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No shame, no gain?

The role of reputation in labour market enforcement

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Summary

The UK's labour market enforcement system is based on the premise that the vast majority of firms treat their workers lawfully – and that a key reason why businesses do so is because they are fearful of reputational damage. In this briefing note we use in-depth firm interviews, case studies and quantitative analysis to investigate the role that reputation plays in enforcing labour market rules. We seek answers to two important questions: first, how powerfully do reputational concerns determine firms' behaviour when it comes to worker rights? Second, could policy makers leverage firms' genuine, and sometimes growing, worries about their public profile more effectively in the cause of improving compliance with labour market rules?

Our analysis confirms that reputation is indeed an important reason why many businesses comply with labour market rules. The consensus view among our interviewees was that 'naming and shaming' non-compliant firms (a strategy that is most visibly deployed when firms are found to have underpaid the minimum wage) improves compliance as few want to be on "the naughty list". Likewise, there have been examples of substantial impacts of labour market violations on a company's value in recent years: for example, investigations into working conditions at Sports Direct and factories supplying the Boohoo Group caused the share price of each to plunge by 23 per cent and 42 per cent respectively in the immediate aftermath.

However, our analysis suggests that firms are not equally exposed to reputational pressure. Bigger businesses are more likely to get caught and be subject to negative publicity, but they also have the resources to manage a scandal and a brand that is often big enough to weather the storm. On the other hand, small businesses that violate labour market rights may be less likely to be identified (despite the evidence suggesting they are worse offenders than large firms), but, when unlawful practice is detected, the impact on the firm can be acute. Equally counterintuitively, customer-facing businesses do not appear especially vulnerable to a reputational hit in the event of a breach: consumers were seen as unlikely to find out about a violation in the first instance, and reluctant to change their behaviour in response if they did. Instead, our interviewees suggested it is fellow businesses that are far more likely both to discover if a trading partner was non-compliant, and to refuse to work with a supplier who was found to be treating their workers unlawfully.

It is also not a given that lasting reputational damage will follow when a business does break the rules. Our research suggests that a reputational hit can often be short-lived, with both the scale and the duration of any damage hinging on how the incident is managed. Stakeholders will largely forgive violations that are (depicted as) accidental, or those that a company is seen to be actively addressing. Indeed, to date, reputational

concerns have mainly been effective in changing firm behaviour when there has been a sustained campaign by the media or other outside organisations, and when powerful language is deployed (in the US, for example, what we call 'minimum wage underpayment' is frequently termed 'wage theft').

Of course, UK enforcement policy seeks to exploit firms' reputational concerns not just to punish recalcitrant firms but also to deter others from breaking the rules. We found, however, that knowledge of the minimum wage 'naming and shaming' scheme was slim (only one-in-five of our interviewees had heard of it, one of whom had experience of working in a business that had been on the list). When we formally test the deterrent effect of the scheme by combining 'naming and shaming' data at the sub-sector level (such as 'retail of food, beverage and tobacco products' or 'hotel accommodation') with data on rates of underpayment, we do find a statistically-significant reduction in non-compliance in an industry that has been named and shamed in the following year. But the magnitude of the impact on compliance is very small: if the chance that underpayment is featured on the naming and shaming list moves from the 25th to the 75th percentile across all sub-sectors, then that sub-sector will see only a 0.3 percentage point fall in the underpayment rate, all else equal.

Overall, then, our analysis suggests that reputation is a useful part of the labour market enforcement toolkit but there far more could be done to leverage it to real effect. The Government cannot leave publicising violations to journalists and campaign groups: instead, it should more proactively use its own social media channels, employ stronger language when discussing violations and ensure press releases are targeted at industry publications and local news outlets. In addition, policy could better exploit the fact that firms are more responsive to the reputation of other businesses that buy from and sell to them than are consumers: for example, brands could be made jointly responsible for breaches further down their supply chains (a policy previously espoused by the Director of Labour Market Enforcement). And critically, in order to eliminate any excuse of so-called 'accidental' underpayment, enforcement bodies should ensure that employers are clear on what is expected of them, including making regular training on labour rights mandatory for employers.

Using reputational concerns to discipline firm behaviour is an attractive labour market enforcement strategy for policy makers, partly because it comes at very little cost to the state, and partly because the Government has said it has little appetite for increasing the financial penalties imposed on businesses when they break labour market rules. But our interviewees made plain that the financial consequences that stem from detection act as a greater deterrent than reputational concerns. As a result, reputational tools must be seen as a complement to, rather than a substitute for, financial penalties levied when non-compliant behaviour is uncovered. Raising the fines imposed on firms that violate labour market rules, and increasing their chance of detection in the first place through more proactive inspections, remain critical policy levers in the UK's labour market enforcement regime.

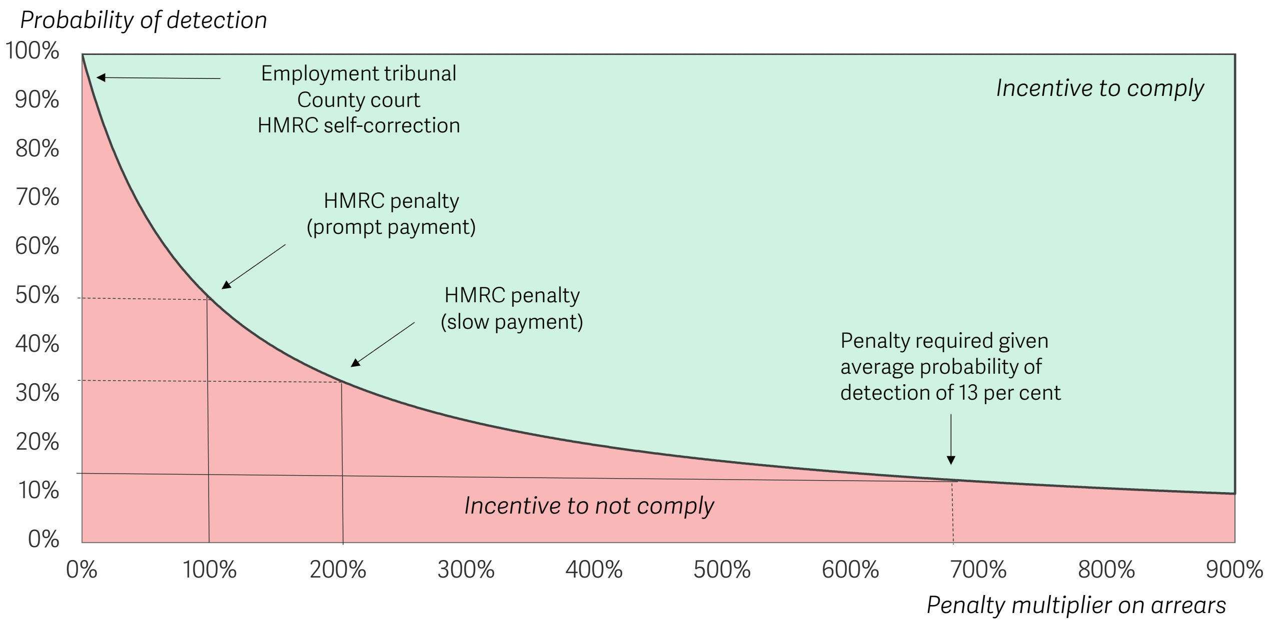
UK labour market enforcement relies heavily on the disciplinary effect of firms' reputational concerns

The UK's labour market enforcement system takes a largely risk-based approach, premised on the idea that the vast majority of firms treat their workers lawfully and that enforcement action must be highly targeted as well as proportionate.[1] Yet in the UK today, too many workers are not afforded the labour market rights they are owed.[2] Enforcement agencies do use financial penalties to deter firms from breaking the rules, but previous Resolution Foundation research shows that, from a purely financial point of view, the fines for minimum wage underpayment provide a very weak disincentive at best.[3] As Figure 1 shows, even the maximum HM Revenue and Customs (HMRC) penalty of 200 per cent of arrears only provides firms with an incentive to comply if their probability of detection is around one-third. (Our upper bound estimate of the likelihood of detection in 2019 was 13 per cent – requiring a fine of around 700 per cent of arrears to provide a meaningful deterrent.)

1 For further discussion of the provenance of the risk-based approach, see, for example: L Judge & H Slaughter, Failed safe? Enforcing workplace health and safety in the age of Covid-19, Resolution Foundation, November 2020.
2 See, for example: N Cominetti, C McCurdy & H Slaughter, Low Pay Britain 2021, Resolution Foundation, June 2021.
3 L Judge & A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation, January 2020.

FIGURE 1: **Relatively low fines for minimum wage underpayment, combined with a low likelihood of detection, mean that firms face little economic incentive to comply**

Required probability of detection, and magnitude of penalties required, to incentivise NMW compliance



NOTES: This chart first appeared in: L Judge & A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation, January 2020.
SOURCE: RF calculations based on information from Figure 7; Table 3 from Low Pay Commission, Noncompliance and enforcement of the National Minimum Wage, April 2019; Freedom of Information Request to HMRC, FOI2019/01761, August 2019.

However, firms potentially face other costs if they are caught violating labour market rights – a key one being reputational damage. As an intangible asset, reputation is inherently difficult to quantify. But it is clear that reputation is closely valued by businesses: 88 per cent of global companies, for example, treat managing reputation risk as a key business challenge,[4] while reputation matters more than ever for many smaller firms given the rise of the internet and online reviews.[5] Labour market rights may lag environmental concerns in many a firms' eyes[6], but employee treatment is still a big driver of reputation: businesses surveyed in 2020 felt that 'treating their employees well' was the most important factor that would improve the reputation of UK businesses (41 per cent of respondents cited employee treatment as important for a good reputation, more than any other category), while half (50 per cent) of respondents felt that 'poor

4 Deloitte, Global Survey on Reputation Risk, February 2015.
5 Federation of Small Businesses, What is reputation management?, February 2018.
6 See, for example: A Martin, M Sino & T Powdrill, Endowing labour: Using foundation sector capital to improve the rights of workers, PIRC, June 2021 which reviewed the investment policies of foundation sector investors (who are far more focused on corporate social responsibility than the average investor), and found that, while two-thirds of investment policies took a stance on environmental standards, less than a quarter (23 per cent) mentioned labour rights.

treatment of employees' was one of the most likely factors to impact negatively on a company's reputation.[7]

There are a number of potential ways in which a breach of labour market rules could cause reputational damage:

- Businesses that deal directly with the public could see a consumer backlash that damages their sales;
- Other businesses that act as clients or trade with non-compliant businesses in supply chains could refuse to work with firms with unlawful working practices;
- Rising investor concerns around environmental, social and corporate governance (ESG) could mean that investors are spooked by poor working practices; and,
- Firms may be concerned about the effect on their workforce of a breach becoming common knowledge, which could lead to lower morale and falling retention among current workers, or difficulties attracting potential workers.

