Enforce for good

Effectively enforcing labour market rights in the 2020s and beyond

Presentation to NERI Labour Market Conference, May 2023

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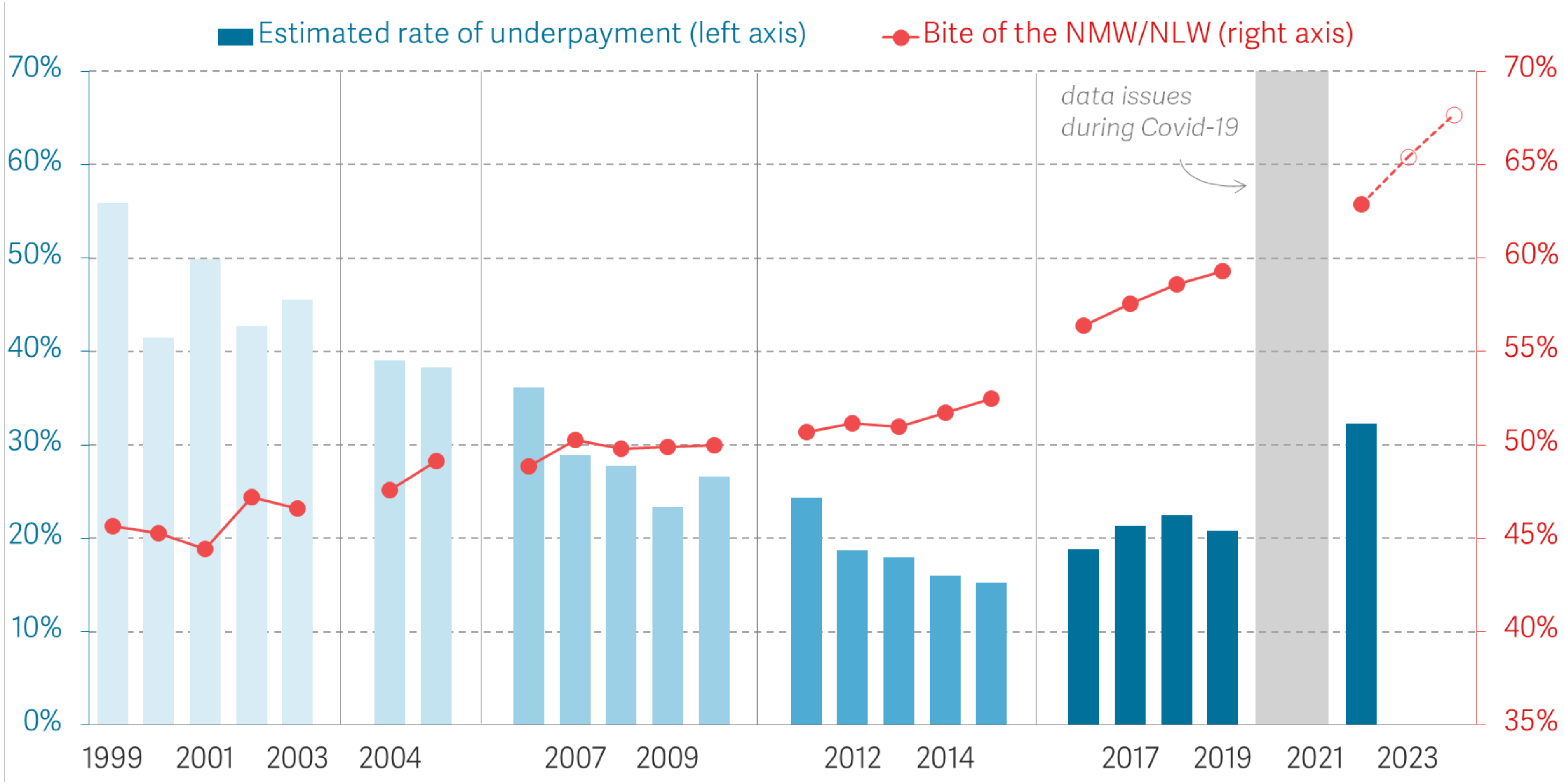
(joint paper with Lindsay Judge)

