Independent Chief Inspector of Borders and Immigration

An inspection of the Home Office's use of sanctions and penalties

(November 2019 – October 2020)

David Bolt

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Foreword

The Home Office is able to make use of a range of sanctions and penalties to encourage and enforce compliance with the Immigration Rules. Some of these are directly within its control, while others are 'owned' and administered by other government departments, agencies or third parties with input from the Home Office in the form of data, typically about individuals who do not have the right to enter or remain in the UK or whose rights, for example the right to work, are restricted.

This inspection examined how efficiently and effectively the Home Office used these sanctions and penalties, which included looking at what it was seeking to achieve with each and to what extent it was succeeding.

All three operational directorates of the Borders, Immigration and Citizenship System (BICS) uses sanctions and penalties. The inspection found that current measures have been introduced piecemeal, with little evidence of consistency or coherence in their design or in their application, and no evidence of an overall strategy or underpinning rationale, beyond a broad understanding that their primary purpose is to encourage compliance rather than simply to punish breaches of the Rules.

In approaching this inspection, inspectors looked beyond the Home Office for examples of best practice in the design and use of sanctions and penalties. Though now dated (it was published in November 2006), Professor Richard Macrory's paper on 'Regulatory Justice: Making Sanctions Effective', produced for the Cabinet Office, offered the most comprehensive and relevant thinking on the subject.

Measured against Macrory's "Principles" and "characteristics", the BICS sanctions and penalties and how they are administered fell short on several counts, most notably their failure to "measure outcomes not just outputs", to "justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament", and to "be responsive and consider what is appropriate for the particular offender and regulatory issue". Some were closer to the Macrory "tests" than others, but I believe that all of them would benefit from thorough review and evaluation.

At the time of writing, the Home Office had already committed to "a full review and evaluation of the hostile/compliant environment policy and measures – individually and cumulatively", as recommended by Wendy Williams in her 'Windrush Lessons Learned Review'. Given the range of parties affected and the Home Office and other resources involved in their administration, I would suggest that this exercise is extended to all BICS sanctions and penalties to ensure that each is proportionate, necessary and well-managed and that together they form a coherent whole.

This report contains two recommendations. It was sent to the Home Secretary on 21 October 2020.

David 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 use of sanctions and penalties, specifically those measures designed to encourage compliance with the Immigration Rules.

1.2 The inspection looked in depth at:

a. the Carriers Liability scheme (CL),[1] including;

- how Border Force officers at ports of entry apply, record and pursue the penalty, including consistency of use between different ports
- the role of Immigration Enforcement in administering the scheme
- the support available to carriers to ensure that only correctly documented passengers travel to the UK
- legal challenges to the scheme and the impact these have had on operations
- reviews and development of CL policy, including of the level of the charge
- Home Office plans for the future of CL

b. Points Based System (PBS)[2] sponsor management, including;

- the structure and resourcing of the sponsor management unit
- the processes for tasking and undertaking compliance visits, including decision making, assurance and safeguards
- the administration of sponsor registers
- trends in the use of sanctions against sponsors
- future transformation in the immigration system

1 The Carriers Liability charge is a penalty levied on airlines and ferry companies who carry incorrectly documented passengers to the UK.

2 PBS regulates entry to the UK for skilled employees and students among others. Migrants in these categories require a UK sponsor, typically an employer or educational institution.

c. Access to Work, Benefits and Services (AWBS), commonly referred to as "compliant environment" measures,[3] including:

- data and documentation from the Home Office's Intervention and Sanctions Directorate (ISD)
- proportionality in the use of these sanctions and penalties
- the operational impact of the "Windrush crisis"[4]
- work completed or underway to review individual sanctions and penalties administered by ISD

1.3 This inspection did not look at the Clandestine Entrants Civil Penalty scheme, as this is covered in a separate inspection report, 'An Inspection of the Home Office's response to in-country clandestine arrivals ('lorry drops') and to irregular migrants arriving via 'small boats' (May 2019 – March 2020)', which was sent to the Home Secretary on 13 March 2020.

1.4 The Home Office also applies sanctions and penalties in relation to contraventions of customs and excise regulations. This inspection did not examine these.

3 The "hostile environment" was reframed as the "compliant environment" in July 2018. It is a suite of immigration measures introduced through the Immigration Acts of 2014 and 2016, the aim of which was to ensure that access to work and services was restricted only to those in the UK lawfully and to encourage those in the UK illegally to voluntarily return or face enforced removal

4 In April 2018, media reporting of widespread mistreatment of members of the Windrush generation and their children by the Home Office resulted in some enforcement activities being paused.

2. Methodology

2.1 Inspectors:

- on 4 November 2019, made a preliminary evidence request of the Home Office
- in November and December 2019, visited relevant Home Office units, including Border Force at Heathrow Airport and Portsmouth Ferry Port; Immigration Enforcement teams in Croydon, London and Manchester; and, UK Visas and Immigration teams in Sheffield, in order to inform the scope of the inspection and formal evidence request
- in December 2019, met representatives of airlines and ferry companies to understand their experiences of the Carriers Liability scheme
- in December 2019, reviewed open source material, including previous relevant inspection reports, in particular:
    - 'Inspection report of hostile environment measures', published October 2016[5]
    - 'An Inspection of the Home Office's approach to Illegal Working (August – December 2018)', published in May 2019[6]
    - 'An Inspection of Home Office (Borders, Immigration and Citizenship System) collaborative working with other government departments and agencies', published in January 2019[7]
    - 'An Inspection of the Right to Rent scheme', published March 2018[8]
- in January 2020, issued two 'calls for evidence' via the ICIBI website:
    - the first seeking submissions from carriers and others with relevant knowledge, expertise or first-hand experience of the Carriers Liability scheme
    - the second seeking submissions from those with relevant knowledge, expertise or first-hand experience of PBS sponsor sanctions
- on 7 January 2020, made a formal evidence request of the Home Office, analysing the documentary evidence provided in relation to governance, staffing, training and operational activity (including statistics on frequency of use, debt recovered, and objections and appeals) for specific sanctions and penalties

5 https://www.gov.uk/government/publications/inspection-report-of-hostile-environment-measures-october-2016

6 https://www.gov.uk/government/publications/an-inspection-of-the-home-offices-approach-to-illegal-working

7 https://www.gov.uk/government/publications/an-inspection-of-home-office-borders-immigration-and-citizenship-system-collaborative-working-with-other-government-departments-and-agencies

8 https://www.gov.uk/government/publications/an-inspection-of-the-right-to-rent-scheme

- From 20 February to 10 March 2020, examined a sample of 200 Case Information Database (CID)[9] case files, selected from a list of all Inadequately Documented Arrivals (IDA)[10] at UK ports between April and June 2019, in order to understand and assess Border Force's decision making and record keeping
- between 28 January and 18 February 2020, visited:
    - Border Force units at Heathrow, Manchester and Stansted Airports and Portsmouth Ferry Port
    - Immigration Enforcement teams in Croydon, London, Madrid and Manchester
    - UK Visas and Immigration (UKVI) teams in Sheffield
    - Home Office policy teams in Croydon, London and Manchester

    and conducted 60 interviews and focus groups, with staff at all grades from Administrative Officer to Senior Civil Servant
- on 20 March 2020, sought further evidence from the Home Office
- on 25 March 2020, presented emerging findings to the responsible Home Office Senior Civil Servants and their teams
- on 1 and 14 September 2020, sought further evidence from the Home Office

2.2 A copy of the report was sent to the Home Office on 22 September 2020 for factual accuracy checking. The Home Office responded on 13 October 2020 and provided a supplementary response on 16 October 2020.

9 CID is the principal Home Office immigration database used to record relevant information on all individuals subject to immigration control.

10 Any passenger subject to immigration control who arrives at a UK port without the necessary documentation that entitles them to enter or transit the UK is recorded as an IDA.

3. Summary of conclusions

3.1 All three operational directorates of the Home Office's Borders, Immigration and Citizenship System (BICS) are involved in the administration of sanctions and penalties. However, current measures have been introduced piecemeal, and the inspection found little evidence of consistency or coherence in their design or in their application, and no overall strategy or underpinning rationale, beyond a broad understanding that their primary purpose is to encourage and enforce compliance rather than simply to punish breaches of the Immigration Rules.

3.2 The absence in most cases of complete and accurate performance data, in particular with regard to outcomes, means that those areas of Border Force, Immigration Enforcement and UK Visas and Immigration that administer and employ the various sanctions and penalties are not able to produce compelling evidence that they work. The fact that known problems with staffing levels, training, and guidance, and long-overdue reviews, have not to date been seen as organisational priorities adds to the sense that BICS is unsure about the true value of these measures.

3.3 The sanctions and penalties available to BICS fall into three categories: monetary administrative penalties (fines), referred to by the Home Office as "civil penalties"; enforceable undertakings, typically involving a warning, specifying the steps that a person or organisation must take in order to be compliant and to avoid a (further) penalty, and in some cases requiring them to take or refrain from a particular action or behaviour; and, denial or withdrawal of a service or privilege.

