



# An inspection of the Home Office's approach to Illegal Working

August – December 2018

**David Bolt**

**Independent Chief Inspector of  
Borders and Immigration**



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## Our purpose

To help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection.

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# Contents

Foreword	2
1. Scope and Purpose	4
2. Methodology	5
3. Summary of conclusions	6
4. Recommendations	9
5. Background	11
6. Understanding the illegal working threat	15
7. Illegal working roles, responsibilities and structures	18
8. Inspection findings – ICE team performance	23
9. Inspection findings – Immigration Intelligence	35
10. Inspection findings – Modern Slavery	46
11. Inspection findings – Partnerships	52
12. Inspection findings – Sectoral engagement	58
13. Inspection findings – Sanctions	63
14. Inspection findings – Illegal working and Windrush	74
Annex A: Previous ICIBI recommendations	79
Annex B: Role and remit of the Independent Chief Inspector	80
Annex C: Expectations of the Independent Chief Inspector	82
Acknowledgements	84

# Foreword

The ability of migrants who are not legally entitled to work in the UK to find paid employment is seen by the Home Office as key to why many migrants remain in the UK without leave, or work here in breach of the terms of their leave. Equally, the belief that they will be able to find work is seen as a significant 'pull factor' for migrants seeking to reach the UK.

Illegal working also raises other issues, for example migrants working illegally in the UK are vulnerable to exploitation and abuse by unscrupulous employers, and businesses employing illegal workers can undercut and damage legitimate businesses, deprive HM Government of revenue in the form of taxes and national insurance payments, and adversely affect the employment prospects of others.

For these reasons, tackling illegal working has been a Home Office priority for some years.

Because of its hidden nature, estimating the size of the problem with any confidence has been difficult. However, since at least 2015, when I last inspected this topic, the Home Office has understood it to be "greater than our capacity to enforce it through traditional arrest activity."

My 2015 report noted a then relatively new shift in emphasis towards encouraging employer compliance through 'educational visits' by Immigration Compliance and Enforcement (ICE) teams, rather than continuing to rely primarily on enforcement visits to locate and arrest offenders. In this latest inspection, I therefore looked to see how this approach had developed, as well as at the measures introduced since 2015 under the umbrella of the 'compliant environment' to strengthen the powers of ICE teams and the penalties for non-compliant employers.

I found that efforts had been made to develop strategies and encourage partnerships and collaborations with other government departments and with large employers and employer groups in particular sectors, but there were no metrics to show what this had achieved. Meanwhile, 'on the ground' there was little evidence that the shift of emphasis trialled in 2015 had 'stuck', and ICE teams were doing (for the most part professionally and properly from what inspectors observed) what they had always done – deploying in response to allegations received from members of the public, in the majority of cases to restaurants and fast food outlets, and with a focus on a handful of 'removable' nationalities.

The lessons from the Windrush scandal are the subject of an independent review, due to report at the end of 2018-19, and there is a compensation scheme for those affected. Therefore, I did not look specifically at how Windrush generation individuals had been impacted by IE's illegal working measures. However, it was evident that Windrush had had a significant effect on Immigration Enforcement (IE), operationally (as a result of the 'pausing' of data sharing with other departments) and psychologically (with IE perceiving that other departments and agencies, employers and the general public were now less supportive), and that having dispensed with removals targets it was no longer clear, at least to ICE teams, what success looked like.



This report makes 6 recommendations. The majority focus on improving the mechanics of illegal working compliance and enforcement but, while important and necessary, these are not enough by themselves to answer the criticism that the Home Office's efforts are not really working, and may have had the unintended consequence of enabling exploitation and discrimination by some employers.

My first 2 recommendations are pivotal to changing this. The Home Office needs to publish an updated (post-Windrush) strategy and Action Plan for tackling illegal working, supported by clear external and internal communications to ensure maximum buy-in cross-government, by employers and representative organisations, by the general public, and within the Home Office itself as soon as possible. It also needs to capture, analyse and report the quantitative and qualitative data and information that demonstrates the strategy and actions are not just effective in reducing illegal working and tackling non-compliant employers but are also sensitive to and deal appropriately with instances of exploitation and abuse.

The report was sent to the Home Secretary on 6 February 2019.

**D J Bolt**

**Independent Chief Inspector of Borders and Immigration**

# 1. Scope and Purpose

- 1.1 This inspection examined the efficiency and effectiveness of the Home Office’s approach to illegal working, specifically:
- the assessment of the illegal working threat
  - the operational response, including the performance of Immigration Compliance and Enforcement (ICE) teams
  - the collection, analysis, assessment and use of intelligence
  - the identification and safeguarding of potential victims of modern slavery and of other forms of exploitation
  - the use of Civil Penalties and Closure Notices against non-compliant employers
  - engagement by and joint working between Immigration Enforcement (IE) external partners and stakeholders
  - the impact of the Windrush scandal
- 1.2 The ICIBI previously inspected this area of the Home Office’s work in 2014-15. ‘An Inspection of How the Home Office Tackles Illegal Working (October 2014 – March 2015)’ was published in December 2015.<sup>1</sup> This latest inspection examined what changes and improvements the Home Office had made since 2015, including in relation to the recommendations contained in the 2015 report.
- 1.3 This inspection completes the series of inspections identified in the ICIBI 3-Year Inspection Plan 2016-17 – 2018-19 under the heading ‘hostile environment’, looking at the measures introduced in the Immigration Acts 2014 and 2016. The previous inspections<sup>2</sup> are available on the ICIBI website.

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<sup>1</sup> <https://www.gov.uk/government/publications/inspection-report-on-illegal-working-december-2015>

<sup>2</sup> An inspection of the ‘hostile environment’ measures relating to driving licences and bank accounts (January to July 2016), published 13 October 2016; The implementation of the 2014 ‘hostile environment’ provisions for tackling sham marriage (August to September 2016), published 15 December 2016; An inspection of the “Right to Rent” scheme, published 28 March 2018; An inspection of Home Office (Borders, Immigration and Citizenship System) collaborative working with other government departments and agencies (February – October 2018), to be published.

## 2. Methodology

### 2.1 Inspectors:

- in September 2018, visited relevant Home Office units in Croydon, Manchester and London in order to inform the scope of the inspection and the initial evidence request
- reviewed open source material, including previous relevant inspection reports, in particular 'An Inspection of How the Home Office Tackles Illegal Working (October 2014 – March 2015)'
- on 17 September 2018, issued a 'call for evidence' via the ICIBI website seeking submissions from employers and others with relevant knowledge, expertise or first-hand experience of Home Office's current policies, strategy, planning, guidance and operational practice in relation to illegal working
- between August and October, met with academics, trade unions, NGOs and employment solicitors
- in October 2018, requested and analysed documentary evidence from the Home Office about the staffing, training, governance, collection and use of intelligence, and operational activity (including arrests, encounters, removals, Civil Penalties) in relation to illegal working for the business years of 2015-16, 2016-17, 2017-18 and 2018-19 to 31 August 2018
- examined a sample of 48 case files, selected from a list of all ICE team operations between 1 April 2017 and 31 March 2018 where an arrest linked to illegal working was made in order to understand ICE operations and record keeping
- between 7 and 29 November 2018, visited ICE teams in Croydon, Cardiff, Solihull, Glasgow, Manchester and Bedford, accompanying the teams on operational deployments, and conducted 62 interviews and focus groups, involving all grades from Administrative Officer to Senior Civil Servant (Director)
- in November and December 2018, sought further evidence from the Home Office to test and triangulate the findings to date

2.2 On 10 December 2018, the inspection team presented its emerging findings to the responsible Home Office Senior Civil Servant and their team

2.3 A copy of the draft report was sent to the Home Office on 17 January 2019 for a factual accuracy check. The Home Office responded on 31 January 2019.

## 3. Summary of conclusions

- 3.1 The Home Office has been clear about what it sees as the impact of illegal working. The 2014 'Code of Practice' accompanying the Civil Penalty scheme for employers found to be employing a person illegally noted that it "often results in abusive and exploitative behaviour, the mistreatment of illegal migrant workers, tax evasion and illegal housing conditions. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are in the UK lawfully." The 2018 redraft of the Code repeats this.
- 3.2 For some years, illegal working has been identified as a priority (though not the highest priority) threat in the assessments produced as part of the process for determining Immigration Enforcement's activities nationally, regionally and locally.
- 3.3 While illegal working is recognised as a serious threat, and one that causes significant harm, there is no reliable estimate for the number of people working illegally in the UK. Those working illegally have every reason to conceal the fact, while those who employ illegal workers may not know because they have not checked an employee's right to work, as required by law, or may have been duped with forged or fraudulent documents or may be, in varying degrees, complicit.
- 3.4 However, in September 2015 IE noted in an internal report that it had been estimated that "between 190,000 and 240,000 businesses employ illegal migrants"<sup>3</sup> and concluded that "the size of the illegal working problem is greater than our capacity to enforce it through traditional arrest activity".
- 3.5 The 2015 inspection of illegal working saw evidence of a shift in IE's approach towards tackling illegal working, with a greater emphasis on raising awareness amongst employers rather than simply conducting enforcement visits, with the aim of discovering and arresting illegal workers. Meanwhile, the 'compliant environment' measures brought in the Immigration Acts 2014 and 2016 included increased penalties for employing an illegal worker and greater powers for IE to deal with illegal working and non-compliant employers.
- 3.6 The current inspection looked to see what changes and improvements the Home Office had made in tackling illegal working since 2015. It found there had been significant efforts from within IE to develop strategies and to encourage partnerships and collaborations with other government departments and with large employers and employer groups in particular sectors. But, there were no metrics in place to measure how successful or otherwise these had been, and it was unclear what level of support they enjoyed at the most senior levels in the Home Office and elsewhere, especially since the Windrush scandal.
- 3.7 However, the evidence suggested that little had changed 'on the ground'. Between 1 April 2015 and 31 August 2018, Immigration Compliance and Enforcement (ICE) teams conducted 23,413 illegal working deployments, all of which inspectors were told were "intelligence-led". During these deployments, they encountered 83,855 individuals<sup>4</sup> and made 14,762 arrests.

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<sup>3</sup> The figures were derived from a 2015-16 Cabinet Office review of illegal working. The Home Office has described them as "speculative" with no "sound statistical basis". It stated that: "The figures used by the Cabinet Office were subsequently discounted because they were found to be inaccurate, and no policy or operational activity resulted on the basis of the paper or the figures it quoted."

<sup>4</sup> The Home Office explained that: "Not all those encountered were necessarily illegal workers".

- 3.8 Immigration Compliance and Enforcement (ICE) teams were still largely reliant on allegations received from members of the public as the main source of operational leads, and almost half of all illegal working deployments were to restaurants and fast food outlets, and concentrated on a few nationalities, essentially those believed to be removable. Bangladeshis, Indians, Pakistanis and Chinese made up almost two-thirds (63%) of all illegal working arrests. Whatever the logic of this approach from a removals perspective, the inference for other nationals working illegally, especially if they were not employed in restaurants and takeaways, was that the likelihood of being arrested for working illegally was low and the likelihood of removal was negligible.
- 3.9 New powers in the Immigration Act 2016, in particular the powers of entry to licensed premises and to issue Closure Notices were not being used, in the latter case because applying for one took officers away from the frontline, which teams could ill afford as they were perennially under strength (in 2 of the 3 ICE regions). Meanwhile, the conversion rates for referrals from ICE teams into Civil Penalty Notices had dropped off (notably since Windrush, but they were already falling). Some IE managers and staff questioned the effectiveness of these penalties, which had been strengthened in the Immigration Act 2014, especially as businesses seemed able to 'phoenix' (dissolve and reopen under a different name with different directors in order to avoid paying a Civil Penalty) with relative ease.<sup>5</sup>
- 3.10 Within IE it appeared that some of the 'disconnects' between functions that had been seen by inspectors in 2015 still persisted and may even have become more pronounced. Immigration Intelligence (II) and ICE teams were critical of one another – ICE teams did not understand that II was trying to transform and focus more on "middle and upper tier intelligence"; II was taking too long to pass on intelligence, so that it was no longer actionable when ICE received it. Whatever the truth of this, it seemed that the Single Intelligence Platform (SIP) was not (yet) the panacea it had been held out to be in 2015 when ICIBI inspected the Immigration Enforcement and Border Force intelligence functions, not least as IE struggled to provide the current inspection with detailed breakdowns of the data on illegal working operations that SIP had been supposed to make possible.
- 3.11 The other 'disconnect' that had persisted was between ICE teams and Criminal and Financial Investigation (CFI) teams, where the continued dearth of criminal investigation capability within ICE teams and the focus of CFI teams on organised immigration crime meant that Level 1 (local) crime was still falling into the gap between the two.<sup>6</sup>
- 3.12 The general view from those interviewed by inspectors was that Windrush had fundamentally altered the environment in which IE operated, in particular the declared move away from removal targets had left some unsure about what 'success' now looked like, and this was affecting morale. It had also affected staff recruitment and collaboration with other government departments and others, who were perceived to be less willing to be associated with IE and with compliant environment measures.
- 3.13 Even before Windrush, ICE teams in some locations had seen a rise in attempts to disrupt ICE deployments through acts of violence against IE property or ICE officers, threatening behaviour, verbal abuse and protests, some of which appeared to have been coordinated using social media. Some public reactions to ICE teams appeared spontaneous and relatively petty. Some

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<sup>5</sup> Senior managers in Civil Penalties Compliance team (CPCT) told inspectors that they were making efforts to prevent 'phoenixing', including monitoring companies through Companies House and objecting to "strike offs" to prevent businesses from shutting down in order to evade payment.

<sup>6</sup> At the factual accuracy stage, the Home Office commented that: "The decision to remove investigative capability from within ICE teams and transfer this element of work back to CFI was justified in the IE CFI strategy. While it meant that ICE teams were unable to take low level prosecutions forward, it did allow CFI to allocate a proportion of investigative resource to L1 investigations where they met national priorities. This ensures that even low level criminal prosecutions are prioritised and delivered in accordance with IE's strategic objectives."

were more serious and had raised concerns about the safety of ICE teams in the field and about their ability to carry out their duties effectively.

- 3.14 Windrush has led to questions about whether sufficient safeguards were in place when IE identified individuals they believed to be migrants without the right to live and work in the UK. Certainly, stakeholders were clear with inspectors that they considered ICE teams to be ill-equipped in terms of expertise, time and incentive to identify where an individual encountered working illegally was in fact a victim of modern slavery or some other form of exploitation, and the small sample of case records examined by inspectors tended to support this view. Inspectors also heard concerns that fear of falling foul of IE might encourage some employers to discriminate against individuals who found it difficult to evidence their right to work.<sup>7</sup>
- 3.15 The ‘pausing’ of some IE activities as a result of Windrush had undoubtedly had a negative effect on IE ‘delivery’ in 2018-19, although not across the board. Nevertheless, some in IE have seen a positive side in the consequential strengthening of assurance processes. Windrush has created both an opportunity and an imperative for IE (and the wider Home Office) to examine its approach to illegal working (and other compliant environment measures) and ask not only whether it is effective but also whether it is appropriate. As at the end of 2018, based on this inspection, there was little sense that IE had (as yet) fundamentally rethought that approach.

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<sup>7</sup> In 2014, the Home Office produced a Code of Practice for employers setting out how to avoid unlawful discrimination. This was last updated in November 2014. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311665/Code\\_of\\_practice\\_on\\_avoiding\\_unlawful\\_discrimination\\_while\\_preventing\\_illegal\\_working.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/311665/Code_of_practice_on_avoiding_unlawful_discrimination_while_preventing_illegal_working.pdf)

## 4. Recommendations

### The Home Office should:

1. Publish an updated (post-Windrush) strategy and Action Plan for tackling illegal working that clearly communicates:
  - a. where collaboration and contributions are required from others (including, other government departments and agencies, employers' organisations, individual employers complying with 'right to work' checks) and what the Home Office is doing to secure this
  - b. what it means in practice (priorities, specific actions, performance measures) for Immigration Enforcement (IE) teams and other BICS directorates
  - c. what oversight arrangements are in place to ensure that policies and actions are fair and reasonable and what safeguards exist to identify and protect vulnerable groups and individuals
2. Capture, analyse and report the quantitative and qualitative data and information that enables the Home Office to demonstrate the effectiveness and appropriateness of:
  - a. the overall strategy for tackling illegal working
  - b. particular initiatives, operations and actions
3. Ensure that all IE teams with a responsibility for delivering the illegal working strategy and Action Plan (including Immigration Intelligence, Immigration Compliance and Enforcement teams, Criminal and Financial Investigation teams, and the Civil Penalty Compliance team) are:
  - a. communicating effectively (both formally through tasking mechanisms and informally through visits, 'shadowing', and secondments)
  - b. that there are no gaps in IE's coverage or operational response (in particular in relation to criminal investigations and prosecutions) as a result of misaligned priorities and practices or lack of skills or knowledge
4. Break the continued reliance by Immigration Compliance and Enforcement (ICE) teams on allegations received from members of the public, and the consequential concentration on restaurants and fast food outlets (and focus on a few 'removable' nationalities) by developing effective intelligence collection and assessment capabilities at local/regional level, and aim to widen the deterrent effect of the risk of an ICE visit by deploying more frequently to other employment sectors.

5. Review the effectiveness of the Civil Penalty regime, including:
  - a. whether the evidential threshold applied to Civil Penalties is appropriate and, if so, what further training or guidance Immigration Compliance and Enforcement teams require
  - b. whether the amount of the penalty is having a perverse effect on employer behaviour in some cases
  - c. what can be done to combat 'phoenixing' and any other devices employers use to avoid payment
  
6. Explore whether more effective use could be made of licence revocations and Closure Notices, addressing specifically the operational value of these measures (where they are best used), the training needs of IE officers so that they are comfortable in using them, and how the disincentive of having to take time away from the frontline to attend licence review or court hearings could be better managed.



## 5. Background

### The Home Office illegal working ‘narrative’

- 5.1 The Home Office has not produced a definition of ‘illegal working’. However, from various guidance documents, and through custom and practice, it has come to mean the act of working in the UK by someone who is the subject of immigration control, and who is either in the country illegally or is breaching the terms of their leave by working.
- 5.2 For some years, the Home Office ‘narrative’ regarding illegal working has been consistent. For example, the latest ‘DRAFT Code of practice on preventing illegal working – Civil penalty scheme for employers’,<sup>8</sup> presented to Parliament in December 2018, repeats verbatim the introduction to the May 2014 version of the Code:
- “Illegal working often results in abusive and exploitative behaviour, the mistreatment of illegal migrant workers, tax evasion and illegal housing conditions. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are in the UK lawfully.”
- 5.3 Over this period, through numerous ministerial statements about the ‘compliant environment’ measures introduced in the Immigration Acts 2014 and 2016, the Home Office has made it clear that it regards denying access to employment to those who are not entitled to work by virtue of their immigration status, as a key element of its strategy to persuade large numbers to depart the UK voluntarily and to reduce the ‘pull factor’ for anyone thinking to come to the UK to settle illegally.

### The legislative framework

- 5.4 Powers and penalties to combat illegal working were in place prior to the Immigration Acts 2014 and 2016.
- 5.5 While it did not explicitly refer to illegal working, section 24 of the Immigration Act 1971 (“the 1971 Act”) had the effect of making it a criminal offence along with other actions where “a person who is not patrial<sup>9</sup> ... knowingly ... fails to observe a condition of [their] leave”. The penalty under the 1971 Act is “a fine of not more than £200<sup>10</sup> or with imprisonment for not more than six months, or ... both”.
- 5.6 Section 8 of the Asylum and Immigration Act 1996 (“the 1996 Act”) introduced the offence of employing “a person subject to immigration control (“the employee”) who has attained the age of 16” if the latter does not have leave to enter or remain in the UK or is subject to a condition

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8 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/764662/Illegal\\_Working\\_Code\\_of\\_practice\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764662/Illegal_Working_Code_of_practice_web.pdf)

9 Amended to “British citizen” by the British Nationality Act 1981.

10 Amended to “level 5 on the standard scale” by the Criminal Justice Act 1982 and the Asylum and Immigration Act 1996. Level 5 is the highest point of the scale for summary offences. Section 37 of the Criminal Justice Act 1982 set Level 5 at £5,000.

<https://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines>

precluding them from taking up employment. A person found guilty of this offence is liable to a fine “not exceeding level 5 on the standard scale”, but it is a defence if they can prove, by means of a copy or a proper record of the relevant document, that before the employment began they were presented with a document which appeared to them to show that the person was entitled to work in the UK.

5.7 Section 8 was repealed by the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”), Sections 15 to 25 of which gave the Home Secretary the power to impose a financial penalty on anyone who employed “an adult subject to immigration control”. The 2006 Act required the Home Secretary to “issue a code of practice specifying factors to be considered by him in determining the amount of a penalty” and to review and update this from time to time.<sup>11</sup>

5.8 The 2006 Act also made it an offence, punishable on conviction by imprisonment,<sup>12</sup> a fine, or both, if a person:

“employs another (“the employee”) knowing that the employee is an adult subject to immigration control and that-

a. he has not been granted leave to enter or remain in the United Kingdom, or

b. his leave to enter or remain in the United Kingdom—

(i) is invalid,

(ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or

(iii) is subject to a condition preventing him from accepting the employment.”

5.9 Section 44 of the Immigration Act 2014 (“the 2014 Act”) amended section 17 of the 2006 Act, introducing the requirement for an employer to exercise their right to object to a penalty notice for a breach of the illegal working provisions in the 2006 Act to the Home Secretary, before appealing to the civil court against the penalty. Section 45 amended section 18 of the 2006 Act and concerned the recovery of sums payable under penalty notices. It allowed the Home Secretary to enforce a penalty as if it were a debt due under a court order, in principle making it easier and quicker to receive payment.

5.10 The Explanatory Notes that accompanied the Immigration Act 2016 (“the 2016 Act”) explained that it contained:

“measures to tackle illegal working, enhance the enforcement of labour market rules, deny illegal migrants access to services including housing and banking, provide new powers for immigration officers, as well as other measures to improve the security and operation of the immigration system.”

and that its purpose was

“to tackle illegal immigration by making it harder to live and work illegally in the United Kingdom. The intention behind the Act is that without access to work, illegal migrants will depart voluntarily, but where they do not, the Act contains other measures to support enforced removals.”

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<sup>11</sup> At the time of the inspection, the December 2018 Draft was the latest iteration of the Code.

<sup>12</sup> Originally, conviction on indictment was for “a term not exceeding 2 years”. With effect from 12 July 2016, this was increased to “a term not exceeding 5 years” by the Immigration Act 2016.

- 5.11 The 2016 Act extended Immigration Enforcement’s (IE) powers to search, seize and detain. Chapter 2 (sections 34 to 38) of the 2016 Act is devoted to ‘illegal working’. It includes a new section 24B for insertion into the 1971 Act covering the offence of illegal working. The Home Office explained that the 2016 Act had “clarified that working illegally is always a criminal offence”, thereby providing “a firmer legal foundation” for the use of the Proceeds of Crime Act 2002 to confiscate the earnings of anyone convicted of working illegally.<sup>13</sup> It also includes amendments to section 21 of the 2006 Act, widening the scope of the criminal offence of employing an illegal worker and increasing the penalty.
- 5.12 Schedules 4 and 5 of the 2016 Act cover the denial of licence, for the sale of alcohol from particular premises and to drive a taxi or private hire vehicle respectively, to anyone who is not entitled to work in the UK by virtue of their immigration status. Schedule 6 covers ‘illegal working closure notices and illegal working compliance orders’ and empowers IE to shut down businesses found to be employing illegal workers.

