

Institution: University of Greenwich
Unit of Assessment: (UoA 19) - Business and Management Studies
Title of case study: Enforcing the national minimum wage
<p>1. Summary of the impact</p> <p>The research for the Low Pay Commission was designed to investigate whether the enforcement of the UK's national minimum wage was effective, through the experiences of workers and employers. It showed that despite the law, only a minority of workers found to have been underpaid received their arrears in full and without detriment. The LPC subsequently called upon the government to amend the legislation to provide a more significant deterrent to non-compliance on payment of arrears. This change was implemented through the Employment Act 2008. As a result £722,000 in arrears has been paid and 1,417 workers have benefited.</p>
<p>2. Underpinning research</p> <p>The National Minimum Wage Act 1998 introduced a statutory right to be paid a certain amount of remuneration for work performed. Almost all workers in the UK are covered by the legislation. A qualifying worker who is paid less than the national minimum wage (NMW) for any pay reference period is entitled under their contract to be paid arrears by the employer. The Secretary of State has appointed HM Revenue & Customs to act as enforcement officers. HMRC enforcement may be initiated by two methods: directly by a complaint from workers or third parties, or by HMRC's NMW Central Information Unit which carries out risk profiling, including targeted enforcement of key low paying sectors. The unit refers cases to NMW compliance teams. On receipt of a case, a compliance officer will normally carry out an investigation of the employer's business.</p> <p>The research</p> <p>Funded by the Low Pay Commission (LPC) in 2004, assisted by the Inland Revenue national minimum wage compliance team and involving detailed discussion on the methodology with them, this was the first research project to investigate the impact and effectiveness of the British government's NMW enforcement process. Conducted by Professors Geoff White and Richard Croucher (at Universities of Greenwich and Cranfield respectively), the research was qualitative and involved telephone and face-to-face interviews with a sample of employers and workers who had been through the NMW enforcement process. In February 2004 the Inland Revenue sent out letters to a structured sample of 1,000 people inviting them to be interviewed anonymously and confidentially by the researchers. From this initial exercise 70 people agreed to be interviewed (43 employers and 27 workers). More detailed face-to-face interviews were conducted with six employers and six workers from the original sample.</p> <p>The findings</p> <p>The research revealed significant problems with the enforcement process:</p> <ul style="list-style-type: none"> • many employers interviewed said they were unclear about the detail of the NMW and hence claimed to have underpaid their workers through ignorance rather than intent; • over half the employers had pay records that Inland Revenue Compliance Officers found deficient in some respect; • the range of arrears owed was between a few pence and over £12,000; • the researchers noted especially that under the existing law there was little incentive for

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employers to comply with awards of arrears;

- in the majority of cases the complainant was not the only worker found to be underpaid;
- some of the workers interviewed experienced hostility from other workers as a result of taking action;
- some workers had been pressurised by employers into falsifying records that they had been paid their arrears in full; and
- workers had to take further legal action at an employment tribunal to receive their arrears.

In short, only a minority of workers received their legal rights in full and without detriment.

Recommendations

Recommendations drawn from the research included making both employers and workers more aware of the NMW regulations, and strengthening the legal provision for the payment of arrears so that workers would be paid in full and without delay.

3. References to the research (REF1 submitted staff in **bold**, **REF2 Output)**Research outputs**

3.1 Croucher, R. & **White, G.** (2004) Enforcing the minimum wage: the experience of workers and employers. *Research Report for the Low Pay Commission*, London: Low Pay Commission.

<http://www.lowpay.gov.uk/lowpay/research/pdf/t0NTAVZ3.pdf>

3.2 Croucher, R., & **White, G.** (2007). Enforcing A National Minimum Wage: The British Case. *Policy Studies*, 28(2), 145–161. <http://dx.doi.org/10.1080/01442870701309080>

The research is published on the Low Pay Commission website (www.lowpay.gov.uk) and is publically available. The article in Policy Studies was peer refereed and presented the results of the research against contextual material on the enforcement process in a political context and against data on compliance levels. The article also discussed the methodological problems of conducting such research among low-paid workers and their employers, especially where the employer had been through a legal process. The article finally reflected on the theoretical issues concerning the regulation of the employment relationship, especially the minimum wage, and identified practical issues in the enforcement process that needed attention. Finally the article made suggestions for future research.

Research grant

The grant for the research was awarded to White, G. and Croucher, R. by the Low Pay Commission in the period October 2003 to March 2004 and its value was £16,000.

Quality of the research

Professor White, with colleagues in the Work & Employment Research Unit (WERU), was awarded one research grant before the 2005 research in 2002 – (Druker et al 2002) ‘The [Impact of the National Minimum Wage on the Hairdressing Sector](#)’ - and two further research grants since 2005 by the Low Pay Commission: in 2006 (Croucher and White 2007) ‘Awareness of the Minimum Wage in the Hairdressing Sector: An evaluation of the DTI/HMRC Targeted Campaign’ <http://www.lowpay.gov.uk/lowpay/research/pdf/t0Z96GK6.pdf>) and in 2011 (Croucher and White 2011) ‘The Impact of minimum wages on the Youth Labour Market: an international literature review for the Low Pay Commission ’ (both of these latter projects jointly with Middlesex University) <http://www.lowpay.gov.uk/lowpay/research/pdf/CroucherWhiteFinal.pdf>). This demonstrates that the funder values the research capacity of the research group and has been happy to award further contracts.