Reputation damage, then, is potentially an effective mechanism disciplining firms' behaviour, and policy makers already make some use of firms' concerns about their reputation as part of the UK's enforcement strategy.[8] But just how powerful a determinant of firm behaviour is reputation when it comes to labour market rights? And could policy makers leverage firms' reputational concerns more effectively (a particularly pertinent question given the Government's reluctance to increase financial penalties)?[9] Exploring firm reputation is not without methodological challenge, but combining qualitative interviews with businesses (see Box 1), a number of case studies and quantitative analysis allows us to bottom out some hard answers to these two important questions.

BOX 1: **Our approach to firm interviews**

We undertook in-depth interviews with 15 businesses during August and September 2021 in order to understand how businesses think about the link between labour market violations and reputation. The individuals we spoke to had responsibility for the reputation of the business and corporate risk, and their roles ranged from being the owners of a small business to being

7 Confederation of British Industry, Everyone's Business Reputation Tracker 2020, December 2020. See also, D Metcalf, Labour Market Enforcement Strategy 2018 to 2019, May 2018 which states 'During our consultation I was told repeatedly by stakeholders that companies fear for their public reputation'.

8 For further discussion, see: D Metcalf, Labour Market Enforcement Strategy 2018 to 2019, May 2018.

9 For example, see: Department for Business, Energy & Industrial Strategy et al., UK Labour Market Enforcement Strategy 2018 to 2019: Government response, December 2018.

an operational or brand manager in a multi-national corporation. Participants came from businesses across the UK. Five of our interviewees worked in large businesses (250+ employees), with the rest from businesses with 1-249 employees, and we had a mixture of firms selling directly to the public and those working with other businesses.

We focused on three sectors: cleaning, clothing, and construction. We chose these sectors because we wanted to look at relatively low-paying sectors where evidence indicates labour market violations are prevalent,[10] but avoid those that had been particularly hard-hit by the pandemic (such as hospitality and leisure), those with complex funding drivers (such as childcare and social care), and those where the business profile is relatively homogenous (such as hair and beauty, where businesses are overwhelmingly small and localised). We were particularly interested in the clothing sector because of the recent high-profile violations at factories supplying the Boohoo Group (discussed further in Box 2); in construction, because this ensured our discussions extended beyond financial violations (such as minimum wage underpayment and non-provision of holiday pay) to capturing violations such as health and safety; and in cleaning, because this is a largely hidden and highly feminised industry, where recent research has highlighted a high incidence of labour market violations and unsafe working conditions.[11]

Each semi-structured interview was one hour long. As well as asking participants to reflect on their own experience with compliance and enforcement, we also asked them to reflect on behaviour in their wider industry. And to get the most honest view possible of firms' perspectives on compliance (minimising, for example, social desirability bias), we discussed a number of hypothetical scenarios, such as the consequences for a firm similar to theirs that breached labour market rules or that appeared on the minimum wage 'naming and shaming' list. Participants received a small incentive payment, and recruitment was handled by Acumen.

Reputational concerns are an important driver of compliance – but only when they hit the bottom line

Our interviews showed that, for the majority of participants, the fear of reputation damage was an important reason why their business complied with labour market rules. Interviewees told us that non-compliance would not be worth the resulting public

10 See, for example, Figure 3.5 of: Low Pay Commission, Low Pay Commission Report 2019, January 2020.
11 Focus on Labour Exploitation, "If I Could Change Anything About My Work…" Participatory Research With Cleaners In The UK, January 2021.

backlash, and that businesses would be "crazy not to" comply given the reputational risks. Reputational risks were seen to exist for both wage-related violations, such as minimum wage underpayment, and breaches that put workers' health and safety at risk. But reputational risks around health and safety were felt to be particularly high in the construction sector, where accidents could result in serious injury or even loss of life.

Crucially, however, most felt that reputational concerns only had a bearing on business practice if there was a risk of hurting the firm's profits, such as the risk of losing business if clients found out. Of course, very few employers are purely profit-driven: interviewees pointed out that, in the vast majority of cases, firms do not set out to treat their workers badly, and firms in the construction sector understandably view serious injury or loss of life as very severe consequences in their own right.[12] But, by and large, interviewees viewed financial motivations as the primary concern for businesses, rather than an intrinsic wish to comply with the law or do the right thing. Other important drivers of compliance were also seen to be largely financial. Interviewees told us that businesses were particularly concerned about fines, court cases (especially where the business could be shut down), and prohibition orders that require them to pause operations temporarily while investigations take place.

> *"This is going to sound really bad, but it's always going to go back to the money."*
>
> *Large construction business*

> *"[A scandal] would hurt the brand, and that … is money in the tills. However it comes to you, whether it's money in the front door or you're being fined from the back door, money always talks with these kind of companies, doesn't it? … Yes, it hurts the brand, but that in turn then hurts the company financially."*
>
> *Large clothing business*

Similarly, reasons for non-compliance were mostly seen to come down to cost: participants felt that non-compliant businesses were motivated by maximising profit (especially in sectors competing with cheap labour from abroad), keeping costs down to win contracts, or cutting corners to keep jobs or projects to time. Studies endorse this view, suggesting that, in some sectors, reputation only has a marginal impact on firms' behaviour because so many other features of the business model act to push down labour standards.[13]

12 See also, for example: T Hardy & J Howe, Creating Ripples, Making Waves? Assessing the General Deterrence Effects on Enforcement Activities of the Fair Work Ombudsman, Sydney Law Review 39(4), March 2018, which notes that motivations of compliance include 'general agreement with the legitimacy of the regulatory framework, as well as perceived social pressures, shame and guilt'.

13 J Reinecke et al., Business models & labour standards: Making the connection, Ethical Trading Initiative, March 2019.

> *"Sometimes corners are skipped, purely because we set out a programme from the get-go, from start date to completion date. If we don't hit that, that means we're essentially losing money."*
>
> *Large construction business*

Large businesses are more likely to get caught, but are better equipped to deal with a reputational hit

One key issue our interviewees highlighted was the differential impact of labour market violations on a business given its size. Interviewees were broadly of the view that larger businesses are more likely to get found out if they do break the rules (a view that chimes with the Government's approach to targeting enforcement activity[14]) – and, if they do get caught, larger businesses tend to be treated more harshly by the media when a breach arises (for example, well-known names on the minimum wage 'naming and shaming' list tend to be more likely to be picked up by the national press).

> *"Bigger businesses are penalised quite a lot, and they're always picked through with a fine-toothed comb by the local government or outside agencies, so it's a lot harder for them to ... get away with that kind of stuff."*
>
> *Medium-sized cleaning business*

That said, many interviewees also felt that big companies who are caught are better able to weather the storm. There were two broad reasons. First, big companies are more likely to have resources available to help them manage a crisis, or allow then to employ someone to help restore the brand's image.[15] Second, and contrary to received wisdom, they can be protected to some extent by their established brand: for example, media reports about John Lewis underpaying their staff was not seen to have affected customers' choices to shop there, perhaps because customers already had a deep-seated view of John Lewis as a fundamentally ethical business.[16]

> *"I think sometimes, size wins out. So, I don't think John Lewis had any impact from being on [the minimum wage 'naming and shaming'] list at all. ... I think the name, the standing, counts for more than being on the list, probably, for certain companies."*
>
> *Medium-sized cleaning business*

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14 See, for example: L Brown, Larger businesses are too often targets of enforcement, says government tsar, People Management, March 2019.

15 For example, when former employees accused the brewery and pub chain BrewDog of having a toxic workplace culture, the company appointed an external consultancy to review its working practices, as well as promising pay rises and reviewing internal policies. See: A Key, BrewDog gives staff a pay rise and pledges 100 new hires in response to 'rotten' culture claims, The i, July 2021.

16 See, for example, D Metcalf, Labour Market Enforcement Strategy 2018 to 2019, May 2018 which states 'This means of enforcement (reputational penalties) should have a strong deterrent effect, at least for those employers with a high public profile'.