## The previous inspection

- 5.13 ICIBI previously inspected this area of the Home Office’s work in 2014-15. ‘An Inspection of How the Home Office Tackles Illegal Working (October 2014 – March 2015)’ was published in December 2015.
- 5.14 The 2015 report made 8 recommendations (see Annex A). These focused on improving staff training, guidance, internal communications and feedback, and ensuring Immigration Compliance and Enforcement (ICE) teams had the necessary skills, experience and capacity; on capturing and evaluating relevant data in order to assess the effectiveness of various initiatives; and on supporting employers to be compliant. The Home Office “Accepted” 7 of the recommendations.
- 5.15 One recommendation was “Not accepted”. This was that: “the Home Office should produce information and advice for businesses in the first language of the business owners and managers most encountered during compliance and enforcement visits, both to hand out and make available online.” The rejection of this recommendation seemed at odds with IE’s recognition from the then recently concluded Operation Skybreaker<sup>14</sup> that it should look to provide information in a range of languages.
- 5.16 The previous inspection team was told that the IE strategy was to move away from widespread enforcement activity in workplaces, designed primarily to arrest and detain immigration offenders. It was looking to create a more collaborative relationship with employers, through visits to educate and encourage employers to comply with the relevant legislation. However, by March 2015, when the evidence gathering for the previous inspection was completed, this new approach was not sufficiently embedded for the ICIBI to assess what impact it had had.
- 5.17 Published in December 2015, the Home Office response to the 2015 inspection report stated that:
- “since the inspection we have developed a new, more coherent illegal working strategy which focuses on increasing sector-wide compliance; using communication engagement and enforcement activity to increase employer responsibilities and to deter employers

<sup>13</sup> The Home Office explained that the power for Immigration Officers to seize cash in respect of immigration offences was introduced in section 24 of the UK Borders Act 2007.

<sup>14</sup> Operation Skybreaker ran from July to December 2014. It looked to move Immigration Enforcement’s approach “from a model that seeks predominantly to arrest and remove individuals” to one that drives compliance, including where information had been received that there were individuals working illegally first making a visit to the business premises to encourage compliance with employment requirements before considering making an enforcement visit.

from using illegal labour... The new Immigration Bill,<sup>15</sup> currently going through Parliament, will strengthen these powers ... And whilst our work has always been intelligence-led, we have identified a number of new employment sectors where we believe illegal working to be taking place, but where intelligence has traditionally been limited.

The ongoing Operation Magnify, where we work proactively with partners to develop better intelligence to target sectors such as construction, care and cleaning, shows how we are diversifying the range of our enforcement work. We will also use the data we will get from Exit Checks<sup>16</sup> to target activity in a more effective way. In parallel, our work to better understand the factors that influence employers to comply with the law allows us to segment employers and target our approach with cross-government partners.”

## The current inspection

- 5.18 Given the time that had elapsed since the previous inspection and the new powers created by the 2016 Act, the current inspection did not set out to be a re-inspection of the findings and recommendations from 2015. However, inspectors inevitably covered some of the same ground.

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<sup>15</sup> This became the Immigration Act 2016.

<sup>16</sup> ICIBI inspected Exit Checks in 2017. The report, 'An inspection of exit checks (August - December 2017)', published in March 2018, found that "the Home Office needed to be more careful about presenting exit checks as the answer to managing the illegal migrant population, which for now remained wishful thinking."

# 6. Understanding the illegal working threat

## Size of the illegal working population

- 6.1 Since those involved set out to conceal their activities, there is no reliable estimate for the number of people working illegally in the UK. A paper produced in September 2015 for the Illegal Working Steering Group (IWSG),<sup>17</sup> included the statement:

“The size of the illegal working problem is greater than our capacity to enforce it through traditional arrest activity. It is estimated that between 190,000 and 240,000 businesses employ illegal migrants; last year IE visited 6,404 businesses. At the current rate it would take IE between 29-37 years to visit them all. The solution requires an approach that goes beyond enforcement action and makes employers regulate themselves.”

- 6.2 The estimated numbers of businesses employing illegal migrants were derived from a Cabinet Office review of illegal working, which the Home Office described to inspectors as “speculative”.

## The Annual Threat Assessment

- 6.3 Each September, Immigration Intelligence<sup>18</sup> (II) produces an Annual Threat Assessment (ATA) for Immigration Enforcement (IE) and UK Visas and Immigration (UKVI). Threats identified in the ATA are assessed and prioritised using the Management of Risk in Law Enforcement (MoRiLE<sup>19</sup>) scoring system, which considers each threat in terms of the harm it causes, the likelihood that it will occur, and the organisation’s capacity and capabilities to contain it.
- 6.4 According to the 2016 ATA, the illegal working threat was “low harm, high volume”. Recognising that threats overlap to some extent, the 2018 ATA assessed that illegal working accounted for 10% of the overall threat to the UK immigration system (down from 11% in 2017), making it the 4th largest threat after “Abuse of legitimate routes”<sup>20</sup>, “Modern slavery and human trafficking” (each accounting for 33%), and “Facilitation by air” (12%).
- 6.5 The 2018 ATA stated that the “overall threat picture [as a whole] has not changed significantly” in the previous 12 months, although in the case of illegal working, as a result of the refining of the underlying methodology, there had been a change in the “Key enablers” – see Figure 1.

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17 The IWSG’s Terms of Reference are at paragraph 7.7. IWSG met from 2015 to 2017.

18 Immigration Intelligence is a directorate within Immigration Enforcement.

19 MoRiLE is a National Crime Agency (NCA) led project that has developed a suite of risk prioritisation models and processes for use by law enforcement agencies.

20 The act of fraudulently gaining some form of legitimate immigration status to enter or remain in the UK.

## Figure 1: “Key enablers” of illegal working identified in the 2017 and 2018 Annual Threat Assessments

### 2017

- Availability of false and fraudulently obtained genuine identity documents
- Lack of regulations in service industry
- Insufficient enforcement or investigative resource to undertake desired level of enforcement and investigative activity
- Layers of subcontractors or ‘app’ based working making it difficult to ensure that all workers undergo appropriate security/status checks
- Length of time to consider applications in some workflows

### 2018

- Document packages – fraudulent identity documents as well as other supporting documents
- Complicit employers
- Complicit sponsors
- Organised crime groups (OCGs)

6.6 The ATA looks to break each threat down into its component parts and assesses and ranks them. In the case of illegal working, the 5 highest scoring areas identified in the 2018 ATA were:

- “1. Migrants are gaining illegal employment in franchise-operating companies (e.g. food outlets, petrol stations and convenience stores, including Post Office counters). Workers use false documents and in some circumstances the employer or employment agencies are complicit.
2. Employers/employment agencies are complicit in employing migrants (primarily from Africa and South Asia) in the care industry using false documents. This provides the employer with cheap labour.
3. Migrants are working in the cleaning industry using false documents and in some circumstances with the complicity of employers or employment agencies. Many migrants are paid cash in hand. It is an unregulated industry, with a large invisible workforce which has access to the whole of the UK infrastructure including critical and sensitive sites. There is no distinct offender profile, but implicated companies tend to be small and medium sized enterprises.
4. Migrants are using false documents and/or the complicity of employers to work illegally in restaurants and takeaways. This can also involve the provision of accommodation, often in an HMO.<sup>21</sup>
5. Migrants, some linked to harm crimes, work illegally within the Taxi & Private hire sector with late night venue locations or common taxi ranks being preferred. Nationalities tend to come from the Indian sub-continent.”

## Quarterly Threat Assessments

- 6.7 The ATA is used to inform the IE Control Strategy.<sup>22</sup> IE also produces its own Quarterly Threat Assessments (QTA). The QTAs look at the direct operational responses to the threats on a quarterly basis and respond to in-year changes in trends or circumstances. Using the MoRiLE scoring system, IE assesses the component parts of each threat and allocates a BRAG (Black, Red, Amber, Green) rating to each.
- 6.8 The QTA for the first quarter of 2018-19 identified 11 components to the illegal working threat. Of these, one was assessed as Red. This referred to illegal workers “gaining employment in the care industry using false documents” or via rogue employers or care agencies, resulting in “poorer caring standards”. The QTA stated that IE received allegations of illegal workers in the care sector on a “weekly basis”, with no seasonal trends. The intelligence available to IE indicated that the threat resulted from the increasing demand for cheap labour as care providers were “struggling to provide an adequate service” due to reductions in central funding and hikes in service costs.
- 6.9 Of the other ten components, 5 were assessed as Amber and 5 as Green.

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<sup>22</sup> The National Intelligence Model (NIM) is a well-established and recognised model within policing that managers use for: setting strategic direction, making prioritised and defensible resourcing decisions, allocating resources intelligently, formulating tactical plans and tasking and co-ordinating resulting activity, and managing the associated risks.

# 7. Illegal working roles, responsibilities and structures

## Illegal Working Threat Lead

- 7.1 The illegal working threat is 'owned' by the Director of Immigration Enforcement's Strategic Operations Command (SOC). Day-to-day management of the threat is the responsibility of a Grade 6 manager within SOC, who is the designated 'Illegal Working Threat Lead' (IWTL). Shortly after the inspection began, an SEO role was created to assist the IWTL.
- 7.2 The IWTL described his role to inspectors as falling into 4 distinct areas:
- subject matter expert for illegal working; lead on responses to Parliamentary Questions, Freedom of Information Act requests and policy
  - coordinator for illegal working activity, including working with the National Tasking Board (NTB) to plan actions, and demonstrating that the output and tasking from the NTB meets the Quarterly Threat Assessment
  - the link between Immigration Compliance and Enforcement (ICE) teams and Intelligence teams, working with Operational Intelligence Units and directing intelligence assessments
  - working-level link with external partners,<sup>23</sup> managing relationships with contacts; leading on the drafting of Memoranda of Understanding, data sharing agreements with external agencies; pushing the "IE message and agenda" on the illegal working threat and ensuring activities are aligned with BICS' priorities

## Draft 'Illegal Working Threat Action Plan'

- 7.3 A Draft 'Illegal Working Threat Action Plan' (TAP), covering the "remainder of 2017 into the operational year 2018/19" was submitted to the Director of SOC in November 2017.
- 7.4 The Draft TAP described the illegal working threat as "multi-form and complex to tackle" and acting as the "principal pull factor for illegal migration to the UK", as well as denying employment to those who have the right to work in the UK and driving down wages, and impacting on other threat areas, such as "Abuse of legitimate routes" and "Modern slavery and human trafficking". It listed 6 objectives:
- “• A government-wide approach to tackling illegal migration and other labour market abuses
  - Employers understand their responsibilities and it is straightforward to comply with them
  - Non-compliant employers (whether it be through negligence or outright abuse) feel the consequences of their actions
  - Illegal migrants are motivated to depart voluntarily and understand the consequences of their illegal presence in the UK (through the 'Compliant Environment')

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<sup>23</sup> Her Majesty's Revenue and Customs, Department of Work and Pensions, National Crime Agency, Director of Labour Market Enforcement contacts, private employers and others.



- Tackling organised crime gangs who are increasingly infiltrating the labour supply market
- The vulnerable are protected ensuring that British Citizens are not prevented from accessing the labour market and the worst types of abuse (modern slavery) are tackled”

7.5 The Draft TAP sought to establish a long-term “credible deterrent to illegal working” as well as “maintaining a high level of BAU [business as usual] illegal working operations” by disrupting employment opportunities in ‘high risk’ industries, such as the care sector or public infrastructure projects. It also set out a schedule of national and regional campaigns targeting various employment sectors, to run between November 2017 and October 2018 under the umbrella of Operation Magnify.<sup>24</sup> These varied from data-sharing activities with other government departments (OGDs), leading to enforcement activity and joint operations, to operations focusing on the implementation of new powers of entry available to ICE teams under amendments to the Licensing Act 2003.

7.6 The Draft TAP referred to the current IE “Illegal Working Strategy”. Inspectors requested sight of this strategy but were told no such document existed and that none of the threats had its own strategy.

### Illegal Working Steering Group (IWSG)

7.7 The Illegal Working Steering Group (IWSG) was established in September 2015 with the aim of ensuring that the strategic direction “for illegal working activity across Immigration Enforcement (IE) is realised”. Its Terms of Reference included:

- “• Identifying and developing the capabilities required to deliver the illegal working strategy
- Agree priority areas for illegal working activity, monitoring and supporting the delivery of plans to increase employer compliance within high-risk sectors
- Provide a forum to identify and escalate issues that require a policy solution or wider HO/HMG response
- Feed into STB<sup>25</sup> and NTB decision-making and the Immigration Taskforce
- Ensure activities support the ‘Identifying Illegal Migrants’ steering group which is focused on preventing the use of fraudulent documents and ensuring currently compliant employers remain compliant”

7.8 The IE Director of Operations is the IWSG Chair, with the CEO of the Gangmasters and Labour Abuse Authority (GLAA) as Deputy Chair and representatives from across IE and from the BICS Policy Directorate. Originally, IWSG was supposed to meet monthly, but in 2016 this was changed to every 6 to 8 weeks. However, the evidence provided to the inspection team in October 2018 indicated that it had last met on 7 September 2017. Inspectors were told that the Windrush crisis, the movement of key staff and other pressures had led to a pause in the group’s work. It was not clear when it would re-start.

7.9 Inspectors saw little evidence of what the IWSG had achieved, and the IWTL told inspectors it had not been particularly active but that “lots of other work” was happening.

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<sup>24</sup> See Chapter 11.

<sup>25</sup> Strategic Tasking Board.

## Illegal Working and Public Procurement Working Group

- 7.10 The Illegal Working and Public Procurement Working Group (IW&PPWG) was formed in May 2017. It was set up to establish how to “strengthen Right to Work (RtW) compliance in publicly funded projects and services, through delivering changes in public procurement policy”.
- 7.11 The IWTL was Chair of the IW&PPWG and OGDs, including Crown Commercial Services (CCS),<sup>26</sup> the Department for Business, Energy and Industrial Strategy (BEIS), and Cabinet Office, attended along with the IE Strategic Communications team.<sup>27</sup> The intention was that IW&PPWG would meet monthly, but the last meeting was on 19 June 2017. The agenda items for that meeting included updates from CCS, BEIS, and BICS Policy, but inspectors were not provided with the minutes so were not able to see what was said.
- 7.12 According to the Chair, IW&PPWG worked closely with CCS to develop policy initiatives, which it planned to monitor once implemented. However, none of the initiatives had been endorsed by senior officials in the other government departments.

## Operational tasking

### National Tasking

- 7.13 IE’s NTB meets monthly. It is chaired by the Director of National and International Operations and attended by representatives from all IE Directorates. SOC’s National Tasking and Operational Planning (NTOP) team provides the secretariat for IE’s NTB and oversees, evaluates and assesses the impact of operations and projects.
- 7.14 A Senior Civil Servant (SCS) within IE described the NTB to inspectors as “the key monthly tactical decision-making forum that coordinates and directs operational activities within IE”. According to the SCS, it:
- directs IE operational activity and deployment of resources based on intelligence-led inputs to achieve strategic outcomes
  - reviews business performance and activity against agreed targets
  - reviews monthly intelligence threat assessments and agrees tasking and information requirements as necessary
  - considers and agrees operational tasking requests
  - commissions intelligence products to support further development of strategic, tactical and target products<sup>28</sup>

### Regional Tasking

- 7.15 The outputs from the NTB inform the Regional Tasking Boards (RTBs) that are held in all 3 regions. RTBs meet monthly and are chaired by either the IE Director, responsible ultimately for managing national and regional priorities across their region, or by their Grade 6 Operations Lead.

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<sup>26</sup> Crown Commercial services is a government organisation that provides commercial services to the public sector and leads on procurement policy on behalf of the UK government.

<sup>27</sup> Strategic communications are a team within IE who plan and develop communications both internally in the Home Office as well as externally to the public and other organisations.

<sup>28</sup> In addition to the Annual and Quarterly Threat Assessments, the NTB takes account of a wide range of other data sources and inputs. These include: the SPB Threat Dashboard Summary, NTB Threat Dashboards, Monthly threat assessments, Operational capacity and capability, Removal capacity/flight schedules, Business performance data and outcomes, plus input from IE’s Strategic Priorities Threat Board and Enabler Matrix, political imperatives and Strategic Resource Allocation.

- 7.16 Attendance at the RTBs differs between the regions and from meeting to meeting, but ICE leads and representatives usually attend them from other business areas including Criminal and Financial Investigation (CFI), Immigration Intelligence (II), Reporting and Offender Management (ROM) centres, Returns Preparation (RP) and Criminal Casework (CC).

### Tasking and Coordination Groups

- 7.17 Tasking and Coordination Groups (TCGs) are responsible for setting objectives below regional level, resource planning and specific taskings. The work of the TCGs is informed by the IE Control Strategy, and by the outputs from the NTB and RTBs, including nationally or regionally tasked operations. The TCGs meet weekly and a record is kept locally of all tasked work. While most work is tasked through the TCG, some is tasked outside this process and authorised either by the Grade 7 or other managers within the ICE team, according to national and regional priorities.

## Operational teams

### Immigration Compliance and Enforcement (ICE) teams

- 7.18 At the time of the inspection, IE had 18 ICE teams based around the UK, arranged in 3 regions.

London and South region	- North London ICE South London ICE East London ICE West London ICE Central London ICE South Central ICE Kent and Sussex ICE
North, Midlands, Wales and South West region	- North East & Cumbria ICE Yorkshire & Humber ICE Merseyside & North Wales ICE Greater Manchester ICE West Midlands ICE East Midlands ICE East of England ICE Wales ICE South West ICE
Scotland and Northern Ireland region	- Scotland ICE Northern Ireland ICE

- 7.19 According to the Home Office intranet, the primary function of ICE teams is to “carry out intelligence-led enforcement operations at businesses and residential addresses” in order to “disrupt illegal operations and arrest and detain illegal migrants who have no right to be working and living in the UK”.
- 7.20 Taskings for ICE teams comes from a variety of sources, including Operational Intelligence Units (OIU), RP and CC. In addition, teams may receive requests from partner agencies to participate in joint operations. The TCG decides which taskings to action and passes them to ICE officers to do the necessary operational planning.

## Criminal and Financial Investigations unit

- 7.21 CFI is a national unit responsible for investigating serious and complex organised immigration crime (OIC), including trafficking and modern slavery offences, illegal facilitation ('lorry drops', sham marriage, counterfeit documents), and related financial crimes, including investigation of cash seizures. CFI aims to disrupt and dismantle organised crime groups, working with partner agencies, such as the National Crime Agency (NCA) and police forces.
- 7.22 ICE teams do not carry out criminal investigations. Where they encounter suspected criminal activity, ICE teams refer the case to CFI to consider for adoption and action. Where the referral concerns modern slavery and trafficking offences CFI's 'General Instructions' require that CFI pursues it where there is *prima facie* evidence that an offence has been committed or that those involved have exploited the immigration system.<sup>29</sup>

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<sup>29</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/584221/Criminal-investigationsv1\\_0\\_ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584221/Criminal-investigationsv1_0_ext.pdf)

# 8. Inspection findings – ICE team performance

## Evidence base

- 8.1 Inspectors examined written evidence and data provided by the Home Office, including a sample of 48 ICE team case records, interviewed and held focus groups with ICE officers from 6 teams (South London, Cardiff, Greater Manchester, East of England, Solihull and Glasgow), and observed a number of ICE illegal working deployments.

## Issues identified

### The 2015 inspection

- 8.2 The 2015 ICIBI illegal working inspection identified weaknesses and inconsistencies in operational training and practice, failures to comply with guidance in relation to obtaining lawful entry to premises, pursuit of individuals away from target premises, cautioning, questioning and use of handcuffs, and poor operational record keeping. While the current inspection looked to examine ICE team performance in the round, inspectors looked specifically for evidence of improvements in these areas.

### Training

- 8.3 For the current inspection, inspectors reviewed IE's training packages, including all mandatory training delivered to new and existing ICE staff, plus:
- Adults at Risk
  - Arrest
  - Cash seizures
  - Civil Penalty Compliance
  - Critical incidents
  - Enforcement powers
  - Health and Safety
  - Immigration bail
  - Notebook completion
  - Licensing
  - Keeping children safe
  - Safeguarding

- 8.4 Inspectors found that the training packages were up to date, and that ICE teams maintained good quality records of completed training and training plans. ICE officers received comprehensive classroom-based training, broken down into ‘bite sized’ modules. Having completed their initial training, new ICE officers were mentored ‘on the job’ by more experienced officers until assessed to have met the required standard. Any further training and development was tailored to the individual.
- 8.5 In focus groups managers and operational officers told inspectors that the training was “significant and comprehensive”. All grades said there had been a particular focus on safeguarding training. A Grade 6 ICE Performance Lead told inspectors:

“I am very confident in our ability to identify vulnerability and safeguarding concerns. All teams have regular training and sessions to raise awareness and capability, which makes sure that they focus on doing the right thing.”<sup>30</sup>

### Staffing levels

- 8.6 During visits to the 6 ICE teams, inspectors were told by several senior managers that staff “churn” meant that their teams were regularly below the budgeted headcount. Vacancy data provided as part of the evidence pack confirmed this was the case for all 3 ICE regions.
- 8.7 As at September 2018, the budgeted headcount for ICE teams nationally was 1,208 full-time equivalents (FTEs), but there were 121 vacancies. These were not evenly distributed. ICE North had 63 vacancies, ICE South had 57, while ICE Scotland/Northern Ireland had just 0.93. Between 2015 and September 2018, Scotland/Northern Ireland was consistently closest to full complement.
- 8.8 Inspectors were told that lack of resources was impacting the ability of ICE teams to conduct illegal working operations. For example, one ICE team manager told inspectors:

“It is a challenge. If we had the staff we could be out more, 7-days a week, and we could be out on illegal working jobs, but we don’t have the staff and that is not the direction we are given. We get intel packages for non-removable individuals and we don’t touch them. They won’t be tasked. Nationality: we just wouldn’t deploy to non-removable nationalities at the moment. That means we as an organisation are missing a huge opportunity to levy fines. £20k per employee is a lot of money, but we just don’t have the resources to deploy, and it is not in line with the direction we are given.”

Another said:

“Resources are a massive problem. We are 12 people down and this impacts on our capability to task and deploy. If we are talking about staff resources available versus the potential workload, then we are not scratching the surface.”<sup>31</sup>

- 8.9 In some regions, lack of resources meant that ICE teams were routinely deploying on illegal working operations with only the minimum number of staff required to be operationally viable

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30 See ‘An inspection of the Home Office’s approach to the identification and safeguarding of vulnerable adults (February – May 2018), published 10 January 2019.

31 At the factual accuracy stage, the Home Office commented that: “We would not necessarily deploy operationally 7 days a week, nor would it be operationally feasible to do so, even if more resources were available. ICE has the capacity to conduct operations 7 days a week as it stands currently – however, there are constraints on this, not necessarily related to numbers of staff, such as the requirement to husband AHA hours allowances to ensure enforcement resources are deployed consistently throughout the operational year.”

as a team.<sup>32</sup> Officers explained that this was having an impact on the efficiency and effectiveness of deployments. For example, an ICE team of 7 officers might be tasked with 2 or 3 deployments in a day. If an individual was arrested during the first deployment and required escorting to a police station it would take 2 officers away. This would mean that the team would no longer have enough officers to complete the remaining deployments. Officers told inspectors:

“It is a problem and very stressful, it has resulted in staff going off with lots of sick. We are short of staff from where we should be, and the “where we should be” level has also been reduced.”

