

From rights to reality

Designing a Fair Work Agency that delivers for the most vulnerable workers

Executive summary

Rights are only as strong as your ability to enforce them. While most employers obey the law, many still fail to fulfil their basic legal obligations. We helped more than 100,000 people with more than 192,000 employment issues in 2023/24. They're often the people most at risk of experiencing poor treatment, working in low-paid and insecure jobs, without trade union protection.

It's clear we need a better system for enforcing rights at work, especially for vulnerable workers. To make work pay and secure growth, we need to help more people get the money they're owed, access crucial protections like sick pay, and challenge unfair and exploitative practices.

The government's promise of a Fair Work Agency is an important step in the right direction. **In this report, we set out what's needed to ensure the Fair Work Agency truly delivers for those workers currently falling through the cracks, many of whom come to Citizens Advice for help.**

We show how the Agency can overcome key barriers to people accessing their rights, including fear and risk of retaliation, and lack of clarity around employment status. We also highlight what needs fixing within the existing system, from overreliance on individuals enforcing their own rights, to lack of funding, and inconsistent remit and powers.

To deliver for the most vulnerable, the Fair Work Agency must:

- 1 Carry out proactive enforcement in high-risk sectors where workers are less able to stand up for their rights.**
- 2 Have the responsibility to determine whether businesses are using the correct employment status for their staff.**
- 3 Help secure compliance with rights under the Equality Act in relation to core workers' rights**
- 4 Have formal routes for frontline organisations to share intelligence, provide advice, and make referrals.**
- 5 Ensure that those vulnerable to poor treatment due to their immigration status are able to seek help.**
- 6 Have independent decision making and funding - via a levy - to enable effective and evidence-based enforcement.**

Introduction

The government has promised to introduce a **Fair Work Agency (FWA)** to uphold and enforce the rights of workers. The proposed body would merge 3 of the main agencies currently responsible for labour market enforcement, creating a single place where workers can go if they are experiencing problems at work.

This is an important and long overdue initiative for which Citizens Advice has been campaigning for 25 years. Most of the people we help with their employment rights have multiple problems currently spanning several agencies. The current enforcement system is complicated, confusing and often relies on workers pursuing justice themselves through the Employment Tribunal (ET) system. The FWA 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 recompense.

If designed correctly, the FWA should take pressure off an overburdened ET system and raise compliance across the economy. This would be good for workers but also helps level the playing field for businesses - it prevents those who are non-compliant from undercutting those who follow the rules, and can improve retention and productivity. It can also bring savings for society - where employers don't pay what they should, taxpayers are left to foot the bill.

However, as this report sets out, poor design of the FWA could lead to it failing to achieve this ambition.

We identify several barriers which the government will need to ensure the FWA can overcome, and look at how approaches to powers and funding of other UK enforcement bodies can be profitably replicated in this space.

These barriers include:

- An over-reliance on our already struggling court system, either to establish employment status or to exercise powers. Reliance on the courts risks putting more burden on the ET and slowing down the pace of enforcement.
- A reluctance for some workers to lodge complaints against their employer due to risk of retaliation, especially where this interacts with migration and visas.
- A lack of resources to carry out its functions. This has been a longstanding barrier to effective labour market enforcement, and the FWA must have sustainable and sufficient funding to remedy this.

Our report sets out 6 recommendations to address these barriers and to ensure that the FWA will address the problems which people are coming to us for help with. These recommendations build on our previous work highlighting why a single enforcement body is sorely needed, and responding to a previous government consultation on what such a body should look like.

The scale of non-compliance

Unfair treatment at work is common in the UK. In 2023/24, Citizens Advice helped more than **100,000** people with **192,000** employment problems. The biggest category of issues was pay and entitlements, which includes sick pay, holiday pay, and other unlawful deductions from wages. People on low pay and those from marginalised groups, including migrants and people of colour, are more likely to experience non-compliance, perpetuating inequality.

The cases we see are examples of widespread violations of workers' basic legal rights. Across the country, 365,000 people were paid less than the minimum wage last year. This means almost 1 in 4 (23%) workers who should be paid the minimum wage aren't receiving the pay they're entitled to. And as many as 1.8 million workers per year aren't receiving the holiday pay they're entitled to, with 900,000 receiving no holiday pay at all.

