



# The need for a Single Enforcement Body for Employment Rights

August 2019

Last month the Department for Business, Energy and Industrial Strategy opened a consultation on whether to establish a single enforcement body for employment rights.<sup>1</sup> The proposed body would replace the majority of organisations currently responsible for enforcement, creating a single place where workers could go if they were experiencing problems at work. It would be responsible for a range of core employment rights, including some, like holiday pay, which the government has never previously enforced.

This is an important and long overdue initiative, for which Citizens Advice has been campaigning for nearly twenty years. The current enforcement system is complicated, confusing and often relies on workers pursuing their employer themselves through the tribunal system. A single enforcement body should make it easier for people to raise a complaint, and is a vital step to end a situation when only a small minority of workers who experience employment problems get any kind of redress.

## The current enforcement system isn't working

Unfair treatment at work is common in the UK. In 2018, Citizens Advice helped almost 150,000 people with 220,000 employment problems. These included 18,000 sick pay issues, 8,400 issues with paid holidays and 7,000 cases of other unlawful deductions from wages.

The cases we see are examples of widespread violations of workers' basic legal rights. Across the country, 439,000 people were paid less than the minimum wage last year.<sup>2</sup> This means almost 1 in 4 (22%) workers eligible for the minimum wage aren't receiving the pay they are entitled to.

1.8 million British workers are missing out on holiday pay per year - leaving affected workers £1,000 worse off on average.<sup>3</sup> And Citizens Advice's own research indicates that up to 460,000 workers may be falsely self-employed, and therefore don't receive the holiday, sick, and maternity pay from their employers that they should.<sup>4</sup>

Rights are only as strong as your ability to enforce them. While most employers obey the law, many still fail to fulfill their basic legal obligations. This shows our existing

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<sup>1</sup> BEIS, [Good Work Plan: establishing a new single enforcement body for employment rights](#) (2019)

<sup>2</sup> [National Minimum Wage: Low Pay Commission Report 2018](#). Figures include both National Living Wage (NLW) and youth rates

<sup>3</sup> N. Clark, E. Harman [Unpaid Britain: Wage Default in the British Labour Market](#) (2017), p.22

<sup>4</sup> Citizens Advice, [Neither One Thing nor the Other how reducing bogus self-employment could benefit workers, business and the Exchequer](#) (2015)

enforcement system isn't working. This briefing explains why Citizens Advice believes that the creation of a single enforcement body is an important step towards creating a system which will work to ensure that everyone is treated fairly at work.

### **Only a small minority of people experiencing problems at work pursue their case to an Employment Tribunal**

The default legal method for resolving most employment problems is through an Employment Tribunal. These specialist courts allow both individuals and groups of workers to seek redress from their employers for all types of employment problem, apart from some Health and Safety cases. As such they are a vital route for workers to use to secure their rights, and it is important they remain accessible for everyone.

However, the number of claims made through this process is vastly smaller than the estimated scale of employment problems. For instance, only 24,000 cases of unlawful deductions of wages, a category that includes withholding holiday, sick and maternity pay, were notified to tribunal in 2017/18 - despite the fact that 1.8 million workers are estimated to not be paid Holiday Pay alone.<sup>5</sup>

This disparity is not surprising. Taking a case to Employment Tribunal can be a long and involved process, which many workers may be unable or unwilling to undertake. With the exception of discrimination cases, no legal aid is available.<sup>6</sup> To make a successful claim a worker can be required to:

- Establish whether their problem is covered by the law
- Gather and submit evidence to both the Advisory, Conciliation and Arbitration Service (ACAS) and the tribunal service
- Respond to any orders from the Tribunal to provide further evidence
- Attend both preliminary and full hearings in person.

The Tribunal Service estimate this process can last over six months,<sup>7</sup> and experience with our clients shows that it can take much longer. For example:

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<sup>5</sup> HMRC, *Tribunal and gender recognition certificate statistics Quarterly: October to December 2018*

<sup>6</sup> Legal aid has never been available for representation at tribunal, but was available to help works establish whether employees had a case and to help them prepare it before 2013.

<sup>7</sup> HMCT's guidance states that a claim that needs a hearing will take an estimated 30 weeks ([Your Claim:what next?](#)). This does not include the early conciliation process which can take another month.