### Measuring success

8.10 Inspectors were told that ICE teams did not have targets for the number of illegal working deployments. Senior managers said that IE’s priorities in relation to illegal working were communicated to operational teams via the Annual and Quarterly Threat Assessments. In the case of regional or national operations, the TCG may receive guidance on how these should be prioritised and how they link to national priorities.

8.11 This resulted in significant regional variations. For example, inspectors were told that in Scotland illegal working operations made up 25 to 50% of ICE team work but were not regarded as the first priority. However in London, the majority of ICE team work was focused on illegal working. The same was true in Wales. Managers in the ICE ‘North, Midlands and Wales’ region told inspectors:

“Illegal working is a big priority and accounts for the majority of jobs ... in Wales, the main part is usually illegal working. I would say it makes up 80-90% of our work.”

8.12 At the time of the inspection, ICE teams no longer had performance targets linked to the number of detentions and removals of individuals encountered working illegally, which were in decline.

8.13 In April 2018, in the wake of the Windrush scandal, the Home Office announced that IE would no longer make use of local targets for removals and voluntary departures.<sup>33</sup> However, the only piece of evidence provided in response to inspectors’ request for details of specific instructions issued to IE staff in relation to ‘Windrush’ and illegal working operations was an internal communication highlighting the assurance processes that had been put in place via the Windrush Taskforce and the Employers Checking Service.<sup>34</sup> No information was provided to the inspection team about what had replaced the local targets. In November 2018, in focus groups and interviews with ICE team managers and operational officers there was a lack of clarity about how performance was now being measured and inspectors found that teams were being given conflicting messages about what constituted “success”. For example, some officers told inspectors that while formal targets were no longer in use, there was still an expectation of removals. Others, including ICE team managers, told inspectors:

“...the truth is that we don’t have the detail about how we are measured. We are told removals are key, but there is no figure attached. We are told safeguarding is key, but no targets are set...There is a complete lack of direction.”

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32 A written briefing (‘Operational Order’) is produced for relevant personnel prior to deployment, allocating tasks and setting out key information so that they may be completed safely. An explanation of the purpose and use of Operational Orders is available to staff on the Home Office intranet.

33 See <https://www.bbc.co.uk/news/uk-politics-43902599> and the Home Secretary’s evidence to the Home Affairs Committee on 15 May 2018 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/windrush-children/oral/82932.html>

34 See Chapter 14.

8.14 One ICE team told inspectors that this lack of focus was affecting morale: “it is difficult to keep motivation up in the face of [a reduction in] Civil Penalties [and the failure to get] agreement to have someone detained.” Inspectors also saw some signs of this when observing ICE teams on illegal working deployments.

### Numbers of visits

8.15 According to the data provided to inspectors, between 1 April 2015 and 31 August 2018, ICE teams conducted 23,413 illegal working deployments, all of which inspectors were told were intelligence-led. During these visits, ICE teams encountered 83,855 individuals and made 14,762 arrests<sup>35</sup> - see Figure 2.

**Figure 2: Numbers of illegal working enforcement deployments, encounters and arrests between 1 April 2015 and 31 August 2018<sup>36</sup>**

	Financial Year	London and South of England	Scotland and Northern Ireland	North, Midlands, Wales and South West	National Total
<b>Illegal working enforcement deployments</b>	2015-16	2,568	564	3,626	<b>6,758</b>
	2016-17	3,025	346	3,561	<b>6,932</b>
	2017-18	3,129	243	3,364	<b>6,736</b>
	2018-19	1,185	148	1,654	<b>2,987</b>
<b>Numbers of individuals encountered</b>	2015-16	9,670	2,171	13,141	<b>24,982</b>
	2016-17	10,889	1,217	12,168	<b>24,274</b>
	2017-18	11,447	851	11,212	<b>23,510</b>
	2018-19	4,741	618	5,730	<b>11,089</b>
<b>Numbers of individuals arrested</b>	2015-16	2,060	586	2,165	<b>4,811</b>
	2016-17	2,109	318	1,893	<b>4,320</b>
	2017-18	1,948	240	1,809	<b>3,997</b>
	2018-19	752	136	746	<b>1,634</b>
<b>Numbers removed (enforced or voluntary returns)</b>	2015-16	1,027	225	957	<b>2,209</b>
	2016-17	839	79	683	<b>1,601</b>
	2017-18	649	53	530	<b>1,232</b>
	2018-19	80	7	61	<b>148</b>

8.16 The data suggested that, despite what inspectors were told about a “lack of direction”, there had been no material change in the overall number of illegal working deployments since the beginning of 2018-19 compared with the previous 3 years (allowing for some year-to-year and regional fluctuations), and that if deployments continued at the present rate the final total for 2018-19 would in fact be higher than for any of those years. Similarly, the overall number of

<sup>35</sup> These were arrests of people encountered on illegal working visits, not all of which will have been illegal workers.

<sup>36</sup> Figures accurate as at 25 October 2018.



individuals encountered on illegal working visits by the end of August 2018 if projected at the same rate to the end of March 2019 would mean an increase in encounters of c. 13% on 2017-18.

- 8.17 The data also suggested that the annual decline in the overall numbers of individuals arrested on illegal working visits since 2015-16 had continued to slow down in 2018-19 (from c. minus 10% per year to c. minus 2%).
- 8.18 The big change in 2018-19 was in removals. Like arrests, these had been declining year-on-year since 2015-16, but at a more significant rate. And, if the 2018-19 year-to-date rate of removals continued for the remainder of 2018-19, the annual total would be less than a third of the previous year, and only 16% of the 2015-16 total.
- 8.19 A senior manager told the inspection team that the reduction in removals was because:
- “... our effectiveness is declining. This is partly due to coverage and partly due to the difficulties we have in finding offenders. They are better hidden. I can’t give figures, but it is a fact that we are less successful at identifying, arresting and removing people.”
- 8.20 While the data supported this assertion in relation to arrests and removals, it did not appear to be the case that ICE teams were becoming less successful in identifying illegal workers in the first instance.

### ‘Target’ nationalities

- 8.21 ICE officers told inspectors that while they did not have targets for the number of deployments, arrests and removals, the latter were still the overriding priority, and senior managers pressed them to target individuals for whom there was a realistic prospect of removal. In practice, this meant that certain nationalities were more likely to be targeted for working illegally. Figure 3 shows the nationality of those arrested as a result of an illegal working deployment by an ICE team between 1 April 2015 and 31 August 2018.

**Figure 3: Number of arrests resulting from illegal working deployments by ICE teams between 1 April 2015 and 31 August 2018, broken down by nationality**

National of	Number of arrests
Bangladesh	2,593
India	2,490
Pakistan	2,467
China	1,770
Vietnam	658
Albania	657
Afghanistan	566
Nigeria	369
Malaysia	304
Sri Lanka	253

Ghana	242
Turkey	229
Brazil	210
Nepal	174
Romania	174
Algeria	159
Iran	113
Other <sup>37</sup>	1,334
<b>Total</b>	<b>14,762</b>

8.22 The figures showed that Bangladeshis, Indians and Pakistanis made up over 50% of all arrests made on illegal working visits. Together with Chinese, 4 nationalities accounted for almost two-thirds (63%) of such arrests. Whatever the logic of this approach from a removals perspective, the inference for other nationalities was that the likelihood of being arrested for working illegally was low and the likelihood of removal was negligible.

8.23 ICE officers complained about the effects of the “mixed messages”:

“We are told no targets, but if that is the case, then why are we only tasked to go on jobs involving removable nationals. We turn down all jobs if there is an allegation of IW from a non-removable national. What kind of message does that send?”

### Types of premises visited

8.24 The 2015 ICIBI inspection found that the majority of ICE team illegal working visits were to restaurants and fast-food outlets (takeaways). In its response to the previous inspection report, the Home Office stated:

“The ongoing Operation Magnify, where we work proactively with partners to develop better intelligence to target sectors such as construction, care and cleaning, shows how we are diversifying the range of our enforcement work. We will also use the data we will get from Exit Checks to target activity in a more effective way.”

8.25 The current inspection asked for data for the types of premises visited during illegal working deployments that took place between 1 April 2015 and 31 August 2018 – see Figure 4.

**Figure 4: Types of premises visited during illegal working deployments between 1 April 2015 and 31 August 2018**

Sector	2015-16	2016-17	2017-18	2018-19	Total
Restaurants/Takeaways	2,918	2,832	3,070	1,559	10,379
Shops	1,435	1,750	1,614	612	5,411
Residential properties	908	671	582	192	2,353

<sup>37</sup> Other comprises 123 other nationalities, for each of which there have been fewer than 100 arrests.

Commercial properties (inc. farms)	490	805	670	329	2,294
Supermarkets	205	180	186	71	642
Building/construction	59	50	31	17	157
Hospitals/Care Homes	45	25	25	6	101
Council/Government Offices	26	9	23	2	60
Other <sup>38</sup>	672	610	535	199	2,016
<b>Total</b>	<b>6,758</b>	<b>6,932</b>	<b>6,736</b>	<b>2,987</b>	<b>23,413</b>

- 8.26 The data showed that, over the period, 10,379 (44%) illegal working ICE team deployments were to restaurants or takeaways, with shops accounting for a further 5,411 (23%) of all deployments. The continued focus on restaurants and takeaways was recognised as an issue during interviews and focus groups with ICE teams: “we need to branch out away from restaurants and takeaways to look at other areas”.
- 8.27 One consequence of focusing narrowly on removable targets working in a small number of employment sectors was that the learning from ICE team deployments was limited in terms of intelligence, knowledge and operational skills.

### Operational assurance

- 8.28 The ICE Operational Assurance team<sup>39</sup> was tasked with conducting 72 verification visits each financial year, covering all types of enforcement activity and premises. This allowed for 2 visits a year to each of the 28 ICE locations,<sup>40</sup> plus any additional visits that may be required. Figure 5 shows the number of visits conducted in relation to illegal working activity.
- 8.29 The assurance process included observations of enforcement visits and the use of powers by ICE officers, including entry by means of an ‘AD letter’<sup>41</sup> and the use of Immigration Act 2016 powers. Assurance reports outlined how many enforcement visits and arrests were observed, allocated RAG ratings, and made recommendations based on what the Operational Assurance team had observed. A legal breach by an ICE team attracted a Red rating, while a policy breach received an Amber rating.
- 8.30 Completed reports were provided to the ICE senior manager (usually a Grade 7) who was encouraged to produce an action plan to address any issues. There was also a follow-up meeting with the regional Grade 6 manager to discuss progress against the action plan. The ICE Performance Lead and the Regional Directors also received a quarterly assurance report, which identified any themes.

38 This includes one of 26 other types of premises, including airports, train stations, pubs, prisons and schools.

39 The ICE Operational Assurance team is headed by a G6 and comprises 5 full-time equivalents.

40 Some ICE teams were split across more than one location.

41 ‘AD (Assistant Director) letters’ can be used in lieu of a warrant to enter a property. Its use is restricted to situations where entry is reasonably required to effect an arrest of an immigration offender (not an employer) and would justify a warrant and where informed consent is likely to be refused.

**Figure 5: Operational assurance visits between 1 April 2015 and 31 August 2018**

Year	Number of illegal working visits
2015 – 2016	30
2016 – 2017	42
2017 – 2018	47
2018 – 2019	16

- 8.31 Inspectors examined 48 case files for ICE team deployments that took place between 1 September 2017 and 31 March 2018 in which an arrest linked to illegal working was made. The records were selected at random from a list of 3,997 file references provided to inspectors. In each case, inspectors asked for details of the responsible ICE team, the powers used to enter the premises, the powers under which the arrest was made, the outcome (for example, no further action including reasons why, prosecution, Civil Penalty, removal), and the type of establishment (for example, restaurant/fast food outlet, supermarket, construction site etc.).
- 8.32 From the sample of 48 case files, 42 related to deployments to business premises and 6 to residential properties. Of the 42, 25 were restaurants or takeaways, 5 were shops, 2 were car washes, and 2 were beauty salons. The rest were a construction site, a factory, a car showroom, a car valet, a car repair, a scrap yard, a care home, and a catering company.
- 8.33 Of those arrested, 41 were male and 6 were female. In one case, the gender was not recorded.<sup>42</sup> Eight were from Bangladesh and 8 from Pakistan, 6 from India, and 5 from China, representing broadly the same proportions of these nationalities in the overall numbers of persons arrested between 1 April 2015 and 31 August 2018 (see Figure 3). Of the remainder, 4 were from Albania, 3 from Ghana, 2 each from Malaysia, Nigeria, Philippines, and Turkey, and one each from Algeria, Brazil, Sri Lanka and Syria. In 2 cases the nationality was recorded as “unknown”.
- 8.34 None of those arrested were suspected to be victims of modern slavery, nor were any safeguarding concerns noted in any of the case files.
- 8.35 Inspectors identified inconsistencies and poor practice in ICE team record keeping, document retention, case file compilation, and officers’ notes and notebook etiquette. Copies of officers’ notebooks were provided for 38 of the 48 case files.<sup>43</sup> In 10 of the 38 cases at least one of the notebooks provided was illegible. Key details, such as the justification for using handcuffs, and the serial number and position of the handcuffs, was recorded inconsistently in notebooks, and inspectors found that case files contained no clear record of the use of force or use of handcuffs.<sup>44</sup>
- 8.36 While a sample of 48 case files could not be considered ‘statistically significant’, record keeping quality and consistency has been a recurring theme in inspections and chimed with the findings of the Operational Assurance team. In 2018-19, to 31 August 2018, the latter had made 16 IE assurance visits and observed 37 deployments. This had resulted in 71 recommendations, 19 of which related to record keeping, with a further 18 relating to “post operation” actions, which included elements of record keeping, such as ensuring the National Operations Database (NOD)

<sup>42</sup> There is no set format or cover sheet for recording personal details.

<sup>43</sup> In one of the 48 cases the deployment did not take place.

<sup>44</sup> At the factual accuracy stage, the Home Office stated: “Though the requirement to record the serial number of the handcuffs used remains in published guidance, its removal was authorised by regional G6s and agreed by Enforcement Policy in May 2017 following a thematic review into the use of force. Unfortunately, the publication of the amended guidance has been delayed. Staff are no longer required to record serial numbers for handcuffs and batons used in these situations. This change to policy has been disseminated to staff but operational policy has not yet been fully updated. This guidance supersedes the existing operational policy until the new version is approved and published.”

was 'fully and accurately updated' along with other databases. Operational Assurance's June 2018 Quarterly assurance report noted that "Record keeping appears as a common thread in verification visits, self-assurance and public operations".

- 8.37 Based on the Operational Assurance team's findings in 2017-18, record keeping quality appeared to be getting worse. In 2017-18, Operational Assurance made 47 visits and observed 115 deployments. It made 168 recommendations related to illegal working visits (out of a total of 245 recommendations for all visit types). Of the 168 recommendations, 31 concerned record keeping and a further 23 concerned post operation actions, again including some record keeping issues.

## Pronto

- 8.38 At the time of the inspection, IE was introducing or considering a number of initiatives to streamline working practices and increase efficiency. One of these was the use of smartphones loaded with an application (Pronto) to replace paper notebooks and NOD.

- 8.39 Inspectors were told that Pronto was an "off-the-shelf" product, currently used by a third of UK police forces.<sup>45</sup> The first phase (Private Beta) of Pronto roll-out began in June 2018, with the incremental roll-out to all other teams beginning in November 2018. Using 'Change Champions' to capture users' needs and undertake early testing, a number of ICE teams were using Pronto "on the move" to receive tasking and, at the time of the inspection, to search one immigration database.

- 8.40 In November 2018, the Home Office intranet carried a story about Pronto, which included the following comment from an ICE team officer:

"Pronto ushers in a new era, outdates the old lengthy processes and introduces new and innovative systems, I have been pleasantly surprised at how uncomplicated and user friendly the app is."

- 8.41 Inspectors observed ICE teams using Pronto during operational deployments and asked about it in focus groups. Officers were broadly in favour of it. In one area, where it had been in use for longer, inspectors were told that some "glitches" had been identified:

- the smartphone could not be used simultaneously to speak to an interpreting service and to record details of the visit<sup>46</sup>
- there was a risk that members of the team would all be looking at their devices at the same time and would not be alert to what was happening around them<sup>47</sup>
- service drops or crashes interrupted the flow of work<sup>48</sup>

- 8.42 Pronto was not referenced on the risk registers of 2 of the 3 ICE regions, but on the third, dated August 2018, it was noted that Pronto in its present form:

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45 [https://www.motorolasolutions.com/en\\_xu/products/command-center-software/records-and-evidence/pronto.html#tabresource](https://www.motorolasolutions.com/en_xu/products/command-center-software/records-and-evidence/pronto.html#tabresource)

46 At the factual accuracy stage, the Home Office stated that this was incorrect and that "the smartphone could be used to simultaneously speak to an interpreting service and record necessary details using the loudspeaker function. Alternative options also include working with other officers to utilise their devices."

47 At the factual accuracy stage, the Home Office stated that: "Pronto has replaced personal notebooks and not increased the requirements to read or record information. There is no additional risk of team members looking at their devices over and above the previous risk of them looking at their notebooks."

48 At the factual accuracy stage, the Home Office stated that: "There were a small number of early issues in the Private Beta phase – this was before the wider rollout (which is the intention of the Private Beta stage). However, during observations of ICE team deployments in November 2018, of six teams observed four had problems with service drops or crashes."

- did not have a management information function, so did not support performance reporting
- data relating to previous visits and persons encountered are not available through Pronto<sup>49</sup>

8.43 In one ICE team inspectors found some confusion about whether a quality assurance mechanism was in place or being developed for Pronto records to match the monthly quality assurance checks of officers' notebooks by managers. The ICE team senior manager told inspectors: "There is no function on Pronto for me to run a report about an operation. There is nothing for me in terms of MI [management information]."<sup>50</sup> However, the Deputy Director told inspectors that: "Pronto will hardwire assurance."

8.44 Inspectors explored this issue with the ICE Risk and Assurance Lead, who referred to: "ongoing development on this system to ensure there is assurance. Within Pronto itself there should be points where the MI can be drawn out." In terms of alignment with existing assurance frameworks and tool kits, "a dual system will be running until March 2019." From interviews and focus groups with ICE teams, it seemed that this message had not been communicated clearly at the time of the inspection.

### Disruption of ICE team deployments

8.45 ICE team managers and officers in some locations told inspectors about a rise in attempts to disrupt ICE deployments through acts of violence against IE property or ICE officers, threatening behaviour, verbal abuse, and protests, some of which appeared to have been coordinated using social media. This had raised concerns about the safety of ICE teams in the field and about their ability to carry out their duties effectively.

8.46 Some reactions to ICE teams appeared spontaneous and relatively petty. For example, while inspectors were observing a deployment in South London, youths threw a firework at the ICE van and shouted abuse before running off. Some passers-by also made derogatory comments. However, some were more serious. Inspectors were told that during a recent deployment in Lewisham (South East London), the ICE team was subjected to a coordinated attack and a concrete slab was thrown at an IE vehicle.

8.47 In April 2016, the National Police Chiefs' Council (NPCC) produced an 'Anti-Raids Intelligence Assessment' which found that:

- the majority of incidents were not coordinated by a group or activist, but involved members of the local community, unaffiliated to any groups
- the likelihood of violence was increased when anti-state and/or anti-police sentiment was at its highest
- the main aim of the Anti-Raid Network (ARN) was to film and be obstructive to IE operations, and to support individuals being visited or detained, including carrying out non-violent direct action such as blockades, incursions and damage to vehicles including the deflating of tyres

8.48 Inspectors requested data about 'disruptive' actions aimed at frustrating IE illegal working operations, which IE had begun recording from April 2016 as 'Activist Intel Reports'. The data showed that:

<sup>49</sup> At the factual accuracy stage, the Home Office commented that: "Pronto does have a reporting function, and training has been completed on this element" and "At the time of the inspection, the migration of data from the NOD system had not been completed (the NOD system remained available). This is due for completion in Q1 of 2019."

<sup>50</sup> At the factual accuracy stage, the Home Office stated: "There is a function to pull a report on what happened on the operation as well as comprehensive MI reports available."

- In 2016-17, 16 'Activist Intel Reports' were completed, of which 7 were disruptions of illegal working deployments
- In 2017-18, there were 27 reports of disruptions, of which 13 were of illegal working deployments
- between 1 April and 18 October 2018, 21 'Activist Intel Reports' were completed, 6 of which related to illegal working deployments

- 8.49 IE had responded to what appeared to be a growing threat by providing officers with training in how to manage members of the public who were intending to disrupt enforcement activity, how to recognise potential public order situations, to pre-empt them where possible, and to conduct a tactical handover to the relevant specialist police team where necessary. At the time of the inspection, this training had been provided to a limited number of ICE officers, mostly London-based. It had been well received by those who had completed the training.
- 8.50 An IE senior manager told inspectors that IE was changing its approach to critical incidents. It planned to include critical incident recording on Pronto, to change its training packages including the annual 'arrest refresher' to incorporate a critical incident scenario, and to provide access to support at 'Police Treatment Centres' for officers affected by their involvement in a critical incident.<sup>51</sup>

### Body-worn cameras

- 8.51 In interviews and focus groups, officers from an ICE team that had experienced hostility when deployed operationally were almost unanimous about the need for body-worn cameras. One group described them as "the way forward", commenting "we are very much in favour [of body-worn cameras]. It would help address the issue of allegations made against staff." Others saw body-worn cameras as a means of proving that an individual was working illegally.
- 8.52 An IE senior manager told inspectors that he saw their potential, commenting that they would function as a deterrent to the anti-raids groups and help to dispel trouble, as well as helping to deal with complaints. However, cost and the "political sensitivities" surrounding their use could mean they would not be introduced.
- 8.53 Although body-worn cameras had reduced in price, an IE Director said that the procurement costs were still "prohibitive". And, although quality and data storage had improved, and while they might bring some benefits, the use of body-worn cameras had also created problems, with police officers being sacked and cases being lost.
- 8.54 The cost-benefit arguments were considered in a business case, dated 8 June 2018. This noted that, in the last 12 months, only 15 complaints received about officers from ICE teams, CFI or ROMs had been about their "professionalism", "conduct of staff", "rudeness" or "other". This excluded complaints that had been received and handled locally by ICE teams themselves. The cost to IE of resolving these complaints was £2,233, but this figure did not include the costs of any Professional Standards Unit (PSU) investigations.
- 8.55 IE's Civil Penalties Compliance Team had commented on the evidential value of body-worn cameras:

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<sup>51</sup> <http://www.thepolicetreatmentcentres.org>



“visual evidence will not provide enough evidence to demonstrate employment. ... Seeing somebody working would not be enough to issue a penalty without the required Q&A to obtain evidence of control, obligation and remuneration to demonstrate employment.”

