



*Championing better  
work and working lives*

## **Good work plan: establishing a new single enforcement body for employment rights**

---

Submission to Department for Business, Energy and Industrial  
Strategy

**Chartered Institute of Personnel and Development (CIPD)**

**October 2019**

## **Background**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has over 155,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

We consulted a panel of expert stakeholders (including employer bodies, senior HR professionals, trade unions, professional bodies and policy organisations, academics and researchers and employment lawyers) to help inform this CIPD submission, as part of a wider CIPD research project on enforcement (to be published early 2020). In March/April 2019 we also surveyed 2,104 senior UK HR professionals and decision-makers on their views about some aspects of enforcement as part of our regular Labour Market Outlook. We draw on these findings where relevant.

As the professional body for HR and people development, our members are highly unlikely to be based in organisations operating in high-risk sectors at the more exploitative and deliberate end of the non-compliance spectrum, as many of these won't have a HR function. We therefore confine our responses to those questions where we can bring an informed and evidence-based view based on the insights and experience of our membership.



*Championing better  
work and working lives*

## **Executive Summary**

The CIPD does not believe that the current two-tier enforcement framework is working to effectively to protect workers, particularly those that are vulnerable.

The development of a single enforcement body could be more effective and if one were to be created, we believe that it should play a key role in the enforcement of:

- statutory sick pay
- employment tribunal awards
- the Working Time Regulations 1998
- Modern Slavery Act

We do not however believe that it should have a role in enforcing discrimination and harassment claims in the workplace.

Lack of information and advice about employment rights remains a key issue and the new body's approach should consider using new and existing communication channels to reach those operating in 'high-risk' sectors of the labour market where employers are most likely to abuse workers' rights.

We also believe that reform is needed to achieve a better balance between individual and state enforcement which is currently too heavily weighted on the individual having to seek address. Whether a new single enforcement body would make it easier to raise a complaint would be contingent on:

- The budgets and resources available to the new body
- The nature and strength of its enforcement powers
- Its critical role in providing information and guidance and raising awareness

We support the Government's aim to see the new body as an opportunity to develop a more consistent approach to naming or publicising enforcement action and would also agree in principle of joint naming and shaming, as without the prospect of facing this potential penalty, it could be difficult to embed accountability.

## Our response

### **1. Is the current system effective in enforcing the rights of vulnerable workers?**

No. The CIPD welcomes the current public policy focus on enforcement of workers' employment rights prompted by the Taylor Review of Modern Working Practices because we don't believe that the current UK's two-tier enforcement framework is working effectively to protect vulnerable workers in particular. As the Director of Labour Market Enforcement says in his [Labour Market Enforcement Strategy 2019 to 2020](#) – 'the current system is complex and fragmented and is clearly sub-optimal for workers needing employment protection.' And as this consultation paper notes, the enforcement landscape is 'still deeply fragmented' which causes a number of problems which we concur with – for example, it's difficult for workers and employers to seek help and the work of the enforcement bodies is not really visible.

We also believe that reform is needed to achieve a better balance between individual and state enforcement which is currently too heavily weighted on individuals having to seek redress. Stronger state enforcement could help to overcome the barriers that vulnerable workers experience in enforcing their rights via an employment tribunal. An unacceptably high proportion of individuals who pursue their rights via an Employment Tribunal do not even receive the award to which they are entitled.

A further benefit of stronger state enforcement would be to help level the playing field for businesses, particularly those operating within tight profit margins – companies that diligently comply with employment regulation should not be undercut when competing for business by unscrupulous companies that are able to offer more competitive prices because, for example, they are not paying workers the statutory payments to which they are entitled. We believe there is a case for stronger enforcement by the state in a number of areas, and we welcome the Government's commitment to expanding state enforcement relating to umbrella companies and holiday pay.

We consulted a panel of expert stakeholders (including employer bodies, senior HR professionals, trade unions, professional bodies and policy organisations, academics and researchers and employment lawyers) to help inform this CIPD submission, as part of a wider CIPD research project on enforcement (to be published early 2020). There was widespread acceptance among our interviewees of the current weaknesses and shortcomings of labour market enforcement in the UK and a unanimously recognised need for action to address this. The near-unanimous view was that low skilled/low paid/non-unionised workers, on the edges of the labour market, and a high proportion of SMEs are

among those most at risk of breaches of many aspects of employment legislation. While this might be seen as supporting more 'joined up' and integrated action by a single agency, we are also mindful of the differences between different sectors and areas of employment law, requiring the application of differentiated and specialist expertise.