In January 2018 Graham discovered his employer had failed to pay him his full wages over several months. In February, after making an unsuccessful attempt to resolve the problem directly with his employer, he informed ACAS that he intended to take the case to tribunal and started the early conciliation process with the help of his local Citizens Advice.

By the end of May the employer had only agreed to pay £400, substantially less than the £1300 he owed, so Graham submitted a Tribunal claim. A full hearing was scheduled for mid-August, but this was delayed when the employer failed to submit the required information. Graham waited another four months to find out whether the hearing would be rescheduled, before being told in December that a judgement would be made without one. The tribunal found in his favour and Graham received the £1300 he was owed at the end January 2019 - over a year after the initial complaint. He had been in debt throughout the whole process.

Access to employment tribunal by itself is not sufficient for ensuring everyone gets the rights they are entitled to. Many people will feel unable to go through this lengthy process without support. Others may decide not to because they still work for the employer concerned, and they fear reprisals. The responsibility for enforcing workers' rights can not lie solely with individuals.

### **The public enforcement landscape is complex and inconsistent**

While all types of employment dispute can be taken to a tribunal, a range of other organisations are responsible for enforcing specific employment rights, including:

- The HMRC National Living Wage Compliance Team (HMRC NLW )
- Health and Safety Executive (HSE)
- Gangmasters and Labour Abuse Authority (GLAA)
- Employment Agency Standards Inspectorate (EASI)
- HMRC Statutory Sick Pay disputes Team (HMRC SSP)

The public enforcement activity of these bodies is essential for two reasons. First, whereas tribunals can only secure redress for the individuals or groups bringing the case, public enforcement activity can investigate problems and secure redress for whole companies and sectors. It can ensure complaints made by individuals can also lead to change for their co-workers.

Second, they help to redress the power imbalance between employers and employees. This is especially important for vulnerable workers. Enforcing these rights solely through private action taken through tribunals puts a disproportionate burden on those workers.

However, despite the good work each of these organisations do, public enforcement in the UK is inconsistent. Each of the enforcement bodies has different, but sometimes overlapping, remits, as illustrated in Table 1 below. Despite this they do not cover the

full range of employment problems. For instance, there is no state agency responsible for enforcing holiday pay.

**Table 1: Enforcement agency responsibilities**

Enforcement agency	Pay	Statutory Sick Pay	Health and safety	Tax and national insurance	Agency licensing	Holiday Pay
EASI	X				X	
GLAA	X	X	X	X	X	
HMRC NLW	X					
HSE			X			
HMRC SSP		X				

Furthermore, each agency has a varying range of powers. Some agencies are obliged to investigate every complaint, whereas others only undertake investigations after conducting wider risk assessments. Not every agency uses complaints from individuals to begin investigations into wider practices. While some agencies can recover money for workers who complain, in other cases workers still have to pursue the money they are owed through Employment Tribunals.

Beyond their handling of individual complaints, not all agencies can take proactive action to raise standards. For instance, while the HMRC Statutory Sick Pay team can resolve individual complaints, it does not have the powers or resources to conduct targeted inspections of employers, or raise awareness among employers or employees.

**Table 2: Enforcement Agency Powers**

Enforcement agency	Investigates every complaint	Complaint can lead to investigation on wider practice	Can recover money owed	Conducts Targeted Inspections	Raises awareness
EASI	X	X		X	X
GLAA	X	X		X	X
HMRC NMW/NLW	X	X	X	X	X
HMRC SSP	X		X		
HSE		X		X	X

The fragmented nature of the system also does not reflect the fact that people often have multiple issues at work. More than a third (37%) of respondents to a survey conducted through the employment pages of our website listed more than one employment problem.<sup>8</sup> The lack of coordination is a missed opportunity for enforcement. People who seek help from an enforcement agency from one type of problem, could supply vital information about other issues in their workplace.