Resolution Foundation

There is widespread non -compliance with UK employment rights

Non-compliance with labour market rules is far too high

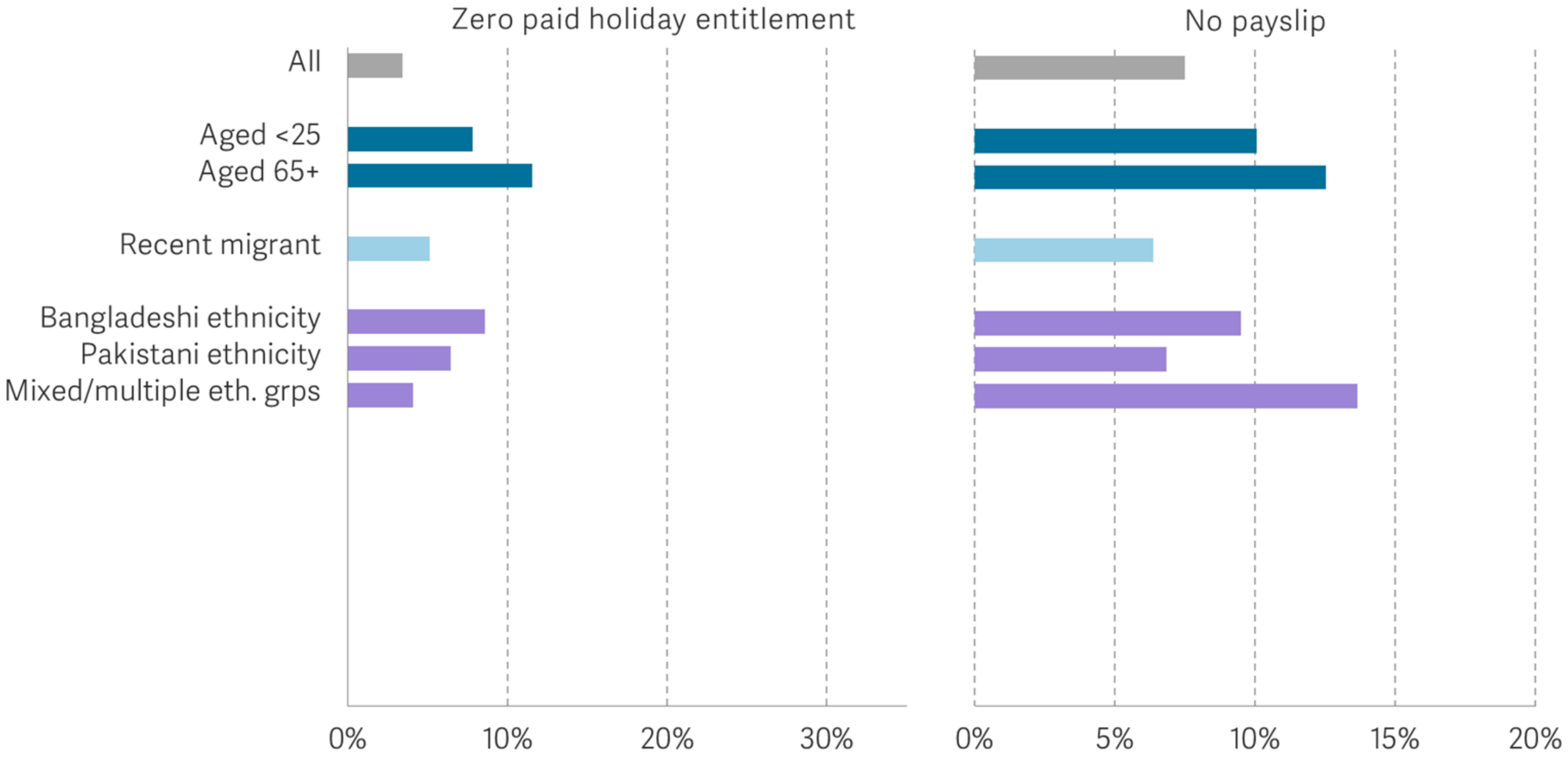
Estimated rate of underpayment for covered workers (those paid at or below the NMW/ NLW-plus-5p), and 'bite' of the NMW/NLW (minimum wage rate as share of median wage), employees aged 25 and over: UK



Notes: Different methods are used to calculate underpayment rates 1999-2003, 2004-05, 2006-10 and 2011 onwards. Data for 2016 onwards are for different points in the minimum wage year than all other years, so cannot be directly compared to 2011-15 data. Bite is for April of the relevant year. We exclude 2020 and 2021 because pay data was affected by the Job Retention Scheme, where many furloughed workers were paid 80 per cent of their previous earnings. Latest data point is 2022 for the underpayment series and 2024 for the (projected) bite.
Source: Low Pay Commission analysis of ONS, Annual Survey of Hours and Earnings, 1999-2018; LPC, Low Pay Commission Report 2022.

Some demographic groups are at the sharp end

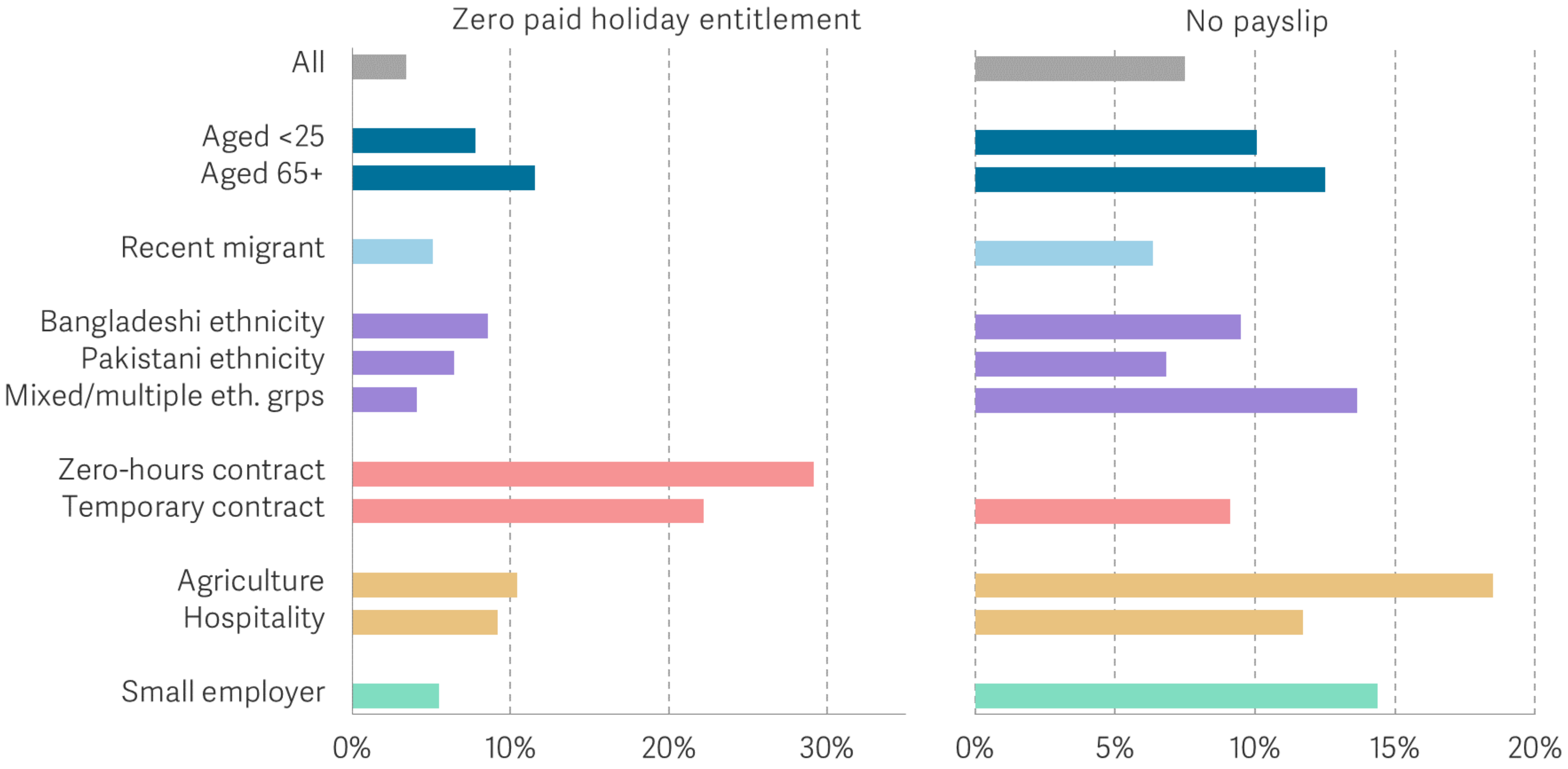
Proportion of employees reporting zero paid holiday entitlement and not being in receipt of a payslip, by selected characteristics: UK, 2019-2022 and 2018-19