These figures don't account for those who are falsely classed as self-employed and therefore denied access to key employment protections, including minimum wage and sick, holiday, and maternity pay. There are 1.9 million low-paid self-employed workers in the UK. It's difficult to say how many are falsely self-employed, but previous estimates show the proportion could be significant. In 2023/24, **3,400** people came to us for help with their employment status.

Key employment issues we helped clients with in 2023/24



Laura, 22, Yorkshire and the Humber

Laura has worked part-time at a take-away restaurant for more than a year. She's pregnant and was hoping to go on maternity leave, but her employer is refusing to pay her statutory maternity pay. She's also never received a payslip, despite this being a legal requirement. When she complained about this to her employer, he told her to "ring the police".

Employment rights violations are a living standards issue

When work doesn't pay, people are left struggling to meet their basic needs. There are 5 million people in Britain in a negative budget, unable to afford essentials. A further 2.35 million are 'living on empty' - only escaping a negative budget by cutting their spending to unsafe levels. In a cost of living squeeze, the government needs to ensure workers are paid what they're owed and can get redress when they aren't.

Hunter, 29, Yorkshire and the Humber

Hunter works part-time for a supermarket alongside his studies. His income from work is his only income. Last month, his wages were unexpectedly low. He asked his employer why, but received no explanation. In addition to his core pay, he's also not been paid his holiday pay. **He's fallen behind on rent and came to us for help with energy costs.**

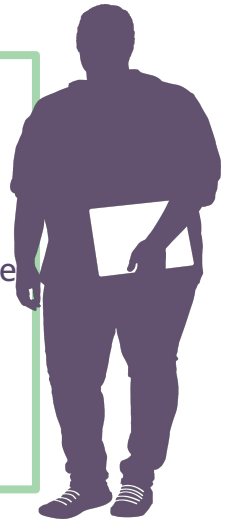


Becy, 32, Wales

Becy works as a dinner supervisor at a local school. She's only being paid £7 an hour by her employer. This is well below the national minimum wage. **She's struggling to afford food and essentials.**

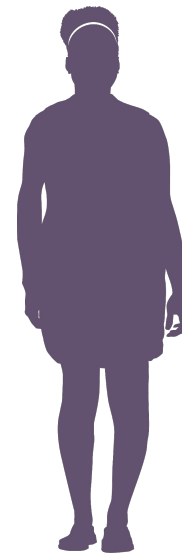
Nigel, 46, South West England

Nigel was employed by a cleaning company. The work was part time and he clocked up a lot of agreed overtime. When his employer failed to pay his wages, Nigel raised a complaint, but nothing happened. He left the job as he was owed about £2,500. He has signed on for Universal Credit, but until his first payment **he has no money for food. We helped him access a food bank.**



Sophie, 51, South East England

Sophie isn't being paid by her employer. She works at a care home and is also a carer for her disabled son. For the last 2 months she's been unable to work due to severe anxiety and depression, but her employer has only paid her 1 month of sick pay. She also wasn't paid for work she did before she was signed off sick. **Sophie has no income and no food or heating in her home.** She isn't sure how she and her son will survive.



What our advisers are seeing: People are scared to seek help

We regularly see people who are afraid to stand up for their rights at work. They're worried that if they complain or take enforcement action, they'll lose their job, have their hours reduced, or face other forms of retaliation.

These fears are not unfounded. Many groups in the labour market are vulnerable to retaliation. Employees only gain unfair dismissal rights after 2 years of continuous employment, while workers don't have these rights at all. They can simply be 'zeroed down' or taken off the rota if they complain. There are exceptions - automatically unfair reasons for dismissal - but to claim these you have to go to an Employment Tribunal. This is a long, complex, and potentially costly process at the end of which you're unlikely to keep your job.

Migrant workers on restrictive visas are especially vulnerable to retaliation. They face the same risk of dismissal outlined above, with the added risk of also losing their right to live and work in the UK. This is currently a major problem in social care, agriculture and domestic work.

There are a multitude of other factors that increase fear and risk of retaliation, from having limited job opportunities due to care responsibilities or discrimination, to having no financial safety net due to low pay and no recourse to public funds. Often these factors intersect, concentrating vulnerability in sectors where the risk of non-compliance is already high.