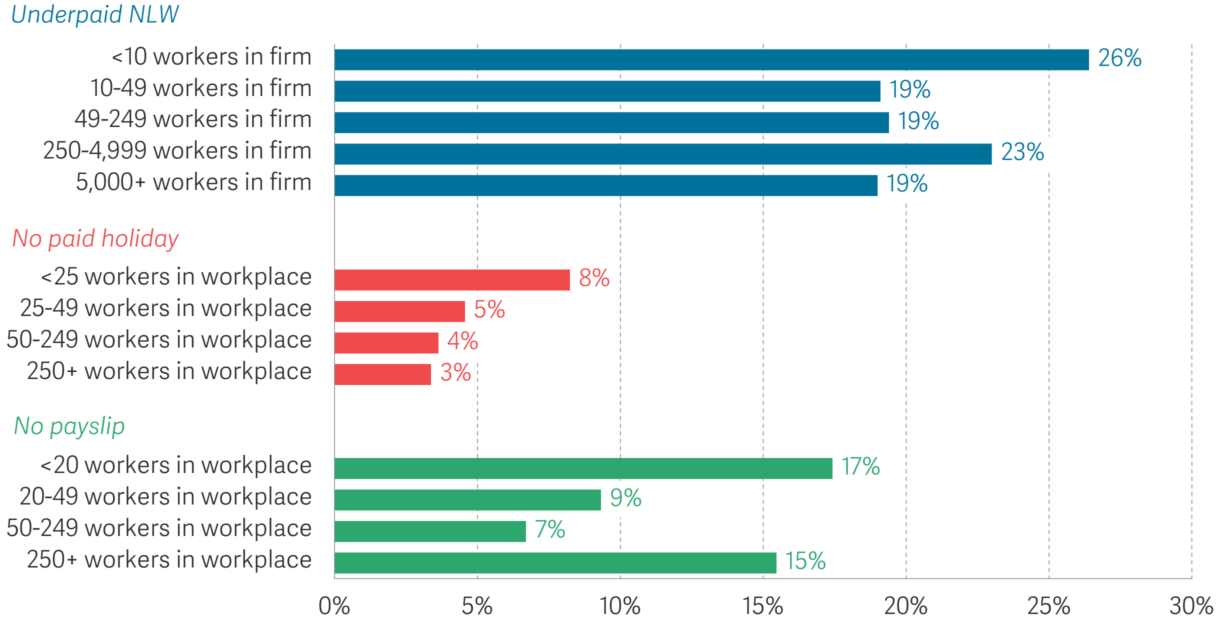
Our interviewees thought that small businesses, on the other hand, were less likely to get found out if they did break the rules – despite the fact that, as Figure 2 shows, workers in very small businesses are more likely to experience a range of labour market violations, such as being underpaid the minimum wage, receiving no paid holiday, and not receiving a payslip. In addition, some interviewees were concerned that, when small businesses do get found to be breaking labour market rules, they can close down and reopen under a new name (known as 'phoenixing'). But if a small business is found to be non-compliant, the repercussions can be huge: many of the smaller businesses we spoke to, particularly those that operated within a relatively small local area, told us that they risked losing almost all their business if their clients found out that they were not complying with labour market rules.

> *"Reputation is everything, really. I mean, for me, most of my clients still come through word of mouth."*
>
> *Small construction business*

> *"If you think about it, anyone can set up a cleaning company. The only reason why we're still here is because we stay behind the reputation."*
>
> *Small cleaning business*

FIGURE 2: **Workers in the smallest businesses are most likely to suffer labour market violations**

Proportion of workers paid below the National Living Wage (NLW) (as a proportion of workers aged 25+ 'covered' by the NLW), reporting zero paid holiday entitlement, and reporting not being in receipt of a payslip, by size of employer: UK, 2016-2018



NOTES: 'Covered' defined as paid less than the NLW plus 5p. 'Underpaid NLW bars use ASHE data and cover April 2018. 'No paid holiday' bars use LFS data and cover calendar years 2016-2018. 'No payslip' bars use FRS data and cover financial years 2016-17 and 2017-18. For further details, see: N Cominetti & L Judge, From rights to reality: Enforcing labour market laws in the UK, Resolution Foundation, September 2019.
SOURCE: Low Pay Commission analysis using ONS, Annual Survey of Hours and Earnings (see Figure 5 of: Low Pay Commission, Non-compliance and enforcement of the National Minimum Wage, April 2019); RF analysis of ONS, Labour Force Survey; RF analysis of DWP, Family Resources Survey.

Firms are far more concerned about other businesses' reactions to a labour market breach than consumer backlash

It might seem intuitive that customer-facing businesses would be more vulnerable to reputational hits than the firms that supply them: they and their brand are the face of the end product. In fact, most interviewees felt that firms selling directly to the public had little to worry about in terms of customer backlash. First, consumers were felt to be unlikely to find out about a labour market breach, even if the information is publicly available (with some exceptions: one interviewee suggested that clients hiring a cleaner for their house are likely to Google the business they hire, for example). Second, consumers were viewed to be unlikely (in most cases) to stop buying a non-compliant firm's products even if they did find out about a breach. Although some consumers are becoming more conscious of social responsibility,[17] the majority are more concerned

17 Interviewees in the clothing sector told us that younger generations in particular are increasingly concerned about environmental and social responsibility, which could help to drive up industry standards in the longer term. See also, for example: D Wightman-Stone, Gen Z consumer inspired by sustainability and self-expression, Fashion United, June 2021.

about cost: their desire for cheap clothing or getting their house cleaned at a low price wins out over ethical concerns.

> *"For the end users, such as you and me, well, we're a glutton for this cheap fashion. … I think most people think, 'Well, I don't care, I want my top at £10 rather than £20.'"*
>
> *Medium-sized clothing business*

In contrast, interviewees thought that the reaction of other businesses in a firms' supply chain was much more of a concern. Not only were other businesses thought to be much more likely than consumers to find out about a breach, due to being more likely to undertake background checks, but they were also thought to be more likely to stop trading with a non-compliant business. Interestingly, interviewees felt that this was due to those other businesses' concerns about their own reputation – they would not want to be seen as guilty by association with a non-compliant supplier or trading partner. This suggests that, by and large, firms primarily trading with other businesses have a greater incentive from a reputational standpoint to comply with labour market rules.

> *"[If] you're not dealing with the public, you're dealing with businesses, … they have people that are paid to make sure that everyone in their supply chain is doing the right thing. And if they're not then they get kicked out at the first stage of the tender or lose an existing contract. You know, no one wants to be associated with that, because the knock-on effect is massive."*
>
> *Medium-sized cleaning business*

This means that big players in an industry can have a lot of influence. Interviewees in the clothing sector told us that ASOS was driving up standards by requiring all of a brand's factories to be independently audited as a requirement to be stocked on their website.[18] Similarly, big developers in the construction sector often have strict conditions for their contractors to meet, often going beyond compliance (such as requiring Living Wage accreditation). In both cases, suppliers have an incentive to comply with the rules: they will lose out on custom if they do not.

> *"[ASOS] are seen to be doing their own ethical kind of roadmap as well, and if we're not aligning with the direction that they're going in, they won't even hesitate, they will just cut you off."*
>
> *Medium-sized clothing business*

18 D Wightman-Stone, Asos calls on brands to make ethical manufacturing pledges, Fashion United, August 2020.

> *"If you're [a big developer], you're not going to want a story of your contractors employing people and paying them … under the minimum wage."*
>
> *Small construction business*

On the other hand, businesses don't always care about the behaviour of other businesses in their supply chain, particularly if they are unscrupulous themselves. One interviewee suggested that non-compliant businesses would match to clients with similarly lax views around compliance, while another felt that big brands in the clothing sector would be likely to turn a blind eye to working conditions in their supply chain in exchange for the cheap, quick-turnaround products that are the norm in fast fashion. The recent example of garment factories supplying Boohoo, who were able to continue underpaying their workers and providing unsafe working conditions despite their end client being aware of these failings, speaks to the complexity of the response of different businesses through the supply chain (see Box 2 for further details).

> *"Some companies don't actually care all that much. As long as you do them a good service and you're cheap, they would overlook, you know, dodgy dealings that you may have done in the past. … They've possibly got similar issues where they do sail close to the wind perhaps, so work with people that work like they do."*
>
> *Small cleaning business*

> *"The big organisations would probably turn a blind eye to it, because they're getting their garments made at the right price. So they just say, 'We're outsourcing this work, it's not our responsibility to pay their staff the correct amount.' They're one step away from the fire, so to speak."*
>
> *Medium-sized clothing business*

BOX 2: **Working conditions in garment supply chains**

One of the most high-profile cases of labour market violations in the UK in recent years concerned reports in July 2020 of minimum wage underpayment and unsafe working conditions in factories linked to the fast-fashion company Boohoo.[19] Earlier research from the University of Leicester in 2015 and reporting by the Financial Times in 2018 identified widespread issues in

19 V Matety, Boohoo's sweatshop suppliers: 'They only exploit us. They make huge profits and pay us peanuts', The Sunday Times, July 2020.

the garment industry in Leicester.[20] But it was not until 2020 that formal action was taken and a review was conducted by Alison Levitt QC, which not only confirmed the unacceptable working conditions in the factories but also found that senior Boohoo directors had been aware of issues but did not see it as a priority for them to address, doing 'too little, too late'.[21]

Even after such a high-profile and severe case of labour market violations, it is not clear that Boohoo has suffered much of a financial penalty through the bad publicity. Multi-brand sites, such as ASOS and Zalando, stopped stocking Boohoo products, and issued press releases to publicly declare they were no longer affiliated with the brand.[22] But any resulting slowdown in sales was dwarfed by wider pandemic shifts towards online shopping: Boohoo actually saw a 41 per cent rise in their sales over the year ending in February 2021.[23]

The experience has, however, prompted Boohoo to improve compliance. From hiring senior figures with responsibility for ethical compliance, responsible sourcing and sustainability to auditing factories and publishing lists of approved suppliers, the Boohoo group has been eager to demonstrate publicly that it is taking compliance seriously.[24] This resonated with the perspectives of our interviewees in the clothing sector, who said that the reputational consequences of the scandal led Boohoo to improve compliance throughout its supply chain – and, crucially, to be seen to do so. And, according to our interviewees, the Boohoo case is improving standards in the wider industry – albeit slowly.

> *"I think a lot of people were kind of scared of what happened to Boohoo because they were such a massive business, and … the effect that the scandal had on them was huge. … If it can happen to Boohoo, it can happen to anybody."*
>
> *Medium-sized clothing business*

It remains to be seen, however, whether these changes have a lasting impact on labour standards. Interviewees in the clothing sector told us that Boohoo is not trying to regain custom from the sort of multi-brand sites that dropped the company when the scandal broke: instead, it is focusing on

20 N Hammer & R Plugor, A New Industry on a Skewed Playing Field: Supply Chain Relations and Working Conditions in UK Garment Manufacturing, University of Leicester Centre for Sustainable Work and Employment Futures, February 2015; S O'Connor, Dark factories: Labour exploitation in Britain's garment industry, Financial Times, May 2018.
21 A Levitt, Independent review into the Boohoo Group PLC's Leicester supply chain, September 2020.
22 BBC News, Boohoo dropped by Next, Asos and Zalando over exploitation claims, July 2020.
23 A Armstrong, Boohoo crying all the way to the bank as sales surge by 41%, The Times, May 2021.
24 Boohoo Group Plc, A4C Roadmap, May 2021.

sales through its own platform where it is subject to less scrutiny. And it is worth remembering that the Boohoo scandal was a very extreme case of non-compliance: there is no guarantee that other violations will have a similar impact.

