



Home Office

# **The Home Office response to the Independent Chief Inspector of Borders and Immigration's report:**

## **An Inspection of the Home Office's use of sanctions and penalties**

**November 2019 – October 2020**

## **The Home Office thanks the Independent Chief Inspector of Borders and Immigration (ICIBI) for his report.**

The Home Office is grateful to the ICIBI for the attention which has been given to a wide range of complex and interrelated issues. The inspection covered ‘the completeness, consistency of application and the deterrent effect of sanctions and penalties applied by the BICS Directorates’. In addition, it also sought to ‘examine the reasons for the introduction of each sanction and penalty and the frequency of their use’. This included ‘a data led oversight of all the sanctions and penalties applied by Border Force, Immigration Enforcement and UK Visas and Immigration’.

The ICIBI has made two recommendations. The Home Office has fully accepted one and partially accepted the other. The Department acknowledges there is more to do to look comprehensively across the three areas covered by this report and to improve how it monitors the performance of the individual measures. We also accept that there is more that we need to do to improve our record keeping and data quality and to take action to better understand and monitor outcomes.

We are pleased the report acknowledges that debt recovery by the Carriers Liability Section is largely effective and that because of actions taken by the Home Office, we are confident that both the Tier 2 and 5 (work) and Tier 4 (study) sponsor registers are more robust and compliant than they had been in the early years of operation. The report also recognises the commitments we have made to review the Compliant Environment, following the Windrush Lessons Learned Review, and work continues at pace to meet this commitment.

There is already a significant amount of work being done against the areas covered by the report.

- The Home Office’s Comprehensive Improvement Plan has been published. This sets out the steps that will be taken to implement the recommendations in the Windrush Lessons Learned Review report, as well as the progress made so far.
- The department acknowledges the more recent findings of the Equality and Human Rights Commission (EHRC), that the Home Office did not comply with the Public Sector Equality Duty (PSED) to have due regard to advancing equality of opportunity for black members of the Windrush generation when developing and implementing the Compliant Environment measures which formed part of the 2014 and 2016 Immigration Acts. The EHRC concluded that the Home Office did not give sufficient attention to understanding the impact of the Compliant Environment policies for the Windrush generation, agreeing with Wendy Williams that these impacts were foreseeable and avoidable. The Home Office is working closely with the EHRC to develop an action plan for implementing their recommendations. The action plan will be finalised by the end of January, as agreed with the Commission.
- Free movement between the UK and the EU ended on 1 January 2021 and the UK’s new Points-Based Immigration System was introduced, including a re-design of the existing Sponsorship system. This is part of a wider multi-year programme of change, led by the Home Office, to transform the operation of the border and immigration system.
- We are working on the introduction of the Electronic Travel Authorisation (ETA) scheme - as part of our wider universal ‘permission to travel’ requirement – which will significantly change the operation of the Carriers Liability Scheme. This will include amendments to incentivise carriers to check for a permission or risk a penalty charge should they not follow our advice.

## The Home Office response to the recommendations

### The Home Office should:

1. Carry out a co-ordinated review of current BICS sanctions and penalties, starting with a clear statement of the specific objective(s) of each measure and how the Home Office will monitor and report its performance and outcomes, and including:
  - a. an impact assessment and policy equality statement setting out who will be affected, directly and indirectly, and how, together with the safeguards in place to prevent unlawful discrimination and perverse outcomes, including routes and remedies for complaints and challenges
  - b. a robust BICS resourcing plan that enables each measure to be administered efficiently and effectively, with a supporting training plan, quality assurance regime and feedback mechanisms
  - c. process maps and comprehensive guidance for those administering and operationalising the measure, made available to those affected, that clearly identify roles, responsibilities, service standards and expectations (the latter should include, for example, a definition of “reasonably apparent falsities” in the case of travel documents presented to carriers)
  - d. Memoranda of Understanding (MoU) (renewed annually) with each external “partner” (government department, agency or other body) on whom the administration of a particular sanction or penalty relies, covering as a minimum the exchange of data and service levels
  - e. identification of gaps and issues that require new measures, or existing sanctions and penalties to be amended or scrapped, with a plan and timetable for the necessary changes

In the absence of its own or any other benchmarks for the design and use of sanctions and penalties, the Home Office should look to apply the “Principles” and “characteristics” set out in ‘Regulatory Justice: Making Sanctions Effective’ when carrying out this review.

#### 1.1. Partially Accepted.

- 1.2. We acknowledge that there is more we need to do to look holistically across the three areas covered by this report and to improve how we monitor the performance of the individual measures. Rather than conduct an additional review at this stage, we will take the findings of this ICIBI inspection into account alongside the work already underway.
- 1.3. We published the Comprehensive Improvement Plan in September 2020 in response to the Wendy Williams Lessons Learned Review. This outlined our commitment to a full review and evaluation of the compliant environment policy and measures, individually and cumulatively. We have taken the findings and recommendations of the ICIBI report into consideration in the development of our more detailed plans.
- 1.4. We are redesigning the existing sponsorship scheme, and our plans to introduce Electronic Travel Authorisation will change the way that we operate the Carriers Liability Scheme in the future. We will give full consideration to the findings of this report as we progress this work.

**2. (Without waiting to complete any more comprehensive reviews), ensure that the quality and extent of record-keeping and data collection are sufficient to provide clear insights into the efficiency and effectiveness of the processes supporting each sanction and penalty currently in use and, where this is not the case, take whatever actions are necessary to fix this in the shortest possible timescale.**

### **2.1 Accepted**

2.2 We have already made progress across all three areas covered within the report but recognise that there is more that we need to do to improve our record keeping and data quality.

2.3 As part of our ongoing work on the Compliant Environment, we will carry out a baselining exercise to identify the key indicators against which we can measure impact. The accuracy of this baselining will be dependent on the quality of the data that we currently and historically hold. Where gaps are identified, measures will be put in place to improve data recording and monitoring systems. We anticipate the baselining exercise will be complete by July 2021.

2.4 With regard to Carriers Liability, we have automated the process for recording data to improve accuracy and negate some manual processing. Digitalisation of files at some UK airports has been established which can be remotely reviewed by carriers to consider penalty charges and for audit and assurance. Carrier training material and alerts have been centralised to ensure consistency and relevance and digital refresher training sessions are also now available for all staff involved in the Carriers Liability Process.

2.5 In addition, there is a plan in place to improve Carriers Liability guidance for Border Force front-line staff which will help improve data quality and which will be implemented as soon as possible in 2021. A recent refresh of assurance expectations for front-line managers includes assuring Carriers Liability records, providing a further element of quality control - Border Force Operational Assurance Directorate will continue to monitor compliance with these expectations.

2.6 On Sponsorship Compliance, we are reviewing processes to ensure guidance is strengthened, enabling caseworkers to have greater confidence in their decision making. The UK's new Points-Based Immigration System will provide a greater emphasis on using digital channels and existing data held across Government. Upgrades to IT systems will enable our customers to have a better experience when dealing with us and improve our use of data.