We need proactive enforcement of labour rights to address this.

Callum, 33, London

Callum's been working as a live-in housekeeper for a hotel for nearly 2 years. He's paid the minimum wage with housing costs deducted. He's never received holiday pay. When he asked his manager about it, he was told he's not entitled because he has a zero-hours contract. **This is incorrect, but Callum believes there's a real risk he'll be sacked and lose his home if he raises this.** Callum's employer has 5 hotels across the UK, with about 100 employees.



My client is unable to take action about issues at work due to her immigration status. She has been crying, stressed, and unable to sleep due to the problems she faces at work. Any action she may want to take - although legal for an employee - could result in her being dismissed and therefore losing her right to stay in the UK.

Adviser, West Midlands

What our advisers are seeing: Employment status matters

Your rights at work depend on whether you're classed as an employee, worker, or self-employed. Therefore when someone comes to us with an employment issue, one of the first things we do is try to establish their employment status.

We regularly see people who have had their employment status misclassified as a way for their employer to avoid national insurance costs and statutory obligations. Businesses who do this are not only shortchanging workers, but also undercutting compliant employers and defrauding taxpayers who are left to pick up the tab, often through the benefits system.

Having an unclear employment status significantly complicates people's ability to access their employment rights. Before they can get redress for non-payment of the minimum wage, or failure to pay sick pay, they first have to dispute their employment status through an Employment Tribunal.

This process puts the burden of proof on workers. They're the ones who have to establish whether they've been misclassified rather than employers having to show they're using the correct status. This can make the process of delivering justice burdensome and delay people's access to much needed redress. Not everyone will know to challenge their status.

An enforcement body that can't determine whether the correct employment status is being used will not be effective at enforcing employment rights in a world where misclassification is tactically used to dodge statutory obligations.

George, 45, South West England

George works for a decorating company, travelling to client's houses to carry out measurements and offer quotes. His contracts says he's self-employed despite the fact that he works regular hours, can't refuse appointments, and can't send someone else in his stead. He's only paid commission, meaning his pay can fall below minimum wage if customers decide to buy elsewhere. Because George is deemed to be self-employed, he receives no holiday or sick pay, and no employer pension contributions.

The employer was using self-employed status to avoid statutory entitlements and to pay the client below the minimum wage. This restricts the client's rights to make a claim to an employment tribunal without first disputing their employment status, and gives the company what they consider a legal basis to pay below minimum wage.

Adviser, West Midlands



Why the current enforcement system isn't working

1. It's overly reliant on individuals enforcing their own rights through the courts

The default legal method for resolving most employment problems is for individuals to do it themselves by bringing a claim to an Employment Tribunal. Tribunals allow both individuals and groups of workers to seek redress from their employers for all types of employment problems, apart from some Health and Safety cases. They are a vital route for workers to use to secure their rights, and it is important they remain accessible for everyone

Yet the number of claims made through this process is vastly smaller than the estimated scale of non-compliance. Only about 23,000 cases of unlawful deductions of wages, a category that includes withholding holiday, sick and maternity pay, were notified to tribunal in 2022/23 - despite the fact that 900,000 workers are estimated to not be paid holiday pay alone.

This disparity is not surprising. Taking a case to Tribunal can be a long and involved process. Time limits for action are short (3 months minus 1 day), yet backlogs mean cases can take years to solve. With the exception of discrimination cases, no legal aid is available. People who can't secure free legal representation have to pay costly fees or represent themselves. Yet even if they're successful in their claim, they're unlikely to get what they're owed - only 49% are paid what they've been awarded in full while 16% get paid in part and 35% receive nothing at all.

Many people will feel unable to go through the Tribunal process without support. Others may decide not to because they still work for the employer concerned and fear reprisals. Often it's the people most vulnerable to non-compliance who will struggle most to access the Tribunal system. Analysis shows that high paid workers are 50% more likely to bring a case than low paid ones, despite those on low pay being much more likely to have their rights violated.

Employment Tribunals also only decide cases for the individuals party to the case, and only on the issues brought - they cannot make wider recommendations for sectors or even companies. They're important for individual action, but they're not the right tool to tackle endemic non-compliance.