3.4 The inspection found no evidence that the relative effectiveness of these approaches, used singly, in combination or in sequence, had been seriously examined.

3.5 A number of the BICS sanctions and penalties rely on staff in different business areas, sometimes different operational directorates, each playing their part. Typically, this means frontline staff initiating the process, either by raising a penalty notice, as in the case of Border Force officers at ports and the Carriers' Liability (CL) charge, or by making an internal referral, as with Immigration Compliance and Enforcement (ICE) teams and Illegal Working and Landlord Civil Penalties.

3.6 The levels of engagement by frontline teams with certain sanctions and penalties suggests some scepticism about their operational value, particularly when set against the time and effort required to effect them. For ICE teams, Illegal Working Closure Notices are a case in point. Oddly, Immigration Enforcement's Intervention and Sanctions Directorate (ISD) does not have responsibility for this sanction.

3.7 Equally, from the figures for ICE team residential visits versus Landlord Civil Penalty (LCP) referrals, the latter have never been seen as a priority by frontline staff. ICIBI's 2018 'Right

to Rent' inspection[11] highlighted this. The later impact of Windrush and legal action by the Joint Council for the Welfare of Immigrants (JCWI) is hard to quantify, but the data shows that before this, between 2015 and 2017, just 2.1% of 29,082 ICE team residential visits resulted in a referral. Even allowing for the Windrush effect, the numbers suggest that LCP has fallen well short of expectations.

3.8 In the case of the Carriers' Liability Scheme, the longest running of the penalties, the split of responsibilities between Border Force frontline officers and Immigration Enforcement's Carriers' Liaison Section (CLS) produces inconsistencies in the way the Scheme is implemented, including in the waiving of CL penalties at ports. The issues are well-known to Border Force, not least because they were set out in a January 2019 report by its own Operational Assurance Directorate (OAD), which found "significant weaknesses". But, one year on, three of OAD's six recommendations remained "Open" as other priorities took precedence. All three concerned improving the available guidance.

3.9 The inconsistencies in the Carriers' Liability Scheme are exacerbated by the different recording systems in use. The paper files traditionally preferred at ports (though no longer at Heathrow) are not easily accessible to CLS to assure. There are no clear, enforced standards for the Casework Information Database (CID) records Border Force officers create, and file sampling by inspectors identified that the quality of these records was generally poor. Meanwhile, CLS uses a locally-held spreadsheet to record its actions, and Metis[12] to record details of charges and payments.

3.10 Both Border Force and Immigration Enforcement staff involved with the Carriers' Liability Scheme told inspectors that the efficiency and effectiveness of its processes and workflows needed to be reviewed. A number believed that the £2,000 fixed penalty, which had remained at that level since 2002, should be increased and replaced with an 'up to' figure to allow more targeted penalties.

3.11 Senior management recognised the need for an external consultation and internal review, taking into account the 'Authority to Carry Scheme 2015'[13] and requirements for passenger and crew data in advance of travel. However, inspectors were told that a review was not a priority at present, either for BICS or for ministers, and one was unlikely to take place in the foreseeable future.

3.12 In terms of the Scheme's effectiveness, in August 2018, Border Force issued internal guidance to its staff entitled 'Immigration Intelligence Centre and Carriers Liaison Section', which stated that CLS had "recovered over £180 million in charges from carriers since 1987 with IDAs [inadequately documented arrivals] falling from 31,000 in 1999 to just over 5,780 in 2017." (Data provided to inspectors, indicated that the Home Office had recovered £22 million between April 2014 and September 2019 and that debt recovery was largely effective).

3.13 The Border Force statement appeared to credit the Carriers' Liability Scheme with having played a major part in reducing IDA numbers between 1999 and 2017. However, inspectors saw no evidence that the Home Office had carried out a detailed analysis to support this assertion, taking account of other factors, for example, improved security features in travel documents and tighter security measures at ports and airports in response to the terrorist threat. Nor, it

11 https://www.gov.uk/government/publications/an-inspection-of-the-right-to-rent-scheme

12 Metis is a financial database used by the Home Office to process finance and procurement tasks.

13 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419838/49013_Official_ATC_Scheme_accessible.pdf

seemed, had there been any analysis of why IDAs had almost doubled (+77%) since 2010 and whether the increase in non-EU passenger arrivals was causal or coincidental.

3.14 Compared to the Carriers' Liability Scheme, which was introduced in 1987, other BICS sanctions and penalties are relatively new, though none is recent. Those used to encourage compliance by sponsors of migrants seeking work or study visas date from the creation of the Points-Based System (PBS) in 2008.

3.15 Since it alone has the power to grant or refuse a sponsor licence, the Home Office is uniquely placed to encourage and enforce PBS sponsor compliance, which it does through enforceable undertakings (licence agreements), which if not met result in "denial of a privilege" (revocation of the licence). The sponsor may suffer financially by losing its licence, but that is an indirect consequence in which the Home Office takes little obvious interest.

3.16 While the sanction is a blunt weapon, the Home Office (UKVI) is able to choose how rigorously and how often it tests compliance, and how readily it revokes licences, or gives a sponsor the opportunity to correct any breaches as part of a supervised "action plan".

3.17 Compliance Caseworkers told inspectors they preferred to use "advisory letters" (which the Home Office does not regard as a sanction) or licence suspensions, as they gave the sponsor "more options and potentially a quicker outcome", rather than formal action plans which were more restrictive. Overall, there was an emphasis from UKVI's Sponsorship business area on actions being "reasonable and proportionate", not least so that they stood up in the event of any litigation.

3.18 Compliance visits are a key element of the sponsorship regime. Visits may be carried out before a licence is granted and during its life-time (four years). However, the Home Office told inspectors that "there is no policy requirement that a sponsor must be visited by UKVI at least every four years". If there were, UKVI would not be able to fulfil it, even at full strength (in March 2020, Sponsorship had a 20% shortfall in Tier 2 and 5 Compliance Officers and there were just two officers to carry out Tier 4 visits). From the data provided, compliance visits have been steadily declining, with half the number of pre-licence visits in 2019 that there were in 2015.

3.19 Inspectors found the value of compliance visits difficult to assess. Compliance Officers estimated that around 70-80% of sponsors received an overall 'Not Met' rating in visit reports, but said that Compliance Caseworkers, responsible for reviewing the reports and deciding what action to take, made "inconsistent" decisions that lacked common sense. Caseworkers said that most 'Not Mets' were not serious. There was general agreement, however, that not enough feedback was provided on visit reports and senior management said it recognised that the Compliance Officers, who were dotted around the UK, felt disconnected from the other Sponsorship teams.

3.20 Sponsorship managers were confident that both the Tier 2 and 5 (work) and Tier 4 (study) sponsor registers were more robust and compliant than they had been in the early years of operation, because of the actions taken to remove non-compliant sponsors and stronger systems to assure new sponsor applicants.

3.21 Between 2009 and 2013, the Home Office made significant efforts to ensure that Tier 4 licence holders were compliant. During this period, it suspended 1,178 Tier 4 licences and revoked 805. The Tier 4 list was further 'weeded' following the English Language Testing scandal in 2014 that "uncovered systematic fraud in the student visa system", and in 2019 it stood at 1,169,

down from 1,590 in 2014. The sizes of the much bigger Tier 2 and Tier 5 lists remained constant between 2014 and 2018. Each grew slightly in 2019 (to 28,734 and 3,952 respectively). While it was possible that the Tier 2 and 5 register was now 'cleaner', Sponsorship had no clear means of measuring compliance as there was no regular assurance conducted across the whole of the register.

3.22 As with other sanctions and penalties, and more generally across BICS, Home Office capacity means it cannot do everything. It must prioritise. Intelligence plays a key part in this, but inspectors found little evidence of recent efforts to encourage intelligence reporting from BICS frontline functions about non-compliant sponsors. Meanwhile, by narrowly focusing on the sectors perceived to be "high risk", and with compliance visits reducing, there is a danger that some employers will believe that they are effectively free from scrutiny, a concern ICIBI has already raised in its 2019 Illegal Working inspection report regarding ICE team illegal working visits.

3.23 The newest and by far the most contentious set of sanctions and penalties are those introduced and/or strengthened in the Immigration Acts 2014 and 2016 with the aim of creating a "hostile environment" by restricting access to work, benefits and services (AWBS) for anyone without leave to enter or remain in the UK.

3.24 A great deal has already been written about these measures, including in previous ICIBI inspection reports. The previous Home Secretary committed to carrying out a review in light of the Windrush scandal. Meanwhile, the Windrush Lessons Learned Review (WLLR) recommended "a full review and evaluation … of the policy and measures – individually and cumulatively … assessing whether they are effective and proportionate in meeting their stated aim … and [the policy's] impact on British citizens and migrants with status, with reference to equality law and particularly the public sector equality duty." The present Home Secretary has accepted this recommendation, but at the time of writing the Home Office has not indicated what form any review will take or when it will be conducted.

3.25 Most of the evidence gathering for this inspection was completed before the WLLR was published. While noting the determination of the Court of Appeal in the case brought against the Home Office in relation to 'Right to Rent', the inspection did not look in any detail at the question of discrimination. The focus was on the efficient and effective use of each measure both before and after the Windrush scandal broke.