Notes: Main jobs only. The ‘recent migrant’ category refers to people who were born outside the UK and first came to the UK within the past five years. Data for zero paid holiday entitlement is averaged over Q4 2019 and Q4 2022 (the holiday pay variable is only available in Q4 of the LFS and we avoid 2020 and 2021 due to the ongoing impact of the Covid-19 pandemic); data for no payslip refers to 2019-20.
Source: RF analysis of ONS, Labour Force Survey; DWP, Family Resources Survey.

Some types of job are particularly high risk

Proportion of employees reporting zero paid holiday entitlement and not being in receipt of a payslip, by selected characteristics: UK, 2019-2022 and 2018-19



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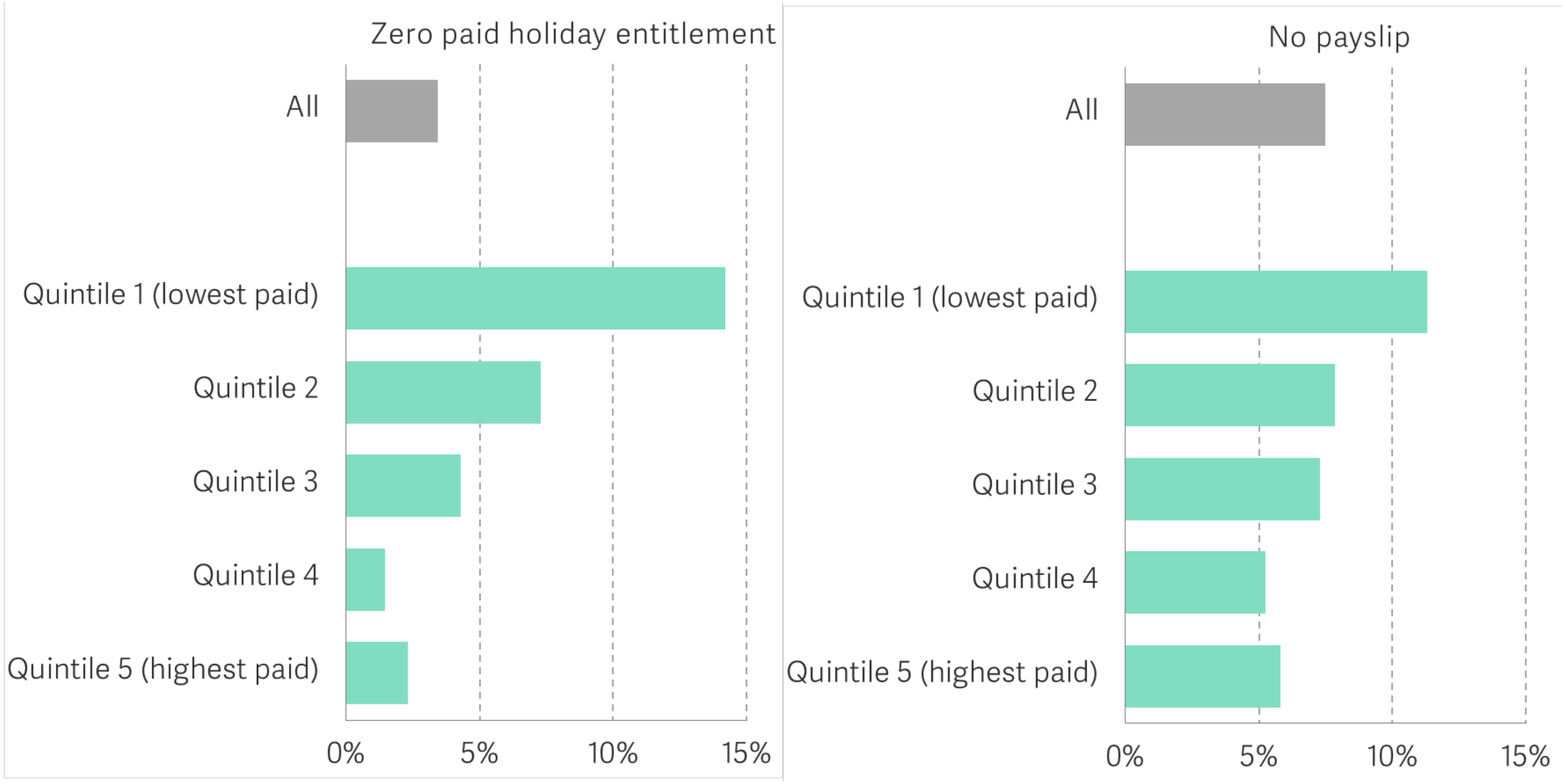
Source: RF analysis of ONS, Labour Force Survey; DWP, Family Resources Survey.