Natasha, 42, East Midlands

Natasha worked at a manufacturing plant where she was sexually harassed by a colleague. When she reported it to her manager, she was dismissed and didn't get all the wages and holiday pay she was owed. Natasha took her employer to a tribunal, but the final hearing for her case was set for 2 years away. She struggled to find pro-bono legal representation and had to provide complex technical evidence on her own. Eventually Natasha decided to withdraw her claim due to stress and anxiety. **She lost out on any compensation and any real sense of justice.**

2. The public enforcement that exists is fractured and inconsistent

There are several government bodies responsible for enforcing employment rights in the UK, including:

- Gangmasters and Labour Abuse Authority (GLAA)
- HMRC National Minimum Wage team (HMRC NMW)
- HMRC Statutory Payment Disputes team (HMRC SPD)
- Employment Agencies Standards Inspectorate (EASI)
- Health and Safety Executive (HSE)

They all have different, but often overlapping, remits. Yet they don't cover all employment issues. For instance there's no public enforcement of holiday pay.

Each agency has a varying range of powers. Some are obliged to investigate every complaint, whereas others only investigate after conducting wider risk assessments. Some use complaints from individuals to begin investigations into wider practices, while others don't. While some agencies can recover money for workers who complain, in other cases workers still have to pursue the money they're 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 Payments team can resolve individual complaints, it doesn't have the powers or resources to conduct targeted inspections of employers, or raise awareness.

The fragmented nature of the system doesn't reflect the fact that people often have multiple issues at work. Nearly 1 in 3

(31%) of the people we helped with an employment issue in 2023 needed help with more than one work-related problem. The fact that people have to go to multiple agencies for help is ineffective and risks agencies missing out on vital information.

Table 1. Enforcement agency remits

| Agency | Pay | Statutory Sick Pay | Tax and national insurance | Agency licensing | Holiday Pay |
|----------|-----|--------------------|----------------------------|------------------|-------------|
| GLAA | X | X | X | X | |
| HMRC NMW | X | | | | |
| HMRC SPD | | X | | | |
| EASI | X | | | X | |

Table 2. Enforcement agency powers

| Agency | Investigates every complaint | Complaint can lead to investigation on wider practice | Can recover money owed | Conducts targeted inspections | Raises awareness |
|----------|------------------------------|---|------------------------|-------------------------------|------------------|
| GLAA | X | X | | X | X |
| HMRC NMW | X | X | X | X | X |
| HMRC SPD | X | | X | | |
| EASI | X | X | | X | X |

3. Insufficient resourcing is leading to ineffective enforcement

Workers are often scared to seek help. They face a very real risk of retaliation, whether that's being dismissed, 'zeroed down', or having their visa sponsorship revoked. Many are also not aware of their rights and entitlements, or are explicitly being told they're not entitled to key protections like sick pay. In this context, labour market enforcement needs to be proactive - it can't rely solely on workers coming forward for help.

Heather, 25, South East England

Heather and her friends came to the UK to work in social care on a Health and Care Worker visa. They were given a contract in their home country, but asked to sign an 'updated version' on arrival in the UK with much worse conditions. They're now being forced to work over 14 hours per day, 6 days a week. When we spoke to Heather, she sounded exhausted. She told us she's scared to raise any grievance with her employer for fear of losing her visa sponsorship. Equally she feels trapped with the sponsoring company and unable to switch jobs. Her friends are in the same situation.

Unfortunately, current resourcing levels don't support a proactive approach to labour market enforcement. Funding for labour market enforcement was cut significantly since 2010, and has barely increased since. As a result, there's been a 32% drop in the number of labour inspectors and a 27% drop in the number of inspections in the UK.

The UK falls well below the International Labour Organization's (ILO) benchmark of 1 inspector per 10,000 workers. It has just 0.29 inspectors per 10,000 workers if health and safety inspectors are included, and only 0.1 per 10,000 if they're not. Between them, the three agencies that are intended to form the Fair Work Agency have about 550 full-time equivalent staff - this is all staff, not just inspectors.