3.26 The Home Office has consistently argued that its "hostile (now "compliant") environment" measures should be judged as a package and not singly. But, as ICIBI found in 2016,[14] 2018[15] and 2019,[16] it has done little to evaluate them either way, whether in terms of the efficiency of the processes underpinning each measure, including the costs to third parties of supporting them, or their effectiveness in delivering the hoped-for outcomes. Nor, as at September 2020, had it produced evidence to answer the concerns of stakeholders about the damage caused to communities and to individuals, which have intensified since the Windrush scandal.

3.27 The measures comprise financial penalties and denials of services or privileges. The latter rely largely on bulk sharing of immigration data with other parties (government departments, agencies and businesses) who match it with their own data in order to deny access to or to

14 https://www.gov.uk/government/publications/inspection-report-of-hostile-environment-measures-october-2016

15 https://www.gov.uk/government/publications/an-inspection-of-the-right-to-rent-scheme

16 https://www.gov.uk/government/publications/an-inspection-of-home-office-borders-immigration-and-citizenship-system-collaborative-working-with-other-government-departments-and-agencies and https://www.gov.uk/government/publications/an-inspection-of-the-home-offices-approach-to-illegal-working

withdraw a benefit, credit, service or licence. These data exchanges are managed by ISD's Data and Sanctions Team (DAST).

3.28 Since July 2018, safeguards have been in place to ensure that no-one from the Windrush generation is included in the Home Office data, and the volume of records shared has greatly reduced. However, the figures provided to inspectors indicated that the impact of bulk data sharing with HMRC, DWP and DVLA, for example, in terms of stopping existing benefits etc. had already peaked and begun to tail off before Windrush.

3.29 In most cases, the Home Office is meanwhile unsighted on the value of its data in preventing new access to such benefits, as the other parties are under no obligation to provide this information, or to report appeals against actions they have taken based on the Home Office data.

3.30 Civil Penalties (financial penalties) are administered by ISD's Civil Penalty Compliance Team (CPCT). There are two main Civil Penalties schemes, one covering employers and the other residential landlords. The performance of the two has been markedly different. Operationally, both rely on referrals from ICE teams. But while the number of ICE illegal working visits since 2015 is broadly comparable with the number of residential premises visits (32,425 versus 40,986) the former average a referral every three visits, while for the latter it is one in forty.

3.31 However, levying a financial penalty is not the same as collecting the debt owed. And, over the course of six years to the end of 2019, while the Home Office had imposed penalties of £179,867,875 on employers it had collected only £70,422,172.[17] ISD staff told inspectors that they were concerned that since the penalty was increased (the Immigration Act 2014 raised it to £15,000 per illegal worker for a first breach), rather than encouraging future compliance, it may have had the effect of forcing some smaller employers out of business, and therefore unable to pay.[18]

3.32 At the same time, the Home Office had no better understanding of the extent of 'Phoenixing' (where business owners dissolve their business and start up again under a different name as a way of avoiding paying a Civil Penalty) than it had had in 2015 and 2018 when this was raised as an issue during ICIBI's inspections of illegal working. And, though it had an agreement with the Insolvency Service to pursue and disqualify directors, the Home Office was not resourcing its side of the arrangement.

3.33 When the "hostile environment" was conceived, one of its key objectives was to incentivise individuals to regularise their immigration status or to depart the UK voluntarily. The Home Office has caveated published data for voluntary returns as "subject to significant upward revision". Nonetheless, the data indicates fewer voluntary (and enforced) returns year-on-year.

3.34 The published data does not include the numbers of returns "after sanctions". Internal ISD performance data for 2017/2018 showed 1,431 "Voluntary Returns after sanctions" and 1,059 "Enforced Returns after sanctions" that "included matches with data from DfE, DVLA, DWP, NHS and HMRC. It also includes matches from data flagged locally on Right to Rent and Construction Skills Certification Scheme". In the absence of evidence to the contrary, it would

17 £179,867,875 was the initial figure, before any reductions as a result of objections or appeals, or because of faster payment discounts (of up to 30%).

18 In its factual accuracy response, the Home Office explained that its "concerns" in respect of the level of the penalty "were in relation to the expectation that increasing the penalty value would translate to increased penalty debt recovery – this would not necessarily be the case if the higher penalties impact businesses viability." However, "the increased penalty in 2014 recognised the damage illegal working has on the economy undercutting legitimate business".

be reasonable to assume from the other data provided to inspectors that these numbers have also fallen.

3.35 In approaching this inspection, inspectors looked beyond the Home Office for examples of best practice in the design and use of sanctions and penalties. Though now dated (it was published in November 2006), Professor Richard Macrory's paper on 'Regulatory Justice: Making Sanctions Effective', produced for the Cabinet Office, offered the most comprehensive and relevant thinking on the subject. Macrory's "Six Penalties Principles" and "Seven characteristics" that regulators should display are listed in this report (Chapter 5).

3.36 Measured against these "Principles" and "characteristics", the BICS sanctions and penalties and how they are administered come up short on several counts, most notably their failure to "measure outcomes not just outputs", to "justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament", and to "be responsive and consider what is appropriate for the particular offender and regulatory issue". Some sanctions and penalties are closer to the Macrory "tests" than others, but they would all benefit from thorough review and evaluation and, given the range of parties affected by them and the Home Office resources involved in their administration, this should be properly prioritised.

4. Recommendations

The Home Office should:

4.1 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.

4.2 (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.

5. Background

BICS Overview

5.1 The Home Office Borders, Immigration and Citizenship System (BICS) employs various sanctions and penalties to encourage individuals and organisations to comply with the Immigration Rules and with Customs and Excise Regulations.

5.2 BICS does not have a standard definition of what constitutes a sanction or penalty. In October 2019 in answer to an initial request for a list of sanctions and penalties currently in use, inspectors were informed of 25 that were available to the different operational commands.

5.3 Aside from criminal prosecutions, the sanctions and penalties available to BICS fall into three types:

- monetary administrative penalties (fines), referred to by the Home Office as "civil penalties"
- enforceable undertakings, typically involving a warning, specifying the steps that a person or organisation must take in order to be compliant and to avoid a (further) penalty, and in some cases requiring them to take or refrain from a particular action or behaviour
- denial or withdrawal of a service or privilege

5.4 BICS sanctions and penalties have been developed and introduced at different times over the last 30 plus years, and there is no overarching piece of legislation that regulates their use.

The Macrory Principles

5.5 In 2005, Professor Richard Macrory was commissioned by the Chancellor of the Duchy of Lancaster (the Cabinet Office) "to examine the system of regulatory sanctions" to help ensure that they were "consistent with and appropriate for a risk-based approach" and "a penalty regime based on the risk of re-offending, and the impact of the offence, with a sliding scale of penalties that are quick and easier to apply for most breaches with tougher penalties for rogue businesses that persistently break the rules" as proposed by Sir Philip Hampton's 2005 review of the regulation of UK businesses.[19]

19 The Hampton Report: 'Reducing administrative burdens – effective inspection and enforcement'. https://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system

5.6 Professor Macrory published his findings and recommendations in November 2006 in 'Regulatory Justice: Making Sanctions Effective'.[20] This identified "Six Penalties Principles":

> "A sanction should:
>
> 1. Aim to change the behaviour of the offender
> 2. Aim to eliminate any financial gain or benefit from non-compliance
> 3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
> 4. Be proportionate to the nature of the offence and the harm caused
> 5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
> 6. Aim to deter future non-compliance."

5.7 It also identified "Seven characteristics":

> "Regulators should:
>
> 1. Publish an enforcement policy
> 2. Measure outcomes not just outputs
> 3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament
> 4. Follow-up enforcement actions where appropriate
> 5. Enforce in a transparent manner
> 6. Be transparent in the way in which they apply and determine administrative penalties; and
> 7. Avoid perverse incentives that might influence the choice of sanctioning response."

5.8 The government accepted all of Professor Macrory's recommendations and the report provided the theoretical framework for the Regulatory Enforcement and Sanctions Act 2008,[21] which governs how local authorities and five named regulators[22] should use sanctions. Section 5(2) of the Act states that "regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent" and that they "should be targeted only at cases in which action is needed".

5.9 Macrory's recommendations are widely considered as best practice for regulators and several government bodies refer to Macrory in their policies.[23]

20 Richard B Macrory; Regulatory Justice: Making Sanctions Effective; November 2006 https://www.regulation.org.uk/library/2006_macrory_report.pdf

21 https://www.legislation.gov.uk/ukpga/2008/13/contents

22 Environment Agency; Food Standards Agency; Gambling Commission; Health and Safety Executive; Office of Fair Trading

23 For example, the Gangmasters and Labour Abuse Authority (GLAA) link to the Macrory review from the "what we do" section of their website https://www.gla.gov.uk/who-we-are/what-we-do/, The Electoral Commission and Insolvency Service also refer to Macrory on their websites.

