



Home Office

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

**An inspection of the Home Office's
approach to illegal working**

August – December 2018

The Home Office thanks the Independent Chief Inspector for his report.

The Home Office is grateful to the ICIBI for the effort that he and his team have devoted to this inspection, and the attention which has been given to a wide range of complex and interrelated issues. The Department is committed to improving every aspect of its illegal working response and recognises the value of the independent specialist scrutiny that the Inspectorate has provided. Work is already underway to take forward the recommendations in this report.

The Home Office fully accepts all six of the recommendations.

The Home Office response to the 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, and

b. what it means in practice (priorities, specific actions, performance measures) for Immigration Enforcement 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.

1.1 Accepted

1.2 The Home Office commits to producing an updated strategy and Action Plan to tackle illegal working. This will be informed by the outcomes of the reviews of the immigration system that are underway or imminent, including Wendy Williams' Windrush Lessons Learned Review, and will be part of a broader response to those reviews' recommendations. It will also be informed by relevant legal judgments. The strategy will cover the items listed in the recommendation above and we will consult affected Government Departments and agencies as part of this. We do not plan to publish the full strategy, due to concerns around operational sensitivities. However, we will undertake to publish a summary of the key points.

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, and

b. particular initiatives, operations and actions.

2.1 Accepted

2.2 The Home Office will capture, analyse and report the quantitative and qualitative data and information that enables us to demonstrate the effectiveness and appropriateness of our approach to illegal working. This recommendation will be implemented as part of wider work which is already planned to evaluate access to work, benefits and services measures, rather than commissioning specific work to address illegal working.

2.3 Alongside work to test our strategy, we will review the effectiveness and appropriateness of particular initiatives, operations and actions by examining our current operational performance data, and any further benefits that can be achieved from the recent introduction of improved operational IT systems.

3. Ensure that all Immigration Enforcement (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), and

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.

3.1 Accepted

3.2 The Home Office will ensure that all the Immigration Enforcement teams responsible for delivering the illegal working strategy and plans communicate effectively with each other. We will examine our current approach for Immigration Intelligence (II) and Criminal & Financial Investigations (CFI) teams' participation in the national, regional and local ICE tasking meetings. We will review the current tasking system to ensure opportunities to communicate effectively across business areas are fully utilised. We will launch a programme of visits and shadowing opportunities across Immigration Intelligence, Criminal & Financial Investigations, Immigration Compliance and Enforcement teams and the Civil Penalty Compliance Team. Implementation of this element of the recommendation will be completed prior to the end of the 2019/20 financial year but will remain ongoing to ensure effective communications going forward.

3.3 As part of our work to devise a new strategy and Action Plan, the Home Office will review our system of governance to ensure full participation by both internal Immigration Enforcement business areas and our partners from across law enforcement and other Government Departments. We do not accept that priorities are misaligned – rather, we have taken decisions to focus resources on cases prioritised by harm. Our review of governance will provide additional assurance around addressing skills or knowledge gaps.

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.

4.1 Accepted

4.2 As part of our work to produce an updated strategy and Action Plan for illegal working, we will review our approach to allegations. The flow of information from the public is the largest single source of information received by Immigration Intelligence, so it is reasonable to expect that this would form the majority of tasked enforcement activity. There is also a public expectation that any information provided is acted upon. In addition, Immigration Enforcement has previously been challenged by the Home Affairs Select Committee to demonstrate that it acts in response to information supplied by members of the public.

4.3 Whilst such accusations will remain an important element of our intelligence-led approach to tackling immigration abuse, we agree that public allegations in isolation do not provide a complete intelligence picture and we are already looking to diversify our work into a broader range of sectors (as mentioned in the inspection report). We will continue to focus on how

we can improve the quality of referrals and develop new sources of intelligence that will allow us to tackle previously hidden and difficult to identify forms of abuse.

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, and

c. what can be done to combat “phoenixing” and any other devices employers use to avoid payment.

5.1 Accepted

5.2 We will undertake further evaluation of the impact of the measures designed to prevent illegal working, including examining the effectiveness of our work with employers in different sectors to secure their compliance with Home Office regulations, but we do not intend to revisit the penalty scale. The level of civil penalties to be served on employers found to be employing illegal workers and the factors to be considered in determining this are set out in the statutory code of practice issued under section 19 of the Immigration Asylum and Nationality Act 2006. The penalties operate on a sliding scale up to a maximum of £20,000 for each illegal worker employed, and the maximum amount is specified in an order subject to the affirmative resolution procedure; the amount was last approved by both Houses of Parliament in 2014 following a full public consultation in 2013 and properly reflects the harms caused by the employment of illegal labour. The sliding penalty scale provided in the code already incorporates substantial discounts for employers who report the presence of illegal workers in their workforce to the Home Office and who co-operate with our investigation into the immigration offences committed. The Home Office is taking action to ensure right to work checks are as simple as possible for employers to perform, to reduce the scope for errors in their recruitment and employment processes. The Home Office does not accept that employers who employ illegal workers should be completely absolved of liability for penalties if they co-operate with the authorities, as this too could drive perverse behaviour in terms of discouraging employers from conducting proper checks.

5.3 We accept the requirement to deliver additional training and guidance. We are reviewing the training and guidance required by Immigration Enforcement Teams and relevant teams in UKVI. We also have work underway to review our current communications strategy and we will fully implement the new approach by September 2019.

5.4 The Home Office acknowledges the risk posed by phoenixism. We made significant changes to legislation starting in 2014 to combat the threat, including changes to support debt recovery and increase employer compliance. The introduction of new legislation in 2016 has further strengthened our powers to act against non-compliant employers, preventing rogue employers from obtaining new alcohol licenses, introducing closure notices, and improving measures to counter the offence of employing an illegal worker, allowing prosecution in the most serious cases.

6. Explore whether more effective use could be made of license 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.

6.1 Accepted

- 6.2 Much of this recommendation will be addressed through the development of a new illegal working strategy. A key element of the strategy will be to provide Immigration Enforcement staff with the necessary guidance to effectively balance the need to conduct operational activity which results in arrests/removals, with that of longer-term measures that increase illegal working deterrence without necessarily achieving removals.
- 6.3 We are reviewing our training to ensure we improve it where required. Training is planned for all frontline staff on the powers of entry and other measures introduced in the 2016 Immigration Act. Operational Guidance is also being updated to provide greater clarity on when the range of powers can be used, ensuring responses are proportionate.
- 6.4 The Department will also undertake a feasibility study on whether to introduce a systematic referral process for persistent non-compliance, which introduces a follow-on stage for those employers found to be using unlawful methods to avoid paying penalties. This work will commence within six months of the ICIBI report being published and will be completed within twelve months.