Low-paid workers bear the brunt of non-compliance

Proportion of employees reporting zero paid holiday entitlement (Q4 2019 and Q4 2022) and not being in receipt of a payslip (2019-20), by hourly pay quintile: UK

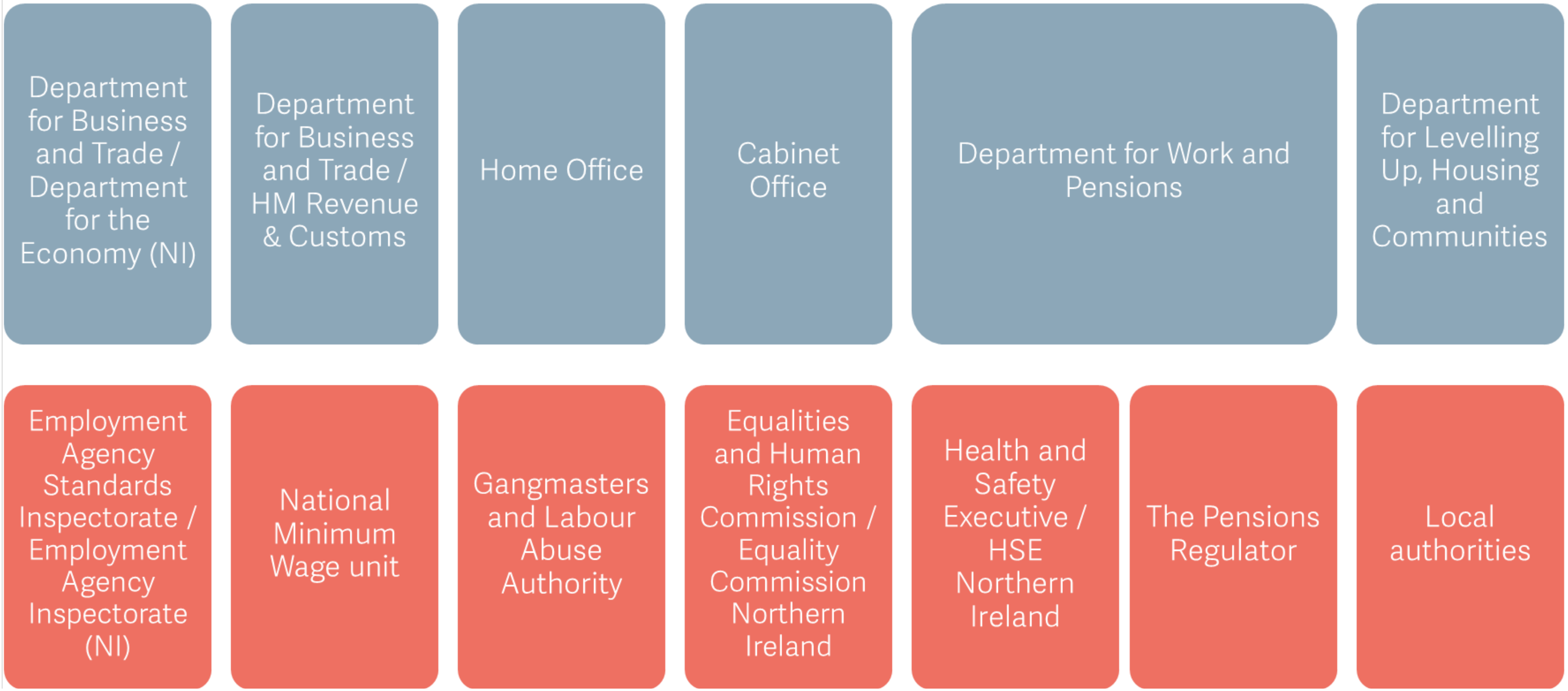


Notes: Main jobs only. Hourly pay quintiles calculated among employees only. The 'all' bar includes people who did not respond to the pay questions. Data for zero paid holiday entitlement is averaged over Q4 2019 and Q4 2022 (the holiday pay variable is only available in Q4 of the LFS and we avoid 2020 and 2021 due to the ongoing impact of the Covid-19 pandemic); data for no payslip refers to 2019-20.
Source: RF analysis of ONS, Labour Force Survey; DWP, Family Resources Survey.

The current system is not well - equipped to tackle non -compliance

The UK enforcement system is highly fragmented

Government departments responsible for enforcing labour market law: England and Wales/GB/UK, March 2023



Notes: Blue boxes are Government departments; red boxes are enforcement agencies. Each enforcement agency is part of, funded by, and/or has its strategic framework set by ministers from the department(s) above it. EHRC, EAS and HSE are GB only, but have direct counterparts in Northern Ireland. GLAA covers England and Wales only with respect to modern slavery and the UK for Gangmaster licencing; all other bodies cover the UK.
Source: RF analysis of GOV.UK.