The Home Office as regulator

5.10 In encouraging compliance through monetary administrative penalties, enforceable undertakings, and the denial or withdrawal of services, the Home Office is acting as a regulator. Along with other central government departments, it is not bound by the Regulatory Enforcement and Sanctions Act 2008. However, it has previously referenced Macrory's principles in relation to BICS sanctions and penalties. In 2014, Macrory was cited in relation to the Illegal Working Civil Penalty and, in 2018, in relation to the Carriers' Liability scheme. In both cases, it was in connection with the proposed level of the monetary administrative penalties.[24]

Sanctions and penalties available to BICS operational directorates

Border Force

5.11 Border Force employs a range of monetary administrative penalties in connection with the transportation of inadequately documented or undocumented persons to the UK, and with the failure to adhere to Customs and Excise Regulations.

5.12 In the latter case, penalties are typically raised against individuals who are found to have breach the Regulations. See Figure 1.

Figure 1
List of monetary administrative penalties available to Border Force In respect of failures to adhere to Customs and Excise Regulations

Description	Sanction/Penalty
Compound Penalty	Fine issued at the border in lieu of prosecution for contravention of a prohibition or restriction or fiscal matter, for example in lieu of prosecution for entering the UK with a small amount of cannabis
Fine in lieu of forfeiture	Fine in lieu of the seizure of any ship over 250 tons when caught committing a Customs and Excise offence
Customs Civil Evasion Penalty	Fine issued where a party has sought to evade tax or duty
Wrongdoing/ post audit excise penalties	Confiscation of goods where an offence is discovered at the border. HMRC will later charge the importer for the excise duty, import duty and VAT
Penalty for specified breach of customs law	Fine up to £2,500 may be issued for a breach of customs law, the amount is dependent on the circumstances[25]

24 Impact Assessment dated 5 February 2015 for 'Strengthening and Simplifying Civil Penalties to prevent illegal migrant working' and Submission to Home Secretary dated 7 February 2018 on 'Level of Carriers Liability penalty in relation to Inadequately Documented Arrivals'.

25 Border Force told inspectors in November 2019 that it was not enforcing Customs (contravention of relevant rule) (Amendment) Regulations 2015, as amended 2019, as it was awaiting authorisation from HMRC. In October 2020, in its factual accuracy response, the Home Office stated that it was "working with HMRC to develop the policies needed to implement it". No timescale for this work was provided."

5.13 However, in the case of inadequately documented or undocumented arrivals the penalties target the carrier, with the aim of encouraging carriers to carry out rigorous pre-departure and security checks. See Figure 2.

Figure 2
List of monetary administrative penalties available to Border Force In respect of non-compliance with the Immigration Rules

Description	Sanction/Penalty	Amount
Clandestine Entrant Civil Penalty	Fine for drivers and haulage companies who are found to have migrants concealed in their vehicles when entering the UK	£2,000 driver and £2,000 haulier per clandestine entrant
Carriers' Liability	Fine for airlines and ferry companies that carry inadequately documented passengers to the UK. NB. Rail companies are not subject to the Carriers Liability scheme	£2,000 per inadequately documented passenger
Authority to Carry	Fine for a carrier that fails to comply with a refusal of authority to carry (one they have been told by the Home Office not to carry)	Up to £50,000
Passenger Crew and Service Information	Fine for carriers that fail to provide accurate or complete Advance Passenger Information (API) data or fail to provide it on time or in the correct format	Up to £10,000

Immigration Enforcement

5.14 Most BICS sanctions and penalties are administered by Immigration Enforcement. They are a mixture of monetary administrative penalties, enforceable undertakings and denials or withdrawals of services See Figures 3 – 5.

Figure 3
List of monetary administrative penalties available to Immigration Enforcement

Description	Sanction/Penalty	Amount
Illegal Working Civil Penalty	Fine levied against an employer for employing someone without the correct immigration status to work in the UK	Up to £20,000
Landlord Civil Penalty	Fine levied against a landlord, homeowner or letting agent, who rents residential property to someone with no right to rent in the UK[26]	Up to £3,000

26 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729318/right-to-rent-landlords-v6.0-ext.pdf

Figure 4 **List of actions available to Immigration Enforcement to encourage compliance[27]**	
Description	**Sanction/Penalty**
Employer Nudge Letter	Compliance letter to prompt an employer to check an individual employee's right to work in the UK. The nudge is followed up by a second check three months later, at which time the employer could receive a civil penalty
Notice of letting to a disqualified person	Compliance notice (that can be used to end a tenancy) issued to a landlord who is letting to someone without the right immigration status

Figure 5 **List of denials or withdrawals of services or benefits by partner agencies initiated or supported by Immigration Enforcement**	
Description	**Sanction/Penalty**
Driving licence revocation	Revocation or refusal of a UK driving licence
HMRC benefits and credits	Refusal or revocation of HMRC benefits and credits
DWP benefits	Refusal or revocation of DWP benefits
Director disqualification	Disqualification of directors who fail to comply with illegal working sanctions
Closure/Refusal of Bank account	Closure or refusal of a current account
Taxi Licensing	Refusal or withdrawal of a licence to operate a taxi
CSCS card revocation	Refusal or withdrawal of a Construction Skills Certification Scheme (CSCS) card[28]
NHS Referrals	Refusal of service or raising of an invoice to those that do not qualify for free non-emergency healthcare
Alcohol and Late-Night refreshment licensing	Review or refusal of a licence to serve alcohol or late-night refreshments due to non-compliance with the Licensing Act 2003 (as amended by the Immigration Act 2016)

UK Visas and Immigration

5.15 UK Visas and Immigration is able to penalise non-compliant sponsors of study and work visas by suspending or revoking their sponsor licences. It can also revoke its agreement to allow a community group to act as sponsor for a refugee family resettled under a UK resettlement scheme. As at September 2020, this sanction had never been used. Since 2016, UKVI has also had responsibility for levying a financial penalty where an individual fails to comply with the Biometric Registration Regulations.[29] This previously sat with Immigration Enforcement.

27 In the factual accuracy process, the Home Office correctly noted that the Employer Nudge Letter and Notice of letting to a disqualified person were not "enforceable undertakings" in that they did not themselves cover activities that the Home Office could enforce. However, they have the effect of enforceable undertakings in that failure to act on them carries the implied threat of follow-up action by Immigration Enforcement.

28 A CSCS is required for employment with most large construction companies but is not proof of a right to work in the UK.

29 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419232/UK_Borders_Act_2007-_Code_of_Practice_-_non_compliance_with_biometric_registration_regulations_March_2015.pdf

Figure 6

List of sanctions and penalties available to UK Visas and Immigration

Description	Sanction/Penalty
Non-compliance with sponsorship duties	Suspension or revocation of sponsor licence
Community Sponsorship	Revocation of agreement to allow group to participate in the Community Sponsorship Scheme if it does not comply with the terms of the contract
Non-compliance with Biometric Registration Regulations	Fine levied against an individual who fails to comply with Biometric Registration Regulations. Either £125 or £250 but reduced where there are mitigating circumstances

6. Inspection findings: Carriers' Liability Scheme

Legislation

Immigration (Carriers' Liability) Act 1987

6.1 The Immigration (Carriers' Liability) Act 1987[30] was passed into law in response to rising numbers of passengers requiring leave to enter the UK arriving without valid documentation: a passport or other document that established their identity and nationality or citizenship, and a visa, where required.

6.2 The Act aimed to ensure that "owners or agents of the ship or aircraft" bringing passengers to the UK checked for the required documents at the point of embarkation, and it introduced a monetary administrative penalty (fine) of £1,000 payable for each person who arrived as an inadequately documented.

6.3 There would be no liability "in respect of any person who is shown by the owners or agents to have produced to them or an employee of theirs the [required] document or documents".

6.4 The Carriers' Liability (CL) scheme came into force on 4 March 1987.

Immigration and Asylum Act 1999

6.5 Section 40(2) of the Immigration and Asylum Act 1999[31] raised the level of the fine to £2,000 per person. This change took effect on 8 December 2002, on which date the (Carriers' Liability) Act 1987 was repealed.

6.6 Section 40 of the 1999 Act also added arrivals by "road passenger vehicle or train" to the scope of "Charges in respect of passengers without proper documents" and extended the liability to a fine to a non-compliant "train operator" or "owner of a road passenger vehicle".

Application of the Carriers' Liability Scheme

Payment of CL charges

6.7 The Home Office told inspectors that, between 1 January 2014 and 30 September 2019, it had issued 12,766 'Charge notice – Notification of demand for payment' (form IS80D) and collected 12,670 payments.[32]

6.8 However, inspectors analysed the raw data and came to different figures: 12,607 demand for payment notices, and 11,217 payments collected.

30 http://www.legislation.gov.uk/ukpga/1987/24/enacted

31 http://www.legislation.gov.uk/ukpga/1999/33/contents/enacted

32 The figures for demands and payments for any period will not match because the carrier has 30 days to make the payment.