- 8.56 The advice from Home Office Legal Advisors (HOLA) was that: “BWV [body-worn videos] should only be used in such circumstances where it is strictly necessary in order to gather evidence, and there is no other reasonable means of gathering the necessary evidence”, and therefore illegal working, family visit and street operations were “out of scope”.
- 8.57 While the business case observed that the “legal advice was conservative”, it concluded that “The body worn video technology offer is impressive and still evolving, but there are significant costs to rolling out BWV with limited associated tactical benefits.”

### Joint powers

- 8.58 By amending Section 179 of the Licensing Act 2003, the Immigration Act 2016 (“the 2016 Act”) aimed to strengthen and broaden the powers available to IE, giving officers the same power of entry as a Licensing Enforcement Officer and Police Constable. In addition to having to be over the age of 18, the 2016 Act required that anyone applying for a premises licence or a personal licence must be entitled to be in the UK and to work in a licensable activity. The effect of the 2016 Act was to make it easier for IE to work jointly with licensing authorities and the police in the case of illegal working on licensed premises.
- 8.59 Inspectors were told that, although ICE teams often used these new powers, joint visits with licensing authorities and the police were infrequent, either because of competing priorities or because the local relationships were not particularly strong. In May 2018, an IE review of the use of Section 179, since its implementation on 6 April 2017, noted:
- “While the level of joint working has increased, we are still predominantly using this power on our own. In order for us to demonstrate that we are using the power in the way it was intended, it is important that we can evidence we are trying to work with our partners, so one of the changes in NOD is to record that we have invited our partners, even if they decline to attend.”
- 8.60 The review found that joint operations had increased by 21% as a result of Section 179, but there was some doubt about the accuracy of this figure as 13% of visit packs sampled for the review had not accurately recorded joint working.
- 8.61 Following an ICE team visit, a licence holder who was found to be employing an illegal worker could have their licence reviewed and revoked by the licensing authority. According to IE data, 2.3% of visits conducted using Section 179 powers resulted in a licence review, and 71% of these resulted in the licence being revoked. Inspectors were told that ICE teams were more likely to issue a Civil Penalty than look for a licence review, since the latter would require officers to attend a review hearing, for which they had not received any training. However, IE was updating its guidance on sanctions where officers encountered repeat offenders or found a large number of offenders. The updated guidance would emphasise the proportionate use of all of the tools available.



# 9. Inspection findings – Immigration Intelligence

## Intelligence

### Definition

- 9.1 The Home Office defines intelligence as “assessed information”. Information becomes intelligence when it has been evaluated by an intelligence officer,<sup>52</sup> who will as a matter of routine have conducted research and background checks using Home Office systems, with the aim of adding to the initial information.

### The “intelligence cycle”

- 9.2 The process by which information is collected, assessed for its intelligence value, shared and used to inform and drive decisions and actions is known as the “intelligence cycle”.

## BICS intelligence structures – 2016 inspection findings

- 9.3 Two intelligence structures operate within the Home Office’s Borders, Immigration and Citizenship System (BICS). One sits in Border Force, and the other, known as Immigration Intelligence (II), sits in Immigration Enforcement (IE). II supports IE and UK Visas and Immigration (UKVI) and is responsible for producing the Annual Threat Assessment (ATA).
- 9.4 ICIBI inspected both intelligence structures in 2016.<sup>53</sup> The inspection found that Border Force and IE had made considerable efforts to develop and improve their intelligence functions, and had made significant progress towards becoming truly ‘intelligence-led’ by implementing the key components of the National Intelligence Model (NIM), adapted to suit their particular circumstances and challenges.
- 9.5 However, as both directorates recognised, a lot remained to be done practically, in terms of systems and processes, and culturally, in terms of ‘hearts and minds’. The big transformation projects, in particular the development of the Single Intelligence Platform (SIP), promised a great deal, but there was also a need to ensure that staff had access to and made full use of the existing IT systems, that operational priorities were aligned nationally, regionally and locally, and that information and knowledge acquired by frontline staff was fed back so that the intelligence picture was as complete as possible.
- 9.6 Of the 7 recommendations, the Home Office accepted 6 and partially accepted one (which related to Border Force). The current inspection did not set out to re-inspect these recommendations, although inspectors did cover some of the same ground, in particular in relation to the flow of intelligence, information and feedback between intelligence staff and frontline officers.

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<sup>52</sup> Using the National Intelligence Model ‘3x5x2’ grading system to evaluate the source, the information, and how it should be handled.

<sup>53</sup> ‘An Inspection of the Intelligence Functions of Border Force and Immigration Enforcement (November 2015-May 2016)’, published 21 July 2016.

## Immigration Intelligence – roles and responsibilities

### Receipt, Evaluation and Development teams

- 9.7 Receipt, Evaluation and Development (RED) teams are responsible for managing all information received by II from the public, from partners such as the police, and from Home Office staff. At the time of the 2016 inspection they were relatively new. The teams are responsible for completing an initial assessment of information, assessing the risk and priority in order to determine the most appropriate next step: for example, ‘No further action’, ‘Action queue for dissemination’, or ‘Forward directly to OIU no research required’.

### Operational Intelligence Units

- 9.8 Operational Intelligence Units (OIUs) are responsible for producing intelligence ‘packages’ for Immigration Compliance and Enforcement (ICE) teams, in particular those relating to national campaigns aligned to National Tasking Board (NTB) priorities and larger-scale enforcement operations. The OIUs contain Field Intelligence Officers (FIOs), whose job is to develop intelligence using Home Office databases, open sources, liaising with partner agencies, conducting visits to employers, and accompanying ICE teams on visits.
- 9.9 One of the criticisms from the 2016 inspection report was that FIOs “were weighed down with administrative office-based duties and did not have the capacity to get ‘into the field’ and collect feedback and newly acquired intelligence from frontline staff to pass back to intelligence colleagues.”

### Crime Development Teams

- 9.10 Crime Development Teams (CDTs) are based in Cardiff, Croydon, Liverpool and Sheffield. They comprise of an initial assessment team and an investigation team. They use a range of covert means to acquire and develop intelligence about serious organised immigration crime, for example about criminal facilitators of illegal migration, or groups involved in people trafficking and modern slavery. CDTs supply Criminal and Financial Investigations (CFI) teams with intelligence ‘packages’ to investigate.

## The inspection

- 9.11 The current inspection examined the work of II’s RED teams, OIUs, and CDTs, focusing on 4 key elements related to illegal working. Inspectors did this by:
- observing RED, OIU and CDT teams in Croydon
  - observing six ICE teams in South London, Cardiff, Greater Manchester, East of England, Solihull and Glasgow
  - interviewing II senior managers and staff
  - interviewing senior managers and officers from CFI

## Systems and processes

### Intelligence Management System

- 9.12 The Intelligence Management System (IMS) was introduced in 2012 as a database for recording and processing information about immigration and customs crime. IMS best practice guidance is available on Horizon.<sup>54</sup> It was last updated in 2015.
- 9.13 ICIBI inspected IMS between February and April 2014. The inspection report was published in October 2014.<sup>55</sup> The report identified issues with the quality of data entry, the failure to make best use of the advanced search facility, the timeliness of the initial assessment of allegations received, and missed opportunities to prevent or identify offences.
- 9.14 In responding to the report's 4 recommendations, all of which were accepted, the Home Office indicated "there is work already underway to address the points raised. All proposed changes will be implemented during this financial year [2014-15]". Given the passage of time, the current inspection did not set out to re-inspect the 2014 recommendations but did look for indications of improvements in the areas identified.

### Single Intelligence Platform

- 9.15 II staff enter graded intelligence onto the Single Intelligence Platform (SIP), a cloud-based intelligence system that went live in 2016, which is used to record, develop and share intelligence, including by Border Force and Her Majesty's Passport Office (HMPO).
- 9.16 In 2015-16, the Home Office told inspectors that SIP was being developed using an 'agile development model', which meant that the functionality of the system would be developed and implemented in stages. No strict timelines had been set for the project, so that new functionality could be thoroughly tested and made stable before it was released. However, the user requirement had outlined 14 "benefits" that SIP would ultimately provide.
- 9.17 The current inspection team did not inspect SIP, but some of the planned benefits were clearly relevant to IE's ability to respond efficiently and effectively to illegal working, in particular "improved allegation management", "superior reporting functionality", "superior management information functionality", and an "enhanced search facility". However, the difficulty the Home Office appeared to have in providing inspectors with detailed breakdowns of its data, and the comments made by ICE teams in interviews and focus groups, suggested that if SIP now had this functionality it was not delivering what IE had hoped it would.

### Immigration Intelligence Manual

- 9.18 The Immigration Intelligence Manual (IIM) covered all basic intelligence processes and procedures and relevant legislation. It was last updated in February 2014. According to the Home Office response to the 2016 inspection report, the IIM was due to be replaced by the Professional Practice Manual (PPM) in 2016. However, this did not happen. At the time of the current inspection, II was instead planning "soon" to make a new manual of standards available on Horizon.<sup>56</sup> Standard Operating Procedures (SOPs) for RED teams were already available on Horizon and inspectors were told that SOPs were currently in development by operational teams. II stated that the IIM plus the SOPs would form the basis of intelligence "professional practice".

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<sup>54</sup> The Home Office intranet.

<sup>55</sup> 'An inspection of the Intelligence Management System (February-April 2014)', published 23 October 2014.

<sup>56</sup> On 9 January 2019, inspectors were sent a link to the Home Office intranet showing that the Manual of Standards had been published in December 2018.

## Intelligence reports

### Allegations

- 9.19 IE uses the term ‘allegation’ to describe information it receives from individuals about alleged immigration abuses. The 2 principal sources of allegations are Home Office staff and members of the public.
- 9.20 Although some of these allegations might be complete and actionable on receipt, intelligence staff routinely look to “develop” or “enrich” the original information before passing it to an ICE team to action. In many cases, because key details are missing or because it is unclear whether an offence has been committed, no further action is possible, while some allegations are not pursued because they are assessed by a RED team to be of little or no value or because they duplicate what is already known.

### Reports from Home Office staff

- 9.21 Home Office staff wishing to pass on information they have seen or received and believe could be of intelligence value must complete an IMS referral form, which is sent electronically to the relevant RED team for initial assessment.

### Allegations from members of the public

- 9.22 Members of the public are able to report an immigration or customs crime online via GOV.UK, or by calling the Immigration Enforcement hotline (0300 123 7000), Crimestoppers (0800 555 111), the Customs hotline (0800 595 000), or the Anti-Terrorist hotline (0800 789 321).

### Illegal working allegations received and actioned

- 9.23 The number of illegal working allegations received between 1 April 2015 and 31 August 2018, broken down by financial year, and the numbers (and percentages) actioned on receipt are shown at Figure 6.
- 9.24 This shows that, until 2017-18, in the majority of cases no action was taken. The table also shows that the number of allegations received has been declining year-on-year and will fall again (to fewer than 27,000) if the year-to-date rate continues for the remainder of 2018-19. Inspectors were not provided with any explanation for these changes.

**Figure 6: Total number of illegal working allegations received and actioned between 1 April 2015 and 31 August 2018**

Year	Illegal Working Allegations	Actioned		No Further Action (NFA)	
2015-2016	31,979	11,228	35%	20,751	65%
2016-2017	29,377	11,297	38%	18,080	62%
2017-2018	27,368	13,964	51%	13,404	49%
2018-2019	11,183	6,754	60%	4,429	40%

9.25 Figure 7 shows the number of illegal working visits carried out by ICE teams between 1 April 2015 and 31 August 2018 in response to specific intelligence and the source of that information as recorded by II on IE's National Operations Database (NOD).

**Figure 7: Number of illegal working enforcement visits made between 1 April 2015 and 31 August 2018, broken down by intelligence source<sup>57</sup>**

Source	2015-16	2016-17	2017-18	2018-19	Total
Allegation <sup>58</sup>	3,784	3,997	3,529	1,480	12,790
Other government department	1,093	976	1,272	506	3,847
Home Office	973	808	808	654	3,243
Enforcement	723	998	1,008	328	3,057
Private organisation	118	87	41	8	254
Casework teams	47	56	28	7	138
Database search	17	10	49	4	80
Foreign organisation	2				2
Enforcement visit			1		1
UK Borders Agency <sup>59</sup>	1				1
<b>Total</b>	<b>6,758</b>	<b>6,932</b>	<b>6,736</b>	<b>2,987</b>	<b>23,413</b>

9.26 As Figure 7 shows, allegations from members of the public accounted for more than half of all illegal working enforcement visits by ICE teams in 2015-16 (56%), 2016-17 (58%) and 2017-18 (52%). In 2018-19 (up to 31 August 2018) this had reduced to just below 50%.

9.27 Nearly half of all illegal working enforcement visits were to restaurants and takeaways and most of these resulted from allegations. Similarly, ICE visits to petrol stations, shops and warehouses resulted mostly from allegations. Other government departments were a significant source of intelligence about licensed premises.

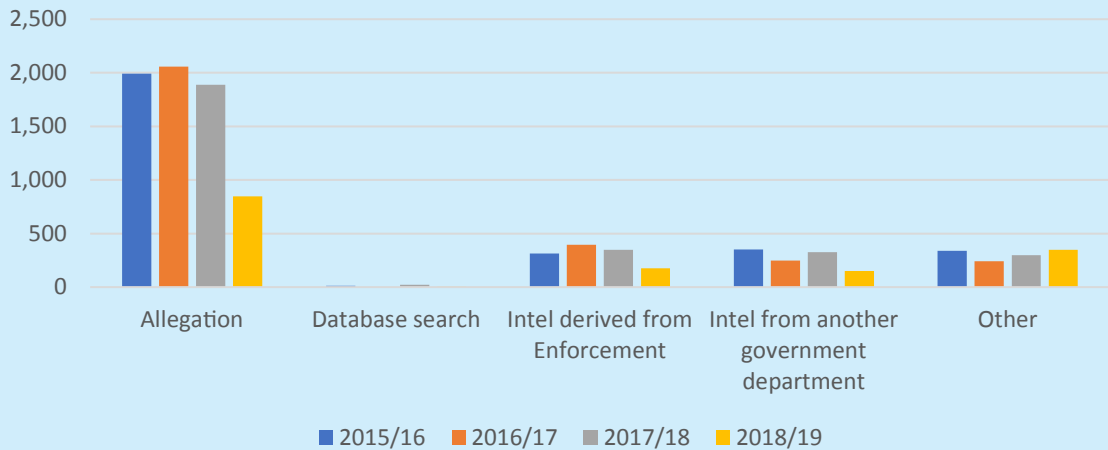
9.28 Figures 8, 9, 10, and 11 show the sources of intelligence about illegal working in restaurants, nursing and care homes, supermarkets, and construction actioned since 2015-16 up to 31 August 2018. 'Other' includes intelligence from a private organisation or from Home Office staff.

<sup>57</sup> Home Office data. Some anomalies in the data may be the result of different regional recording methodologies and from human error (selecting the wrong option from a drop-down menu).

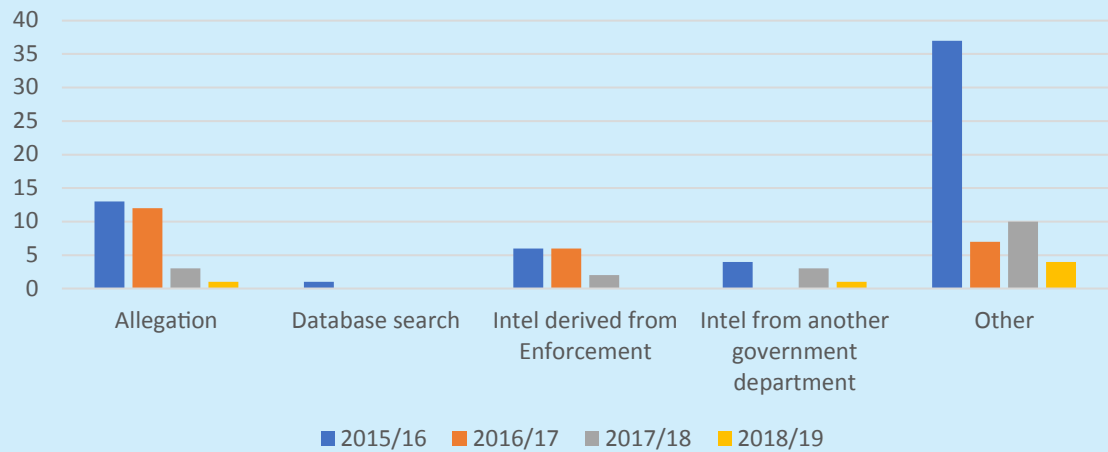
<sup>58</sup> Assumed to indicate received from members of the public.

<sup>59</sup> The UK Border Agency ceased to exist in 2013.

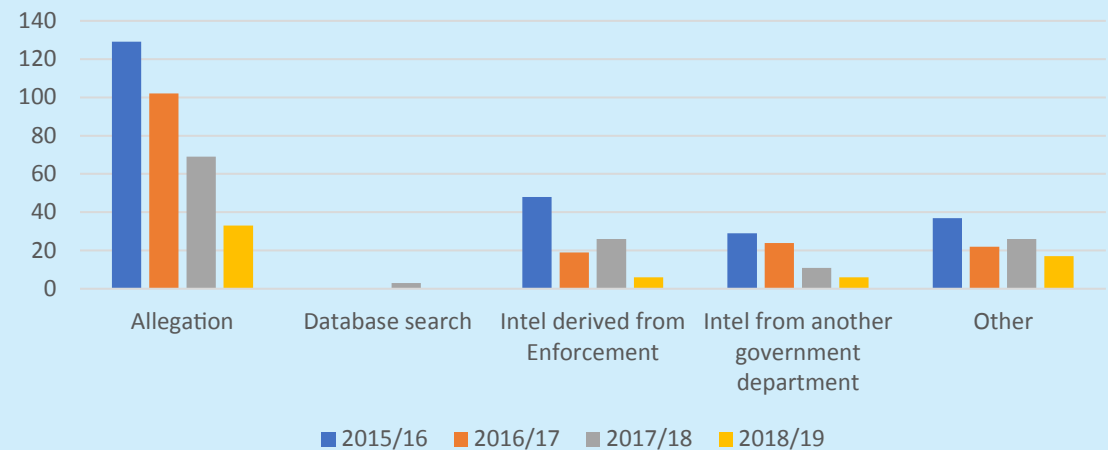
**Figure 8: Restaurants and takeaways**



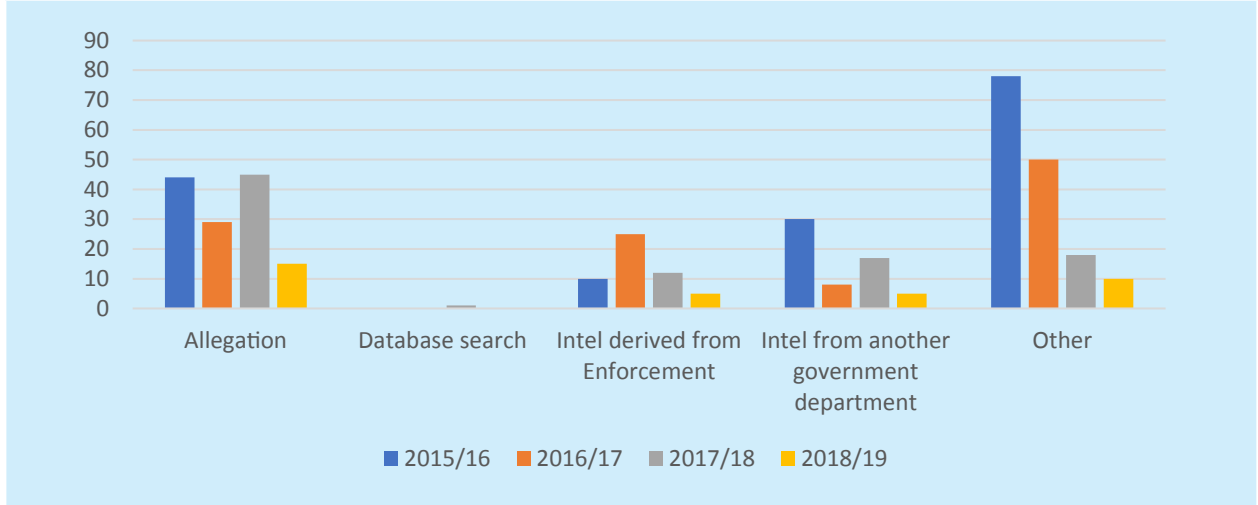
**Figure 9: Nursing/care homes**



**Figure 10: Supermarkets**



**Figure 11: Construction**



9.29 The 2015 ICIBI inspection of illegal working found that:

“IE’s intelligence about illegal working mostly consisted of low-level allegations made by members of the public, which were lacking in detail and the reliability of which was difficult to assess. This had led IE to focus on high street restaurants and takeaways, which was self-reinforcing and limiting in terms of organisational knowledge and the nationalities encountered. Other business sectors and possibly other nationalities had been neglected by comparison.”

9.30 Based on the data provided to the current inspection team, little appeared to have changed.

### Quality and timeliness of intelligence

9.31 Inspectors were told that the outcomes from specific intelligence reports were not recorded and therefore II and ICE teams had no way of evaluating the quality of the intelligence received and actioned.

9.32 ICE team managers and officers told inspectors they were not receiving either the quantity or quality of intelligence packages from II to assist in their work on illegal working. One focus group commented “[The] main aim is to identify and contain illegal working. But the intel isn’t accurate enough to help with this”. Other groups commented that the intelligence they received “lacked focus”, produced “limited outcomes”, and “the quality was declining”.<sup>60</sup>

9.33 ICE teams told inspectors that intelligence was taking too long (“up to seven weeks”) to get through to them from receipt of the initial allegation. By the time it was received and actioned it was already out of date.<sup>61</sup> Intelligence staff from one ICE team told inspectors that, for one operation, II had simply carried out a number of “quick checks” before passing allegations on to the ICE teams to investigate. This had produced better results. Another ICE team reported that it was passing field intelligence simultaneously to II and to the ICE team manager responsible for that geographical area. This meant that the intelligence could be actioned more promptly by the ICE teams, while also ensuring it was captured centrally.

<sup>60</sup> At the factual accuracy stage, the Home Office commented that: “It is not factually accurate to simply state that the intelligence is not accurate, and this leads to limited outcomes. Intelligence is not evidence and there is no guarantee of an outcome based solely on intelligence reporting.”

<sup>61</sup> At the factual accuracy stage, the Home Office commented that: “There is no factual basis for this. Routine intelligence referrals are shared in much faster time than stated here. Larger scale operations can take longer and are often delayed with agreement of the relevant ICE team to manage available resources effectively.”

9.34 However, an II senior manager told inspectors that the way in which II handled and developed intelligence depended on its type and on how complete it was. They explained that if it was not a priority it would be classified as ‘No further action’. They stated that II could not take forward and develop everything it received so had to take a “bigger picture” approach, aligning itself with IE’s broader objectives. However, getting this message across to the ICE teams was difficult, and ICE teams continued to view the role of intelligence staff as supporting and generating work for them.

### ICE team ‘self-generated’ intelligence

9.35 Inspectors were told by a number of ICE team managers and officers that, as a result of the poor intelligence products provided by II, they were focusing on generating intelligence about illegal working for themselves. Some ICE teams were able to do this, but others found it hard. A number of factors affected a team’s ability to generate intelligence about illegal working, chiefly location (demography and size of area covered), the amount of illegal working deployments they did, and the depth of their local knowledge.<sup>62</sup>

9.36 The latter had reduced because teams were making fewer education visits to local businesses to encourage compliance with ‘right to work’ checks. The development of Checking and Advice Service run by IE’s Interventions and Sanctions Directorate (ISD) meant that education and training on right to work checks were now a “paid for” service.