Aside from the strong reliance on individuals to enforce their own rights, there are other factors contributing to the lack of effective enforcement that need to be addressed and would not automatically be solved by the formation of a single enforcement body, including:

- a lack of knowledge about employment rights on the part of many line managers: in March/April 2019 the CIPD surveyed 2,104 senior UK HR professionals and decision-makers as part of our regular Labour Market Outlook and asked them 'how would you rate managers' knowledge of people's employment rights?' and nearly 3 respondents in 10 (29%) said it was 'poor' or 'fair' while 23% said 'very good' or 'excellent' and 32% said 'good'.
- the complexity and inadequacy of employment legislation and regulations in a modern, fast-moving economy (for example, calculating holiday pay and SSP entitlements)
- the UK's increasingly flexible and dispersed labour market and emphasis on lower-skilled, lower-paid work in some sectors
- the absence of an effective HR function in many organisations, together with the decline in unionisation and collective bargaining in the private sector

However, we recognise the progress being made in relation to existing state enforcement, including the appointment of the Director of Labour Market Enforcement, as evidenced in the [Labour Market Enforcement Strategy 2019 to 2020](#). As an example, we highlight the HMRC's national minimum wage activity, which shows the benefits of a better resourced and more proactive enforcement approach, which doesn't rely on individual employees raising cases with tribunals supported by the threat of 'naming and shaming' and increased chances of detection by a larger force of inspectors acting now as a strong deterrent. We also highlight the HSE's risk-based, targeted and proactive approach aimed at raising general standards, and not just enforcing compliance with minimum standards.

## 2. **Would a single enforcement body would be more effective than the current system?**

In principle, we are in favour of the formation of a new single enforcement body. However, this is a challenging question to answer in terms of a simple 'yes or no' response; a single enforcement body *could* be more effective than the current system but this would not be an automatic outcome. In theory, a single enforcement body would seem to offer greater opportunities for a more holistic enforcement approach including closer joint working, greater intelligence sharing and even, in the longer-term, more cost-effective resourcing. In practice, however, there are a number of critical success factors to take into account. As the Director of Labour Market Enforcement says in his [Labour Market Enforcement Strategy 2019 to 2020](#) – *'While the option of a single enforcement body may be attractive at a theoretical level ...this is a substantial step change from the current UK system...The practicalities, time and resources required to bring together the three organisations would be significant.'*

Our panel of expert stakeholders (including employer bodies, senior HR professionals, trade unions, professional bodies and policy organisations, academics and researchers and employment lawyers) we consulted to help inform this CIPD submission (as part of a wider CIPD research project on enforcement) voiced general support for the appointment of the UK's first Director of Labour Market Enforcement in 2017 and the progress he has been making with his strategy, which includes aspects of improved co-ordination. Some interviewees felt that better implementing this strategy should be the immediate focus of enforcement activity, rather than the creation of a new body, with the challenges and risks this would involve. They also shared our concern for the lack of definition and detail in the Government's proposals for the new body, particularly in terms of:

- the budgets/resources for the new body
- would the new body create an entirely new legal entity or would it be more a case of merging together the existing three enforcement bodies?
- the nature and strength of its enforcement powers
- how it would actually operate (for example, with generalist or joint inspection teams?)
- its critical role in providing information and guidance to support prevention.

While a new integrated body could help to provide greater co-ordination and overall emphasis to enforcement activity, we share the concern as to whether the lack of integration and co-ordination of the existing bodies is the major cause of the current problems (see our response to Question 1, above). Therefore, the proposals for a single enforcement body could either be viewed as a logical progression from where we are now,

or as an unnecessary diversion from the progress being made and evidenced in the [Labour Market Enforcement Strategy 2019 to 2020](#).

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

- strong political emphasis and leadership on enforcement is essential to ensure that the potential benefits of the new body are realised in practice, and to counter the possible reduced emphasis on employment rights and enforcement post-Brexit
- a clear purpose and strategy for the new body which should determine its structure
- adequate funding for the new body for the long-term
- high-quality leadership and staff resourcing for the new body.