Low resourcing means not enough 'boots on the ground'

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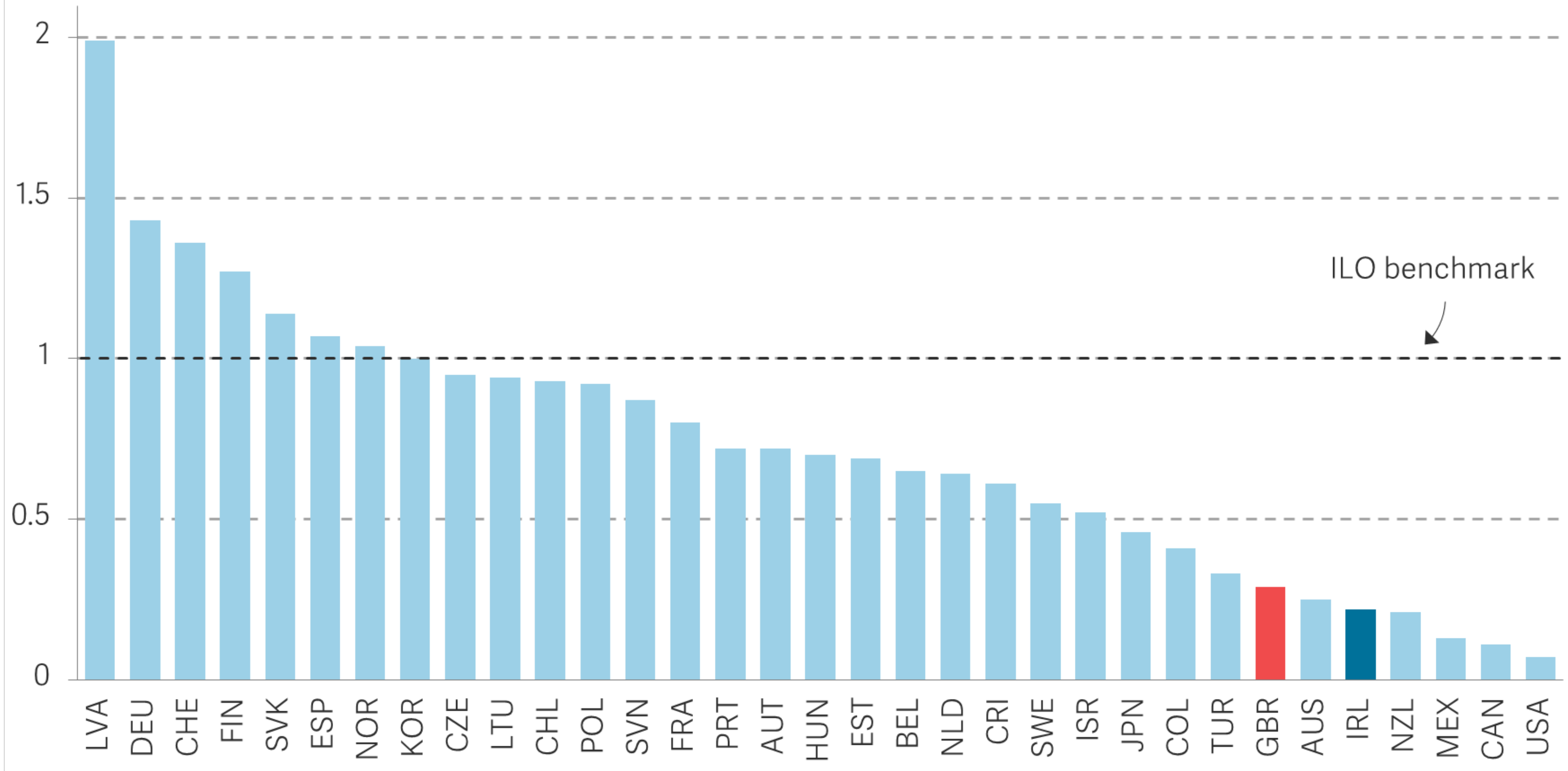
Number of labour inspectors per 10,000 employed persons, by OECD country: 2019-2021



Notes: Data points cover the latest available data in each country, ranging from 2019 to 2022. All figures come from the ILO database, except for Australia and the Netherlands (for which data is not available from the ILO) which we draw from our partner-commissioned work. In these latter two cases, however, we note that the figures may not be perfectly comparable.
Source: ILO, Inspectors per 10,000 employed persons; reports from RF-commissioned international partners.