6.9 Nonetheless, even at the lower figure, this represented over £22 million in penalty payments collected in 69 months.

6.10 The Home Office also provided inspectors with details of outstanding CL penalty payments as at 5 April 2020. This involved 71 carriers and totalled just under £1.5 million. Approximately £1.1 million of the outstanding £1.5 million related to demands made within the previous 90 days.

Numbers of Inadequately Documented Arrivals (IDAs)

6.11 Inspectors asked the Home Office for data for inadequately documented arrivals from the point the CL scheme went live in 1987. The department provided data for the last 10 complete years (2010 to 2019). This was done only with some difficulty and led to numerous requests for clarification of the selection criteria used. The department appeared to struggle to settle on a reliable methodology for interrogating the data it held, which means that there must be some doubt about the accuracy of the figures presented below.[33]

6.12 Figure 7 shows the number of IDAs recorded each year between 2010 and 2019. These are set against the number of arriving non-EU passengers.[34]

Figure 7
Inadequately Documented Arrivals as a percentage of non-EU passengers 2010 to 2019

Year	Non-EU arrivals (millions)	Number of IDAs	IDAs as % of non-EU arrivals
2010	12.5	4,520	0.036%
2011	13.3	4,478	0.034%
2012	12.9	4,277	0.033%
2013	14.0	4,941	0.035%
2014	14.6	5,824	0.040%
2015	15.3	6,807	0.044%
2016	16.3	7,104	0.044%
2017	20.2	6,662	0.033%
2018	20.4	7,664	0.038%
2019	N/A	7,986	–

6.13 The data shows that IDA numbers have steadily increased since 2016. But, expressed as a proportion of non-EU arrivals, the ratio has remained around 3 or 4 per 10,000 over the 10-year period.

33 Inspectors understood that the data at Figure 7 was produced by interrogating the Casework Information Database (CID). The Home Office collects information about IDAs from several sources: Border Force encounters at ports of entry; allegations from the public; information and observations from carriers and handling agents including reports compiled about individuals denied boarding; reports and messages received from the Immigration Liaison Officer global network. To what extent and how well any of this is recorded on CID varies. Meanwhile, comparison and analysis of IDA data by Immigration Intelligence informs risk profiles and assessments that are fed back to frontline staff and, indirectly, to the carriers. Profiles and trends can change rapidly and staying ahead of IDAs and criminal organisers is challenging.

34 The non-EU arrivals data is published on GOV.UK. During this period, the Carriers' Liability scheme did not apply to EU nationals.

Impact of the CL scheme on IDAs

6.14 In August 2018, Border Force issued internal guidance to its staff entitled 'Immigration Intelligence Centre and Carriers Liaison Section'. This stated:

> "CLS (Carriers Liaison Section) has recovered over £180 million in charges from carriers since 1987 with IDAs falling from 31,000 in 1999 to just over 5,780[35] in 2017."

6.15 This statement would appear to credit the CL scheme with having played a major part in reducing IDA numbers between 1999 and 2017. However, inspectors saw no evidence that the Home Office had carried out a detailed analysis to support this, taking account of other factors, for example, improved security features in travel documents and tighter security measures at ports and airports in response to the terrorist threat. Nor, it seemed, had there been any analysis of why IDAs had almost doubled (+77%) since 2010 and whether the increase in non-EU arrivals was causal or coincidental.

Breakdown of IDAs

6.16 Although there had been no detailed analysis of IDAs in relation to the CL scheme, the data did show the mode of transport used. This indicated that 97% of IDAs arrived in the UK by air. See Figure 8.

Figure 8
Breakdown of Inadequately Documented Arrivals by mode of travel 2010 to 2019

Year	Air	Sea	Rail	Total
2010	4,366	153	1	4,520
2011	4,308	161	9	4,478
2012	4,079	165	33	4,277
2013	4,746	155	40	4,941
2014	5,680	133	11	5,824
2015	6,594	197	16	6,807
2016	6,918	178	8	7,104
2017	6,528	126	8	6,662
2018	7,467	193	4	7,664
2019	7,788	195	3	7,986
Total	**58,474**	**1,656**	**133**	**60,263**

6.17 Of these recorded IDAs, a number could not be linked to a particular carrier. This showed that the carrier was not confirmed in roughly 7% of cases overall between 2010 and 2019, almost all of which were arrivals by air. While there was some fluctuation in the annual total, it had grown faster than the rate of increase in IDAs or non-EU passenger numbers. Again, inspectors found that there had been no detailed analysis of the reasons for this. See Figure 9.

35 The disparity between this figure and the figure provided to inspectors was not explained.

Figure 9

Inadequately Documented Arrivals not linked to a particular carrier by mode of travel 2010 to 2019

Year	Air	Sea	Rail	Total
2010	130	0	0	130
2011	151	2	0	153
2012	265	0	0	265
2013	274	0	0	274
2014	336	0	0	336
2015	409	0	1	410
2016	706	2	2	710
2017	571	0	3	574
2018	618	9	0	627
2019	697	2	1	700
Total	**4,157**	**15**	**7**	**4,179**

6.18 Of the IDAs that could be linked to a particular carrier, roughly 12% overall between 2010 and 2019 did not have a CL charge raised. Here, there has been less movement in the annual totals for IDAs arriving by air, and to a lesser extent those arriving by sea. While the average since 2015 is higher than that for 2010 to 2014 (682 against 581), the increase in IDAs over the period suggest a tightening of the CL scheme in terms of raising charges where the carrier is identified. See Figure 10.

Figure 10

Inadequately Documented Arrivals linked to a particular carrier where a CL charge was not raised by mode of travel 2010 to 2019

Year	Air	Sea	Rail	Total
2010	557	40	0	597
2011	644	73	0	717
2012	594	57	0	651
2013	537	58	0	595
2014	574	52	0	626
2015	610	50	0	660
2016	789	23	0	812
2017	672	23	0	695
2018	702	30	0	732
2019	638	35	0	673
Total	**6,317**	**441**	**0**	**6,758**

Border Force Operational Assurance Directorate review of the CL scheme

6.19 In 2017, the Border Force Board tasked Border Force Operational Assurance Directorate (OAD) to review the CL scheme.[36] OAD visited eight airports and three seaports as well as the Carriers' Liability Section (CLS), the policy team, and the Leadership, Learning, Capability and Talent (LLC&T) team.

6.20 OAD's report,[37] published internally in January 2019, assessed the control measures in place. See Figure 11.

Figure 11
OAD assessment of CL Control Measures

Control Measure	OAD Assessment
Guidance and instructions	Minor weaknesses
Consistency of raising files	Significant weaknesses
Action taken in CL cases	Significant weaknesses

6.21 OAD made eight findings, covering guidance, training, oversight and the performance of different ports. The main points to emerge were:

- central guidance was clear but was hard to locate on the Home Office intranet, so staff relied on local guidance
- training for new staff on the legislation and process was adequate but there was no refresher training
- there was no central oversight by Border Force of the CL scheme
- (based on a sample of roughly 3%)[38] there was a high level (96.4%) of compliance with the guidance in terms of raising CL charges
- ports with dedicated CL teams had more robust processes in place than those that did not, and the latter had issues with serving CL paperwork on carriers within the recommended timescales
- some ports were routinely obtaining CCTV footage to link IDAs to flights where others were not

6.22 A further issue raised by OAD concerned guidance in relation to what constituted a "reasonably apparent" forgery. The Immigration (Carriers' Liability) Act 1987 had stated that "a document shall be regarded as being what it purports to be unless its falsity is reasonably apparent". For carriers to be liable to a CL charge where a person presented a falsified document "Any falsification has to be 'reasonably apparent' for liability to be incurred."

36 The objective of the review was to provide assurance that there was consistency of application of CL fines across Border Force and that CL cases were dealt with accurately and administered properly. It looked specifically at whether: guidance was easily accessible, clear, and easy to understand; cases were raised consistently across ports in line with guidance; action taken was consistent, and in line with guidance, at all ports. Where issues were identified, the review sought to identify potential root causes.

37 The report, 'Carriers' Liability Review – Summary of Findings', was marked Official-Sensitive.

38 OAD examined 234 cases. In 2018, there were 7,467 IDAs. In its factual accuracy response, the Home Office pointed out that some of the cases sampled by OAD were from 2017.

6.23 The Immigration and Asylum Act 1999 term, stating that a carrier ("an owner") "shall be entitled to regard a document as – (a) being what it purports to be unless its falsity is reasonably apparent" adding "and (b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him".

6.24 A 'Guidance Note' produced in 2012 and still accessible via the Home Office intranet, Horizon, stated that: " UKBA Carriers Liaison Section (who administer the penalty regime) would consider a falsity as reasonably apparent, if it were of a standard which a trained representative of the carrying company, examining it carefully but briefly and without the use of technological aids, could reasonably be expected to detect. A 'trained representative' would be expected to have a level of basic knowledge of how to identify false documents."

6.25 At the time of OAD's review, the most recent Border Force guidance was 'Carriers Liability Section 40 charges: best practice', which was issued to staff on 1 February 2016. OAD reported that current guidance "lacked necessary detail on what constituted 'reasonably apparent' forgeries" and found "notable differences" between ports in CL charge waivers were a document was identified as a forgery. According to Home Office data, between January and October 2018, 141 fines were waived because the forgery was not "reasonably apparent", 60 (43%) of these cases at one airport.