4. Details of the impact

The NMW was introduced in 1998 to protect the most vulnerable workers, usually working in low-pay sectors with minimal trade union activity. However the government did not know if its enforcement strategy and mechanisms were working or not. This research revealed in 2004 that where HMRC compliance officers found a worker to have been underpaid and issued a notice to the employer to pay the arrears, the majority of workers were still not receiving their legal rights in full and without detriment. There was little incentive for employers to pay arrears with the effect that very little protection was extended to the workers. The research informed the changes in the statutory enforcement provisions of the National Minimum Wage in 2008 (effective from 2009), which were along lines it recommended. In detail the impact of the work can be demonstrated as follows:

Resulting change in the law

The research was discussed in the Low Pay Commission report for 2005 and used by the commission to recommend changes in the enforcement of payment of arrears to the government. This LPC recommendation in turn led to a change in the law. In 2008 the National Minimum Wage Act 1998 was amended by the Employment Act 2008 and incorporated new requirements concerning arrears of payment. The Act was enacted in April 2009. These provisions meant that workers not paid the minimum wage would receive arrears at the current rate (as opposed to the NMW rate which applied at the time they were underpaid, which had been the rule) and that employers who had not paid the minimum wage would pay a fine of half of the amount of arrears identified up to a maximum of £5,000. This financial penalty represents the legal provision to ensure payment of arrears recommended by the research team. Under the 2008 amendment, an HMRC Officer can now serve a notice of underpayment which requires an employer to pay arrears due to specified workers in respect of any pay reference period within the preceding six years. Payment must be made within 28 days of the notice. An employer has a right of appeal against a notice of underpayment to an employment tribunal on the ground that either no arrears were due or the amount of the stated arrears is incorrect.

Impact on low-paid workers

The new penalty regime has now been in place for three years. The statistics produced by the government and published in the Low Pay Commission annual reports for 2011 and 2012 show that £722,000 in arrears has been paid and some 1,417 workers have benefited from this change in the law (LPC 2011, p.126-7 and LPC 2012, p.120).

Change in employer attitudes

The new requirement and better publicity and increased awareness has led to some change in employer attitudes. Research conducted by BIS in 2011 on employers' attitudes towards compliance found that those who expressed a view now accepted that a mechanism was needed to ensure workers were not out of pocket. There were, however, divergent views about whether the arrears should be paid at the current rate or whether there should be a financial penalty for non-compliance (BIS 2011).

Continuing impact of the research

Despite the changes in the law in 2008, the payment of arrears continues to be problematic. The Low Pay Commission has recently suggested that the £5,000 penalty for late payment of arrears may not be sufficiently high, especially where there are substantial amounts of arrears due. It stated in 2012 that 'a higher penalty, which may require the use of criminal law, will be necessary in some cases' (LPC 2012). The principles established by the research, that employers in arrears need incentives to pay including a sufficient financial penalty, are therefore embedded in the

enforcement strategy of the minimum wage.

5. Sources to corroborate the impact

- Low Pay Commission Report 2005. http://www.lowpay.gov.uk/lowpay/report/pdf/DTi-Min_Wage.pdf
- This research was cited by Lord Wedderburn in the House of Lords' debate on the new legislation in 2008 (13 March 2008. Hansard Column CG258).
- Letter from Mr Tim Butcher, Chief Economist and Deputy Secretary of the Low Pay Commission, dated 28 January 2013, providing a testimonial for the impact of the research on policy (copy available on request). Commenting upon the impact of the 2004 research by White and Croucher on enforcement, the LPC has stated that 'compliance and enforcement are extremely important policy areas for the LPC and the Government' (letter from Chief Economist and Deputy Secretary of the Low Pay Commission). Tim Butcher went on to say that 'the research revealed significant problems with the process and highlighted the weak incentives for employers to comply'. He continued: the 'research findings were very useful in convincing Commissioners that the existing enforcement process was not working as intended. It also provided the evidence required to support the recommendations on enforcement in the 2005 Report. This eventually resulted in a change in the enforcement regime and the introduction of Penalties and Fair Arrears under the 2008 Employment Act that came into force in April 2009'.
- The research was cited in the Department for Business, Innovation and Skills report on employers' attitudes and behaviour towards compliance with UK NMW legislation in 2011 (BIS 2011).
- The research has been further used in subsequent international work on minimum wages. It is cited in a report to the European Commission on 'Minimum Wage Systems and Changing Industrial Relations in Europe: National Report UK' (Grimshaw et al 2010).