And resourcing has fallen over time

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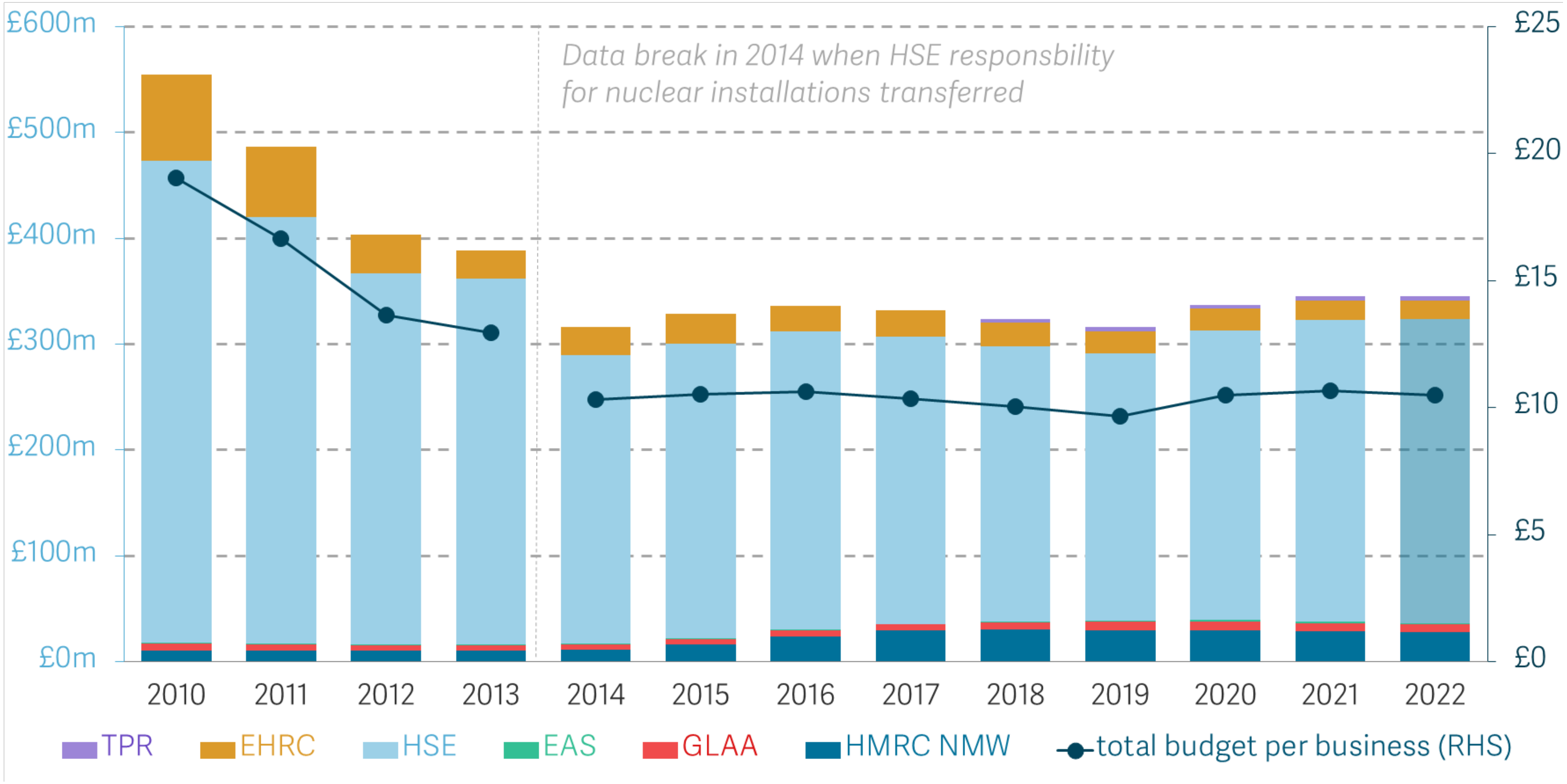
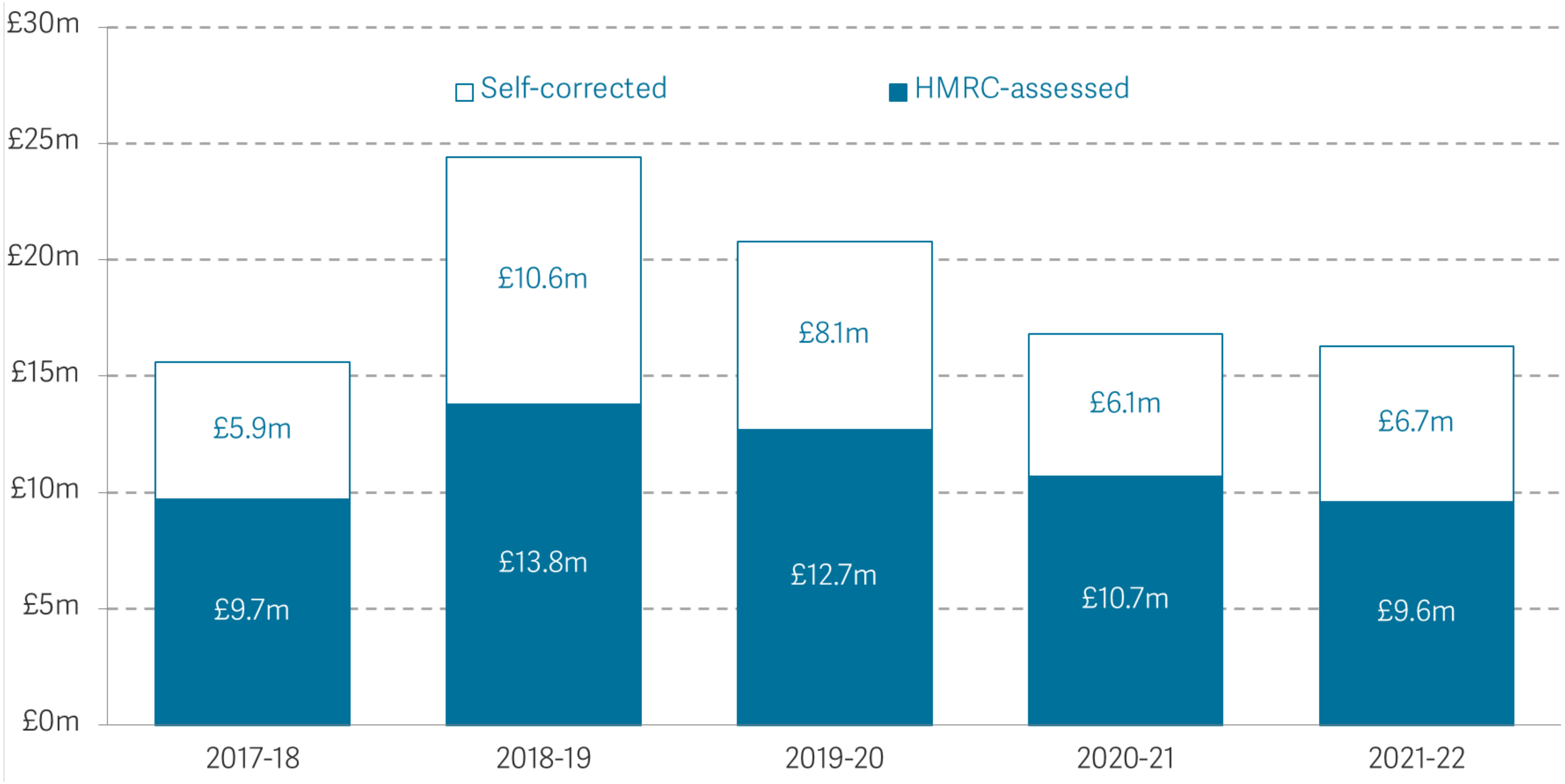
Total enforcement agency budgets in 2022-23 prices (right-hand axis), and total budget per employed person (left-hand axis): GB/UK