6.26 The OAD report made six recommendations, including:

- a review and rationalisation of CL guidance
- further guidance about and examples of "reasonably apparent"
- specific guidance for seaports, including how to treat "stowaways"
- CL training for Border Force Higher Officers (BFHOs) and Senior Officers (BFSOs)
- a reminder to staff about the importance of identifying the carrier in IDA cases
- consideration of introduction of a national or regional CL team(s) to oversee case progression

6.27 Inspectors asked Border Force what progress had been made against each of the recommendations. As at January 2020, the three recommendations regarding guidance remained "Open", as other priorities, including preparations for EU Exit, took precedence. However, the CL scheme had been included in the operational module of the BFHO/BFSO training programme. And, in July 2019, a reminder about CL was sent to all Border Force staff.

Administration of the CL scheme

6.28 In relation to the sixth recommendation, regarding oversight of CL case progression, inspectors were told that "a proposal has been developed on the implementation of regional CL hubs to improve case management and effective communication between CLS and Border Force and is due to be considered post EU-Exit."

6.29 The recommendation stemmed from the fact that administration of the CL scheme is split between Border Force and Immigration Enforcement's Carriers' Liability Section (CLS), part of the Immigration Intelligence Directorate.

- Border Force is responsible for the "on-entry" processing of IDAs. Frontline Border Force Officers prepare a paper file and corresponding electronic record on CID.[39] A BFHO (or BFSO) reviews the record and authorises either:
  - no further action*
  - the waiver of any potential charge*
  - proceeding with a demand for payment of the penalty
- CLS is responsible for reviewing demands for payment raised by Border Force and may either:
  - waive the charge
  - receive payment, or
  - pursue outstanding demands

  *CLS is not routinely informed in these cases.

6.30 CLS is a national team, housed in offices close to Heathrow Airport. Figure 12 shows CLS staffing levels at the time of this inspection.

Figure 12
CLS staffing levels – November 2019[40]

Grade (Role)	Number (FTE)
Senior Executive Officer (Senior Manager/Head of Unit)	0.6
Higher Executive Officer (Chief Immigration Officer)	1.2
Executive Officer (Immigration Officer)	2.0
Executive Officer (Office Manager)	1.0
Administrative Officer	2.7
Total	7.5

6.31 CLS staff told inspectors that they had had no involvement in the OAD review.[41] However, OAD reported that Border Force officers "relied on support and guidance provided by CLS" but while CLS "provided a valuable service to Border Force, [it] did not routinely get involved with cases until the final stages of the process such as after demand for payment of a fine had been made."

39 Casework Information Database (CID), the Home Office's main caseworking database, used throughout BICS to record details of individuals encountered in the UK.

40 In its factual accuracy response, the Home Office reported that the CLS staffing model had since changed.

41 In October 2020, OAD clarified that "CLS staff were consulted when the OAD review took place in late 2017. However, the staff member has since retired from service. The Terms of Reference [for the review] were shared with CLS who later met with OAD to discuss the processes and to give their views. They also submitted relevant data and later reviewed the draft report for factual accuracy."

6.32 This undersold CLS's role in assuring that the CL scheme was working. According to CLS, it carried out routine audits of the Border Force elements of the CL process and produced reports highlighting areas for improvement. CLS said that it made between 15 and 20 visits to ports each year, selecting ports where there were high volumes of IDAs or where the data appeared anomalous, for example, higher than expected waiving of charges.

6.33 Where there was the opportunity, CLS would review local processes and records, and run general CL training and awareness sessions for Border Force officers and managers. CLS staff told inspectors that training was usually based on the outcomes of their audits and was always "well received".

6.34 Inspectors were shown evidence of 18 such audit visits completed in 2018 to 19, during which just under 1,000 paper CL files were assessed, resulting in 93 recommendations. CLS staff said they were unsure to what extent any of its recommendations were accepted and implemented as CLS did not have the capacity to carry out follow-up visits to check.

Guidance

6.35 Border Force guidance 'Carriers Liability Section 40 charges: best practice' was issued to staff on 1 February 2016. Version 2 was issued on 1 May 2020. Both versions are marked 'Official-Sensitive" and therefore neither is available on GOV.UK. The Home Office intranet, Horizon, notes:

> "This Border Force document is intended as a 'best practice' guide to the raising of charges under section 40 of the Immigration and Asylum Act 1999 (IAA). It is intended that all ports will raise and process charges under these procedures."

6.36 Version 2, which runs to 37 pages, explains:

> "Previous instructions on raising Section 40 charges were issued under the heading 'Operational Instructions and Guidance' which has now been superseded by this best practice guide. This new guide has been extended to include the following:
>
> - the initial raising of charges
> - the recommended procedure for notifying carriers of a liability
> - dealing with representations from carriers
> - the procedures when objections are raised
> - the audit of files"

6.37 Inspectors reviewed the updated guidance to see whether it remained "clear and easy to understand" as OAD had found in 2018, and whether the issues raised in the 2019 OAD Review had been addressed.

6.38 The guidance left no room for doubt about what was required of Border Force staff:

> "You **must start** Section 40 action **in all cases where a potential charge is identified**, for example where the passenger does not hold an acceptable travel document or a visa where one is required. You must raise a charge even when a carrier has not been identified. The charge may be cancelled or not subsequently pursued, but it is only when you start a Section 40 action that a record of an inadequately documented arrival (IDA) is created."

6.39 It was equally clear about the requirement to record all IDAs, listing those arriving non-EU passengers defined as IDAs:

> "An IDA is an arriving passenger that holds: -
>
> - no document
> - a mutilated document
> - an expired document
> - a false document
> - a spurious document[42]
> - a fraudulently obtained document
> - an unacceptable document
> - no visa
> - used visa
> - a false visa
> - a child visa[43]
> - a deferred/expired visa
> - a false visa exemption
> - a valid document but is impersonating the rightful holder."

6.40 The guidance contains easy-to-follow flowcharts setting out the steps Border Force officers must take. These include references to the relevant forms and paperwork to be completed. They also include timescales:

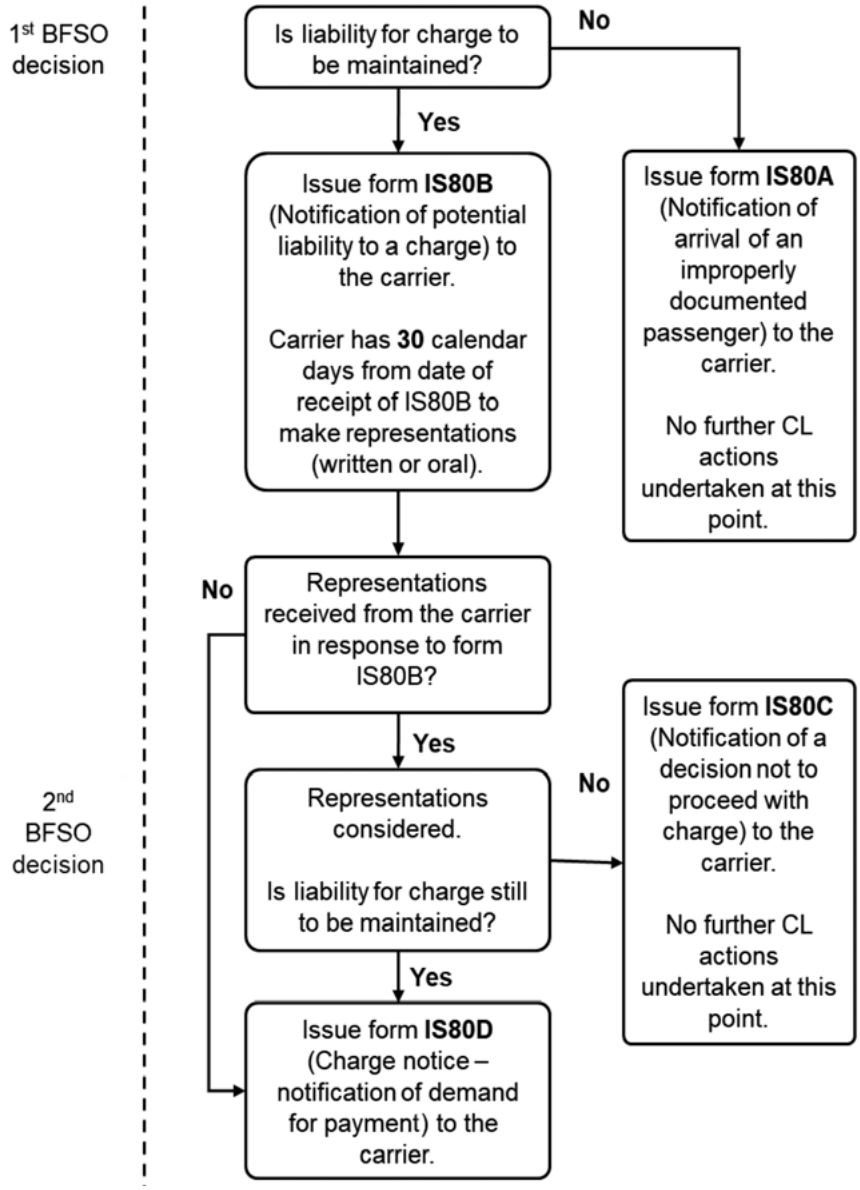
- the initial recording of an IDA and passing of the file to a BFHO must be completed within 24 hours of the encounter
- the BFHO must forward the file to a BFSO within 72 hours of the original encounter, having
- checked that all actions for the CL file and CID have been completed to an acceptable standard
- signed them off
- made a recommendation to the BFSO whether a CL charge is appropriate

6.41 The BFSO flowchart identifies the decisions the BFSO must take, again identifying the forms to be completed and the timescales. See Figure 13.