Table 3. Remit and staff of key UK enforcement bodies

| Agency | Remit | Staff |
|---------------|--|-------|
| GLAA | Licensing labour providers in agriculture and tackling exploitation across the labour market | 119 |
| HMRC NMW team | Enforcing the national minimum wage for 1.56 million workers | 400 |
| EASI | Overseeing 40,000 recruitment businesses | 29 |
| HSE | Regulating workplace health and safety | 2,695 |

The level of resourcing for the GLAA, HMRC NMW team and EASI represents a real risk in terms of their effectiveness. With limited funding, they have had to choose where to prioritise their resources, and over time, have directed them more towards compliance (education, helping businesses get it right) than enforcement (inspections, fines, naming and shaming, prosecutions). While encouraging compliance is important, it does little to root out those employers who are purposefully non-compliant.

Recommendations

Designing a Fair Work Agency that delivers for the most vulnerable workers



1

Carry out proactive enforcement in high-risk sectors where workers are less able to stand up for their rights.

The people who are most at risk of experiencing non-compliance with employment rights are also often the ones least able to stand up for their rights and seek enforcement action. There are multiple reasons for this, from fear and risk of retaliation to lack of knowledge of rights or where to get help.

For the Fair Work Agency to successfully tackle non-compliance, it can't only rely on individuals coming to it for help - it has to proactively identify and take action against non-compliance, especially in high-risk sectors.

To implement this in practice will require intelligence (see recommendation 2) and adequate resourcing (see recommendation 5). It also requires the Agency to have the powers to inspect firms proactively and to sanction firms where it sees evidence of poor practices and non-compliance.

We can learn from the experience of the Competition and Markets Authority (CMA) that where these powers rely on the agency applying to the courts, this is a slow and resource intensive process. The Digital Markets, Competition, and Consumers Act has given the CMA power to use its powers on its own authority. **The Fair Work Agency should learn from this and be given the power to sanction on its own authority.** It's also essential that the sanctions available to the Agency are sufficiently strong to act as a credible deterrent.

It's also important that the Fair Work Agency is able to recover wages owed on behalf of workers. Currently the HMRC NMW team can do this, but only for non-payment of the minimum wage and not for other components of wages, such as holiday or sick pay. For these payments, workers have to pursue to money they're owed through Employment tribunals, and we know there are significant barriers to doing so. We also know that fewer than half of people who should receive compensation receive the full amount owed, and that more than 1 in 3 receive no payment at all.

To make a tangible difference to vulnerable workers, the Fair Work Agency should have an extended version of the HMRC NMW team's power to recover unpaid wages.

We're seeing clients regularly who work through an agency for a local food processing factory and are not paid for the hours worked. These clients are almost always people who speak very little or no English. They're left with no money and often do not know where to seek advice.

Adviser, Yorkshire and the Humber



2

Have the responsibility to determine whether businesses are using the correct employment status for their staff

We know employment status is causing confusion for workers about their entitlements, as well as being purposefully used to deny people their rights at work. Currently it is up to workers to challenge their status through the Employment Tribunal system, the downsides of which we've already explained.

The government's plan to reform the UK's current 'three-tier' employment status structure is a welcome step towards fixing this issue, but more needs to be done. Crucially, the Fair Work Agency must have the power to determine whether businesses are using the correct employment status for their staff, and fulfilling the responsibilities that come with that status.

Without this power, workers experiencing serious employment violations, like non-payment of the minimum wage, won't be able to benefit from the Agency. They will have to continue pursuing their rights through the courts, which will in turn mean that one of the key benefits of increasing public enforcement - reducing pressure on the Employment Tribunals - isn't achieved to the extent that it could be.

There is a precedent for determining employment status among existing enforcement bodies. The HMRC NMW Team already assesses whether someone is self-employed or not to determine tax and minimum wage liabilities. Extending this power to the Fair Work Agency will make it more effective in tackling non-compliance, and could also help increase tax and national insurance revenues.

Saskia, 41, West Midlands

Saskia works on a zero-hours contract. She's pregnant and **her employer has told her she isn't eligible for Statutory Maternity Pay, or Statutory Sick Pay** for pregnancy related illness. Based on the evidence, she's entitled to both.

Ruth, 69, East of England

Ruth has managed her employer's fruit farm for 9 years, working 14-hour days. **Her boss insists she's self-employed.** She's paid a fixed amount with no holiday or sick pay. Her work includes heavy lifting, which has led to several hernias that require surgery. Ruth can't work while she waits for her operation, and will need several months to recover. Her boss has stopped paying her any earnings. She has no private pension and her state pension only just covers her rent.