### **3. What do you think the benefits, if any, of a single enforcement body?**

We consulted a panel of expert stakeholders on this issue. Almost all believe that a well-functioning, well-led and well-funded single enforcement body could potentially bring a number of significant benefits to the employment market in the UK, a view shared by the CIPD. Most notably:

- the strong message the formation of a single enforcement body will hopefully send to employers that compliance matters and that the risks of non-compliance for them are significant, including more focus on 'bad' employers across the entire spectrum of employment rights
- improved, and better co-ordination of, good work and employment standards to help employers move above the minimum legal requirements
- the potential for greater prioritisation of compliance activity across government, as well as across the economy
- improved information sharing on levels of compliance and key areas of weakness to focus on
- the application of new enforcement powers, for example in supply chains and for umbrella companies (although these could arguably be introduced within the existing framework)
- Improved information and support provision to employees and employers, raising awareness of employment rights, breaches to them and how these should be addressed by whom (although, again, these could arguably be introduced within the existing framework)
- faster and more effective action to address identified issues.



**4. What do you think would be the risks, if any, of a single enforcement body?**

There are a number of risks associated with the formation of a single enforcement body, a view shared by our panel of expert stakeholders whom we have consulted to inform a wider CIPD research project we are conducting on enforcement (to be published early 2020). For example, we have reservations about the cost of creating the new organisation and the potential diversion of effort and resources that might well be involved. This view is partly based on past experiences of merging regulatory organisations and the creation of multi-agencies. The formation of the new body could be a difficult and time-consuming undertaking. Other risks highlighted by the CIPD and shared by many of our expert stakeholders include:

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

**5. Do you think the current licensing scheme (for supply or use of labour) should be expanded to other sectors at risk of exploitation by gangmasters?**

In principle, and in the longer term, we are in favour of extending the GLAA's current licensing scheme to other sectors at high risk of exploitation by gangmasters, such as care, construction and contract cleaners. We note the Government's Responsible Car Wash Scheme to build the evidence base in this area, although the pilot is a voluntary one unlike the compulsory pilot licensing scheme for car washes and nail bars originally advocated by the Director for Labour Market Enforcement.

We note the concerns raised in the [Labour Market Enforcement Strategy 2019 to 2020](#), such as the focus by GLAA on modern slavery perhaps at the expense of its licensing



work, and whether ‘this function still receives the support required to run a credible licensing scheme?’ Therefore, perhaps it would be wise to carry out further research of how well risk is managed in sectors currently covered by the current licensing regime before extending to other sectors.

## **Chapter 2: Relationship with other areas of enforcement**

### **6. *Should a single enforcement body take an enforcement of statutory sick pay if this process is strengthened?***

Yes, a single enforcement body should take on enforcement of statutory sick pay (SSP). We also fully agree with the need for more effective enforcement of SSP by HMRC as emphasised in the [Taylor Review of Modern Working Practices](#) and reiterated in the current ‘[Health is everyone’s business](#)’ consultation. We believe there is a strong case for enforcement of SSP in a similar way to enforcement of the NMW.

Tougher penalties to encourage compliance with SSP are to be welcomed and we are broadly supportive of the Government’s proposal to increase fines for employers for non-payment of outstanding SSP. However, the volume of calls by individuals to HMRC seeking redress may not reflect the number of employees not receiving their entitlement and the HMRC disputes process is not designed as a deterrent. Therefore, the impact of greater fines on the scale of the problem may fall far short of achieving the desired aim of many more people receiving the SSP to which they are entitled.

As we pointed out in the CIPD’s [response](#) to the Department for Business, Energy and Industrial Strategy’s [Consultation on enforcement of employment rights](#) the majority of non-compliance in this area is hidden and because the current enforcement regime relies primarily on individuals asserting these rights and seeking redress, non-compliance only comes to light when there is a complaint. We believe there is a widespread lack of awareness by employers *and* workers of SSP entitlements as well as both accidental and deliberate non-compliance on the part of some employers. For employers, one barrier is at a state level, with HMRC officials unable to carry out calculations for SSP when carrying out calculations for NMW and NLW. We therefore welcome the Government’s proposal to establish an online calculator for employers to help them assess SSP entitlements. We also welcome the Government’s plans to include details of individuals’ statutory rights for

SSP to be included in the proposed new written statement from day one to help raise awareness and clarity.

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

Government, working with organisations such as Acas, Citizens Advice, trade unions and professional bodies, should also run a high-profile ‘know your rights’ campaign, which would set out information on the employment rights people should expect in relation to the NMW, statutory annual holiday and SSP, as well as where to go if they have concerns or want to make a complaint.