9.37 II senior managers referred to regional differences in the way ICE teams responded to allegations and intelligence packages. One said:

“in Cardiff we give them everything we come across and they go out on everything. Different in London. Every TCG and Grade 7 ICE in [the] country is different ... every ICE team has a different need and problem”.

9.38 Inspectors heard a number of views from II about whether ICE teams should be generating their own intelligence. A senior manager said they would welcome more feedback from ICE teams about the intelligence II provided to them, acknowledging that II needed to get its work out more quickly. Another senior manager told inspectors that he did not agree with claims that ICE teams were self-generating intelligence and believed that II intelligence still accounted for more than 50% of ICE team tasking. A third II senior manager said that there had been a shift in the last year in the way ICE teams in his area operated, with more self-generated and reactive work from referrals from partner agencies and from FIO-produced intelligence.

9.39 An IE Regional Director told inspectors that a pilot in Scotland (Operation Vovcha) where ICE officers were given access to SIP to develop intelligence themselves had been a success and had produced “good returns”. During this operation, if an ICE team found actionable intelligence they could search SIP for any other relevant intelligence. Since the pilot ended, the Scotland ICE team had continued with a “hybrid” intelligence handling model where ICE officers interrogated SIP and worked closely with their OIU to develop intelligence.

### Level 1 criminality and the role of CFI

9.40 IE adheres to the National Intelligence Model (NIM), which details 3 levels of crime:

- Level 1: local issues – usually the crimes, criminals and other problems affect a basic command unit or small force area

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<sup>62</sup> At the factual accuracy stage, the Home Office commented that: “The move to encourage self-generation was based on the need to supply ICE teams with sufficient work when resources in OIUs were reduced. It was not a decision based on a perception of ‘poor intelligence products’”



- Level 2: cross border issues – usually the actions of a criminal, or other specific problems affecting more than one basic command unit
- Level 3: Serious and Organised Crime – usually operating on a national and international scale<sup>63</sup>

9.41 IE investigators followed the Professionalising Investigations Programme (PIP), which has 4 levels:

- PIP 1 – priority and volume crime investigations
- PIP 2 – serious and complex investigations
- PIP 3 – major investigations
- PIP 4 – strategic management of highly complex investigations<sup>64</sup>

9.42 During the 2015 illegal working inspection, inspectors found that:

“IE crime teams prioritise NIM Level 2 and 3 criminality (regional and/or organised crime). IE subsequently told us that crime teams undertook Level 1 (local crime) investigation when resources allowed and that these accounted for 50 to 65% of their investigations. However, the general lack of ICE experience in criminal investigation meant that there was a capability gap at Level 1.”

9.43 The 2015 inspection report recommended that the Home Office should “ensure that ICE teams had the skills, experience and capacity to pursue criminal investigations and prosecutions”. In accepting this recommendation, the Home Office wrote:

“Prosecution activity is just one of an ICE team’s functions. ... Where the circumstances of a case are sufficient to warrant a criminal investigation, this will be considered in line with other priorities and demands on resource. The bringing together of ICE and Crime teams into one command has prompted a review of the overall demand for Level 1 prosecution activity. The number of ICE officers trained in conducting criminal investigations will be subject to continued review.”<sup>65</sup>

9.44 The current inspection team was told by ICE team managers and officers that the problems identified in 2015 still persisted. There were no PIP or CFI-trained officers in some ICE teams. ICE officers who were PIP-trained were not given the opportunity to use their skills while working in ICE teams. Some moved to CFI teams to use and develop their skills. Meanwhile, ICE officers told inspectors that Level 1 immigration crime was not being investigated by CFI as it was not a CFI priority.<sup>66</sup>

9.45 An II senior manager said they were aware that ICE teams had concerns that II was “abandoning Level 1 immigration crime intelligence and investigations”, leaving a gap that no one was filling. The manager thought that ICE teams might not understand II’s transformation programme, which included focusing on middle and upper tier operations. Within that programme, OIUs were looking for their work to have more impact. However, the senior manager pointed out that the National Document Fraud Unit (NDFU) took on a lot of Level 1 investigations, and CDTs and OIUs were still developing “single strand intelligence”. Meanwhile, the manager believed that each ICE team had a huge amount of unactioned intelligence and would always have a flow of other work.

63 <http://library.college.police.uk/docs/npia/NIM-Code-of-Practice.pdf>

64 <https://www.college.police.uk/What-we-do/Learning/Professional-Training/Investigation/Pages/Investigation.aspx>

65 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486703/Home\\_Office\\_Formal\\_Response\\_to\\_ICI\\_Illegal\\_Working\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486703/Home_Office_Formal_Response_to_ICI_Illegal_Working_report.pdf) (Official HO response to 2015 illegal working inspection).

66 See FN 6.

## “Disconnects”

- 9.46 The 2016 inspection of Border Force and Immigration Enforcement intelligence functions identified a “disconnect” in the way that OIU ‘packages’ were handled by ICE teams “with ‘packages’ containing allegations that met NTB, RTB and NITCG<sup>67</sup> priorities being rejected by local TCGs because they did not meet the latter’s priorities.”
- 9.47 During the current inspection, inspectors were told different things about the provision of intelligence for illegal working enforcement visits, including that relationships between ICE teams and OIUs varied; communication was poor and this led to misconceptions; OIUs were not fully resourced; basic Home Office checks were not being carried out correctly by II; and there was a lack of alignment between ICE, CFI, and II.
- 9.48 Inspectors were also told by CFI senior managers that CFI teams would work better if they had their own local intelligence resource and they felt that it did not work to have CDTs sitting within II, as II was not aligned to CFI priorities.<sup>68</sup>

## Immigration Intelligence transformation

- 9.49 The inspection team was told that II had been engaged in a programme of transformation, and that some changes stemmed from previous ICIBI recommendations, for example, changes to the way allegations were handled and a move away from “volume work” towards a focus on high harm threats.
- 9.50 Inspectors were also told that II and ICE teams had done a lot of work to improve the way the latter fed into II. One of II’s priorities was to increase referrals from ICE officers and the internal referral process was being streamlined and a bespoke referral form developed, along with a scoring system to score intelligence referrals from ICE teams.
- 9.51 Despite this, officers from one ICE team told inspectors that they did not have an understanding of II’s remit. They were aware that II was changing but had not been told how. They believed that before any changes were implemented, thought should be given to the impact on other areas, including ICE.<sup>69</sup>
- 9.52 An II senior manager told inspectors that by streamlining the way allegations were processed FIOs now had the time to do field work rather than having to deal with allegations. There were plans for them to do more focused campaigns to gain a better understanding of the local threat picture.
- 9.53 As part of the Home Office’s commitment to the government-wide strategy for services to be ‘digital by default’, II was hoping to move members of the public away from making allegations by telephone and on paper and to encourage use of the online form. At the time of the inspection, most allegations from members of the public were being made via the GOV.UK website or via Crimestoppers, while some were still being received via the hotline or on paper.

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67 National Tasking Board, Regional Tasking Board, National Tasking & Coordination Group.

68 At the factual accuracy stage, the Home Office commented that: “II priorities and CFI priorities are the same as both work to the control strategy and priorities set by the NTB. While there would always be a range of views on how best to allocate resources in line with priorities, the current Senior Leadership Team believes that the independence of intelligence resources outside of the operational commands of CFI and ICE ensures that intelligence resources are focussed on the highest priority work for IE.”

69 At the factual accuracy stage, the Home Office commented that: “II transformation has been closely aligned to Frontline Enforcement transformation. It is not reasonably viable to include every member of every ICE team in the consultation process; however some ICE staff have actively participated in II transformation workshops where proposed changes impact on ICE teams and vice versa and further transformation roadshows across the UK are ongoing.”

- 9.54 Again, II's views and those of ICE teams were not wholly aligned. The latter told inspectors they were concerned that people might be reluctant to complete an online form and, as a result, the quantity and quality of allegations would reduce. Some ICE officers suggested that it would be better to have an intelligence hotline number displayed on IE vehicles, similar to that on police vehicles.<sup>70</sup>
- 9.55 Another II senior manager recognised there were issues around the quality and quantity of allegations but did not see that this was connected with the move to an online system as members of the public could still telephone and speak to an individual if they wished. However, he agreed that it was easier to probe and get more information from someone over the telephone.

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<sup>70</sup> At the factual accuracy stage, the Home Office commented: "The public use the online form far more frequently than the hotline. The view of staff without supporting evidence is not factual. There is no evidence or research to show that by advertising the hotline the quality of allegations would improve."

# 10. Inspection findings – Modern Slavery

## Modern Slavery defined

- 10.1 The term ‘Modern Slavery’ encompasses slavery, servitude, forced or compulsory labour and human trafficking.

## The scale and nature of modern slavery in the UK

- 10.2 The 2018 UK Annual Report on Modern Slavery, published in October 2018, stated that:

“The most robust estimate to date of the scale of modern slavery in the UK was produced by the Home Office in 2014. The estimate suggested that there were between 10,000 and 13,000 potential victims of modern slavery in the UK in 2013. The National Crime Agency (NCA) assesses that the actual scale of modern slavery in the UK is gradually increasing and, if drivers remain at their current levels, will continue to do so over the next three years.”

- 10.3 Victims of modern slavery were understood to be working mostly in agriculture, hospitality, fishing, private homes, brothels, nail bars and cannabis farms.<sup>71</sup>

## The UK’s response to modern slavery

### Government priority

- 10.4 Combating modern slavery is a priority for the Prime Minister. As Home Secretary, she introduced the Modern Slavery Act 2015, which included the creation of the post of the Independent Anti-Slavery Commissioner (IASC).<sup>72</sup>

### The National Referral Mechanism

- 10.5 The National Referral Mechanism (NRM) is the process through which victims of modern slavery in the United Kingdom are identified and supported. Only designated ‘First Responders’ (FRs), such as the National Crime Agency (NCA), police forces, local authorities, the Gangmasters and Labour Abuse Authority (GLAA), Border Force, UK Visas and Immigration (UKVI), and Immigration Enforcement (IE) may make a referral to the NRM.<sup>73</sup>

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71 HM Government 2018 UK Annual Report on Modern Slavery. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/749346/2018\\_UK\\_Annual\\_Report\\_on\\_Modern\\_Slavery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749346/2018_UK_Annual_Report_on_Modern_Slavery.pdf)

72 The act extends to England and Wales. Scotland is covered by the Human Trafficking and Exploitation (Scotland) Act 2015 and Northern Ireland by the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Northern Ireland Act 2015.

73 Anyone over the age of 18 must consent to a referral to the NRM. In cases where consent is not forthcoming, statutory FRs have a “duty to notify” the NRM that they believe someone is a victim of modern slavery. Children do not need to consent to a NRM referral. A referral to the NRM goes through a two-stage process: a “reasonable grounds” stage followed by a “conclusive grounds” stage. An individual with a positive conclusive grounds outcome is considered to be a victim of modern slavery. Immigration decisions are suspended until the NRM process is completed. There is no automatic grant of leave to remain in the UK for recognised victims. Child victims of trafficking are supported by local authorities as part of their statutory obligations to vulnerable children.

<https://www.gov.uk/government/publications/how-to-report-modern-slavery>

## Inspection scope and evidence base

### Scope

- 10.6 The current inspection focused on the extent to which modern slavery was recognised and pursued as part of IE’s response to illegal working. It did not set out to look at encounters with potential victims of modern slavery at the border, which was the subject of an ICIBI inspection in 2016 and a re-inspection in 2018, both done in collaboration with IASC. Nor did it look at how the NRM was working, as this had been covered by the National Audit Office (NAO) in its report ‘Reducing modern slavery’, published in December 2017.

### Evidence base

- 10.7 In addition to interviewing and holding focus groups with ICE team managers and officers, and observing illegal working deployments, inspectors met and took evidence from a number of stakeholders about the Home Office’s approach to illegal working and how this aligned with combating modern slavery. The stakeholders included law enforcement agencies, regulatory bodies, NGOs, representatives of trade unions, academics and solicitors.

## Illegal working

### Recognising the “continuum of abuse”

- 10.8 The common view from stakeholders was that there was a “spectrum of exploitation” in the UK. This echoed research done jointly by IASC and the University of Nottingham, which found:

“[a] continuum of abuse occurring within certain UK labour sectors, ranging from minor low-level forms of labour abuses, to more extreme forms of exploitation and slavery”.<sup>74</sup>

- 10.9 The challenge to the Home Office from stakeholders was that it often failed to recognise this spectrum or continuum, focusing on the fact that someone was working illegally rather than that they may be the victim of abuse, exploitation and slavery.
- 10.10 A number of stakeholders believed that ICE teams regularly operated in sectors where they were likely to encounter vulnerable individuals who were being exploited, but that they found it difficult to identify them. One stakeholder drew inspectors’ attention to a 2018 Freedom of Information Act request which revealed that 278 migrants arrested under IE’s Operation Magnify<sup>75</sup> were identified as potential victims of modern slavery only after they had been placed in detention.
- 10.11 Another stakeholder commented that ICE teams did not have the resources, the time or the expertise to interview potentially exploited workers in sufficient depth to establish their true working conditions. There was also a general perception that ICE teams were not predisposed to identify potential victims during illegal working visits, since their focus was removals. A stakeholder quoted a migrant worker as telling them “for IE to believe that we are victims, we have to prove that we have been raped, starved and beaten”.

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<sup>74</sup> <http://www.antislaverycommissioner.co.uk/media/1238/labour-exploitation-in-hand-car-washes.pdf>

<sup>75</sup> See Chapter 11.

## Identifying vulnerability

- 10.12 Like the wider Home Office and law enforcement bodies nationally, IE has emphasised to its staff the importance of identifying vulnerability, including cases of modern slavery. The inspection team carried out more than 60 interviews and held focus groups with IE staff ranging from Immigration Officer (IO) to Senior Civil Servant. Without exception, everyone recognised that vulnerability and modern slavery were at the forefront of IE’s strategy and operations. An ICE team officer told inspectors “cases of vulnerability are prioritised; other jobs will be reassigned or postponed. We have no problem with doing that.”
- 10.13 Inspectors heard from IE staff at all levels that they felt confident about identifying vulnerable individuals. Many had made referrals to the NRM. One ICE team manager referred to a “huge improvement over the last 5 years in how we handle vulnerability.” Another commented “there is more and more focus on vulnerability. We are looking at people as people, not just statistics.”<sup>76</sup>
- 10.14 Figure 12 shows the numbers of individuals encountered during ICE illegal working visits completed between 1 April 2015 and 31 August 2018, who were subsequently referred to the NRM. Though still small, the percentage of NRM referrals had almost doubled since 2015-16.

**Figure 12: Individuals encountered during IE illegal working visits completed between 1 April 2015 and 31 August 2018 who were subsequently referred to the National Referral Mechanism**

	2015-16	2016-17	2017-18	2018-19
<b>Encounters on illegal working visits</b>	15,660	15,342	14,674	6,887
<b>Number (%) referred to NRM</b>	174 (1.1%)	298 (1.9%)	270 (1.8%)	143 (2%)
<b>Positive Reasonable Grounds</b>	126	196	189	96
<b>Positive Conclusive Grounds</b>	20	14	0	0

## Training

- 10.15 The examination of case records and visits to ICE teams by inspectors pointed to shortcomings in the identification of potential victims of modern slavery, and frontline IE officers admitted that they would benefit from better training. At the time of the inspection, all frontline officers were required to complete an e-learning course on modern slavery each year. The aims and objectives of this training were to increase awareness of the types of slavery that exist in the UK; to enable enforcement officers to identify potential victims by recognising the indicators of modern slavery; to understand the NRM system; and to give an overview of the wider support available to victims. According to the Home Office, “new staff to ICE read a self-directed module on modern slavery prior to commencing their initial enforcement induction course and have a modern slavery session delivered on their initial course”.

<sup>76</sup> See ‘An inspection of the Home Office’s approach to the identification and safeguarding of vulnerable adults (February – May 2018), published 10 January 2019. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/769849/ICBI\\_inspection\\_of\\_the\\_Home\\_Office\\_safeguarding\\_of\\_Vulnerable\\_Adults\\_Feb-May\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769849/ICBI_inspection_of_the_Home_Office_safeguarding_of_Vulnerable_Adults_Feb-May_2018.pdf)

## Criminal and Financial Investigations unit and Modern Slavery

- 10.16 A manager within Criminal and Financial Investigations unit (CFI) told inspectors about an initiative whereby a network of 40 “Modern Slavery Champions” across IE would lead on training and act as points of contact to assist ICE teams to identify, refer or support potential victims of modern slavery.<sup>77</sup>

### The ICE team perspective

- 10.17 A common theme during interviews with ICE teams was that nail bars were where officers would be most likely to encounter exploitation and modern slavery during operational visits. Six of the 12 focus groups with IOs and Chief Immigration Officers (CIOs) spoke to inspectors extensively about nail bars. There was little sense of an understanding or operational interest in other sectors where exploitation and modern slavery is believed to be common.
- 10.18 An ICE Senior Manager told inspectors that all operations should include recognition of the potential for trafficking and exploitation, and some specific operations such as Operation Lari,<sup>78</sup> which had focused on Houses in Multiple Occupation linked to illegal working, had sought to explore these issues specifically.
- 10.19 The Operational Plan for Operation Lari listed among the outcomes sought “[to] identify, disrupt and prosecute trafficking and modern slavery networks.” However, the evaluation of the first phase of the Operation stated: “No trafficking or modern slavery networks were identified as part of Op Lari” and the evaluation report for the second phase recorded that it had had minimal impact on trafficking and modern slavery.

### The effects of denying individuals the right to work – fear of the authorities

- 10.20 Several stakeholders argued that denying migrants without immigration status in the UK the right to work made them vulnerable to exploitation. It was argued that this was particularly true for asylum seekers who were in receipt of minimal subsistence payments.
- 10.21 The prohibition on the right of asylum seekers to work lasted while their asylum claim was outstanding, but although the Home Office undertook to decide straightforward claims within 6 months, Government Transparency Data for quarter 2 of 2018 showed that 48% go beyond that target.<sup>79</sup> Stakeholders told inspectors that asylum seekers perceived that any adverse interaction with the authorities during this time would lead to the refusal of their claim. Rogue employers took advantage of this, preying on fears of the consequences of the authorities discovering they were working illegally.
- 10.22 More generally, migrants working illegally would be unlikely to report labour abuses to the police or other authorities and, particularly, to IE as they feared being arrested and detained. IASC told inspectors that this extended to a reluctance to consent to an NRM referral, for fear of a negative NRM outcome and subsequent immigration action. NGOs reported acts of horrendous sexual violence against their clients carried out in the workplace, where the victims were too afraid of arrest and removal to report the crimes.

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77 At the factual accuracy stage, the Home Office reported that CFI had recently recruited a “temporary HMI” (Senior Executive Officer equivalent) “to lead on all aspects of Modern Slavery and Human Trafficking”.

78 See Chapter 11.

79 At the factual accuracy stage, the Home Office commented: “Asylum claimants are not normally allowed to work whilst their claim is being considered. Permission to work may be granted to asylum seekers whose claim has been outstanding for more than 12 months through no fault of their own. Anyone who is permitted to work on the basis of this policy is restricted to working in a job on the shortage occupation list published by the Home Office. Their ARC will state “work permitted shortage OCC”.”



10.23 A stakeholder told inspectors that a migrant domestic worker with whom she had worked had been too afraid that the hospital would inform IE of her whereabouts to seek treatment for cancer and had since died. A report published in October 2018 by the University of Oxford Centre on Migration, Policy and Society (COMPAS) concluded that there was a danger that Immigration Enforcement was pushing “migrants and employers into ever more shadowy practices”.<sup>80</sup>

### Illegal working referrals to the Home Office by exploitative employers

10.24 NGOs and trade unions told inspectors that they suspected some employers had decided to use the Home Office “strategically” to rid themselves of illegal workers who were proving troublesome by seeking to “unionise” employees. Stakeholders referred to well-publicised examples of employers tipping the Home Office off that some of their employees may be working illegally in an attempt to have them arrested. More recently, the skipper of a fishing boat was alleged to have exploited illegal workers for several months before having them detained and removed by the Home Office. One stakeholder asserted that Operation Lari had been presented as a way of helping potential victims of slavery and of tackling exploitative employers, but in reality it had been used to check illegal working.

### Case record evidence

10.25 Inspectors examined 48 case records where ICE teams had made an arrest as a result of an illegal working enforcement visit between 1 April 2017 and 31 March 2018. None of the individuals encountered were identified as potential victims of modern slavery or referred to the NRM. However, notebook entries and witness statements in some of the cases referred to situations that could have been considered indicators of exploitation. None of the records contained any evidence of further interviews or investigations to explore this.

10.26 In one case, a number of illegal workers were encountered in an operation focusing on the building trade. One told officers he lived in his boss’ garage (an indicator of modern slavery and of debt bondage). There was no record of a further interview with the worker or with the employer to explore this issue, nor was there any record of a Civil Penalty being issued.

10.27 In another case, 4 illegal workers were encountered in a shop. The workers said that they were being paid approximately £3.50 an hour. As well as being significantly below the national minimum wage and therefore a sign of potential exploitation, on a previous ICE visit to the same premises illegal workers had been encountered and were being paid a similar amount. However, there was no record on file of any contact or follow-up with the HMRC’s National Minimum Wage enforcement team.<sup>81</sup>

10.28 In a third case, IE had identified that a car valeting company was employing multiple illegal workers. The company provided IE with a copy of its staff records, from which IE found 54 illegal workers. Interviews with workers arrested in a subsequent enforcement action indicated that they may have been receiving less than the national minimum wage. However, there was nothing on file to show that any action was taken against the employer or that there had been any liaison with HMRC.<sup>82</sup>

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80 <https://www.compas.ox.ac.uk/wp-content/uploads/DIEM-Irregular-Immigrants-and-Control-Policies-in-the-UK.pdf>

81 At the factual accuracy stage, the Home Office commented: “Where a worker is an illegal migrant, they do not have protection under the National Minimum Wage Act and HMRC have no locus to act. It is for IE to sanction the employment of illegal workers, not HMRC NMW.”

82 At the factual accuracy stage, the Home Office commented: “HMRC cannot take NMW enforcement action where the workers concerned are illegal migrants. This is not a loophole in the law, but a deliberate policy to avoid rewarding illegal workers for breaking the law by guaranteeing them NMW rights. Working illegally is a criminal offence.”



10.29 A further indicator of modern slavery is when a worker is paid in food and board only. Several of the 48 case records contained references to this by workers, and one contained a reference to this by the employer. Inspectors witnessed a further example when observing an enforcement visit. From the case records and the observed visit, the worker and employers appeared to believe that such an arrangement did not constitute illegal working, and that therefore no offence was being committed. This was not the case. But, there was no evidence that IE had investigated further, if only to rule out any suspicions of exploitation.

### **ICE engagement with other bodies over safeguarding 'hand offs'**

10.30 When an ICE team encounters a vulnerable individual, including a potential victim of modern slavery, it is required to refer them to an appropriate agency for safeguarding. Inspectors spoke to 6 ICE teams, 3 of which mentioned the difficulty of engaging local authority social services. This was especially challenging at weekends. ICE officers perceived that social services were unwilling or unable to engage in joint working, and there was some confusion about social services' safeguarding responsibilities in the case of vulnerable adults.