When reputational damage does occur, it is often fleeting

Labour market violations, then, can have a meaningful impact on the reputation of a firm in the eyes of some stakeholders. But even where an incident does cause damage, interviewees suggested that it is often short-lived. Again, there are some differences between different constituencies. Firms selling directly to consumers tended to be more sceptical that there would be any enduring impact than those trading with other businesses. Interviewees told us that consumers moved on quickly from news of relatively minor violations. Even in serious cases – such as the 2013 collapse of a factory in Bangladesh making clothes for brands like Primark, where workers had been forced to come into work despite safety concerns – interviewees suggested that customers do not change their behaviour in the long run despite ongoing awareness.[25]

> *"The sad fact is, people kind of forget. If they're offering, you know, a cheaper service ... they tend to go back. People forget easily."*
>
> *Large cleaning business*

> *"With Primark ... the Rana Plaza thing ... they still have that stigma attached, but it's not really affecting them still."*
>
> *Large clothing business*

A non-compliant firm's reputation among other businesses might take longer to rebuild, though. Interviewees working primarily with other businesses tended to describe a more-enduring reputational hit, such as being permanently struck off clients' books, although this appeared to depend on the scale of the incident. But interviewees pointed out that this was mainly relevant to existing clients, and that a non-compliant firm could rebuild its client base with businesses that do not know its history. And, of course, there will always be some clients who are willing to trade off labour standards for a lower price.

25 See: International Labour Organization, The Rana Plaza Accident and its aftermath, accessed October 2021. That is not to say, however, that consumers cannot drive long-run improvements. There are clearly some cases where consumer pressure has led to companies making changes that drive up standards, such as the consumer boycott of Nike in the 1990s. See, for example: M Nisen, How Nike Solved Its Sweatshop Problem, Business Insider, May 2013.

> *"Using us as an example – in our local area, if a scandal happened, I think we would lose a lot of business. But then if occupants of buildings and tenants and things changed, then it gives us the chance to sort of go again and make new contacts that aren't party to the word-of-mouth grapevine that went before."*
>
> *Small cleaning business*

Furthermore, both the scale and the duration of any reputational impact largely hinge on how an incident is managed. The majority of interviewees (mostly unprompted) told us that if a violation was seen to be accidental, and if the firm was seen to be transparent about the 'mistake' and rectified the situation, then most stakeholders would be forgiving. In the case of health and safety, a distinction was drawn between true accidents (where an accident was out of anyone's control) and cases of non-compliance where the right protections were not in place. Even when it came to minimum wage underpayment, interviewees felt that customers would not penalise a business that was open about the breach and was seen to be taking steps to fix it. This has important implications for policy given that many businesses whose minimum wage violations are made public claim to have made an honest mistake (see Box 3 for a discussion of this).

> *"I think things happen, don't they, and it's about how you deal with them that is important really. Mistakes happen and things can happen, it's human error. But it's the way that we deal with it as a brand and a company that really makes the difference, I think."*
>
> *Large clothing business*

BOX 3: **The line between deliberate and accidental non-compliance is often blurred**

It may seem odd to hear businesses describe labour market violations – which, after all, have a very real impact on workers' pay or working conditions – as mistakes. But the distinction between accidental non-compliance and deliberate abuse of labour market rights is not always clear-cut. Some interviewees, for example, mentioned a disconnect between people in positions of responsibility and the places where the non-compliance was actually happening: in the clothing sector in particular, participants told us that factory owners are not always aware of what is going on in the factories they oversee.

> *"With factory owners, more than anything, there's a lack of education there. They think things are OK and actually it takes a second pair of eyes to go in and be like 'OK, this isn't'."*
>
> *Medium-sized clothing business*

In the case of minimum wage underpayment, claims of accidental non-compliance go further, with underpaying businesses regularly saying that they did not understand what was expected of them. For example, John Lewis, who were at the top of the minimum wage underpayment 'naming and shaming list' in August this year, said that they did so because they mistakenly deducted uniform costs from workers' wages.[26] More broadly, the vast majority of underpayment happens for reasons that an employer could plausibly present as accidental. In August 2021, almost half (47 per cent) of named and shamed employers wrongly deducted pay from workers' wages, including for uniform and expenses; three-in-ten (30 per cent) failed to pay workers for all the time they had worked, such as when they worked overtime; and one-in-five (19 per cent) paid the incorrect apprenticeship rate.[27]

The Government currently draws no distinction between so-called accidental non-compliance and deliberate underpayment, sanctioning employers identically in both cases.[28] This seems sensible: employers, especially large ones, should be well aware of their responsibilities, and negligence is no excuse for underpaying workers. But there is a role for enforcement agencies here, too. HMRC and the Department for Business, Energy & Industrial Strategy (BEIS) already make efforts to educate businesses on their responsibilities, including providing guidance, webinars, and campaigns signposting employers to further information.[29] But they could learn from other enforcement agencies when it comes to ensuring that employers know what is expected of them. The Pensions Regulator, for example, is viewed as one of the best performers when it comes to clear communications and guidance to firms; as a result, non-compliance is very low, and it is broadly assumed that the majority which does occur is deliberate rather than accidental.[30]

26 J Ambrose, John Lewis named in government list of firms that paid below minimum wage, The Guardian, August 2021.
27 Department for Business, Energy & Industrial Strategy, Employers 'named and shamed' for paying less than minimum wage, August 2021.
28 Department for Business, Energy & Industrial Strategy & HM Revenue & Customs, National minimum wage law: enforcement, October 2020.
29 Department for Business, Energy & Industrial Strategy & HM Revenue & Customs, National minimum wage law: enforcement, October 2020.
30 H Slaughter, Enrol up! The case for strengthening auto-enrolment enforcement, Resolution Foundation, August 2020.

A concerted effort is needed to leverage reputational concerns

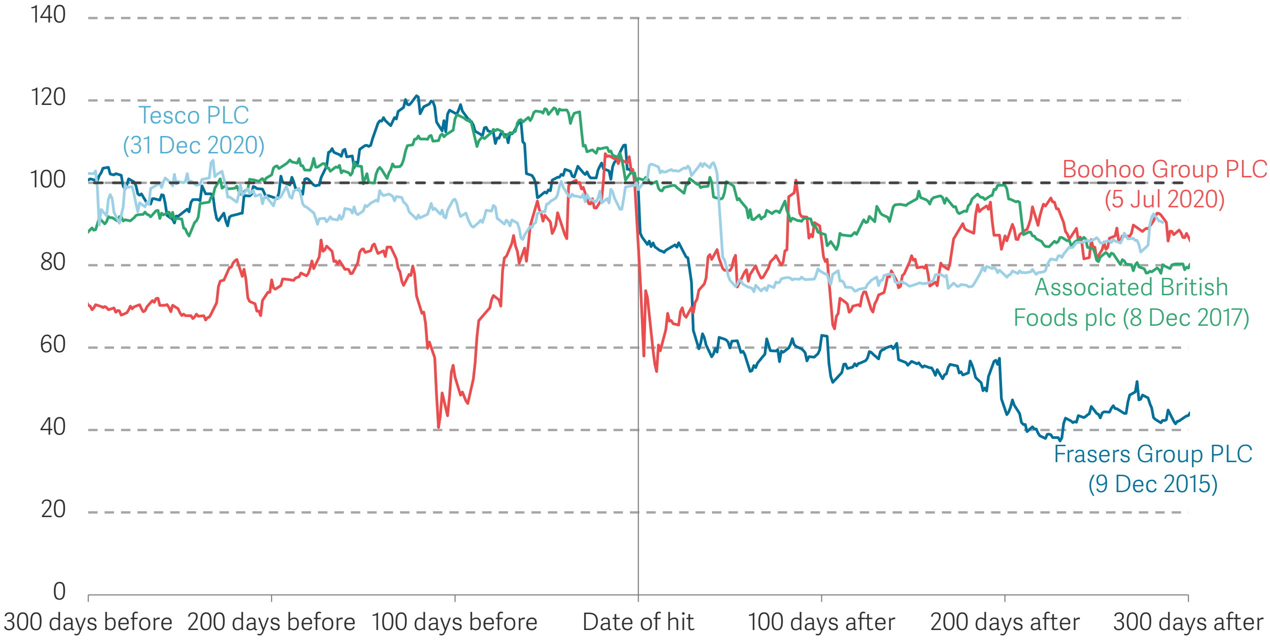
A breach alone is not enough for a company's reputation to be damaged or for there to be any meaningful deterrent. For reputational concerns to have a real impact on businesses who are tempted to break labour market rules, the breach must be effectively publicised. As well as punishing the non-compliant business itself, this can have spill-over effects by boosting compliance among similar businesses: in the US, researchers have found that publicising health and safety breaches by issuing a press release has a deterrent effect on firms in the same sector and local area.[31]

Even if a breach is made public, however, a tangible hit to business does not always follow. Figure 3 suggests that in some cases, a labour rights scandal has the potential to cause huge damage to a firm's bottom line (at least in the first instance). Following an undercover investigation by the Guardian revealing minimum wage underpayment at Sports Direct, the share price of its owner, Frasers Group PLC, plunged by close to a quarter (23 per cent); similarly, after the Sunday Times investigation into factories supplying Boohoo Group, the company's share price fell by more than two-fifths (42 per cent).[32] But Figure 3 also suggests that publicised labour market abuses sometimes have little effect of the value of a firm. Both Primark (owned by Associated British Foods PLC) and Tesco have been 'named and shamed' by the Government for underpaying the minimum wage, for example, but these breaches do not appear to have had an impact on their share prices. Associated British Foods' share price stayed relatively stable before continuing on its previous downwards trend, and that of Tesco only fell a month and a half after its naming for unrelated reasons.[33]

31 M Johnson, Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws, American Economic Review 110(6), June 2020.
32 S Goodley & J Ashby, Revealed: how Sports Direct effectively pays below minimum wage, The Guardian, December 2015; V Matety, Boohoo's sweatshop suppliers: 'They only exploit us. They make huge profits and pay us peanuts', The Sunday Times, July 2020.
33 This fall was linked to the sale of Tesco's operations in Thailand and Malaysia and subsequent share consolidation, and so had nothing to do with being named and shamed. See: Tesco PLC, Tesco PLC Annual Report and Financial Statements 2021, May 2021.