Harry, 57, West Midlands

Harry works as a security guard. He came to us because his employer had only paid him a quarter of the wages he was owed, claiming the rest were deducted to pay for a training course. This hadn't been agreed, and brought Harry's pay to well below the minimum wage. **When Harry complained, his employer claimed he was self-employed** and therefore not entitled to the minimum wage.

3

Help secure compliance with rights under the Equality Act in relation to core workers' rights

Employment is the advice area where we see the highest number of discrimination cases by a significant margin. In 2023/24, we helped more than 10,000 people with a workplace discrimination issue.

The key body responsible for securing compliance with equalities legislation - the Equality and Human Rights Commission (EHRC) - is currently very stretched, and has limited powers to proactively enforce equalities legislation. It is therefore sensible that the work of enforcing equalities legislation be shared with sector-specific regulators and enforcement agencies, like the Fair Work Agency.

Divya, 32, West Midlands

Divya and her friend Lakshmi work in social care on a Health and Care Worker visa. They came to us because they and their migrant colleagues haven't been paid for 2 months, while their British co-workers have been paid as normal. They're falling behind on bills and are worried they'll end up homeless if they can't pay rent. Divya has contacted their employer, but has had no response. She's afraid to complain too much as the employer could dismiss her and her colleagues, leaving them with only 60 days to either find another sponsor or leave the UK. Divya told our adviser: "I feel like we're being treated as slaves".

Equality should be central to the work of the Fair Work Agency and built into its design. It should have an explicit mandate to secure compliance with rights under the Equality Act in relation to core workers' rights, working directly with the EHRC when necessary. Dedicated equalities specialists with equality expertise should be part of its workforce.

This doesn't mean that it should replace the EHRC. Equalities issues can require a complex determination of facts and will often be best decided through the Employment Tribunal system. Supporting such actions are better left to an independent body dedicated to furthering equality. But, as the Women and Equalities Committee has noted, **for equalities legislation to be effective, the burden of enforcement needs to shift away from the individual facing discrimination.** While individuals must still have the right to challenge discrimination in the courts, the system of enforcement should ensure that this is only rarely needed.

There is already a duty for public bodies to enforce equalities legislation under the public sector equalities duty. Establishing the Fair Work Agency provides an opportunity to strengthen this duty, and to give it teeth through the organisation's power to inspect workplaces and issue compliance orders and fines. As keeping with our first recommendation, the **FWA should be able to enforce and sanction breaches of the Equality Act directly, rather than via the courts.**

4

Have formal routes for frontline organisations to share intelligence, provide advice, and make referrals.

It's unrealistic for the Fair Work Agency to inspect all workplaces regularly, so proactive enforcement needs to be intelligence led. In part this intelligence will come from complaints made directly to the Agency but, as we've highlighted throughout this report, we regularly see people who are unwilling to raise a complaint directly, but who will speak to our advisors. **It's therefore crucial that pathways for frontline organisations to collect and feed intelligence into the Fair Work Agency are built into its design.**

People are likely to turn to frontline organisations like trade unions, community groups, and advice agencies, either because they know and trust them, or because they're not aware that they're experiencing an employment problem. Of the people we helped with employment issues in 2023, more than half (54%) also needed support in another area. As for Maisie below, it's often these other issues that people first come to us about.

Maisie, 46, North East England

Maisie contacted us for a foodbank voucher as she and her daughter didn't have enough food to last them the weekend. She's in debt and can't afford to top up her energy meter. **During the advice session we found out that Maisie is on sick leave from work, and isn't being paid.** Her contract says she isn't entitled to sick pay. Maisie didn't know that sick pay is a statutory right and that she's eligible for it. We're now helping her access the sick pay she's owed.

If the Fair Work Agency is to reach vulnerable workers, it must work closely with those organisations that people are likely to turn to with their initial problem. In addition to gathering and sharing intelligence, trade unions, community groups, and advice agencies are well-placed to do outreach, advise people on their rights, and make referrals where needed. This work should be adequately resourced.

Citizens Advice has experience of developing pathways to enforcement through our operation of the consumer service, which offers advice on consumer rights and acts as the referral pathway into Trading Standards. From this we know that coordination between advice agencies and enforcement bodies is crucial. It helps ensure a smooth journey for those experiencing non-compliance, minimising the number of times they have to submit the same information. It also helps create a genuine intelligence map by combining data from multiple sources.