10.31 Two ICE teams questioned the Salvation Army's capacity to fulfil their safeguarding contract,<sup>83</sup> which required it to provide emergency accommodation to potential victims of modern slavery while they went through the NRM process. One told inspectors that they had had to keep a vulnerable adult in their office overnight as the Salvation Army was unable to provide accommodation. Another had had to accommodate a vulnerable individual in a hotel for the same reason.

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<sup>83</sup> While the HO is the policy lead for managing the UK's response to modern slavery, a range of public sector organisations are involved in delivering the strategy, alongside businesses and non-governmental organisations (NGOs). The Department funds and manages the process for identifying victims, known as the National Referral Mechanism. It also manages a contract for support services for potential victims of modern slavery in England and Wales, currently run by the Salvation Army.

# 11. Inspection findings – Partnerships

## The Immigration Enforcement Business Plan

11.1 The Immigration Enforcement (IE) Business Plan 2017-2020 included a commitment to:

“Step up our collaboration with partners in coordinated campaigns to industrialise the use of new powers to enter premises, close businesses, prosecute employers and landlords and seize assets...”

### Illegal working partnership opportunities

11.2 IE staff at all grades and at all of the locations visited by inspectors said that illegal working provided excellent opportunities for partnerships with other agencies. The police and the Gangmasters and Labour Abuse Authority (GLAA) were obvious examples, as were Adult and Children’s Social Services where individuals were encountered with safeguarding needs.

11.3 But there may also be opportunities for IE to work with others, such as the Health and Safety Executive (HSE) or the Fire Service where working conditions were dangerous; HM Revenue and Customs (HMRC) where employers were not paying tax, National Insurance, or the minimum/living wage;<sup>84</sup> and with the Employment Agency Standards Authority where workers were supplied by an agency.

### Examples of partnership working

11.4 Interviews, focus groups and observations of ICE teams found that, while joint working initiatives were emphasised, in some regions these were few and far between. In practice, partnerships focused on data sharing rather than on joint operational deployments.

11.5 In Scotland, inspectors were told that there had been close collaboration between ICE and HMRC since early 2015. This was governed by a local Memorandum of Understanding (MoU) enabling information sharing. An HMRC representative attended the local tasking group meeting and, where appropriate, HMRC accompanied ICE on illegal working visits. The ICE team believed that HMRC’s presence meant harsher (HMRC) sanctions could be applied to businesses employing illegal workers, thereby creating a greater deterrent for employers.

11.6 An ICE senior manager told inspectors that because Immigration Officers’ powers were different in Scotland, ICE there relied on the powers of other agencies, such as HMRC, the Health and Safety Executive, and the Fire Service, to gain entry to premises and take enforcement action.<sup>85</sup> As a result, the relationships with these partner agencies were well-developed. Inspectors witnessed collaboration between other ICE teams and HMRC but were told that the relationships were not as close and contact was less frequent.

<sup>84</sup> The minimum wage applies to those under 25, the National Living Wage to those over 25 <https://www.gov.uk/national-minimum-wage-rates>

<sup>85</sup> At the factual accuracy stage, the Home Office stated that: “Immigration Officers’ powers of entry are broadly the same in Scotland and England under the Immigration Act 1971. The S.179 alcohol licensing entry power does not apply in Scotland.”

- 11.7 Inspectors were provided with an “operational calendar”.<sup>86</sup> This referred to joint operations with various partners, some local, others national. For example, Operation Erzen was a local operation carried out in the London Borough of Newham. ICE visits were made to licensed premises where there had been a data match on IE’s and London Borough of Newham’s IT systems. Between 2017 and August 2018, there had been 31 Operation Erzen visits.
- 11.8 Inspectors were also provided with evaluations from 4 national-level joint operations, all involving extensive data sharing: Magnify, Venezia, Lari, and Weise.

### Operation Magnify

- 11.9 Operation Magnify began in October 2015 as a rolling programme of activities aimed at tackling and sending a message to exploitative employers. The aim of Operation Magnify was to reduce illegal working within identified areas of abuse by sharing intelligence and conducting multi-agency operations, with visible and robust actions taken against exploitative employers. The intention was to make use of the multiple sanctions and powers of prosecution available to the agencies involved.
- 11.10 Phases 1, 2 and 3 of Operation Magnify focused on the construction sector (11 to 17 October 2015), the care sector (8 to 14 November 2015), and the cleaning sector (6 to 12 December 2015). A previous operation (Operation Centurion) had highlighted that IE was not fully aware of the abuse within these 3 sectors and needed to engage fully with partners to gain a better understanding of the issues.
- 11.11 In addition to IE, Operation Magnify involved the police, HMRC, GLAA, HSE, Department for Business Innovation and Skills (BIS), Department for Communities and Local Government (DCLG), and the Care Quality Commission (CQC). The partners exchanged intelligence, ‘washed’ their data against one another’s databases, and performed checks against their records.
- 11.12 IE’s evaluation of Operation Magnify 1, 2 and 3, acknowledged that:
- “... the three completed operations [have] identified intelligence and operational gaps in many areas that were not previously apparent, including potential access to Critical National Infrastructure (CNI) and its potential damage.... Engagement with external enforcement partners should take place early in the planning process to provide adequate time for intelligence/data sharing and planning/resourcing of joint-operations. Further, systems should be developed to measure the impact of enforcement partners’ involvement in campaigns.”
- 11.13 The evaluation made a number of recommendations, those specific to illegal working included the need for a metric to measure the overall aim of the operation, the requirement to complete the National Operations Database (NOD) fully and accurately to ensure the correct data was captured, to obtain early buy-in from partner agencies, and for intelligence sharing with partner agencies to become the norm.
- 11.14 Further phases of Operation Magnify targeted car washes and the catering industry. In its evaluation of the former, IE concluded that the Operation had led to:

“[a] better working relationship with HMRC....Increased joint operations.... Gaps appeared in intelligence picture but were later filled as a result of this operation.”

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<sup>86</sup> An Excel spreadsheet, where proposed operations were timetabled and “matched” to the threats.

- 11.15 The evaluation recommended that partner agencies should be given more notice before conducting another Operation Magnify, that Intelligence Management System (IMS) referrals should be of good quality, and that all systems should be fully and accurately updated on completion of the operation.
- 11.16 In its evaluation of the catering industry phase of Operation Magnify, IE recommended that sector leads should be appointed, that Ministerial Roundtables should be used to support changes in employer behaviour, and that staff training in intelligence gathering and feedback should be improved.
- 11.17 Operations Venezia, Lari, and Weise were all, in practice, further phases of Operation Magnify.

### Operation Venezia

- 11.18 Operation Venezia ran from 27 November to 3 December 2016 and targeted illegal working in the cash-based nail bar industry. Data matching with partners identified offenders and ‘enablers’<sup>87</sup> working in the sector who were linked to organised criminal activity. This meant that it was likely that ICE teams would encounter potential victims of modern slavery.
- 11.19 IE’s evaluation of Operation Venezia noted that 195 immigration offenders were encountered, 70 Civil Penalty notices were issued covering 95 illegal workers, with a potential liability of £1.9 million in fines. The evaluation concluded:

“Referrals of vulnerable persons and minors to Social Services remained an issue as there was evidence that people were absconding...Buy in from [ICE] regional leads faced some challenges....Regional leads expressed concerns regarding impact on their business as usual objectives plus lack of interpreters, detention space and prolonged document process.....Operational fatigue to intensification period in general.”

### Operation Lari

- 11.20 The first operational phase of Operation Lari ran from May to June 2017, with the second phase running between November 2017 and April 2018. The Operational Order stated:

“Immigration Enforcement will lead and co-ordinate a multi-agency response to illegal working by conducting targeted enforcement operations at HMOs<sup>88</sup> accommodating immigration offenders. It will link immigration offenders in HMOs to employers with poor right to work records and those that have previously avoided coming to the attention of law enforcement.”

- 11.21 IE’s intention was to use HMRC-held data as the key intelligence element to support the first phase of Operation Lari, but this was not available to share with Operational Intelligence Units (OIUs) in time, which meant that IE had to use other sources of intelligence to generate enforcement targets. The evaluation of this first phase of the Operation noted that 253 enforcement deployments were conducted, 888 individuals were encountered, and 201 people were arrested.
- 11.22 Once a data usage agreement (DUA) with HMRC had been finalised, and IE had made a few adjustments to its information requests, HMRC was able to share its data in time for the second

87 Enablers: anyone facilitating illegal working either through providing employment or providing individuals with false documents which they can use to secure employment.

88 Houses in Multiple Occupation.

phase of Operation Lari. The IE evaluation of this phase noted that “insufficient cases had been generated to provide a full picture of the success of the Operation”, but it had proved that HMRC data, once ‘enriched’ by ‘washing’ it against Home Office databases could be used to enhance existing intelligence and IE intended that this approach should be replicated in future operations.

### Operation Weise

- 11.23 Operation Weise ran from 24 September to 8 October 2017 and targeted illegal working in licensed premises and the hospitality industry. It was conducted differently from previous phases of Operation Magnify, as IE’s aim was to improve its strategic intelligence gathering and to ensure consistency of use of its new powers of entry under Section 179 of the Licensing Act 2003.
- 11.24 Immigration Intelligence evaluated the intelligence gathering and referrals element of Operation Weise in an ‘Intelligence Referral Assessment’ and the ICE Operational Assurance Team conducted a ‘Thematic Review’ of Section 179 of the Licensing Act 2003.

### II and ICE views of the Operation Magnify approach

- 11.25 The formal evaluations of these operations pointed to some positive outcomes. However, the operations were resource intensive for IE (using the “week of action” approach)<sup>89</sup> and the lack of baseline data made it difficult to produce robust assessments of their impact.
- 11.26 An II manager described Operation Magnify to inspectors as a “blunt tool”. Another told inspectors that Operation Lari had been “very resource intensive” for both IE and II yet it had not generated much operational activity. He was concerned about the number of false matches the data had produced.
- 11.27 In interviews and focus groups, inspectors heard mixed views about the value of the Operation Magnify approach “on the ground”. Regional managers told inspectors that there needed to be a better understanding about whether larger operations were an effective means of dealing with illegal working.
- 11.28 ICE team managers and officers in Scotland told inspectors that they found it difficult to identify work that fitted this type of strategic operation and questioned whether national campaigns worked. One manager said:

“Normally with national campaigns, there is someone in London who decides what to do and it will have no relevance to Scotland.”

Another added:

“National tasking is irrelevant for Scotland, they do not take into consideration the geography, case cohort or communities Scotland has compared to London or other urban areas.”

- 11.29 However, ICE teams elsewhere told inspectors that they had achieved “a lot of results” from national operations, particularly Operation Magnify.

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<sup>89</sup> A concentrated period of coordinated enforcement action involving all regions.

## Partner agency views

- 11.30 Representatives from partner agencies told inspectors that both Operation Magnify and Operation Lari had been valuable in increased collaboration with IE.

## The future of Operation Magnify

- 11.31 In November 2018, inspectors were given to understand that there had been no activity associated with Operation Magnify since April 2018. The Illegal Working Threat Lead told inspectors that this was due to delays in resubmitting previously agreed timetables for senior-level sign off, but assured inspectors that Operation Magnify remained a rolling programme and that activities were being planned for early 2019. These plans included developing and expanding data sharing with other government departments to create more strategic intelligence, and re-running Operation Lari.

## Collaboration with the Gangmasters and Labour Abuse Authority

- 11.32 The Gangmasters and Labour Abuse Authority (GLAA) is a Non-Departmental Public Body whose role is to protect vulnerable and exploited workers. It investigates reports of worker exploitation and illegal activity, such as human trafficking, forced labour and illegal labour provision, as well as offences under the National Minimum Wage and Employment Agencies Acts. It also administers the licencing scheme, which regulates businesses that provide workers to agriculture, horticulture, shellfish gathering and associated processing and packaging industries to make sure that they meet the employment standards required by law.<sup>90</sup>
- 11.33 The Home Office provided inspectors with a Memorandum of Understanding (MoU) that purported to provide the framework for the relationship between the GLAA and IE. However, the MoU, which covered information exchange “subject to existing legal gateways” and support for operational activity, including, where appropriate, joint operations, was dated 2010 and was not finalised. It referred to the Gangmasters Licensing Authority (GLA) - the precursor to the GLAA.
- 11.34 GLAA told inspectors that there was a good working relationship with IE and mentioned a formal arrangement under which GLAA referred cases of illegal working to IE and IE referred cases of exploitation to the GLAA. This exchange of information also applied to trends in intelligence, and the sharing of the GLAA’s bi-annual report on labour exploitation and their strategic assessment.
- 11.35 Inspectors were unclear about how the effectiveness of the relationship was being measured. For example, the number of intelligence reports disseminated by IE to the GLAA was not recorded on the Single Intelligence Platform (SIP) or included in Management Information (MI) reporting. GLAA told inspectors that there was scope for more joint visits and that labour users who worked with the GLAA were keen to receive information about forged documents and ‘right to work’ checks. GLAA was disappointed about the demise of the Illegal Working Steering Group, in particular the lost opportunity to learn more about forged documents and ability to share information with other attendees.
- 11.36 Frontline ICE officers were uncertain about the role of the GLAA and none of those interviewed mentioned working jointly with GLAA. One senior manager told inspectors this was due mainly to the focus of GLAA activity, which was associated primarily with rural working such as farming or fishing.

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<sup>90</sup> <http://www.gla.gov.uk/who-we-are/what-we-do/>

11.37 A stakeholder told inspectors that joint working between the GLAA and IE in the context of illegal working risked undermining the trust of vulnerable migrants and NGOs in the GLAA. Along with another stakeholder, it felt that the creation of a firewall, with a clear separation of duties between the police and GLAA on one side and IE on the other would help to build trust between potential victims and the authorities.<sup>91</sup>

### **Collaboration with the Employment Agency Standards Inspectorate**

11.38 The Immigration Act 2016 created the Director of Labour Market Enforcement, whose role is to provide strategic direction to the GLAA, the National Minimum/Living Wage Enforcement Teams in HMRC, and the Employment Agency Standards (EAS) Inspectorate.

11.39 At the time of the inspection, EAS had 13 inspectors who covered over 26,000 employment agencies. Illegal working did not form a significant part of its work. The legislation was silent on illegal workers, but EAS was able to refer cases to IE where it believed they were of interest.

11.40 EAS told inspectors that it had a good working relationship with IE. The point of contact was IE's Illegal Working Threat Lead. EAS sometimes identified that it might be useful for an ICE team to join an EAS inspector on a planned visit. ICE did not always do so but would ask for a report of the visit.

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<sup>91</sup> At the factual accuracy stage, the Home Office commented that: "compliance with the law on the prevention of employing illegal workers is a formal licensing condition on labour providers administered by GLAA, and it is legitimate for GLAA to share data with IE for the exercise of its functions."



# 12. Inspection findings – Sectoral engagement

## Senior-level sectoral engagement

- 12.1 Inspectors were told that an important strand in the Home Office’s approach to tackling illegal working is to engage at a senior level in high-risk sectors, such as construction. Inspectors were provided with documentary evidence of this engagement, which has included roundtables and meetings with organisations to gain support for Operation Magnify, a dialogue with professional associations and regulatory bodies, training sessions provided by Home Office staff, and the expansion of the embedded officers scheme.<sup>92</sup>
- 12.2 Inspectors found it difficult to assess the value of the meetings with businesses and trade associations due to the poor quality of the minutes and the limited follow-up actions. At interview, the responsible Senior Civil Servant told inspectors that IE faced a challenge in getting organisations to work with it and this had become harder post-Windrush.
- 12.3 Under Operation Magnify, ministerial roundtables were a key part of IE’s engagement with other government departments and “at risk” sectoral organisations. IE’s aim was to agree a long-term strategy with partners and avoid operational activity from occurring in a vacuum. Inspectors saw submissions sent to ministers in September 2017, which looked to build on the roundtables held in 2015 and identified 5 sectors requiring attention (construction, care, hospitality, public sector services, and retail). However, it was unclear whether any events other than operational “weeks of action” were ever formally commissioned.
- 12.4 Inspectors were told that there had been plans to hold a roundtable in 2018 with the care/health sector, but this had been postponed due to the Windrush scandal. At the time of the inspection, it was unclear if this work would go ahead and, if so, when.

## Employers’ Consultation with the Home Office Group

- 12.5 The Employers’ Consultation with the Home Office (ECHO) Group was established in March 2014. ECHO is supposed to meet quarterly. Its purpose is to establish “positive relationships” with employers and create a better understanding of how to prevent illegal working.
- 12.6 The Group is chaired alternately by a Home Office representative and a representative from the employers. Twelve organisations are listed as ECHO members, including major supermarkets, a fast-food chain, and a service provider with a contract to provide services on the Home Office’s behalf.
- 12.7 The Home Office informed inspectors that: “The ECHO Group is solely for the purposes of obtaining insight into commercial practices. It is highly likely that some or all of the participants would withdraw from this group if they are linked to the Home Office without having been consulted first.”

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<sup>92</sup> See paragraphs 12.24 to 12.28.



- 12.8 As at November 2018, the Group had last met on 25 September 2018. Notes of that meeting show that a number of updates were provided by the Home Office, including about the online ‘right to work’ checking service, the EU Settlement Scheme, and illegal working enforcement activity. The details of these updates were not recorded, nor was there any record of the input from non-Home Office attendees. The Home Office told inspectors that while broader trends for illegal working were discussed at this and other ECHO meetings, operational intelligence was not discussed or shared with ECHO members.

### Small and Medium Enterprises

- 12.9 Large companies might reasonably be expected to have the resources to carry out ‘right to work’ checks routinely and robustly, not least in order to protect their reputation. The same was not necessarily true of small and medium sized enterprises (SMEs), who might lack the capacity or incentive to carry out checks as thoroughly.
- 12.10 The extent to which the Home Office was seeking to engage SMEs directly was unclear.

### Engagement with sectoral associations

- 12.11 A Senior Manager told inspectors that engagement with sectoral associations, for example, in the construction industry, had been a success. By engaging professional bodies, trade associations and employers’ groups, the Home Office hoped to create a credible deterrent to illegal working and to bring about a change in behaviours, including attitudes towards ‘right to work’ checks and support for enforcement activity.
- 12.12 IE’s Interventions and Sanctions Directorate (ISD) provided the inspection team with examples of “good practice”. These illustrated the engagement between ISD and the Considerate Constructors Scheme (CCS), Construction Skills Certification Scheme (CSCS) and the Construction Industry Training Board (CITB). However, no information was provided about how long this engagement had been going on or any future plans.

### Memoranda of Understanding

- 12.13 IE and HMRC had agreed an MoU with the Construction Industry Training Board (CITB) to facilitate data sharing. The 3 organisations had already been sharing data but manually, and to exploit the data fully the flow of referrals needed to be automated and fed directly to Immigration Intelligence (II). Inspectors saw documentary evidence of Home Office plans to develop more MoUs with other industry bodies and regulatory agency partners. These plans were aimed at delivering high quality intelligence on IE priority areas “within the next twelve months”. However, as at the end of 2018, it was unclear the extent to which any of them had been progressed.

### Supply chains

- 12.14 Part 6 of the Modern Slavery Act 2015 recognised that extended supply chains created significant opportunities for exploitation and trafficking.<sup>93</sup> The same was true for illegal working. However, this did not feature in the evidence provided to inspectors, except for a brief reference to the fact that IE had signed the “Apparel and General Merchandise Public and Private Protocol” which committed signatories “to work together to eradicate slavery and exploitation in textile supply chains.”<sup>94</sup>

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<sup>93</sup> See Modern Slavery Act 2015, Part 6 and a related guide: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/649906/Transparency\\_in\\_Supply\\_Chains\\_A\\_Practical\\_Guide\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf)

<sup>94</sup> <http://www.gla.gov.uk/i-am-a/i-use-workers/textiles-protocol/>

12.15 In training delivered by IE staff as part of the Checking and Advice Service, employers were told that the responsibility for 'right to work' checks may be delegated to a company's suppliers but liability, including for any penalties, cannot. Under 'Delegation of Responsibility', it encouraged employers to recognise that:

"If the worker is supplied by an agency/contractor or is self-employed you are not the employer and cannot be liable for penalty. Where you are not the direct employer (supply chains, self-employed relationships) there are still benefits to conducting right to work checks, and you should ensure that right to work checks are at least part of the contracts you make with suppliers, and these are enforced. This is important as the illegal workers situation may put your business at risk (undermine Health and Safety, insurance, access to secure sites, vulnerable persons, reputational risk)."

## Public procurement

### Home Office service contracts

- 12.16 From the evidence provided, inspectors could not see how the Home Office was able to assure itself that companies providing it with services were compliant with 'right to work' legislation, including completing employee checks. Inspectors were told there was a three-stage tendering process that included a set of evaluation criteria relating to the Modern Slavery Act 2015 which the bidding organisation used to produce a self-assessment, a further self-assessment questionnaire requiring details of the bidder's approach to corporate social responsibility (CSR), and a final paper-based 'due diligence' stage.
- 12.17 Inspectors found that the contracts for Home Office Estates, which were managed by the Ministry of Justice, used standard wording regarding compliance, with no focus on 'right to work' checks. One Senior Manager told inspectors the Home Office followed Government Commercial Operating Standards<sup>95</sup> for contracts and, while these contained no specific mention of illegal working and 'right to work' checks, compliance with UK legislation was implied. Another commented: "We use standard terms and conditions for outsourcing which contains passages relating to compliance with the Modern Slavery Act. That's a good starting point."

### Critical National Infrastructure

- 12.18 The presence of illegal workers in publicly-funded contracts, particularly critical national infrastructure (CNI) projects, was brought to the Home Office's attention following a number of incidents in 2015:
- in early 2015, a British Transport Police investigation into the fraudulent issuing of Network Rail Sentinel cards, part of Operation Shame, found 70 immigration offenders working trackside at several Network Rail construction sites. 375 forged documents and bogus identities were recovered during subsequent enforcement visits
  - in October 2015, during the first phase of Operation Magnify (construction), 20 illegal workers were encountered working on the TMF Capenhurst civil nuclear site in Cheshire
  - in 12 October 2015, IE received a referral from Ministry of Defence (MOD) Police regarding an Algerian male working at Atomic Weapons Establishment Burghfield using counterfeit Belgian identity documents

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<sup>95</sup> The purpose of the Commercial Operating Standards is to ensure effective and consistent commercial delivery, and to drive continuous improvement of that commercial capability. Standards are also relevant to other initiatives, including commercial blueprints and spend assurance.