Notes: Figures converted to 2022-23 prices using CPIH. Data for TPR starts in 2018-19 as that was when the auto-enrolment rollout was complete. GLAA includes data from when it was the GLA. Break in the HSE data series in 2014, when HSE no longer took on responsibility for nuclear installations; the rise in TPR's budget in the latest two years is linked to bringing some services in-house. HSE 2022 budget is not currently available so is extrapolated based on previous years' levels and trends.
Source: RF analysis of DLME, Labour Market Enforcement: annual report 2019 to 2020; various FOI requests.

Non-compliant firms are often given the benefit of the doubt

National Minimum Wage arrears identified, by whether HMRC-assessed or self-corrected: UK



Notes: £6m of self-corrected arrears in 2018-19 and £0.25m in 2019-20 were the result of the Social Care Compliance Scheme, which opened in November 2017, and closed to new applications in December 2018.
Source: M Beels, Labour Market Enforcement: annual report 2019 to 2020, June 2022; M Beels, Labour Market Enforcement Strategy 2022 to 2023, March 2023.

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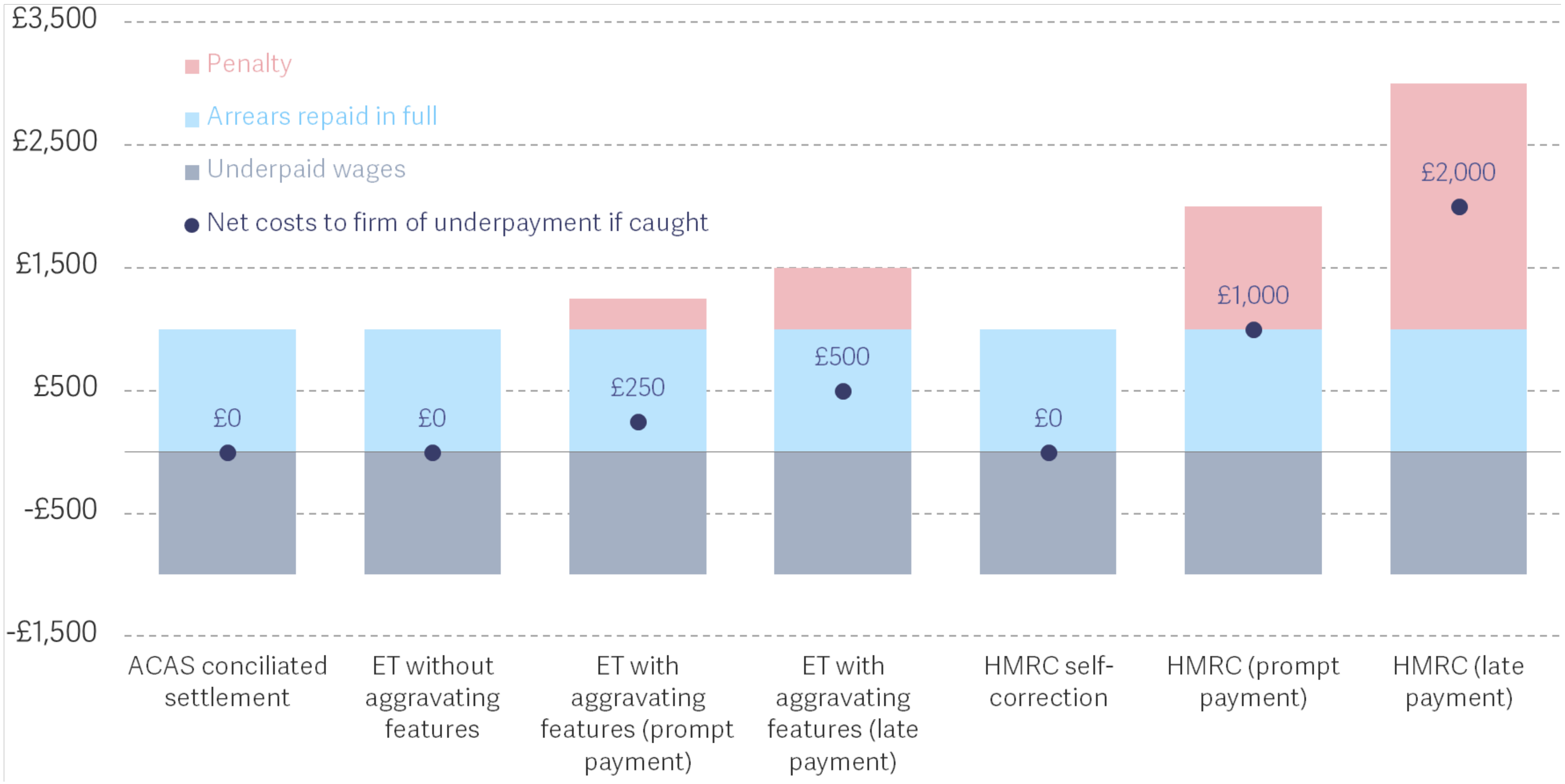
Fines are not high enough to deter non-compliance