## ***8. Should a single enforcement body have a role in relation to discrimination and harassment in the workplace?***

We have thought long and hard about whether or not a single enforcement body should have a role in relation to discrimination and harassment in the workplace but on balance believe that the potential advantages of having all areas of enforcement overseen by one body are outweighed by the risks at this stage. In theory, if we were establishing a new employment rights framework from scratch, in tandem with a robust and holistic framework to enforce those rights, it could make sense to house these under one regulatory roof. However, we are not starting with a blank slate and need to build on the progress that has been made so far.

We concur with much of the rationale set out in the [letter](#) from Professor Sir David Metcalf CBE sent to, and published by, the Women and Equalities Committee on this issue in May 2019. In his view discrimination and labour exploitation are not necessarily aligned in terms of (1) the employers who are the target for enforcement, (2) the workers who are most likely to be victims and (3) the mechanism for enforcement. We think there is some overlap in terms of (1) and (2) as many employers who are not complying with basic employment rights are not likely to be fostering inclusive workplaces with cultures that, for example, prevent harassment. However, infringements with regard to equalities law also

cover a much wider section of the labour market and we agree that current enforcement mechanisms, including the powers and penalties used, are very different in this area compared with enforcement of minimum standards.

Our view is also strongly supported by our panel of experts whom we have consulted to inform a wider CIPD research project we are conducting on enforcement (to be published early 2020). Our experts unanimously voiced concern about the potential dilution of specialist expertise and focus needed for the enforcement of equalities and discrimination law, if included at this stage in a single enforcement body.

However, our experts and the CIPD are keen to emphasise the importance of continuing to work on improved co-ordination and joint activity across these different areas of enforcement, for example in sharing intelligence. This also applies to fostering closer joint working between the EHRC and the HSE: we fully agree with the [Women and Equalities Committee](#) during its Inquiry into sexual harassment, that sexual harassment (and other forms of harassment) are worthy of the HSE's attention. Given the potential impact of harassment and discrimination on people's psychological well-being and the HSE's responsibility for ensuring that employers provide healthy and safe working environments, there is a clear overlap with the HSE's enforcement activity. EHRC may be the lead regular in this area but it can only improve awareness and strengthen compliance if other regulators also play their role as part of a holistic approach. We therefore welcome the steps set out in [Government's response](#) to the Committee's Inquiry, to engage directly with regulators to ensure they are taking appropriate action to address sexual harassment in their areas. We fully concur that the HSE is able to contribute to the measures to move forward on this issue, and welcome the more formal liaison arrangements that will be set up between the two regulators.

## **9. What role should a single enforcement body play in enforcement of employment tribunal awards?**

We believe that a new single enforcement body should play a firm role in the enforcement of employment tribunal awards, and we welcome the transfer of responsibility of the existing BEIS penalty scheme to the new body. However, as in line with our [response to the previous Government consultation](#) on enforcement of employment rights, we are concerned that the current proposals are not wide enough in scope to address the Taylor Review recommendations in this area. This is a view shared by Acas in its [response](#) to the same consultation, wherein it said: *'In Acas' view, the availability of a simple and effective enforcement process for the payment of awards is a matter of key importance both in*



*Championing better  
work and working lives*

*terms of an effectively functioning employment tribunal system and as integral to the promotion of good employment relations more widely.'*

The proposals focus on digitisation of the enforcement process and, although this will be an improvement on the complex paper-based forms for some claimants, enforcement will still essentially rely on individuals paying a further fee and initiating further court proceedings to recoup money that is owed to them as part of a legal judgment. We need more far-reaching reform to address the concerns we have about individuals having to navigate the complex different legal routes available to seek redress for non-payment of their employment tribunal award. It is therefore not surprising that only a small percentage of claimants pursue enforcement action to recoup their award, having already undergone court proceedings to enforce their employment rights in the first place. Therefore we urge Government to undertake a more fundamental consideration of how the various avenues currently open to claimants wishing to pursue enforcement of their unpaid award could be simplified and/or reduced, and more responsibility taken by the state for enforcement at this stage.

**10. Do you believe a new body should have a role in any of the other areas?**

We have answered this question in relation to the enforcement of Statutory Sick Pay in Question 7 above.