***The complexity of the current system makes it harder for workers to seek or receive redress.***

The disjointed and incomplete nature of the current enforcement landscape contributes to a situation where many people don't seek legal redress. Just under half (45%) of respondents to our survey who had experienced a problem at work did not take any action to resolve it beyond making an initial complaint to their employers.<sup>9</sup> The reasons they give up include:

- **Not knowing where to go:** awareness of the relevant enforcement bodies is low - almost a third (29%) of respondents had not heard of any of the agencies.<sup>10</sup>
- **Thinking the process would be too difficult or time consuming:** just under a third (32%) of our respondents said they didn't take action because they thought the process would be 'too confusing or complex'.
- **Thinking that no one could help:** nearly half (45%) of workers who had chosen not to take their problem forward said that this was because they did not think that that 'anyone would be able to help'.

A well resourced single enforcement body would address all these problems. Workers would have one clear place to go for help. All basic employment rights would be covered by public enforcement, reducing the burden on individuals to pursue their cases through tribunals.

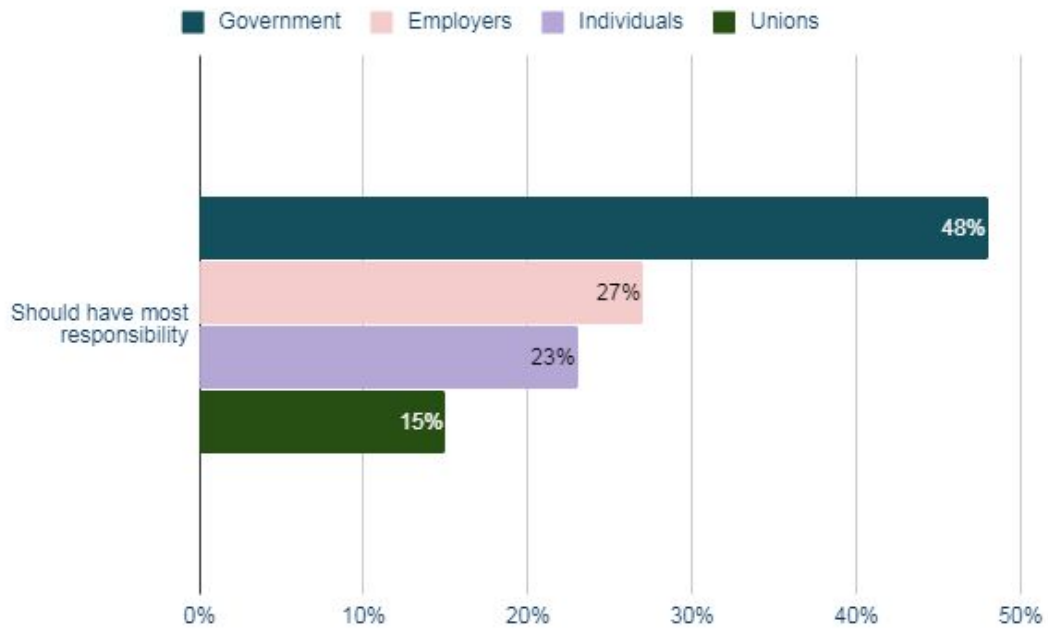
Furthermore, this system would better meet the expectations of workers who have experienced problems. Nearly half (48%) of survey respondents think the government should be most responsible for enforcing employment rights. Less than a quarter of respondents (23%) said that individuals should be most responsible, despite the current system relying heavily on them pursuing cases through tribunal.

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<sup>8</sup> Survey conducted between April and September 2017. N=904

<sup>9</sup> The survey was conducted among visitors to the employment pages of our website, and therefore only included people who were at least aware that there might be some kind of help available to solve their problem.

<sup>10</sup> Prompted question. 11 % of respondents were aware of the HMRC NLW compliance team, 6 % of the EASI and, 5 % of the GLAA



Source: Citizens Advice Employment Redress survey, April-September 2017, 903 respondents

### **We need a co-ordinated, well resourced single enforcement body**

The recent announcement is an important step forward for improving the enforcement of employment rights in the UK. It will create a single place where workers who experiencing unfair treatment can go to resolve their problems. Individuals will be better and more consistently supported by the government to secure their rights.

We welcome this commitment. But it is vital that the organisation has sufficient powers and resources to be an effective body for all workers. The organisation should:

- Provide a clear single body which can take public enforcement action
- Consider whether other rights have been breached, and investigate where appropriate
- Harmonise the range of powers and remedies for different employment problems
- Ensure that all core worker rights are publicly enforced