FIGURE 3: **Even when publicised, the bottom-line impact of a reputational hit varies widely**

Index of selected companies' share prices (day before reputational hit = 100), by number of days before and after a reputational hit: UK



NOTES: The reputational hits referred to are as follows. Sports Direct (owned by Frasers Group PLC) was subject to a report in the Guardian that it was underpaying their workers on 9 December 2015. Primark (owned by Associated British Foods plc) was named and shamed for minimum wage underpayment on 8 December 2017. Boohoo Group PLC was subject to a report in the Sunday Times that it was underpaying their workers and subjecting them to unsafe working conditions on 5 July 2020. Tesco PLC was named and shamed for minimum wage underpayment on 31 December 2020.
SOURCE: RF analysis of Google Finance.

Echoing what our interviewers told us in the previous section about the fleeting nature of reputational damage, though, even a severe scandal is no guarantee of a sustained impact. While the share price of Frasers Group did not recover within the time frame shown on the chart – possibly linked to ongoing investigations over the following year, including by the Business, Innovation and Skills Committee[34] – the share price of Boohoo Group recovered quickly, bolstered by pandemic sales as well as reassurances to investors that they were addressing the issues.[35]

Some of this will come down to a wide variation in shareholders' priorities, both in terms of finding out about violations and in how they respond. But there are two further factors that may have contributed to the Sports Direct and Boohoo scandals having a much greater impact (at least in the short run) than Figure 3's naming and shaming examples. Firstly, both the Boohoo and Sports Direct cases benefited from a sustained media campaign, keeping the labour market violations at the forefront of the public's minds. More broadly, many of the most successful cases of stakeholder action in response to

34 UK Parliament, Mike Ashley must be accountable for Sports Direct working practices, July 2016.
35 S Butler, Boohoo shares bounce back after pledge to improve factory conditions, The Guardian, July 2020.

a public violation have been driven by outside campaigners. A recent example comes from the initial public offering (IPO) of gig economy company Deliveroo earlier this year which was described as the 'worst IPO in London's history'.[36] This was in part because big investors said their 'treatment of couriers doesn't align with responsible investing practices',[37] following health and safety concerns during the Covid-19 pandemic and reports of workers paid well below minimum wage.[38] But this shareholder activism did not come out of nowhere: organisations such as ShareAction and the Independent Workers' Union of Great Britain (IWGB) had produced investor briefings, convened shareholder meetings, and coordinated strike action among Deliveroo riders.[39]

Secondly, the language around the cases was very different. In the Boohoo case in particular, terms like 'modern slavery' were attached to the scandal,[40] while media reports around conditions at Sports Direct presented vivid examples of Sports Direct workers being harshly disciplined for perceived misdemeanours such as 'excessive chatting' and 'long toilet breaks'.[41] It is also interesting to note that in the US, for example, minimum wage underpayment is referred to as 'wage theft', a term with much stronger connotations of unacceptable behaviour and violation of workers' rights than the term 'underpayment' employed in the UK.

But reputational levers depend on non-compliance being detected in the first place

No matter how much a company's image may be damaged by a public breach in labour market rules, reputation cannot discipline firm behaviour if violations are not caught in the first place. Here, interviewees were pessimistic, with more than half telling us that it was unlikely that a non-compliant business would get caught. The main reason for this was a perception that inspections are usually few and far between – with a notable exception for a business in Northern Ireland, who said that the local authority was very proactive in health and safety inspections. Indeed, the UK falls well short of the International Labour Office's benchmark of one labour market inspector per 10,000 workers, suggesting that policy makers would do well to increase the resource dedicated to proactive enforcement.[42]

36 T Bradshaw & A Mooney, Disaster strikes as Deliveroo becomes 'worst IPO in London's history', Financial Times, March 2021.
37 S Gopinath, Deliveroo Sinks 31% in Setback to London Effort to Lure IPOs, Bloomberg, March 2021.
38 E Mellino, C Boutaud & G Davies, Deliveroo riders can earn as little as £2 an hour during shifts, as boss stands to make £500m, The Bureau of Investigative Journalism, March 2021; Independent Workers' Union of Great Britain, Around 50 cross-party MPs demand Deliveroo protect income and safety of its riders, May 2020.
39 Independent Workers' Union of Great Britain, Deliveroo riders to strike and investor briefing exposes further risk as major investment firms shun Deliveroo over exploitation of key workers, March 2021.
40 For example: C Duncan, Boohoo 'facing modern slavery investigation' after report finds Leicester workers paid as little as £3.50 an hour, The Independent, July 2020.
41 S Goodley & J Ashby, Revealed: how Sports Direct effectively pays below minimum wage, The Guardian, December 2015.
42 Trades Union Congress, TUC action plan to reform labour market enforcement, May 2021.

> *"If nobody's checking on the business, if nobody's, you know, inspecting, then … how will they ever know? How will they get caught?"*
>
> *Large cleaning business*

In practice, the UK's enforcement system relies considerably on individuals to assert their own rights, be that by raising it with their employer, whistleblowing, or bringing their case to an employment tribunal. But as we have shown before, the very workers who are most likely to be subject to labour market violations are the least likely to take their case to an employment tribunal.[43] And many interviewees felt that the workers affected would be unlikely to complain about violations, particularly those who were worried about losing their jobs during the pandemic and those with insecure migration status. Box 4 discusses the role of worker power in reducing non-compliance and enforcing labour market rules.

BOX 4: **Increases in worker power can improve compliance with labour market rules**

The role of worker power in improving pay and working conditions is well-established. Collective bargaining (for example, through unions) means workers are better able to lobby their employers for higher wages, better conditions, and training opportunities,[44] while wages tend to be lower in cases where fewer employers dominates the market and workers cannot 'shop around' for a better contract.[45] But higher levels of worker power can also reduce the risk of non-compliance with labour market rules. Our interviewees working in sectors with skills shortages – in our sample, primarily higher-skilled parts of construction – were concerned that reputational damage would put people off working for businesses that were the subject of a scandal. Similarly, improvements in the reputation of the construction sector resulting from longer-term improvements in health and safety compliance were credited with attracting more workers into the sector, including gradual improvements in the gender balance of the construction workforce.

In some other sectors, however – notably clothing – interviewees felt that non-compliant firms were not concerned about a bad reputation having an impact on their workforce because of low worker power and a

43 N Cominetti & L Judge, From rights to reality: Enforcing labour market laws in the UK, Resolution Foundation, September 2019.
44 For example, see: D Tomlinson, More than we bargain for: Learning from new debates on how institutions can improve worker pay and security in Anglo-Saxon economies, Resolution Foundation, November 2019.
45 For example, see: C D'Arcy, Low Pay Britain 2018, Resolution Foundation, May 2018.

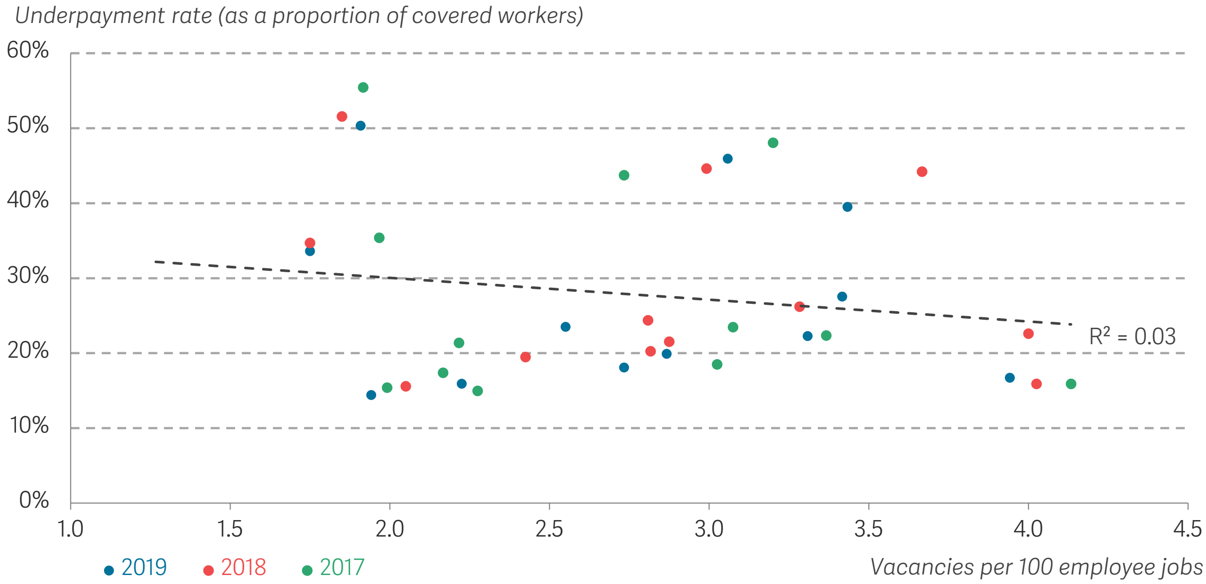
shortage of jobs. There was a view that workers with fewer labour market options – particularly those with the lowest power, such as those with insecure migration status – would be fearful to risk their job by speaking up, and unlikely to leave a job or say no to an opportunity because of a company's poor repute.[46] Indeed, as Figure 4 shows, sectors with high vacancy rates (and so a need to attract workers) do seem to be somewhat less likely than other sectors to underpay their workers. This suggests that enforcement agencies could consider vacancy rates as a useful piece of information to help them target their activity.

"I think that people are so grateful to have a job, especially after the pandemic. ... People aren't really in positions, probably, because it is all quite precarious, to go kicking off about this, that and the other."