We welcome Government's commitment to extend state enforcement of holiday pay for vulnerable workers and regulate umbrella companies operating in the agency worker market and anticipate a role for the new body in both of these areas. We also believe that the new body could play a key role in the enforcement of the Working Time Regulations 1998 as this is an area we feel is not adequately or proactively covered in terms of protecting vulnerable workers, for example there is a gap in terms of enforcement of workers' statutory paid annual leave entitlement.

## **Chapter 3: The approach to enforcement**

### **12. Should enforcement be the focus on both compliance and deterrence?**

Yes, we believe that an effective enforcement model should focus on both compliance and deterrence. The potential for punitive action following non-compliance can act as an effective deterrence to boost compliance for many employers; for example it is thought that larger employers' fear of reputational damage for being named and shamed for not paying the minimum wage has helped to promote compliance. We also agree that providing good-quality and accessible information, guidance and advice for employers to help eradicate non-compliance is another vital part of an effective compliance model, to ultimately remove 'accidental' non-compliance and free up state resources to focus enforcement action on the more serious and deliberate breaches ([Labour Market Enforcement Strategy 2019 to 2020](#)).

Careful thought is needed to achieve the right balance between deterrence and compliance. We consulted a panel of expert stakeholders (including employer bodies, senior HR professionals, trade unions, professional bodies and policy organisations, academics and researchers and employment lawyers) to help inform this CIPD submission, as part of a wider CIPD research project on enforcement (to be published early 2020). In terms of the deterrent effect of the various threats and penalties for non-compliance currently available, a range of views were evident, although few felt that significantly increasing fines and penalties would of itself have a significant, positive effect on compliance. The consensus among our experts also supported the view that improved information provision and employer support was seen as at least as, if not more, important in improving enforcement of the law and employer compliance.

In terms of the new body's remit and approach to developing an effective compliance/deterrence model, we also think that:

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

CIPD research (*Building ambition and HR capability in small firms*, 2017) evaluating the impact of providing HR support to small firms highlighted the low level of HR/people

management knowledge and capability among owner managers of small businesses, with many struggling to reach compliance levels of competence. The research showed that the provision of a limited amount of free high-quality face to face and telephone support could support reported improvements in workforce relations, labour productivity and financial outcomes among participating firms. The project also found that the use of established employer networks such as through chambers of commerce and Growth Hubs was critical to effective engagement. The biggest challenge for delivering IAG is a lack of demand for it among small firm owner managers, who because of their lack of knowledge about HR/managing and developing people, are often not even aware of their shortcomings and won't recognise this as an area in need of improvement. Usually it will take a catalyst such as facing a staffing problem of some type or an employment tribunal application for them to recognise the need to improve their people management practices. Consequently, as much thought needs to go into how to engage with small firms with IAG support as in providing the support itself. CIPD's research also suggested that providing IAG support just via digital means is likely to be ineffective in isolation.

**17. Is there enough guidance and support available for workers/employees?  
18. Should a new single enforcement body have a role in providing advice?**

Given their level of overlap, we respond here to questions 17 and 18.

Lack of information, knowledge and advice about employment rights, and where to go for information and support in the event of breaches to them, is a major issue for employees, workers and contractors, particularly for non-unionised workers. Many employers, and smaller employers in particular, also need better access to information, advice and guidance (IAG) about their employment rights obligations.

We believe that providing clearer, more accessible and higher-quality guidance and support for both workers and employers should therefore be a core focus of the new body's remit. As we pointed out in our [response to the previous Government consultation](#) on enforcement of employment rights, more focus on guidance/support to aid compliance by employers with employment rights in the first place would hopefully free up more resources for the state to focus on the more hardened cases of non-compliance. We would have welcomed more detail in the consultation on the information provision and awareness raising/education role of the new body, both for employers and employees.

A key underlying cause of unpaid wages such as SSP and holiday pay, for example, is lack of awareness on the part of both employers (in some cases) and workers in relation to



their employment rights, which is also a major barrier for people seeking redress. This view is also highlighted by Acas in its [response](#) to the previous consultation on employment rights, where evidence from its Helpline shows that where individuals are uncertain about the nature or extent of their rights, this can contribute to a lack of confidence to raise concerns with their employer. We believe there should be more investment and focus by Government to raise awareness of employers' compliance obligations and workers' rights, particularly in sections of the labour market that are high risk in terms of non-compliance for the most vulnerable workers.