A good example of this is the tripartite agreement in the energy sector between the consumer advocate (Citizens Advice), the regulator (Ofgem), and the dispute resolution scheme (Ombudsman services). It includes an agreement to share data in standardised formats, which is used to for enforcement action. The advice landscape for employment is likely to be more complicated, but similar agreements could and should be reached between the Fair Work Agency and frontline organisations.

5

Ensure that those vulnerable to poor treatment due to their immigration status are able to seek help.

One of the biggest challenges in enforcing rights at work is that those who are most vulnerable to poor treatment are often also the ones least able to seek help. We've seen this in the care sector, where migrant workers are highly vulnerable due to the power imbalance created by their visa. If they report their employer for non-compliance - even anonymously - they risk losing their job and visa. As a result, most of the people we saw didn't want to take any action against their employer unless they'd first secured a new job and sponsor. Their cases represent some of the worst treatment at work we've seen, amounting in some instances to severe labour exploitation.

This same dynamic applies even more strongly for people who have an irregular immigration status. Those looking to exploit people know this, and we regularly see cases of employers purposefully putting workers in breach of visa rules as a means to control them, knowing they'll be too scared to seek help.

Priya, 36, Yorkshire and the Humber

Priya came to the UK with her husband and child on a Skilled Worker visa. She was promised a job in IT, but the start date keeps being delayed. Each month she has to pay her employer £1,400 for 'tax and national insurance' or he'll cancel her visa. Priya is technically in breach of her visa conditions because she isn't working. If she reports her employer, she may have to leave the UK. She feels trapped.

Unless something is done to address this dynamic, labour market enforcement agencies will continue to miss out on vital intelligence, and fail to act against the worst employers. The Fair Work Agency provides a valuable opportunity to reset and find ways for those most vulnerable to employment rights violations to safely report poor treatment and get help. The government could provide victims of, and witnesses to, labour rights violations with protection against losing their visa, as has been done by the United States, or follow in the footsteps of Australia and decriminalise working in breach of visa conditions. A firewall between immigration and labour market enforcement would also ensure people can seek help regardless of their immigration status.

Annika, 33, Yorkshire and the Humber

Annika was recruited from abroad to work as a live-in carer. On her employer's instructions, she entered the UK on a tourist visa. She was told a work visa was being arranged on her behalf, but this never happened. Annika started work the day she arrived, but it wasn't what she'd been promised. She worked day and night with no breaks, never received a contract, and was told she'd have no days off. Her employer was physically aggressive. Annika felt she had no option but to stay - she didn't speak much English and depended on her employer financially and for housing.

6

Have independent decision making and funding - via a levy - to enable effective and evidence-based enforcement.

It's an accepted principle that regulatory and enforcement agencies should be able to make decisions themselves, independently of the government of the day. The Fair Work Agency should be no different. It must have the independence to make evidence-based decisions led by its objective to enforce rights and protections for working people. This should include the ability to enforce fines and orders without needing to go to the courts.

Just as important as independence in decision making is ensuring funding is adequate and sustainable. This is especially important if the Fair Work Agency is going to deliver for vulnerable workers through proactive enforcement, which will require more 'boots on the ground'.

Existing funding for labour market enforcement is limited and, as a result, the UK is far behind the ILO's benchmark for the number of labour inspectors needed. With 30.3 million payrolled employees, the UK needs approximately 3,000 labour inspectors. It currently has less than half of this if health and safety inspectors are included, and less than one-sixth if they're not.