- 12.19 Primarily in response to the TMF Capenhurst incident, illegal working in CNI projects was covered in detail in the Operation Magnify evaluation and, as a result, in February 2016, the Illegal Working Steering Group (IWSG) commissioned the Illegal Working Threat Lead to pursue the issue with the Cabinet Office Infrastructure Resilience & Security Working Group (IRSWG). Further research, examining past operations, intelligence databases and public allegations, identified that illegal workers had been discovered at a number of ports and airports, including in controlled areas, and at other sensitive locations.
- 12.20 The Illegal Working Threat Lead told inspectors that the main vulnerability in many of these cases was the failure to carry out effective identity checks as part of the Basic Personnel Security Standard (BPSS) clearance process.<sup>96</sup>
- 12.21 Around the beginning of 2016, a similar issue arose with illegal workers using false identities to bypass Disclosure and Barring Service (DBS) checks and gain employment in the care sector, which was of particular concern as such workers often worked alone with vulnerable individuals. Inspectors were told that IE had been planning an enforcement operation focusing on the care sector but were first seeking Ministerial approval to collaborate with DHSC on delivering a comprehensive response in the sector, which was necessary because of the additional requirements to protect continuity of care for vulnerable individuals, and had to be resolved before a large-scale national campaign to tackle illegal working could be delivered.
- 12.22 According to the Home Office, where intelligence had identified immigration offenders delivering care to vulnerable individuals operations had not been delayed. Meanwhile, all the necessary preliminary work to deliver the planned care sector operation was taken forward: IE had aligned the guidance for checking documents in 'right to work' checks and DBS checks; carried out an in-depth examination of identity abuse and DBS vetting; piloted the Digital Status Checking project in the care sector; produced an extensive intelligence assessment of the care sector in collaboration with DHSC and the Care Quality Commission; set up a multi-agency care sector working group; and begun engaging with industry regulatory and professional bodies. At the time of the inspection, the effectiveness of these measures had not been evaluated.
- 12.23 Since the IRSWG met in February 2018, a number of action points regarding illegal working in CNI projects had been taken forward:
- the Centre for Protection of National Infrastructure (CPNI) had agreed to use its secure intranet to carry awareness messaging for all contractors who registered to work in and supply goods and services to CNI projects
  - the issue of illegal workers gaining access to sensitive and controlled sites was made a standing item on the agenda of Immigration Enforcement CT Threat Board
  - the Home Office was looking at ways to ensure that contractors working at the Hinkley Point C nuclear site were compliant with 'right to work' checks
- 12.24 During 2017, the Illegal Working Threat Lead had to persuade Crown Commercial Services and other government departments involved in public procurements to introduce a clause into public contracts obliging companies to undergo various additional checks of their own 'right to work' practices. However, this had not gained support and had not been taken forward.

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<sup>96</sup> BPSS is the minimum vetting standard required for access to controlled sites and roles and comprises a four-part check to verify the person's identity, immigration status, security and criminal record, and work history and qualifications.

## Embedded officers

- 12.25 In January 2015, IE piloted “embedded officers” as part of a scheme to assist local authorities, NHS Trusts and other organisations with their processes to ensure that access to their services was granted only to those entitled to receive them. In 2016, the IE Checking and Advice Service (IECAS) was established and On-Site Immigration Officials (the new name for embedded officers) were embedded in local authorities, Transport for London (TfL) and latterly HS2. In local authorities they were based primarily in ‘No Recourse to Public Funds Teams’ and provided real-time information to assist with decision making.
- 12.26 The job description for the On-Site Immigration Official (OSIO) working in HS2,<sup>97</sup> dated May 2018, required the post-holder to identify ways to improve HS2’s processes, procedures and systems and provide training to HS2 staff to assist them to deal with the risks of illegal working in HS2’s extended supply chain. The OSIO was not expected to carry out checks, for example, to establish if a document presented by someone applying for employment was a forgery, and HS2 remained legally liable.
- 12.27 As at August 2018, there were 13 OSIOs in total, supporting 12 councils, one housing association, TfL and HS2.<sup>98</sup> OSIOs were provided to these partners on a “cost recovery” basis, charged at an hourly rate. Inspectors were told that any further roll out of OSIOs was dependent on what trends were identified in the intelligence and feedback from existing partnerships, but there were no plans to target specific businesses or industries.
- 12.28 Between October 2016 (when IECAS was established) and September 2018, OSIOs working with local authorities and TfL had identified 6 illegal workers and 4 fraudulent documents.

## ‘Buy-in’

- 12.29 It was unclear to inspectors from the evidence provided to what extent the idea of sectoral engagement in its various forms had been embedded into IE’s thinking and approach to illegal working. It was evident that this work fell primarily on one individual, the Illegal Working Threat Lead. He told inspectors that, to be successful, these initiatives required ‘buy-in’ from senior staff in the Home Office, in other government departments (OGDs) and other agencies, and from businesses leaders, and that, in his view, they needed to be more “vocal” about “the threat and dangers of illegal working”.

## Impact

- 12.30 The impact of the work already done with senior contacts, trade associations and others was hard for inspectors to evaluate. There was no evidence to show it had increased ‘right to work’ compliance as no metrics had been developed for employer compliance, nor were there any internal evaluations for inspectors to review.

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97 Described as “Europe’s largest infrastructure project supporting 25,000 jobs during construction, including 2,000 apprenticeships” <https://www.hs2.org.uk/why/about-us/>

98 Some OSIO covered more than one local authority.

# 13. Inspection findings – Sanctions

## Civil Penalties

13.1 According to BICS Policy, Civil Penalties are:

“the principal means to deal with illegal working.... and provide a transparent and cost-effective means of sanctioning non-compliant employers”.

13.2 Civil Penalties for employers were introduced on 29 February 2008. Section 15 of the Immigration, Asylum and Nationality Act 2006 imposed a duty on employers to establish whether their employees were permitted to work in the UK before employment commenced. Employers found to be employing workers illegally were liable to pay a penalty.

13.3 From 16 May 2016, the maximum Civil Penalty was increased. For a first breach in a 3-year period, the new starting penalty became £15,000 per illegal worker. For a second or subsequent breach in a 3-year period the starting point was £20,000. The new process introduced reductions in the penalty where there were “mitigating factors”, and the discount for fast payment was increased from 20% to 30%.

13.4 An employer can avoid becoming liable for a Civil Penalty by carrying out simple specified document checks on potential employees. Such checks provide a statutory excuse against a Civil Penalty. Guidance about carrying out such checks is available on the GOV.UK website.<sup>99</sup>

13.5 As a result of the Immigration Act 2014, with effect from 28 July 2014 employers were required to object against a Civil Penalty before taking an appeal to a civil court.

## Civil Penalty Compliance Team

13.6 Where an Immigration Compliance and Enforcement (ICE) team finds an illegal worker it will serve the employer with a Referral Notice (RN). The ICE team will then send the RN, with any relevant information gathered from their visit, to the Civil Penalty Compliance Team (CPCT). CPCT sits within Immigration Enforcement’s (IE) Immigration and Sanctions Directorate (ISD).

13.7 CPCT is responsible for administering the Civil Penalty scheme. It:

- makes initial decisions on liability for a Civil Penalty
- serves Civil Penalty Notices (CPN), Warning Notices or No Action Notices (NAN), as appropriate<sup>100</sup>
- makes decisions on any subsequent objections
- works with the Government Legal Department (GLD) in defending appeals against Civil Penalties

<sup>99</sup> <https://www.gov.uk/check-job-applicant-right-to-work>

<sup>100</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/338061/civil\\_penalty\\_scheme\\_-\\_28\\_July\\_2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/338061/civil_penalty_scheme_-_28_July_2014.pdf)

- 13.8 Where CPCT decides, on the basis of the RN and any other information provided by the ICE team, that no offence has been committed, it serves a NAN on the employer and no further action is taken. Where it considers there has or may have been a breach, CPCT sends the employer an Information Request asking for any further information and evidence relevant to employer’s liability. Where the employer is able to establish a statutory excuse for the workers identified in the RN, CPCT will issue a NAN.
- 13.9 An employer has the right to object to the penalty within 28 calendar days of receipt of the CPN. Taking into account any further evidence submitted by the employer, CPCT either cancels the CPN or dismisses the objection. If the penalty is maintained, the employer has 28 days to pay the full amount or to appeal to the courts. For a first breach, the employer can qualify for a 30% discount by paying within 21 days. Employers can apply to pay via an instalment plan of up to 24 or, exceptionally, 36 months. If payment becomes overdue the debt is passed on for debt recovery action.

### Performance

- 13.10 Home Office data showed that the number of Civil Penalties issued for illegal working had declined since 2016-17, while the percentage of fines collected had increased – see Figure 13.

**Figure 13: Illegal working Civil Penalties issued and fines collected between 1 April 2015 and 31 August 2018**

Year	Number of penalties issued	Value (£ million)	Amount collected (£ million)	% Collected
2015-16	2,594	46.2	12.5	27
2016-17	2,933	46.2	16.5	35.7
2017-18	2,094	36.2	14.1	38.9
2018-19	256	4.4	3.9	88.6
<b>Total</b>	<b>7,877</b>	<b>133</b>	<b>47</b>	<b>35.3</b>

- 13.11 The data also showed that the issuing of Civil Penalties was London-centric and focused heavily on the hotel and restaurant sector - see Figures 14 and 15.

**Figure 14: Civil Penalties by region between 1 April 2015 and 31 August 2018**

Year	London & SE	Midlands & East	North West	Wales & SW	NE, Yorks & Humber	Scotland & NI
2015-16	1,216	366	326	274	211	201
2016-17	1,566	395	414	246	183	129
2017-18	1,010	364	228	217	161	114
2018-19	137	32	28	17	27	15
<b>Total</b>	<b>3,929</b>	<b>1,157</b>	<b>996</b>	<b>754</b>	<b>582</b>	<b>459</b>

**Figure 15: Civil Penalties by sector between 1 April 2015 and 31 August 2018**

Year	Hotel & Restaurants	Retail	Healthcare	Commercial	Automobiles & Components	Construction
2015-16	1,339	500	111	118	83	48
2016-17	1,203	529	165	131	116	57
2017-18	1,032	372	70	82	49	33
2018-19	114	38	7	11	8	2
<b>Total</b>	<b>2,788</b>	<b>1,439</b>	<b>353</b>	<b>342</b>	<b>256</b>	<b>140</b>

13.12 The majority of Civil Penalty referrals came from ICE teams, with HM Revenue and Customs being the only other party to make referrals in significant numbers. Inspectors were told that this reflected the joint work done between IE and HMRC – see Figure 16.

**Figure 16: Civil Penalties by source of referral between 1 April 2015 and 31 August 2018**

Year	ICE	HMRC	II	Sponsor Mgt <sup>101</sup>	Cifas	UKVI	CITB <sup>102</sup>	Asylum Support	Employer Checking Service pilot
2015-16	1,893	550	57	36	5	39	6	3	5
2016-17	1,615	1,188	45	28	42	0	14	1	0
2017-18	1,611	439	14	12	16	1	0	1	0
2018-19	202	54	0	0	0	0	0	0	0
<b>Total</b>	<b>5,321</b>	<b>2,231</b>	<b>116</b>	<b>76</b>	<b>63</b>	<b>40</b>	<b>20</b>	<b>5</b>	<b>5</b>

13.13 An IE senior manager suggested to inspectors that the issuing of Civil Penalties may have “plateaued”. The Home Office explained the fall in 2017-18 as “the return to a stable flow of referrals” following a one-off exercise in the previous year “to compare a large cohort of Home Office data with HMRC data, which resulted in a large number of civil penalties”. It said that the sharp fall in the first 5 months of 2018-19 (to 31 August 2018) was “as a direct result of the pause following Windrush”.

### Civil Penalties collected

13.14 Referring to the data about penalties and payments, CPCT explained:

“The data provided for collections is the total collections figure for each financial year. There is not a direct correlation between the value of penalties issued and the monies recovered in the same period. We are unable to provide cohort payment data. It can take a number of months for the debt to become due as penalties are subject to a statutory objection and appeals process and then employers can apply for instalment plans of up to 24 or 36 months

101 The Immigration Rules require that certain categories of immigrants arriving to the UK have a UK sponsor such as a university or employer. The Sponsor Management System authorises this sponsorship and monitors compliance.

102 The Construction Industry Training Board (CITB) is the industry training and qualifications board for the UK construction industry and worked closely with IE in Op Magnify (construction phase) to help identify illegal workers applying for construction qualifications.



(exceptionally). Therefore, payments received in a period will also relate to historic penalties issued which are now due and where employers have opted to pay by instalment plan.”

- 13.15 While the fact that payments received may be from an earlier period makes in-year comparisons of penalties issued and monies collected problematic. The inability to break the payment data down by “cohort” means that the Home Office cannot analyse the effectiveness of Civil Penalties by region and employment sector, and therefore is unable to use this to target future enforcement action.<sup>103</sup>
- 13.16 The 2015 ICIBI illegal working report noted that the debt recovery rate for “the most recent period” was around 31%, and that it was taking on average 28.4 months for CPCT to receive payment. The latest data indicated that since the beginning of 2015-16 the collection rate had been improving and inspectors were told that it was currently 37% of which 4% were faster payments made to qualify for a discount. According to a CPCT Senior Manager, Civil Penalty debts were difficult to collect, as unlike other government departments, CPCT did not have the ability to collect the debt at source and some debtors were “very transient”, however its collection rates for overdue debts (via debt recovery specialists) were comparable.

### Deterrent effect

- 13.17 In 2015, the Cabinet Office estimated that there were between 190,000 and 240,000 businesses employing illegal workers in the UK, which the Home Office has described as “speculative”. If even broadly correct, this would mean that roughly 1% of non-compliant businesses are issued a Civil Penalty in any year, and only a third of these pays up. On these figures, it is hard to imagine that businesses that knowingly employ illegal workers, or those that are negligent in carrying out ‘right to work’ checks, consider they are at serious risk of receiving a Civil Penalty, the more so if they are not in London and the South East and not a restaurant or hotel.
- 13.18 A senior manager within ISD told inspectors that the “plateauing” of Civil Penalties was a reflection of their success as employers were now more compliant. But an IE Director was concerned about the failure of the Civil Penalties scheme to deal effectively with ‘phoenixing’, where a company is dissolved and reopens under a different name with different directors in order to avoid paying its Civil Penalties.
- 13.19 ‘Phoenixing’ is not new. It was highlighted in the 2015 ICIBI report. The CPCT told the current inspection team that it was one of the reasons for the low level of Civil Penalty collections, and others in IE agreed that it was an issue. But, the Home Office appeared to have done little to analyse or assess the true scale of it.
- 13.20 CPCT was working with the Insolvency Practice to disqualify directors who had liquidated companies in order to avoid paying Civil Penalties, and CPCT told inspectors that this had been: “[a] real success... with hundreds of directors disqualified from acting as a company director for significant periods.” However, again there had been no analysis or assessment of the impact of these disqualifications.
- 13.21 Inspectors heard different views from IE senior managers about whether the current level of a Civil Penalty was appropriate. Some thought it acted as a definite deterrent, but others said it was too high, as having to pay £15,000 to £20,000 would bankrupt many companies. Companies that were already largely compliant needed the “nudge” of a smaller fine rather than a large penalty, and the latter should be reserved for those companies that consistently and knowingly flouted the immigration laws.<sup>104</sup>

103 At the factual accuracy stage, the Home Office commented: “ICE teams cannot do this systematically through an automated means, however, they can check individual reports on progress of penalty payments by region through finance systems and do so to inform further activity.”

104 At the factual accuracy stage, the Home Office commented: “substantial penalty discounts are already included in the statutory code of practice governing the scheme for employers who report illegal working and co-operate with Home Office investigations into the illegal workers concerned (and who pay penalties early). The sliding scale of penalties does have the capacity to increase fines for companies that repeatedly and knowingly flout the law.”



## The impact on employer attitudes

- 13.22 Stakeholders, particularly legal representatives who acted on behalf of employers who had received a Civil Penalty as a result of data matching between IE and HMRC, expressed concerns about the efficiency and effectiveness of the Civil Penalties process.
- 13.23 The data matching exercise had cross-referenced national insurance data with immigration records, and employers were informed of breaches. According to stakeholders, the process did not allow employers enough time to dispute allegations made against their employees and still qualify for the 50% discount, and as a result they were forced to choose between paying in time to get the discount or disputing the penalty and risking having to pay the full amount. This problem was compounded as there were no clear communication channels for employers to seek further information about the allegation, and many employers did not have the means to seek legal advice.<sup>105</sup>
- 13.24 Stakeholders told inspectors about one case where the employer received 4 Civil Penalty notices relating to the same individual who was not an employee. Attempts to contact the Home Office to query the notices were unsuccessful and the employer received escalation letters asking for a response to the notice. The case was finally resolved when the employer sought legal advice and the legal representative was able to speak to an existing contact in CPCT.
- 13.25 Legal representatives also raised concerns about the impact the Civil Penalty process was having on employers' attitudes towards employing overseas nationals, particularly those who found it challenging to provide documentary proof of their right to work in the UK. Many employers, particularly smaller businesses, did not feel confident about checking identity documents and found it difficult to find the relevant guidance on GOV.UK. Since there were "over 200 pages of guidance", even legal representatives struggled to navigate them. The knock-on effect was that employers were exposed to claims of discrimination or unfair dismissal where individuals did in fact have the right to work in the UK.<sup>106</sup>
- 13.26 Some of these points were echoed in independent research commissioned by IE. The report, 'Businesses' awareness of and attitudes towards Right to Work checks' was produced in April 2017. It looked at 4 employment sectors: construction, retail, residential care, and restaurants and food services and made 7 findings:
- lack of awareness and understanding of 'right to work' legislation is a significant cause of non-compliance
  - businesses agree with the principle of 'right to work' checks once explained, but generally have low awareness of their obligations
  - current policy (i.e. obtain, check, copy) is accepted by most as clear and practical, but there is a low level of knowledge about how to comply
  - business size matters more than sector as an identifier of those most likely to be non-compliant – with smallest businesses least compliant
  - Home Office is not seen as 'relevant' to most businesses, especially when compared to HMRC
  - government is expected to be more joined up
  - government should communicate proactively and directly with businesses on their responsibilities and the consequences of non-compliance

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105 At the factual accuracy stage, the Home Office stated that this account from stakeholders "mixes the HMRC employer nudge letter with the employer's obligation in returning an information request within 10 working days to qualify for a reduced penalty amount for active co-operation." According to the Home Office: "Methods of Communication are very clear on all correspondence."

106 At the factual accuracy stage, the Home Office stated: "There is a simple decision tree tool on line which leads employers through the process of conducting right to work checks. This is supplemented with longer guidance and the various statutory codes we have to publish as a matter of law. It is not the case employers need to read 200 pages of guidance."

13.27 It was unclear what impact this report had had on IE’s approach to illegal working. For example, no obvious communications strategy had been developed to address the businesses’ lack of awareness or understanding of the legislation. Efforts to engage on a sector basis had focused on the “big players” rather than small and medium sized businesses, and where engagement with business associations or membership groups had occurred, there had been no analysis of any trickle-down effect on smaller businesses’ compliance.

### Checking services

13.28 Two online systems existed for checking an individual’s right to work in the UK: the Employer Checking Service, and the “Employee check” or Online Checking Service (OCS).

13.29 Guidance about both was outlined in the “An Employer’s Guide to Right to Work Checks”. This 40-page document, dated 29 June 2018, was available on GOV.UK.<sup>107</sup> The guidance and the 2 ‘right to work’ checking systems were potentially confusing for users not familiar with the processes or the terminology.

13.30 The Employer Checking Service<sup>108</sup> is for employers wishing to check the ‘right to work’ of applicants for employment who cannot show them a passport or other evidence and who have:

- an outstanding appeal or application with the Home Office
- an Application Registration Card
- a Certificate of Application

13.31 The check is carried out manually by a Home Office caseworker against multiple Home Office systems. A response is sent directly to the employer. There is a 5-day Service Level Agreement.

13.32 The online “Employee check” or Online Checking Service (OCS)<sup>109</sup> went live in April 2018, but until December 2018 employers also needed to request an original document alongside the service. The OCS provides an automated, real-time check of a potential employee’s right to work in the UK. Its use is voluntary for employers and prospective employees. Individuals authorise the employer to see information about their immigration status. The same information is provided to both. In September 2018, the system was being visited by 250 people a day.

13.33 At the time of the inspection, OCS covered only non-EEA nationals with biometric residence cards or permits and EEA nationals who have been granted settlement rights under the EU Settlement Scheme. By 2020, the Home Office’s Digital Data and Technology team (DDAT) plans that the OCS will provide a totally integrated system that will cover all foreign nationals resident in the UK. However, an IE Senior Manager told inspectors that he believed this “was still four or five years away”.

### The Civil Penalty process and feedback for ICE teams

13.34 While many saw Civil Penalties as the logical conclusion of much of their operational work, ICE team managers and officers expressed mixed views about their deterrent effect and criticised the lack of feedback from CPCT, the high evidence threshold, low payment/recovery rates, and the loopholes available to consistent non-compliant employers.

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107 <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

108 <https://www.gov.uk/check-job-applicant-right-to-work>

109 <https://www.gov.uk/prove-right-to-work>

13.35 One ICE team described a recent enforcement visit to a business where the employer had previously paid a Civil Penalty. Checks on current staff showed that all had the right to work in the UK, and the business owner told officers that this was because he could not afford any more Civil Penalties. However, other ICE teams thought Civil Penalties were ineffective because of the time it took to issue them.

13.36 The concerns of ICE teams were not new. The 2015 ICIBI report identified the problems regarding lack of feedback from CPCT:

“CPCT also needed to ensure that feedback on referrals reached ICE teams, particularly in relation to proof of employment, insufficient evidence of which meant that civil penalties could not be issued....CPCT told us that they provided feedback on both good and poor-quality referrals, but some ICE team members told us that where they had previously seen regular feedback they no longer saw it.”

13.37 One of the recommendations from that report, which was accepted, was that the Home Office should:

“Improve communication between ICE teams, crime teams, and the Civil Penalties Compliance Team and ensure that their priorities and working practices are complementary.”

13.38 At the time of the current inspection, CPCT issued monthly feedback to ICE teams in the form of a spreadsheet, but ICE team middle managers found this unwieldy and difficult to understand and it was rarely seen by ICE team officers. The drawn-out objection and appeal process meant that feedback might not be provided until many months after an ICE visit.

13.39 Home Office data for Civil Penalties showed that approximately 10% of Civil Penalties issued since 2015-16 had been appealed and that until 2018-19 the figure had been reducing each year. It also showed that over the same period only 5% of appeals were allowed and 18% conceded. See Figure 17.

**Figure 17: Civil Penalty appeal outcomes between 1 April 2015 and 31 August 2018**

Year	Total number appeals	Appeal allowed	Appeal dismissed	Appeal conceded	Appeal settled/ withdrawn	Invalid appeal	Not yet concluded
2015-16	293	14	110	49	115	5	0
2016-17	272	19	88	56	92	15	2
2017-18	187	8	52	30	70	7	20
2018-19	40	0	6	7	4	1	22
<b>Total</b>	<b>792</b>	<b>41</b>	<b>256</b>	<b>142</b>	<b>281</b>	<b>28</b>	<b>44</b>
<b>%</b>	100	5	32	18	35	4	6

13.40 CPCT told inspectors that it required evidence of “control, obligation and remuneration” of an illegal worker for a Civil Penalty to succeed. ICE teams found the requirement to provide this evidence resource-intensive and “bureaucratic”. ICE officers could not understand how employers were able to argue that they had not employed a particular individual when several officers had witnessed the individual working. There was a perception among ICE teams that the objection and appeal process was too lenient towards employers.