The new body's approach should consider using new and existing communication channels to reach those operating in 'high-risk' sectors of the labour market where employers are most likely to abuse workers' rights by not paying, or under-paying, NMW, SSP and holiday pay, etc. We have consistently urged Government, working with organisations such as Acas, Citizens Advice, trade unions and professional bodies, to run a high-profile 'know your rights' campaign (similar to the successful one run previously by Government to promote pensions auto-enrolment), which would set out information on the employment rights people should expect in relation to basic employment rights, as well as where to go if they have concerns or want to make a complaint. Another option could be for Companies House or HMRC to send out clear guidance on core employment rights to any new business that registers.

We believe that Acas plays a key role in providing IAG for workers and employers, and also in referring potential breaches of employment rights to the enforcement bodies; adequate resourcing should be made available so that it can continue and enhance its role in promoting good practice, as well as providing conciliation. Acas' range of advisory booklets are accessible and high quality for employers and workers alike, and Acas should play a vital complementary role to the new single enforcement body. However, we also note the comments about Acas in the [Labour Market Enforcement Strategy 2019 to 2020](#) – that immediate awareness and recall of Acas as a support service is currently low and that more must be done to raise its public profile through digital awareness-raising campaigns, a recommendation we believe Government has accepted.

We are also of the view that the other proposed legislative reforms connected with the 'good work' agenda and currently under consultation are potentially at least as important as the new body in improving enforcement and driving more good jobs and work. They also provide an opportunity to further increase the power and impact of the new body, for example the new 'day one' entitlement to a statement of employment rights from employers to all new staff could be required to include contact details of the new body for workers to contact if they need to.



## **19. Would having a single enforcement body make it easier to raise a complaint?**

We believe there needs to be much greater focus on raising workers' awareness of enforcement mechanisms and how to seek redress. This view is reflected in the comments of the Director of Labour Market Enforcement in his the [Labour Market Enforcement Strategy 2019 to 2020](#) who points out that his recommendations to bolster awareness of workers' rights have yet to be implemented and that '*awareness-raising remains an area of concern for stakeholders.*' Whether or not the single enforcement body makes it easier for workers to raise a complaint depends on what action is taken on this front, for example by providing information about rights and how to raise a complaint through innovative ways at key touchstone points as suggested and addressing key gaps in worker awareness (see box 7 on the IFF research, [Labour Market Enforcement Strategy 2019 to 2020](#))

As we pointed out in our [response to the previous Government consultation](#) on enforcement of employment rights, there are also deeper-seated issues affecting the awareness and confidence of workers to make a complaint that need to be addressed. Aside from lack of awareness of their rights, these include those who may be in fear of losing their jobs and/or being unsure of their right to work in the UK. We also pointed out that the number and diversity of different channels whereby workers can raise a complaint can be confusing; hopefully this is one area for improvement if the new single body acts as a high-profile and accessible point of contact to raise complaints across the range of employment rights breaches.

## **20. Would a single enforcement body improve the ability to identify the full spectrum of non-compliance, from minor breaches to forced labour?**

We support the aim, in establishing the new body, to review enforcement across the full spectrum of non-compliance, from minor breaches to very serious abuses. The move to a single enforcement body represents a welcome opportunity to develop a consistent approach that is also proportionate, with appropriate tools and strategies to identify and rectify 'accidental' infringements through guidance and better awareness as well as strong deterrent tactics (such as more robust penalties) to foster much better compliance at the deliberate and flagrant end of the spectrum. However, the new body's success in developing and applying an effective compliance/deterrence model across the full spectrum of non-compliance will depend on a number of factors, such as a clear strategy for the new body in this regard, and achieving the right balance between compliance and deterrence, as we explain in our response to Q12 above.

A number of experts whom we interviewed for our wider research project on enforcement felt that the existing Director of Labour Market Enforcement has been heading in the required direction with his strategy and so this strategy needs to continue to be applied and tested, rather than be replaced by that of a new body.

There are also wider factors that will impact on the effectiveness of the new body as we pointed out in our response to Q3, such as adequate funding and high-quality leadership. More targeted outreach is also important, as employers' awareness of people's employment rights, the role and visibility of the enforcement bodies and the consequences of not complying needs to be much higher across the board. In March/April 2019 we surveyed 2,104 senior UK HR professionals and decision-makers on their views about some aspects of enforcement as part of our regular Labour Market Outlook. The findings show that employers' awareness of the enforcement bodies and interaction with them, including the likelihood of facing any type of enforcement, is very low.

