has successfully overseen the rollout of a policy that has brought millions of people into a pension scheme, thereby guaranteeing them a better standard of living in retirement. But this briefing note has shown that while overall non-compliance is low, that which does exist is concentrated among particular areas of the labour market – low-paid and insecure workers, those in small businesses, and workers in industries like hospitality and agriculture. Now that the initial rollout of auto-enrolment is complete, the Pensions Regulator should target these areas in particular to build on its success to date. Increasing proactive enforcement supported by data sharing and collaboration, in particular with the new single enforcement body, will allow them to effectively target the areas of the labour market where non-compliance is most likely to arise. Alongside reforms to the eligibility criteria, this will ensure that auto-enrolment, which has already improved the living standards prospects for millions of employees, can benefit everyone.

65 D Metcalf, Labour Market Enforcement Strategy 2019 to 2020, July 2019.
66 Resolution Foundation, A New Generational Contract: The final report of the Intergenerational Commission, May 2018.
67 D Silcock, Automatic enrolment: A success worth building on, Pensions Policy Institute, April 2020.
68 Resolution Foundation, A New Generational Contract: The final report of the Intergenerational Commission, May 2018.
69 J Adams, Automatic enrolment in the gig economy, Pensions Policy Institute, February 2018.
70 HM Treasury, Chancellor's statement on coronavirus (COVID-19): 26 March 2020, March 2020.

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