Medium-sized clothing business

FIGURE 4: **Sectors with higher vacancy rates are less likely to underpay their workers**

Vacancy rate and NMW underpayment rate, by industry and year: GB/UK



NOTES: Each data point is an industry (Standard Industrial Classification sectors, such as 'manufacturing' and 'education'). 'Covered' defined as paid less than the NLW/NMW plus 5p.
SOURCE: RF analysis of ONS, Vacancies by industry; RF analysis of Office for National Statistics, 2021, Annual Survey of Hours and Earnings, 1997-2020: Secure Access, [data collection], 18th Edition, UK Data Service, SN: 6689.

46 For further discussion of the increased risk of labour market violations posed to those with insecure migration status, particularly in the aftermath of Brexit, see: L Judge & K Henehan, Home and away: The UK labour market in a post-Brexit world, Resolution Foundation, December 2020.

In addition, increased worker power through collective action can help improve compliance through reputational channels. Previous work from the US has shown that the publicization of health and safety breaches is more likely to lead to increased compliance in local areas with higher unionisation, for example because workers have more leverage to demand better conditions in response.[47] And collective action by workers can also bring breaches to the attention of other stakeholders, such as shareholders, who have more power to act.[48]

Enforcement policy makes use of reputation, but to weak effect

Reputational concerns clearly do have potential to deter businesses who might otherwise choose not to comply with labour market rules, and policy makers already exploit this through a number of enforcement strategies. Perhaps the most prominent of these is the minimum wage 'naming and shaming' scheme,[49] where employers found to have underpaid the minimum wage are listed on the Government website, and a press release is sent out.[50] When we asked businesses about the minimum wage naming and shaming scheme as part of our qualitative interviews, the consensus was that the scheme could drive higher compliance: businesses would not want to be on what more than one interviewee referred to as "the naughty list" and would improve their behaviour accordingly. But if naming and shaming is to be truly effective, it needs to have wider deterrent impacts beyond just the businesses that are named: firms whose competitors have been named and shamed may improve their compliance, for fear of the same thing happening to them.

To test whether this appears to be the case, we analyse whether a higher chance of minimum wage underpayment being publicised on the naming and shaming list in a particular industry group is associated with a reduction in non-compliance in that industry the following year relative to others.[51] (Box 5 describes our approach more fully, and Annex 1 provides further technical details). Our analysis suggests that there is a

47 M Johnson, Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws, American Economic Review 110(6), June 2020.
48 K Toussaint, How shareholder activism is the secret weapon in workers' long fight for justice, Fast Company, March 2021.
49 For example, see: Department for Business, Energy & Industrial Strategy, Employers 'named and shamed' for paying less than minimum wage, August 2021.
50 Other schemes where the deterrent effect of reputational damage is leveraged include a published list of people prohibited from running an employment agency (see: Department for Business, Energy & Industrial Strategy & Employment Agency Standards Inspectorate, List of people banned from running an employment agency or business, June 2021); a searchable register of health and safety convictions and notices (see: Health & Safety Executive, Register of convictions and notices, accessed October 2021); and a published list of businesses subject to automatic enrolment penalty notices (see: The Pensions Regulator, Penalty notices, accessed October 2021).
51 Our unit of analysis is three-digit Standard Industrial Classification (SIC) codes – for example, food beverage and tobacco retail, or hotel accommodation.

statistically-significant link between the likelihood of naming and shaming in a sector and reductions in underpayment in that sector the following year, all else equal.[52]

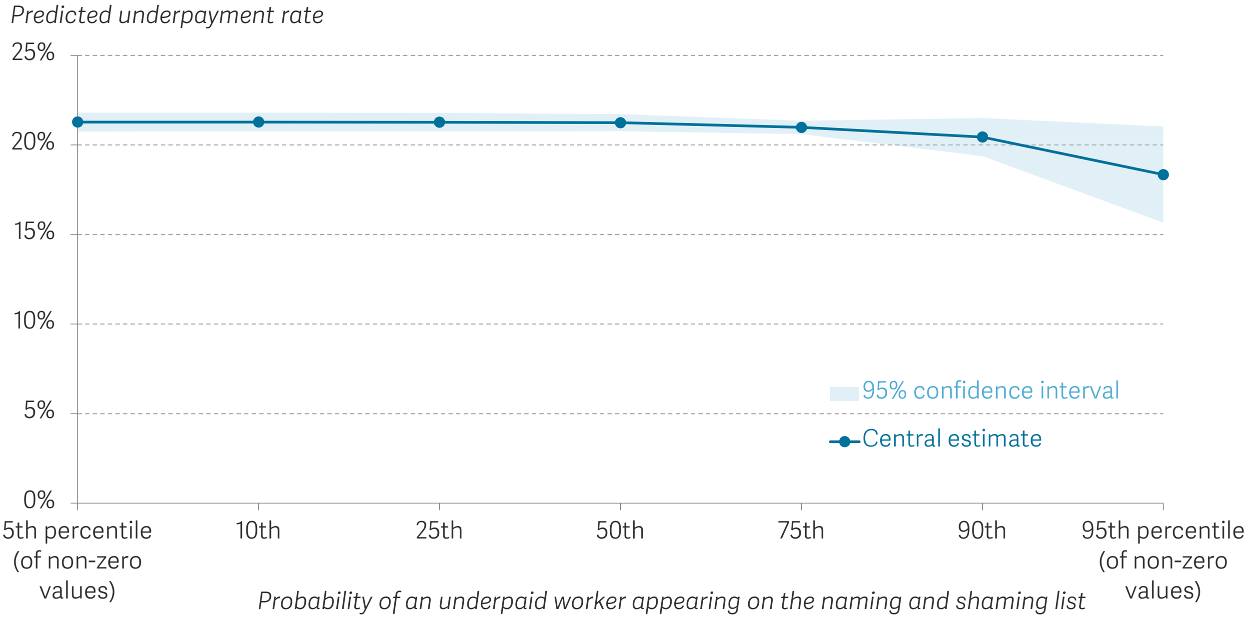
But the size of the effect is very small. Figure 5 shows that moving from the 25th to the 75th percentile of values that the probability of a worker in a given industry being named and shamed took between 2015 and 2019 (excluding cases where there was no naming and shaming at all) is associated with only a 0.3 percentage point decrease in the predicted underpayment rate. But moving from the 75th to the 90th percentile of the naming and shaming probability was associated with a 0.5 percentage point fall in predicted underpayment – and moving from the 90th to the 95th percentile was associated with a 2.1 percentage point fall in predicted underpayment.

Overall, Figure 5 suggests that the deterrent impact of naming and shaming mainly lies in cases of very high naming rates, such as when a business that has underpaid a large share of the minimum wage workforce in a sector is on the list.

52 The three forms of naming and shaming variable that we use – the probability that an underpaid worker appears on the Government's naming and shaming list, its square, and the binary indicator for whether any naming and shaming took place – are jointly significant at the 5 per cent level (p = 0.024), based on the regression described in Box 5 and Annex 1.

FIGURE 5: **Naming and shaming has a statistically significant but very small impact on the incidence of underpayment within sectors**

Predicted NMW underpayment rate in an industry, for a given probability of an underpaid worker appearing on the naming and shaming list in the previous year, after controlling for industry characteristics: GB, 2015-2019



NOTES: The actual values of the observed percentiles are as follows: 5th = 0.02%; 10th = 0.04%; 25th = 0.15%; 50th = 0.48%; 75th = 3.88%; 90th = 11.2%; 95th = 46.52%. Predictive margins following a fixed effects regression, with all other characteristics held constant as observed in the sample. Units of analysis are three-digit SIC codes in a given year. 'Probability of an underpaid workers appearing on the naming and shaming list' is defined as the number of employees reported as underpaid in the naming and shaming data in the preceding year divided by the estimated level of underpayment in ASHE in April of that year. The squared term of the probability of being named and shamed and a binary variable indicating whether any naming and shaming took place are also included. Control variables are the proportion of workers in five-year age band and sex interaction groupings, proportion of workers in each region/nation, the NMW coverage rate, the lag of the underpayment rate, the rate of unionisation (and its square), the proportion of employees born outside the UK (and its square), and year dummy variables. See Annex 1 for further details.
SOURCE: RF analysis of Office for National Statistics, 2021, Annual Survey of Hours and Earnings, 1997-2020: Secure Access, [data collection], 18th Edition, UK Data Service, SN: 6689; Office for National Statistics, Social Survey Division, Northern Ireland Statistics and Research Agency, Central Survey Unit, (2021), Quarterly Labour Force Survey, 1992-2021: Secure Access, [data collection], 27th Edition, UK Data Service, SN: 6727; BEIS, National Minimum Wage naming and shaming data.

BOX 5: **Analysing the impact of naming and shaming**

There is little quantitative evidence to date on the impacts of the minimum wage 'naming and shaming' scheme: data is difficult to come by, and due to the low cost of the policy, BEIS has not undertaken a formal cost-benefit analysis. We take inspiration from a US study that found that publicising health and safety violations had a substantial deterrent effect among similar businesses, decreasing non-compliance in firms in the same sector and local area.[53] We follow this approach, but since we are not able to track individual firms' compliance, we combine the naming and shaming data produced by BEIS with our best measure of minimum wage underpayment, the Annual Survey of Hours and Earnings, to assess the impact of naming and shaming on non-compliance in the following year at the sector level.

To measure the likelihood of underpayment being publicised through naming and shaming, we focus on the probability that underpayment of a worker in a particular sector is picked up on the naming and shaming list each year. We define this as the number of workers in a sector who are flagged as underpaid on the naming and shaming list, divided by the average level of underpayment in that sector between 2015 and 2019. This will, of course, be linked to the probability of non-compliance being detected in a particular sector and year – but given that there is a substantial delay between detection and naming (for example, the August 2021 naming and shaming list contained breaches that occurred between 2011 and 2018), this measure is likely to pick up variations in the impact of being named and shamed rather than detection itself.[54] (Such long gaps between breaches and naming are a separate cause for concern: reputational damage is likely to be substantially smaller for a breach that happened several years ago, for example, than a recent violation.) Further methodological details can be found in Annex 1.