For example, we asked organisations, *'Has your organisation been visited by or had formal contact with any of the following enforcement bodies on employment-related compliance issues in the last two years?'* and the findings are:

HMRC – 9% said 'yes' (56% 'no', 33% didn't know, 2% prefer not to say)  
GLAA – 3% said 'yes' (64% said no, 31% didn't know, 2% prefer not to say)  
EAS – 4% said 'yes' (61% said no, 33% didn't know, 2% prefer not to say)  
HSE – 16% said 'yes' (52% said no, 30% didn't know, 2% prefer not to say)  
EHRC – 5% said 'yes' (62% said no, 32% didn't know, 2% prefer not to say)

We also asked employers, *'Has your organisation been subject to any formal enforcement action by any of the following bodies in the last two years on employment-related issues?'* and the findings are:

HMRC – 4% said 'yes' (67% 'no', 26% didn't know, 2% prefer not to say)  
GLAA – 2% said 'yes' (69% said no, 26% didn't know, 2% prefer not to say)  
EAS – 3% said 'yes' (69% said no, 27% didn't know, 2% prefer not to say)  
HSE – 6% said 'yes' (66% said no, 26% didn't know, 2% prefer not to say)  
EHRC – 5% said 'yes' (62% said no, 32% didn't know, 2% prefer not to say).

**21. What sort of breaches should be considered ‘lower harm’? Should these be dealt with through a compliance approach?**

We agree that there should be consistent and proportionate approach to ‘lower harm’ breaches that in the first place encourages better future compliance and works with employers using techniques, such as ‘nudge’ letters and better guidance and information, to rectify infringements where these were unintentional. If these ‘lower harm’ types of non-compliance can be resolved informally, there will hopefully more state resource available to concentrate formal enforcement action on the more serious types of labour law breaches.

**22. Which breaches should be publicised?**

We support the Government’s aim to see the new body as an opportunity to develop a more consistent approach to naming or publicising enforcement action. We agree that naming everyone could dilute the impact of naming and agree that a more effective and consistent approach could focus on publishing enforcement action involving more serious breaches such as prosecutions, as well as those entities that have failed to pay a civil penalty and persistent offenders. This could potentially increase the deterrent effect of naming.

## Chapter 4: Powers and sanctions

**26. Should a single enforcement body have a role in enforcing section 54 of the Modern Slavery Act?**

Yes we believe that a single enforcement body should have a role in enforcing section 54 of the Modern Slavery Act. We agree that Government should strengthen its approach to enforcement of s.54 that certain categories of commercial business should prepare and publish an annual slavery and human trafficking statement. This is a step in the right direction but publication of a statement and a company’s policies need to be matched by action on the ground, including in a company’s supply chain. Therefore, we welcome the intention to strengthen the state’s approach to non-compliance in this area.

**27. Would introducing joint responsibility encourage the top of the supply chain to take an active role to tackle labour market breaches through the supply chain?**

We agree in principle to the introduction of joint responsibility in supply chains and that in certain circumstances this approach could encourage the top of the supply chain to take an active role to tackle labour market breaches further down its supply chain. However, we recognise the complexity in many supply chains and also their diversity and the potential unintended consequences that could arise in some situations, for example if a company found it easier not to do business with a supplier rather than work with it to encourage compliance. In the interest of its reputation and maintaining procurement arrangements with small businesses in particular, the company should be able to work with its supplier(s) to rectify breaches before any public naming and shaming of both the 'brand' and its supplier. Therefore, we recommend that the Government works with stakeholders to establish how best a company can work with its supply chain to develop good practice in different high-risk sectors across a range of different supply chain scenarios.

**28. Do you think it would be fair and proportionate to publicly name a company for failure to rectify labour market breaches in a separate entity that it has no direct relationship with?**

A 'brand' company has ultimate responsibility for its procurement activities and for ensuring compliance and ethical employment practice across its supply chain, although we recognise that supply chains can be long and complex. We therefore agree with the principle of joint naming and shaming, providing the head of the supply chain has first had sufficient time to work in partnership, in private, with its supplier(s) to rectify any breaches. Otherwise, without the prospect of facing the potential penalty of being named and shamed, it could be difficult to embed accountability.