42 A "spurious document" is one that is not recognised for travel to the UK.

43 A "Visit Child Accompanied" visa has an additional endorsement of "Only valid if accompanied by [details of adult]". If the child arrives alone or the person accompanying them is not the individual detailed on the visa, the visa is invalid.

Figure 13



6.42 If the BFSO decides that the CL charge should be waived, the guidance requires them to "note the (CL) file with a 'reason for waive' audit code". The audit code is set out in the guidance. See Figure 14.

Figure 14

'Reason for waive' audit code

	Type	Comments
1	AGC Case[44]	No Document/Mutilated Document case from AGC route (see later section on AGC)
2	Falsity not reasonably apparent	All forgery or impersonation cases where falsity is not reasonably apparent, including stolen blank documents
3	Fraudulently obtained document	Document duly issued by competent authority which is not forged or altered in any way but which has been obtained in a false identity by fraud
4	Document no longer available for examination	Cases where the original document is no longer available and it is not possible to prove reasonably apparent falsity or impersonation on the basis of a copy
5	Further evidence produced by carrier	Cases where the carrier produces evidence after arrival that a passenger did produce the required documents when he embarked for the UK
6	Insufficient evidence of carriage	This would include cases where flight was not met and it was not possible to prove carriage by other means to the required standard. This may include CCTV linkage, for example
7	Interrupted surveillance/post arrival linkage	Cases where flight was met but passenger was not identified they were an IDA at the gate and was not under continuous surveillance until he was identified as an IDA
8	No charge in law	Cases where it is established post-arrival that there is no liability in law, e.g. where it is established later that passenger without visa qualifies under Para 18 as a returning resident or non-visa national holding a forged IND vignette
9	Miscellaneous	Cases where charges are waived for reasons given in Appendix A to Charging Guide, e.g. first charge to arrive from new station, compelling compassionate cases and others not covered above
10	Passenger accepted as refugee	For CLS use only
Local use: 11 and onwards may be used by ports locally to measure a particular local problem.		
11	IO's minute flawed/ poor file preparation.	This would include cases where IO's minute fails to describe circumstances properly and fails to show that charge was due in law, including cases where minute fails to describe properly why falsity is reasonably apparent
12	Failure to copy travel document or evidence of carriage.	To include cases where IO has failed to copy document (e.g. to show that pax had no visa) or failed to copy available evidence of carriage
13	Failure to serve notice on carrier within proper time limit.	Cases where we cannot proceed to charge because we have failed to serve notice on carrier within required time limits

44 Approved Gate Check (AGC). Carriers may be granted AGC status where there is an audited high standard of document checking and security procedures at a port of embarkation, a good level of co-operation from the carrier, and a satisfactory record in paying outstanding charges.

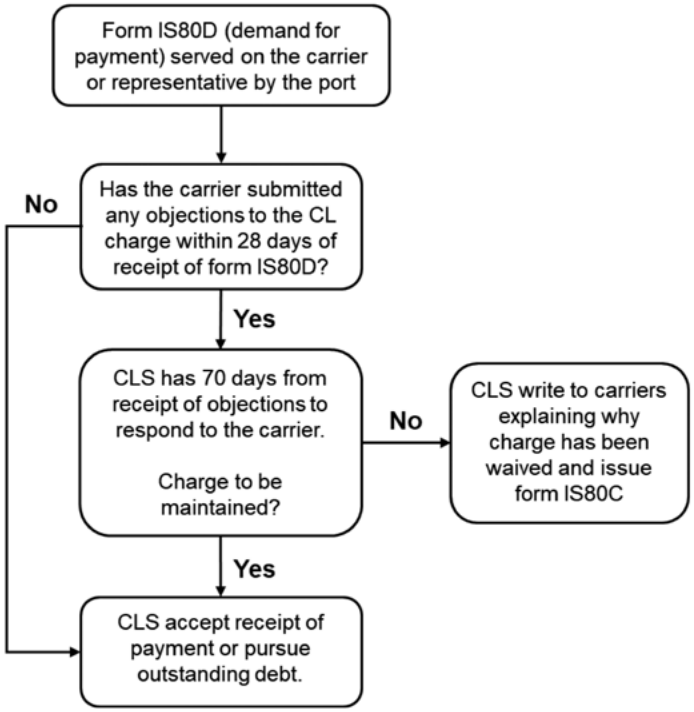
6.43 The service of an IS80D by the BFSO imposes the CL charge on the carrier. The guidance states that the form "must be served by hand or sent by fax or recorded delivery", and a copy sent to CLS. Meanwhile, ports are instructed to "submit [promptly] monthly returns[s] for cancelled charges" to CLS "including nil returns".

6.44 The IS80D sets out details of the IDA and arrival (date, port of embarkation, flight number/ship) and the reason for the charge), the amount (£2,000) and various means of payment, which must be received within 30 days. It informs the carrier how they can object (within 28 days) to the Secretary of State, or appeal (also within 28 days) "to the Court". Although the IS80D does not say so, the carrier may lodge an objection or an appeal regardless of whether they have previously made representations to Border Force about the 'Notification of potential liability to charge' (from IS80B).

CLS actions

6.45 While Border Force's involvement ceases after the IS80D has been issued, 'Carriers Liability Section 40 charges: best practice' includes a flowchart for the CLS process. Again, this is clear about the forms required and the timescales. See Figure 15.

Figure 15



Linking Inadequately Documented Arrivals to flights – Use of CCTV evidence

6.46 It is frequently the case, particularly at larger airports, that an IDA cannot or will not identify the inbound service on which they arrived.

6.47 In these circumstances, the officer should record the date and time of the encounter, the IDA's statement, and any evidence of possible previous location (for example, clothing, currency, bus or rail tickets in the IDA's possession). This information, together with a photograph, should be passed to the Border Force closed-circuit television (CCTV) linking team at the port to try to identify the service the IDA arrived on.

6.48 This can be a time-consuming process, especially if the person has attempted to change their appearance after leaving the aircraft, transits between terminals or hides within the port for several hours before presenting themselves or being discovered.

6.49 The guidance refers to two possible results from successful CCTV searches:

- confirmed link – one which is definitive and not in any reasonable doubt, for example, where there is a dedicated camera covering just one gate.
- unconfirmed link – one which is not definitive, for example, where there is a possibility of arrivals from two or more flights merging on a camera.

6.50 Inspectors saw no evidence of any national training in relation to CCTV linking, nor of any 'evidential' standards. They found that the use of CCTV varied significantly at the three airports they visited: Heathrow, Stansted and Manchester.

6.51 [redacted]

6.52 [redacted]

6.53 [redacted]

Paper files and electronic records

6.54 Border Force officers record CL case actions and decision reasoning and outcomes on a paper CL file, which remains at the port unless CLS requests it to deal with representations or objections. This makes reviewing CL work at the ports by CLS much more difficult as CLS staff need to examine papers or scanned copies to assess the decisions and outcomes.

6.55 In early 2020, Border Force at Gatwick conducted a two-week pilot creating a digital version only of CL cases to assess the viability and impact of dispensing with the paper file version. The pilot was limited to undocumented cases. Border Force told inspectors that it had gone well, and the Gatwick Airline Liaison Section was confident that it would deliver a more time-efficient process. However, other priorities meant that it was not the right time to extend it.

6.56 Meanwhile, the Heathrow Airline Liaison Unit recommenced the pilot from July 2020, and by September it had been adopted as 'business as usual' for all Heathrow CL cases. The benefits were: it was greener, cheaper and quicker to raise files (information could be copied and pasted, which also reduced errors and made records more legible); it saved on storage; records were readily accessible to anyone who needed to access them. In September 2020, inspectors were told that the pilot had been discussed at Border Force Director-level with a view to sponsoring its roll-out to all ports.

6.57 'Carriers Liability Section 40 charges: best practice' also requires Border Force officers to create an entry on CID. It tells them that they:

> "… must raise a Section 40 file containing all supporting documentation, for example, surveillance reports and photographs and complete a no document pro forma (Annex 5 – no document pro forma). You must record the case on CID as a Section 40 case with the inbound legs recorded as "not known"."