**Figure 18: Conversion Rates (%) of Civil Penalty referrals by ICE teams into Civil Penalty Notices between 1 April 2015 and 31 August 2018**

ICE team	2015-16	2016-17	2017-18	2018-19
<b>London and South region</b>				
North London	77	65	64	58
South London	61	57	69	53
East London	67	48	53	59
West London	85	75	79	57
Central London	66	72	83	79
South Central	80	72	71	75
Kent & Sussex	84	75	71	59
<b>North, Midlands, Wales and South West region</b>				
NE & Cumbria	68	56	57	47
Yorks & Humber	77	65	67	47
Merseyside/N Wales	72	64	63	71
Greater Manchester	75	65	75	57
West Midlands	69	70	69	69
East Midlands	84	68	72	67
East of England	71	64	65	69
Wales	73	63	63	65
South West	78	69	73	62
<b>Scotland &amp; Northern Ireland region</b>				
Scotland	81	77	70	71
Northern Ireland	83	85	76	29
<b>Mean</b>	<b>75</b>	<b>67</b>	<b>68</b>	<b>61</b>

13.41 Inspectors examined the data for conversion rates of Civil Penalty referrals by ICE teams since 2015-16 – see Figure 18. The data showed wide variations between the teams, but the general trend was downwards, indicating diminishing returns for most teams.

### CFI and prosecutions

13.42 IE’s Criminal and Financial Investigations (CFI) teams are responsible for conducting immigration-related criminal investigations, with the aim of disrupting and dismantling organised crime groups (OCGs). The teams are based at numerous locations throughout the UK, generally with ICE teams.

13.43 The 2015 ICIBI inspection found that CFI teams “had little capacity to pursue local, low-level prosecutions”, while “most ICE team officers were not experienced in investigating and prosecuting criminal cases”. The inspection report made 2 recommendations in relation to how IE approached immigration crime investigations.

“The Home Office should:

Improve communication between ICE teams, crime teams, and the Civil Penalties Compliance Team and ensure that their priorities and working practices are complementary”

and;

“Ensure that ICE teams have the skills, experience and capacity to pursue criminal investigations and prosecutions of local non-compliant employers where appropriate”

13.44 The current inspection team interviewed CFI managers and officers. Inspectors were told that CFI continued to focus on the most harmful areas as defined by the Annual Threat Assessment and Quarterly Assessments. Consequently, while illegal working was of interest to CFI, it was not one of CFI’s main priorities. A CFI Senior Manager told inspectors:

“Illegal working is low on my priority list really... We are more aligned with intelligence and the National Crime Agency. We do the bulk of the investigations and others tend to get the highlights in the public domain. We have to adapt our approach, mapping the work, using risk and priority registers. We factor in vulnerability issues too to inform the type of work that we take forward. When you plug illegal working into that framework, it falls to a lower priority.”

13.45 Inspectors requested data for the total number of prosecutions as the result of illegal working enforcement visits conducted by ICE teams broken down by year and outcome. During 2015-16, there were 35 criminal convictions linked to illegal working enforcement visits. The following year, there were 29 convictions and in 2017-18 there were just 3.

13.46 Both CFI and ICE teams told inspectors that the reduction in convictions meant there was a “black hole” where lower level immigration crime was not being looked at either by CFI or ICE. The latter was taking administrative action against offenders, in the form of Civil Penalties and closure notices, but did not have the training or capability to conduct criminal investigations, and CFI teams were dealing only with higher priority harms.

### Closure Notices

13.47 The Immigration Act 2016 created powers to issue illegal working Closure Notices and Compliance Orders to employers who were found to be persistently employing illegal workers and for whom previous civil or criminal sanctions had not succeeded in curbing their non-compliance.

13.48 In order to apply a Closure Notice, the authorising officer<sup>110</sup> must be satisfied that:

- a. Illegal working is taking place
- b. The employer or a connected person such as the manager
  - i. has been convicted of an offence under S. 21 and/or S. 25 of the Immigration, Asylum and Nationality Act 2006, or
  - ii. has, during the last three years from the date you wish to serve the closure notice, been required to pay a penalty under S. 15 of the Immigration, Asylum and Nationality Act 2016, or
  - iii. has in the last three years been required to pay an illegal working civil penalty

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<sup>110</sup> An officer of at least the rank of Chief Immigration Officer.

13.49 Home Office staff guidance<sup>111</sup> states:

“A closure notice should only be served in cases where in the preceding three years the employer has shown a serious non-compliance. It does not mean that there must be a significant proportion of illegal workers on the premises.... You must consider what the in Courts would consider justifiable and proportionate in each individual case.”

13.50 A Closure Notice closes a business premises initially for a period of up to 24 hours if issued by a Chief Immigration Officer (equivalent to a Higher Executive Officer), or up to 48 hours if issued by an Immigration Inspector (equivalent to a Senior Executive Officer) or above. A Closure Notice issued for up to 24 hours may be extended up to 48 hours.

13.51 Inspectors were told in interviews and focus groups with ICE teams that Closure Notices were “not routinely being used” and that “Closure Notices are not talked about at tasking, it is not in people’s minds”. The data for Closure Notices confirmed this – see Figure 19.

**Figure 19: Number of illegal working closure notices issued between 1 April 2015 and 31 August 2018**

Year	London & SE	The North, Midlands & Wales	Scotland & N Ireland	Total
2016-17	0	9	0	9
2017-18	4	11	0	15
2018-19	1	0	0	1
<b>Total</b>	<b>5</b>	<b>21</b>	<b>0</b>	<b>25</b>

13.52 ICE team managers explained that issuing a Closure Notice was resource-intensive. It required officers to attend a court hearing and follow up with further visits to the premises. This deterred ICE teams from making use of the new powers:

“Closure Notices have been scaled down because it is too resource-intensive and we found that doing a Closure Notice job stopped the ICE teams from doing their bread and butter. So, we are not using those powers enough .... the numbers are small.”

### Cash Seizures

13.53 Where an ICE team finds cash, officers who have received the relevant training are empowered to seize it under the Proceeds of Crime Act 2002, Section 294, provided it has been found as part of a lawful search, the officers are satisfied it is recoverable property<sup>112</sup> within the meaning of the legislation, and they believe that there is in excess of £1,000.

13.54 Inspectors asked the Home Office for data for the total number of instances when an illegal worker had had their earnings seized, broken down by region, type of business premises, and nationality, gender and age of the individual. The Home Office responded that it was not possible to break cash seizure data down to this level of detail as it was not collected or recorded in this form.

111 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/608708/Closure\\_notice\\_and\\_compliance\\_order\\_guidance\\_Jan\\_17.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/608708/Closure_notice_and_compliance_order_guidance_Jan_17.pdf)

112 <https://www.legislation.gov.uk/ukpga/2002/29/part/5/chapter/4/crossheading/recoverable-property>

13.55 The Home Office did however provide figures for the number of illegal working cases where cash had been seized and estimates of the amounts seized between 2015-16 and 31 August 2018. See Figure 20. This showed that seizures increased significantly between 2016-17 and 2017-18, with the 2017-18 seizure rate more or less maintained for the first 5 months of 2018-19 and the overall amount seized increasing. However, in the absence of a more detailed breakdown of the data, no meaningful analysis of the use and effectiveness of cash seizure powers was possible.

**Figure 20: Cash Seizures from illegal working cases between 1 April 2015 and 31 August 2018**

Year	Number of Illegal working cases	Estimated amount of cash seized
2015-16	2	£30,752
2016-17	188	£612,548
2017-18	246	£705,951
2018-19	95	£438,217



# 14. Inspection findings – Illegal working and Windrush

## Background

- 14.1 In early 2018, stories of people who had come to the UK from the Commonwealth being denied access to public services and being subjected to immigration detention and removal because they had been unable to evidence their legal right to live and work in the UK were taken up by the UK media and subsequently raised in Parliament.
- 14.2 In April 2018, the government acknowledged that the “Windrush generation” had been treated unfairly and the Home Office created a taskforce to help individuals to resolve their immigration status.
- 14.3 In July 2018, the Home Affairs Committee (HAC) published a report on ‘The Windrush generation’, in which it wrote:

“we found that the Windrush generation was caught up by a series of different policy, cultural and organisational changes in the Home Office. These include the removal of Home Office caseworker discretion, the use of targets, restrictions on independent checks and appeals, stronger controls at the border and a raft of laws collectively known as the ‘hostile’ or, more recently, the ‘compliant’ environment. ...

There is little evidence that the Home Office has checked the effectiveness of these policies despite clear warning signs and evidence of mistakes being made. We call for essential checks and balances in the system to be reinstated, and for the whole suite of hostile environment measures to be subject to an evaluation, in terms of their efficacy, fairness, impact (including both intended and unintended consequences) and value-for-money.”

- 14.4 In July 2018, the Home Office “paused” proactive data-sharing with other government departments (OGDs) and delivery partners for people of all nationalities aged over 30, initially for 3 months. At the time of the inspection, this was still paused, with no indication of when it might end.
- 14.5 In December 2018, the National Audit Office (NAO) produced its report<sup>113</sup> on the ‘Handling of the Windrush situation’. This gave an indication of the numbers of people who might struggle to produce documentary evidence of their right to work:

“The [Home] Department estimated in 2014 that 500,000 people might be in the UK lawfully who do not hold a biometric residence permit. ... The Department expected this number to decline over time as people took up biometric residence permits, which it started to issue in 2008, gained citizenship, or died, but for it to remain in the hundreds of thousands well into 2019. The Department’s data indicate it has issued around 90,000 no time limit biometric residence permits to settled migrants since June 2014.”

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113 <https://www.nao.org.uk/report/handling-of-the-windrush-situation/>



- 14.6 Since the middle of 2018, the taskforce has continued to operate and a ‘lessons learned’ review has been commissioned by the Home Secretary, which will report at the end of 2018-19, together with a compensation scheme for those affected. Therefore, the current inspection did not look at how the Windrush generation individuals in particular had been affected by IE’s illegal working activities. Instead, it focused on the effect the Windrush scandal had had on these activities and the overall approach to illegal working.

## Guidance

- 14.7 Following the Windrush scandal, the Home Office issued new guidance to Other Government Departments (OGD), employers and landlords to encourage them to get in touch with the Employer Checking Service if a Commonwealth citizen did not have the documents to demonstrate their status.

- 14.8 One stakeholder told the inspection team that the guidance for employers already available on the GOV.UK website was:

“badly organised and is spread across too many documents. The FAQs hold policy information which cannot be found elsewhere, overall, guidance for employers needs to be consolidated and the content better organised to aid employers in preventing illegal working. Information provided by the Home Office when contacted by employers is ‘notoriously poor’ evidencing that even civil servants are unable to understand the guidance.”

- 14.9 Inspectors reviewed the guidance with Windrush in mind. ‘An employer’s guide to right to work checks: 29 June 2018’,<sup>114</sup> accessed via ‘Right to Work: employers guidance’, made reference to “Windrush generation individuals” but did not define this group.<sup>115</sup> The webpage also contained guidance dating from 2013, with no explanation on the landing page about its current relevance.<sup>116</sup>
- 14.10 The ‘Acceptable right to work documents: an employer’s guide’, dated May 2015, had not been amended in light of Windrush,<sup>117</sup> nor had ‘Checking a job applicant’s right to work documents’, although this did include a section about individuals who cannot show their documents.<sup>118</sup>
- 14.11 More helpfully, the ‘Right to work checks: an employer’s guide’ webpage, which contained guidance from 2016 and 2017, explained how this was relevant.<sup>119</sup> It had a link to a “quick answer tool”. By answering a series of questions relating to the documentation the employer received an indication of whether an individual could be legally employed was given.<sup>120</sup> However, it included the disclaimer: “Check with the Home Office if the applicant is a Commonwealth citizen but does not have the right documents - they might still have the right to work in the UK.”<sup>121</sup>

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114 “In some circumstances, individuals of the Windrush generation (those who arrived in the UK before 1973) and those non-EEA nationals who arrived in the UK between 1973 and 1988, may not be able to provide documentation from the acceptable document lists to demonstrate their entitlement to work in the UK.” [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720858/29\\_06\\_18\\_Employer\\_s\\_guide\\_to\\_right\\_to\\_work\\_checks.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720858/29_06_18_Employer_s_guide_to_right_to_work_checks.pdf)

115 At the factual accuracy stage, the Home Office commented: “The Home Office does define the Windrush generation elsewhere on GOV.UK and provides advice to employers, albeit separate to the pre-existing illegal working guidance available to employers. Information on the definition of the Windrush group is available on GOV.UK along with advice for employers, landlords and the NHS.”

116 <https://www.gov.uk/government/collections/right-to-work-checks-employer-guidance>

117 <https://www.gov.uk/government/publications/acceptable-right-to-work-documents-an-employers-guide>

118 <https://www.gov.uk/check-job-applicant-right-to-work>

119 The webpage states: “You should still refer to this earlier guidance if the employment of illegal workers occurred between 16 August 2017 and 29 June 2018.”

120 <https://www.gov.uk/legal-right-work-uk>

121 At the factual accuracy stage, the Home Office stated: “On the GOV.UK Windrush pages, the Home Office does describe the action employers must take where an individual is unable to provide appropriate documentation to an employer. The webpage describes how employers can request a check via the Employer Checking Service. Where applicable a Positive Verification Notice would be issued to the employer to protect against payment of a civil penalty and ensure the individual is not impeded in terms of employment. Guidance in terms of employers and Windrush was made available on 25th April 2018.

## The effect on employers

- 14.12 In the evidence submitted to the inspection team, one stakeholder included a case study of an individual who had fallen through the gaps between the documentation held by the Home Office and the requirements on employers to check the right to work. In this instance, while the Home Office accepted that the individual had the right to work, it refused to provide them with any documentation to prove this and as a result the employer dismissed them.
- 14.13 According to stakeholders, employers were confused by the difference between employing someone who is not permitted to work and employing someone who cannot provide one of a list of documents which provide a 'statutory excuse' to the charge of employing someone illegally.

## "Negative impact" on enforcement measures

- 14.14 Inspectors were told repeatedly by staff at all levels of IE that Windrush had affected the public perception of IE's work and this was having an adverse effect. At senior levels it had made engaging with businesses more challenging. On the frontline, officers had been subjected to verbal abuse and hostility. A focus group of middle managers told inspectors that Windrush had led "to such a negative impact on the front line. You could feel the atmosphere".
- 14.15 The general view was that Windrush had fundamentally altered the environment in which IE operated. For ICE teams, in particular, the absence of removals targets had made it harder to evaluate the impact of their work and to define "success". Managers were taking a more cautious approach to the production and circulation of performance data, and this had affected morale. Meanwhile, proactive data-sharing, engagement with partners, and operations were running at a significantly reduced rate.
- 14.16 Senior Managers told inspectors that the impact of Windrush was also being felt in staff recruitment and collaborative working, including with other government departments. The work of the Illegal Working Steering Group had been paused as "[the] impact of Windrush had led to a situation where OGDs did not want to be seen working with us [IE]."

## The "pausing" of Civil Penalties and introduction of additional assurance checks

- 14.17 Inspectors were told that the civil penalties process had been paused briefly in April 2018 because of Windrush. It had resumed in July 2018, but with additional safeguards in place. In November 2018, the Director of Interventions and Sanctions (ISD) indicated that the pause and the additional assurance checks had impacted on the timeline for processing civil penalties and it was now taking a little longer than the original "aspiration" to issue a penalty notice within 30 days.
- 14.18 This was reflected in the data provided to the inspection team, which showed that the number of Civil Penalty Notices issued since April 2018 was lower than in previous years. Inspectors were told that the Civil Penalties Compliance Team (CPCT) was planning to revise its forecast of how much it would collect from civil penalties based on the new flow of work, which had slowed down because of "the Windrush effect" on data sharing and operations.
- 14.19 Windrush was given a 'Red' risk rating in the September 2018 version of CPCT's Risk Register, which identified 5 key actions, including independent assurance of CPCT's process and a restriction on HMRC data sharing to remove those aged over 30 in order to ensure that sanctions were not applied in error. The Risk Register also noted: "Lack of ministerial appetite

for further activity on the Compliant Environment will limit our ability to imbed (sic) new and existing measures.”

### **The positives**

- 14.20 Some interviewees saw positives in the changes made as a result of the Windrush scandal. One senior manager told inspectors that Windrush had provided an opportunity for IE to strengthen its assurance processes, for example the new requirement that all detention decisions had to be signed off by a Senior Civil Servant meant there was greater oversight of the detention process. An ICE Senior Manager argued that Windrush had made the case for more coherent, pro-active community engagement.

### **Internal communications**

- 14.21 ICE officers told inspectors that internal communications about the implications of Windrush and the “change of culture” in IE had been poor.
- 14.22 Inspectors were provided with an ‘ICE Cast’, an internal newsletter, from July 2018 which contained instructions on safeguarding Windrush generation individuals if they were encountered during illegal working enforcement operations:

“Where ICE teams identify illegal working, they should refer to the interim guidance on enforcement action in relation to those who may be eligible for the Windrush scheme, to ensure that those with lawful status, but who are unable to demonstrate this status, are not wrongly subject to enforcement action. In any event, where the employer holds a PVN which has not expired, they have a statutory excuse and therefore no action should be taken against them. In these circumstances, if it is determined that the employee has no right to work, ICE teams can consider enforcement action against the individual.”

- 14.23 Inspectors also saw a Risk Register from one ICE team that indicated that the impact on operational activity had been absorbed as “business to usual”, however:

“there is a wider reputational impact on staffing levels with reduced confidence of staff and the impact that this may have on recruitment which has a detrimental effect on current workloads.”

### **Longer-term effect**

- 14.24 In responding to the July 2018 HAC report, the Home Secretary drew attention to the ‘Windrush lessons learned’ review that he had commissioned. He wrote:

“[the] review will consider what the key policy and operational decisions were that led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants; what other factors played a part; and why these issues were not identified sooner. It will also consider what lessons the organisation can learn to ensure that it does things differently in future and whether corrective measures are now in place.”

- 14.25 Referring to the compliant environment, he stated:

“We have already strengthened safeguards to ensure that those who are lawfully here are

not disadvantaged by measures put in place to tackle illegal migration and are considering whether further action is necessary. ...

We recognise the need to fully understand the impact of the compliant environment; that it is meeting our aim to deter immigration offending, and vitally, that safeguards are effective in ensuring it is not capturing those who are entitled to access work, benefits and services in the UK. I have asked my officials to look at the best ways of evaluating the compliant environment, to ensure this policy is right.”

- 14.26 In November 2018, an IE Director told the inspection team that a new strategic direction was required. Another Senior Civil Servant was keen to point out that the “bedding in” of new metrics to replace removals would take time. A number of staff referred to IE being “on a journey” moving beyond targets.
- 14.27 However, inspectors found that while some of the work that had been paused because of Windrush had since been restarted with additional assurance processes in place, there was little sense that IE had fundamentally rethought its approach to illegal working.

# Annex A: Previous ICIBI recommendations

ICIBI previously inspected this area of the Home Office's work in 2014-15. 'An Inspection of how the Home Office tackles Illegal Working' (October 2014 – March 2015) was published in December 2015. The 2015 report made 8 recommendations which are detailed below. The Home Office "Accepted" 7 of the recommendations. Recommendation 2 below was "Not accepted" by the Home Office.

## The Home Office should:

1. Use the evaluation of Operation Skybreaker, and of the Better Business Compliance Partnerships, to identify what quantitative and qualitative data needs to be routinely captured in order to be able to 'baseline' and assess the relative effectiveness of future initiatives or changes in strategy and/or operational priorities in relation to illegal working.
2. Produce information and advice for businesses in the first language of the business owners and managers most often encountered during compliance and enforcement visits, both to hand out and online.
3. Review the content of the notes, guidance and training provided to staff fielding employment calls to the Sponsor, Employer and Education Helpline, and the assurance mechanisms for checking that callers are being given the correct information and advice.
4. Review, and where necessary revise, its operational guidance in relation to illegal working to ensure that it is aligned with all relevant legislation, and is clear in terms of what is required from officers at each stage of an operation from the Tasking & Coordination Group (TCG) decision to take action, through planning, to operational deployment and any follow-up.
5. Review, and where necessary revise, its training and supervision (including mentoring) of Immigration Enforcement (IE) officers deployed on illegal working operations to ensure that it is comprehensive, consistent and fit for purpose.
6. Ensure that all policies and guidance relevant to illegal working are readily accessible to IE officers, including online. Ensure that resources and mechanisms are in place locally and centrally to provide continuing assurance that policies and guidance are understood and are being applied correctly and consistently.
7. Improve communication between ICE teams, crime teams, and the Civil Penalties Compliance Team and ensure that their priorities and working practices are complementary.
8. Ensure that ICE teams have the skills, experience and capacity to pursue criminal investigations and prosecutions of local non-compliant employers where appropriate.

# Annex B: Role and remit of the Independent Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on his behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to him in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which he has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session.

Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

# Annex C: Expectations of the Independent Chief Inspector



## ICIBI's 'expectations' of asylum, immigration, nationality and customs functions

### **Background and explanatory documents are easy to understand and use**

(e.g. statements of intent (both ministerial and managerial), impact assessments, legislation, policies, guidance, instructions, strategies, business plans, intranet and GOV.UK pages, posters, leaflets etc.)

- They are written in plain, unambiguous English (with foreign language versions available, where appropriate)
- They are kept up to date
- They are readily accessible to anyone who needs to rely on them (with online signposting and links, wherever possible)

### **Processes are simple to follow and transparent**

- They are IT-enabled and include input formatting to prevent users from making data entry errors
- Mandatory requirements, including the nature and extent of evidence required to support applications and claims, are clearly defined
- The potential for blockages and delays is designed out, wherever possible
- They are resourced to meet time and quality standards (including legal requirements, Service Level Agreements, published targets)

### **Anyone exercising an immigration, asylum, nationality or customs function on behalf of the Home Secretary is fully competent**

- Individuals understand their role, responsibilities, accountabilities and powers
- Everyone receives the training they need for their current role and for their professional development, plus regular feedback on their performance
- Individuals and teams have the tools, support and leadership they need to perform efficiently, effectively and lawfully
- Everyone is making full use of their powers and capabilities, including to prevent, detect, investigate and, where appropriate, prosecute offences
- The workplace culture ensures that individuals feel able to raise concerns and issues without fear of the consequences



### **Decisions and actions are ‘right first time’**

- They are demonstrably evidence-based or, where appropriate, intelligence-led
- They are made in accordance with relevant legislation and guidance
- They are reasonable (in light of the available evidence) and consistent
- They are recorded and communicated accurately, in the required format and detail, and can be readily retrieved (with due regard to data protection requirements)

### **Errors are identified, acknowledged and promptly ‘put right’**

- Safeguards, management oversight, and quality assurance measures are in place, are tested and are seen to be effective
- Complaints are handled efficiently, effectively and consistently
- Lessons are learned and shared, including from administrative reviews and litigation
- There is a commitment to continuous improvement, including by the prompt implementation of recommendations from reviews, inspections and audits

### **Each immigration, asylum, nationality or customs function has a Home Office (Borders, Immigration and Citizenship System) ‘owner’**

- The BICS ‘owner’ is accountable for
  - implementation of relevant policies and processes
  - performance (informed by routine collection and analysis of Management Information (MI) and data, and monitoring of agreed targets/deliverables/budgets)
  - resourcing (including workforce planning and capability development, including knowledge and information management)
  - managing risks (including maintaining a Risk Register)
  - communications, collaborations and deconfliction within the Home Office, with other government departments and agencies, and other affected bodies
  - effective monitoring and management of relevant contracted out services
  - stakeholder engagement (including customers, applicants, claimants and their representatives)

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