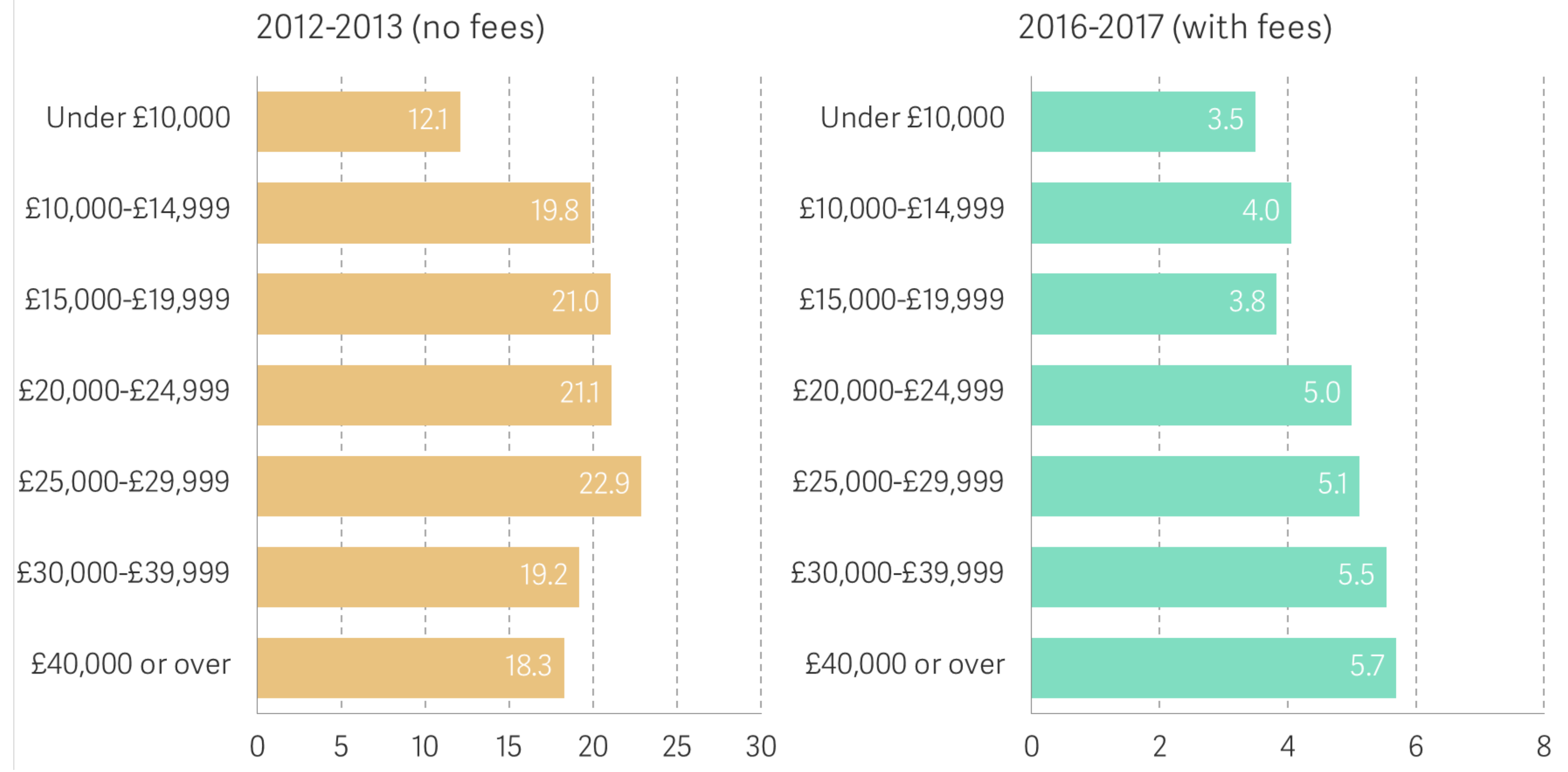
Potential net costs to a firm underpaying a worker the NMW by £1,000: UK, 2023



Source: RF calculations based on information in Figure 3 of: L Judge & A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation, January 2020.

Workers are left to enforce their own rights – but not all can

Number of single jurisdiction applicants to employment tribunal per 10,000 employees, by annual pay band: GB, January 2012-January 2013 and October 2016-October 2017



Notes: Pay bands refer to applicants' salary while working for the employer the case was brought against, and the 2012-2013 salaries have been adjusted using CPIH to 2016-2017 prices. Survey samples single jurisdiction applicants only, which comprised around half of all applications to the ET in 2012. Employment tribunal fees were introduced in July 2013. They were declared unlawful by the Supreme Court in July 2017, at which point ET claims no longer attracted a fee with immediate effect. In practice, this means that none of the claims covered in the 2012-2013 data, and virtually all claims covered in the 2016-2017 data, were made while fees were in operation.
Source: RF analysis of BEIS, Survey of Employment Tribunal Applications; ONS, Labour Force Survey.

A policy plan for change

A five-point plan of action

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- Introduce a single enforcement body (SEB) that goes further than the Government's 2018 proposal and covers all worker rights unless reserved to another body

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- Follow the model of the Competition and Markets Authority (CMA) and empower worker and firm representatives to bring a 'super-complaint'
- Get serious about deterring non-compliance by doubling the number of labour market inspectors and introducing the power to levy a financial penalty up to four-times any arrears owed
- Strengthen the employment tribunal (ET) system by extending application times to six months and enforcing awards adequately

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