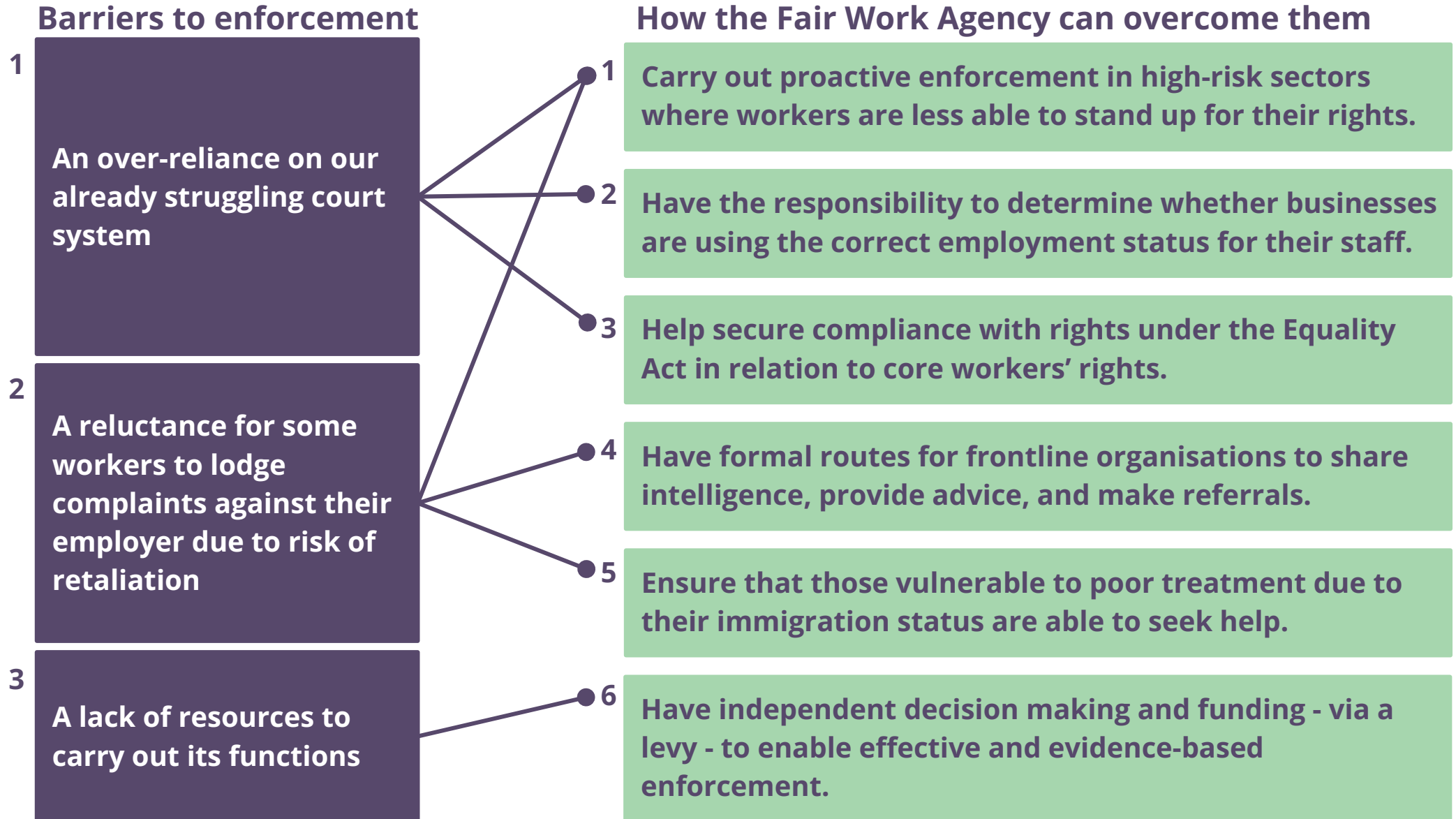
But staff cost money, and we know that the government is operating in a tight fiscal environment. **One option to ensure sustainable funding without adding to the cost to the exchequer would be for the Fair Work Agency to be funded partially or wholly through a levy on businesses.**

This would not be a novel approach. Several agencies including the Money and Pension Service are funded in this way and the enforcement of financial crime is funded through such a levy (the Economic Crime Levy). Funding the Fair Work Agency through a levy would ensure that spending decisions are genuinely focused on evidence-based need and effectiveness rather than trade-offs with other departmental spending. It would also support the independence of the Fair Work Agency.

The exact level of the levy is for the government to decide, but as an illustration, if the GLAA, HMRC NMW team and EASI's combined funding of £35.1 million were covered by a levy on businesses with more than 250 employees, it would only amount to £3.25 per employee per year. Small and medium-sized businesses (those with fewer than 250 staff) could be exempt from the levy, or pay a smaller amount.



How the Fair Work Agency can deliver for the most vulnerable workers



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