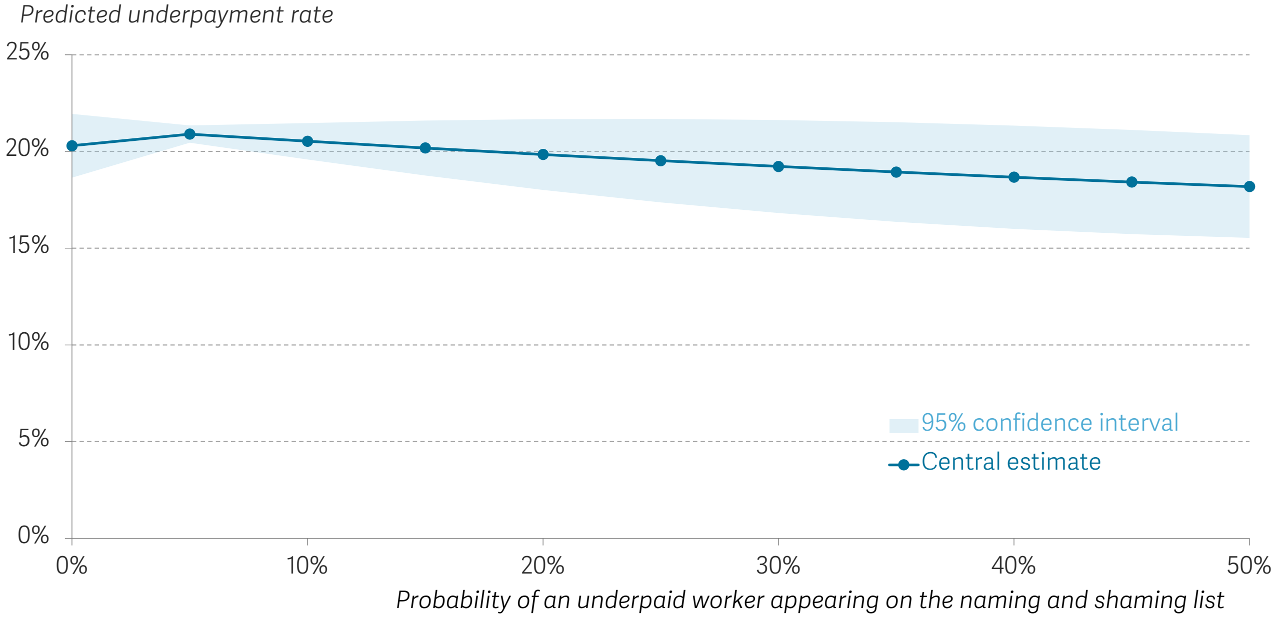
Figure 5 shows the impact of more naming and shaming within the range that most industries experience in practice. But what might happen if the chance of breaches being picked up and made public knowledge became much higher? While Figure 5 shows the predicted underpayment rate across the observed distribution of the chance of underpayment being picked up through naming and shaming, Figure 6 shows the predicted underpayment rate at 10 per cent intervals between 0 per cent (no underpayment picked up through naming and shaming) and 50 per cent (half of all underpayment is picked up through naming and shaming). Even at abnormally high rates of naming and shaming (reflecting, for example, a very large firm that has underpaid huge numbers of its workers being on the list), the magnitude of the effect is very small. Our model predicts that even when there is a 50 per cent chance that underpaying a worker is picked up on the naming and shaming list (in practice, an incredibly rare occurrence),

53 M Johnson, Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws, American Economic Review 110(6), June 2020.
54 Permanent variations in the likelihood of breaches being detected will be picked up in the sector fixed effects, while variations in the detection rate over time that affect all sectors will be captured in the year fixed effects.

the predicted underpayment rate falls only to 18 per cent, compared to just 20-21 per cent when there is a very low chance of being named.[55]

FIGURE 6: **A higher chance of being named and shamed is associated with a lower underpayment rate in the following year – but the impact is small**

Predicted NMW underpayment rate in an industry, for a given probability of an underpaid worker appearing on the naming and shaming list in the previous year, after controlling for industry characteristics: GB, 2015-2019



NOTES: Predictive margins following a fixed effects regression, with all other characteristics held constant as observed in the sample. Units of analysis are 3-digit SIC codes in a given year. 'Probability of an underpaid workers appearing on the naming and shaming list' is defined as the number of employees reported as underpaid in the naming and shaming data in the preceding year divided by the estimated level of underpayment in ASHE in April of that year. The squared term of the probability of being named and shamed and a binary variable indicating whether any naming and shaming took place are also included. Control variables are the proportion of workers in five-year age band and sex interaction groupings, proportion of workers in each region/nation, the NMW coverage rate, the lag of the underpayment rate, the rate of unionisation (and its square), the proportion of employees born outside the UK (and its square), and year dummy variables. See Annex 1 for further details.
SOURCE: RF analysis of Office for National Statistics, 2021, Annual Survey of Hours and Earnings, 1997-2020: Secure Access, [data collection], 18th Edition, UK Data Service, SN: 6689; Office for National Statistics, Social Survey Division, Northern Ireland Statistics and Research Agency, Central Survey Unit, (2021), Quarterly Labour Force Survey, 1992-2021: Secure Access, [data collection], 27th Edition, UK Data Service, SN: 6727; BEIS, National Minimum Wage naming and shaming data.

Naming and shaming, then, appears to be a very weak deterrent to non-compliance. What we heard about naming and shaming from interviewees echoed a lot of what we heard about reputational pressures more generally: to have an impact, naming and shaming needs to be widely publicised, and the right people have to hear about it. There is clearly further to go in this respect. Only three of our fifteen interviewees said that they

55 The confidence intervals are also relatively wide at high levels of naming probability, reflecting the fact that very few observations in our sample reached this threshold.

had heard of naming and shaming when we described the scheme to them, one of whom had experience of working in a business that had been named.[56]

There is much more that policy could do to leverage reputational concerns in the cause of labour market enforcement

Altogether, it is clear that firms are very alive to reputational concerns, but existing policy tools that seek to leverage this currently have a very weak deterrent effect. So how does our analysis suggest the Government could exploit reputation more effectively in enforcing labour market rules? We offer a number of suggestions as follows.

- To begin, it is clear that **the Government could review the way they publicise labour market violations**. By far the most common criticism we heard of the naming and shaming list was that very few people had heard of it, suggesting that the current method of publishing on the Government website, accompanied by a broad-brush press release, is not effective.[57] The list could take a higher profile on Government-run social media channels, and the Government could use stronger language (such as 'wage theft') to make clear how unacceptable it is for employers to short-change workers. And to ensure that the relevant people hear about violations, BEIS and HMRC could send targeted press releases to industry publications and local news outlets.

[Would fines or naming and shaming be more effective at deterring non-compliance?] "Probably the fine … if they're on a list, but nobody knows about the list, then, you know, that's not going to affect them, is it?" [What if the naming and shaming list were better publicised?] "The loss of customers and maybe employees and things like that is going to hit the business harder than a fine could."

Large construction business

"It's like the [food] hygiene rules, you have to display your hygiene number, so, you know, if we had three kebab shops in a row down the road, or three cafes, and there's a three, a four, and a five[-star rating], everyone's going to go in the five. They're going to ignore the three because that's … a visible thing. This café is dirtier than that café."

Medium-sized cleaning business

56 This echoes findings from previous qualitative research completed for the Low Pay Commission in 2017. See: M Ram et al., Non-Compliance and the National Living Wage: Case Study Evidence from Ethnic Minority and Migrant-Owned Businesses, November 2017.

57 One interviewee, for example, said that fines are currently more effective than naming and shaming – but that if stakeholders were more likely to find out about the list, then it would be the other way around. Another drew a comparison with food hygiene certifications: by being placed in restaurant windows, they remind customers which businesses do not maintain high standards and have a good chance of changing their behaviour.

- Some more engaged consumers, and many businesses, do proactively background checks on companies. To make it easier for businesses to identify non-compliant trading partners, **the Government could consider including flags for labour market violations on systems like Companies House** that firms use to background-check their clients. It could also be easier for consumers to search for non-compliant businesses.[58]

- One case where reputational policy levers are unlikely to have an effect on business behaviour is where a non-compliant business closes down to mitigate reputational damage, and starts up again under a different name ('phoenixing'). **The Government could crack down on phoenix businesses** – for example, by linking convictions to individual company directors where appropriate – to ensure that reputational impacts stick with those responsible.[59]

  "Really, they shouldn't be allowed to reinstate under a different name, that same [non-compliant] person. And I don't think the Government has that in control at the moment, because it can happen with companies – you hear of the same person changing company and re-trading and things like that."

  Medium-sized construction business

  "What happens is, the businesses are shell companies … these factories could be closed down, they'll open up the next day."

  Medium-sized clothing business

- Our business interviews also made clear that high standards of some established brands can encourage smaller firms they do business with to boost their compliance. Private sector companies would have a greater incentive to do so if they share in the responsibility for non-compliance that takes place. **The Government could implement the recommendations set out in the UK's 2018-19 Labour Market Enforcement Strategy of making brands at the top of supply chains jointly responsible for breaches**, with public naming of both the brand and supplier if improvements are not made within a given timeframe.[60] And to ensure that public sector contracts are explicitly conditional on playing by labour market rules, **the**

58 'Violation Tracker', a portal to search for non-compliant businesses across a range of metrics, has recently launched in the UK, but this could not be a responsibility of the private sector. See: Good Jobs First, Violation Tracker UK: A Tool for Researching Corporate Regulatory Infringements in the United Kingdom, accessed November 2021; Transparency Task Force, Violation Tracker comes to the UK to highlight corporate misconduct, March 2021.

59 Recommendations to crack down on phoenixing were proposed by the former Director of Labour Market Enforcement in his 2018-19 strategy and accepted in principle by the Government in their response, but have not yet been implemented. See: D Metcalf, Labour Market Enforcement Strategy 2018 to 2019, May 2018; Department for Business, Energy & Industrial Strategy et al., Labour Market Enforcement Strategy 2018 to 2019: Government response, December 2018.

60 The Government chose not to implement these recommendations in their consultation response for the new Single Enforcement Body. See: Department for Business, Energy & Industrial Strategy, Establishing a new single enforcement body for employment rights: Government response, June 2021. The recommendations were originally made in: D Metcalf, Labour Market Enforcement Strategy 2018 to 2019, May 2018.

Government could make compliance with employment rights part of public sector tender requirements to increase the incentive for businesses to play by the rules.

- Enforcement bodies should focus on eliminating so-called accidental underpayment by **clarifying and ensuring that all employers understand the rules.**[61] In addition to the existing communications activity by HMRC and BEIS to promote awareness among both workers and employers, the Government could also consider **making regular training on labour rights mandatory for employers.**[62] As well as the wider benefits from boosting overall compliance, eliminating 'accidental' underpayment would both justify wider publicization of businesses found to be breaching the rules, and goes some way to addressing the fact that customers often excuse underpayment if it is viewed to be a mistake.
- Wider labour market policy can also enhance the effectiveness of reputation. Previous work from the US has shown that in areas with higher unionisation, the publicization of health and safety breaches are more likely to lead to increased compliance in a local area, for example because workers were better able to demand better conditions in response.[63] And collective action by workers can also bring breaches to the attention of other stakeholders, such as shareholders.[64] To strengthen one avenue by which reputational concerns can lead to higher compliance (along with the wider benefits for pay and conditions of improving worker power), **unions could be given the right to enter workplaces to raise awareness among workers**. And to drive up standards and rebalance the power between workers and firms, **21st century Wage Boards could be established in those sectors with the clearest need of improved standards, starting with social care.**[65]
- Policies such as naming and shaming have the potential to make a real difference to business compliance – and at a very low cost to the Government. **We therefore welcome the Government's recent commitment to extend naming and shaming to other areas of enforcement** with the introduction of the Single Enforcement Body.[66]
- But while reputational concerns are clearly important for many businesses, it is crucial that policies targeting reputation are seen as a complement, rather than a

61 As noted above, The Pensions Regulator is viewed as one of the best performers in this respect. See: D Metcalf, Labour Market Enforcement Strategy 2019 to 2020, July 2019.
62 Department for Business, Energy & Industrial Strategy, National Living Wage and National Minimum Wage: Government evidence on compliance and enforcement, 2020, February 2021.
63 M Johnson, Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws, American Economic Review 110(6), June 2020.
64 K Toussaint, How shareholder activism is the secret weapon in workers' long fight for justice, Fast Company, March 2021.
65 For more detail on these recommendations, see: 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.
66 Department for Business, Energy & Industrial Strategy, Establishing a new single enforcement body for employment rights: Government response, June 2021.

substitute, for financial penalties. There are some businesses for whom reputational drivers do not work, such as those whose clients do not see workers' rights as a priority – and if reputational damage does not hit the bottom line, other sanctions must do so instead. **The Government could increase fines for minimum wage underpayment** to ensure that firms tempted to flout the rules face a real deterrent.[67]

- Finally, any power that reputational damage can have is dependent on breaches being discovered in the first place. As noted above, the UK enforcement system puts far too much of the responsibility on workers to assert their own rights.[68] **When the Single Enforcement Body is introduced, it must have the resourcing (and the powers) to carry out more inspections and proactive enforcement.**[69] While activism by clients, workers, and shareholders is a welcome boost to the pressure on non-compliant firms, it is not for the general public to enforce labour market rules: the Government must take responsibility for that itself.[70]

Conclusion

In this briefing note, we have shown that reputational concerns can nudge firms towards compliance in some cases, particularly where they believe that the impact of a scandal will hit their bottom line. And Government policy is already making some use of reputation: a higher chance of a sector being on the 'naming and shaming list' for a minimum wage breach does appear to be linked to increased compliance in the following year among other firms in the industry. But the impact is often weak. Firms told us that consumers do not respond as strongly as other businesses to scandals, reputational damage is often short-lived, and our quantitative analysis suggests that the impact of naming and shaming on future compliance is small in magnitude.

Reputation can be an important tool for labour market enforcement bodies, and given its potential (and very low cost), it is well worth policy makers strengthening it. But crucially, its effectiveness hinges on breaches being detected in the first place – and it is clear that reputational damage is no substitute for higher financial penalties. As well as strengthening reputational levers, the Government must ramp up other forms of enforcement, too.

67 L Judge & A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation, January 2020.
68 N Cominetti & L Judge, From rights to reality: Enforcing labour market laws in the UK, Resolution Foundation, September 2019.
69 N Cominetti, C McCurdy & H Slaughter, Low Pay Britain 2021, Resolution Foundation, June 2021.
70 See also: S O'Connor, It is not up to consumers to police modern slavery, Financial Times, March 2021.

Annex 1

This annex provides further technical detail on the regression analysis behind Figure 5 and Figure 6.

We set out to investigate whether the national minimum wage 'naming and shaming' scheme is associated with a reduction in non-compliance. We tested this by using the fact that the likelihood of being named and shamed (relative to how much underpayment actually takes place) varies between sectors. If naming and shaming is an effective deterrent, we would expect that sectors where underpayment comes with a higher change of being named and shamed would see a greater decrease in underpayment in the following year than those with a lower chance of underpayment being named and shamed, after controlling for other characteristics.

Our unit of analysis consists of combinations of three-digit SIC codes and years for the period 2015-2019. We chose this timespan because the naming and shaming scheme has existed in its current form since 2013, but very little naming and shaming took place before the 2014-15 financial year.[71,72] (Because we expect changes in firms' underpayment to be affected by the chance of being named and shamed in the preceding year, we analyse 2014-15 naming and shaming data alongside ASHE underpayment in April 2015.) The Government paused the scheme between 2018 and 2020; when it was relaunched, only firms with over £500 in arrears were included on the list, up from £100 previously.[73] This hiatus, as well as data complications linked to the Covid-19 pandemic, means that our sample runs only until 2019.[74] (We note that future research could use the pause in naming and the discontinuity in the arrears threshold to further investigate the impact of the scheme.)

The dependent variable is the underpayment rate (defined as a proportion of workers paid below the minimum wage plus 5 pence), as measured in the Annual Survey of Hours and Earnings (ASHE), in each industry and year.

The independent variable of interest is the probability that underpaying a worker was picked up through naming and shaming in the 12 months preceding the ASHE reference date (which is in April of the relevant year). This is intended to represent the risk that underpayment leads to being named and shamed. This is defined as the number of employees underpaid in named

71 See Table 5 of: D Metcalf, Labour Market Enforcement Strategy 2019 to 2020, July 2019.
72 The first naming and shaming round under the post-2013 scheme took place in February 2014 but included only five employers. See: Department for Business, Energy & Industrial Strategy, Government gets tough with employers failing to pay minimum wage, February 2014.
73 Department for Business, Energy & Industrial Strategy, Naming employers who fail to pay minimum wage to be resumed under revamped rules, February 2020.
74 Namely, many furloughed workers received only 80 per cent of their previous earnings (the amount covered by the Government), and this amount divided by their usual hours when not furloughed could cause them to show up as underpaid for legitimate reasons. While ASHE contains a furlough flag, this is imperfect: for example, the Office for National Statistics has noted that ASHE undercounted furloughed workers in April 2020 by around 20 per cent. See: Low Pay Commission, Minimum wage underpayment in 2021, May 2021; Office for National Statistics, Employee earnings in the UK: 2020, November 2020.

firms in the 12 months preceding the ASHE reference date divided by the average number of employees underpaid (measured in ASHE) between 2015 and 2019.

There are other ways that one might decide to construct a measure of the risk that underpayment leads to being named and shamed, and it is worth highlighting two aspects.

- We use a measure of workers (rather than firms) for two reasons. First, it is difficult to estimate the number of firms that are underpaying their workers because we do not have firm-level data.[75] (Because ASHE is only a 1 per cent sample of employees, calculating an underpayment rate within a single firm would be highly unreliable even for the very largest firms.) Second, it is likely that firms that underpay a greater number of their workers are closer to the top of the naming and shaming list (which is ordered by arrears), and more likely to be large firms that are more likely to be picked up by media reports, meaning that the reputational mechanism is likely to be stronger.
- We divide by the average of ASHE underpayment in the 2015-2019 period to avoid inadvertently adding a lagged dependent variable. One alternative would have been to divide by the level of underpayment in the corresponding (i.e. previous) year, but this would have introduced a lagged dependent variable. Furthermore, as we say below, there is often a lag between a breach occurring and being named and shamed, meaning that it is not clear what is the correct time period over which to measure underpayment. We circumvent these issues by scaling by the average underpayment level over the five-year period in our sample.

We also include the square of the probability of being named and shamed and a binary variable for whether any naming and shaming took place. We test for the joint significance of these three naming and shaming variables using an F test, for which the p value is 0.024 – i.e. they are jointly statistically significant at the 5 per cent level.

We use a fixed effects regression model with standard errors clustered by industry. As well as the sector fixed effects included in the regression model, the other controls we include, and their data sources, are as follows:

- The proportion of employees in groupings of five-year age bands and sex (ASHE).
- The proportion of employees in each region and nation (ASHE).
- The proportion of employees who are covered by the minimum wage (ASHE).
- The proportion of employees in small, medium-sized, and large businesses (ASHE).
- The proportion of employees who are members of a union (LFS).
- The proportion of employees who were born in the UK (LFS).
- Year dummy variables.

75 We discuss this challenge further in: L Judge & A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation, January 2020.

We weight the observations by the number of employees covered by the minimum wage in each sector over the 2015-2019 period. We also ran an unweighted version of the analysis (not presented here); the results were similar but with wider confidence intervals.

It is possible that our results could be reflecting that a higher chance of underpayment being detected by enforcement agencies (and possibly leading to fines, for example) leads to fewer underpayments, rather than naming and shaming per se. However, because there is a lag – often a few years – between a breach occurring and being named and shamed, the naming and shaming is temporally separated from the detection.[76] Moreover, the sector fixed effects will capture any differences in the chance of detection that are constant within industries.

76 For example, the businesses named in August 2021 had underpaid their workers between 2011 and 2018. See: Department for Business, Energy & Industrial Strategy, Employers 'named and shamed' for paying less than minimum wage, August 2021.

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