6.58 Inspectors asked the Home Office for case reference numbers for all IDAs who had arrived between 1 April and 30 June 2019. The Home Office provided a list of 1,636 references, from which inspectors selected 200 to examine: 100 'technical'[45] cases and 100 'harm'[46] cases".

6.59 Figure 16 shows the 200 cases broken down by outcome.

Figure 16
Breakdown of CID record sample from 1 April to 30 June 2019

Outcome		Technical	Harm
No record on CID		0	2
Waived	At IS80A stage	9	13
	At IS80C stage	38	49
	By CLS	3	3
Charge levied		43	22
Outcome unclear from CID		7	11
Total		**100**	**100**

6.60 The CID records for CL cases were generally limited to a note of key dates in the process and the authorising officer's details, although the authorising officer fields was left blank in 13 (6.5%) of the 200 cases examined. The reasoning behind the decision was not recorded.

6.61 Here the guidance could be more explicit. It simply states:

> "You must update the case information database (CID) accordingly to show an outcome on the CL screen."

6.62 Inspectors checked the 'Carriers' Liability' training materials used with new Border Force officers (version 3.0 dated July 2019). These did not refer to CID. Inspectors therefore asked what other guidance existed to help officers understand what they should record on CID. Border Force responded:

> "We have not been able to identify any further guidance, documents, or communications related to the CID CLA screen".

45 "Technical" cases include where the passenger arrives with no visa, an expired visa or a deferred visa (where the visa has been issued but is not yet valid).

46 "Harm" cases include no document, mutilated, forged, falsified, fraudulently obtained document, imposter etc

6.63 ICIBI has repeatedly challenged Border Force about its record keeping. The response has been that officers are expected to meet any legal requirements or mandated standards, but beyond that their operational tasks are the priority. The poor quality of CID CL records is therefore unsurprising, but still unacceptable and unhelpful to any attempts to oversee or provide assurance of the CL scheme, including producing meaningful management information.

6.64 Oversight and assurance are further complicated by the fact that CLS does not routinely use CID to record its actions and decisions when responding to objections from carriers, assisting the Government Legal Department with appeals preparation, or collecting and chasing payments. Instead, CLS uses a bespoke Excel spreadsheet and the Home Office's business support system, Metis, to process charges.

6.65 Within the file sample, only a third (65) of the CL cases initiated by Border Force clearly resulted in a charge being levied (the outcome in a further 18 cases was unclear), while 87 were waived at the IS80C stage, which should follow representations to the BFSO from the carrier. However, in nine of the 49 "Harm" cases and nine of the 38 "Technical" cases, the CID record contained no explanation of the waivers.

6.66 The CID record contained no explanation in 21 of the 22 CL cases were the Border Force Officer encountering the IDA decided on "no further action" and issued an IS80A. The exception was one of the nine "Technical" cases.

CLS waiver data

6.67 CLS provided data for the reasons it had waived a CL charge in 2019. See Figure 17.

Figure 17
CL charge waivers by CLS in 2019

Recorded reason	Total
Approved Gate Check (AGC) Case	1,262
Falsity not reasonably apparent	168
Fraudulently obtained document	16
Document no longer available for examination	85
Further evidence produced by carrier	544
Insufficient evidence of carriage	84
Interrupted Surveillance/post arrival linkage	1
No charge in law	207
Miscellaneous	163
Passenger accepted as refugee	0
IO's minute flawed/poor file preparation	69
Failure to copy travel document or evidence of carriage	8
Failure to serve notice on carrier within proper time limit	72
Technical charge waivers	458
Total	**3,137**

6.68 However, the data was caveated:

> "CLS have provided this data, on the basis that:
>
> - this data is based on information provided by ports to CLS. Whilst CLS chase on a monthly basis, they do not always receive a response
> - CLS can only give assurance that it is correct as notified to CLS, and not its accuracy at source
> - CLS do not own this data or have any input as to its accuracy.
> - for the reasons given above, CLS recognise it to be incomplete"

6.69 While inspectors could not be sure how much reliance to place on the data, it seemed likely that the main reasons for CLS waivers was that the carrier had Approved Gate Check (AGC) status or was able to provide evidence that a passenger did produce the required documents when they embarked for the UK.

Approved Gate Check (AGC) scheme[47]

6.70 In 1991, the Home Office introduce an Approved Gate Check (AGC) scheme to incentivise carriers to comply with the CL regime. CLS will waive some of the charges for which a carrier is liable where they have AGC status.

6.71 The AGC scheme is open to air and sea carriers, who must apply to CLS for AGC status for a particular route. AGC status is route-specific. There is no fee, but the carrier is expected to pay for incidental costs arising from flights, food and accommodation for Home Office staff (either CLS or an ILO or ILM) where they need to carry out an inspection of the carrier's operation or provide training.

6.72 AGC status is granted where CLS is satisfied that there is:

- an audited high standard of document checking and security procedures at a port of embarkation,
- a good level of co-operation from the carrier, and
- a satisfactory record in paying outstanding charges.

6.73 If an application is successful, CLS grants AGC status initially for six months, at which point it is reviewed and may be extended for a further six months. After a year, reviews are annual. CLS can terminate an AGC agreement if patterns of IDAs indicate that the standard of checking is no longer satisfactory or if the other criteria are not being met.

6.74 CLS told inspectors that, at the end of 2019, 70 airlines with a total of 479 routes had 'active' AGC status, along with two sea carriers on four crossings.

6.75 Carriers/routes with AGC status receive a CL waiver in two instances:

- "No Document Arrival" (where a passenger fails to produce any document to the Border Force officer when asked to do so)

47 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275925/AGC_Fact_Sheet_for_Carriers_V3_Jan_2014.pdf

- Some “Mutilated Document Cases” (where a passenger rips out a visa or other endorsement from their passport en route to the UK)

6.76 In addition, AGC status allows for two “Technical charge waivers” per quarter per AGC route. Technical charges apply where the passenger arrives with no visa, an expired visa or a deferred visa (where the visa has been issued but is not yet valid). Given the caveats regarding the CLS waiver data, inspectors did not attempt to examine how many of the 458 recorded for 2019 were in respect of AGS carriers/routes.

Guidance and support for carriers

Guidance

6.77 ‘Carriers Liability Section 40 charges: best practice’ is intended for Home Office staff. Separate guidance, ‘Charging Procedures – A Guide for Carriers – Section 40 The Immigration and Asylum Act 1999 (as amended)’,[48] is published on GOV.UK.

6.78 At the time of this inspection, the latest version was Version 7, which was published in November 2014. However, a search of GOV.UK also returned an earlier document with the same title., issued in 2007 and referring to “the Immigration Service”.[49] Though unlikely to confuse carriers, the older document should be removed unless it serves a particular purpose. Similarly, having reviewed its internal guidance, Border Force should consider whether its guidance for carriers, which appeared to inspectors to be comprehensive, needs to be updated.

Immigration Enforcement International (IEI)

6.79 Immigration Enforcement International (IEI), until 2016 known as the Risk and Liaison Overseas Network (RALON), has 83 Immigration Liaison Officers (ILOs)[50] and 36 Immigration Liaison Managers (ILMs)[51] based in 34 locations around the world.

6.80 Their duties include working with carriers, their representatives, port operators and host immigration and police authorities to reduce illegal migration to the UK, which involves providing training and real-time support to spot and prevent inadequately documented passengers from boarding services at the point of embarkation.

6.81 Inspectors examined the IEI training package used with airlines and handling agents.[52] This appeared extensive and had been adapted for different regions (IEI had eight). It covered:

- document validity (including emergency and refugee documents)
- UK visa requirements and validity
- transiting the UK without a visa
- UK residence permits (vignettes, stamps and cards)
- EEA family permits

48 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380616/Charging_Guide_Nov_2014_Version_7.pdf

49 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257587/carriersliabilitychargingu1.pdf The Immigration Service ceased to exist under that name on 31 March 2007. The 2007 version is 53 pages in length, while Version 7 is 26 pages. However, this is mostly accounted for by the removal of seven of the eight Appendices from the 2007 version, six of which were copies of sections of legislation pertinent to CL charging.

50 76 permanent and 7 temporary staff totalling 67.5 FTE (full time equivalent)

51 36 permanent staff totalling 32 FTE.

52 Companies contracted by airlines to provide staff who check-in passengers and process baggage.

- the Authority to Carry (ATC) scheme – see section 6.106
- profiling indictors and trends
- potential abuse of the Common Travel Area[53] (CTA)
- passenger intentions
- document checking (techniques that require no specialised equipment)
- awareness of imposters
- common high-risk scenarios
- expected actions upon encountering a suspect passenger / document
- vulnerability issues – e.g. modern slavery and trafficking – including behavioural indicators
- points of contact including out of office hours

6.82 In February 2020, inspectors spoke with ILOs and ILMs in Madrid about erroneously documented passengers and carriers' responsibilities. During one interview, they were told:

> "I see my role as stopping people getting on planes. The CL charges are designed to influence behaviour. I remind in every training that they [carriers] have a responsibility under UK law."

6.83 ILOs and ILMs receive real-time enquiries and referrals from check-in staff, immigration and police officers at the embarkation controls, and sometimes from airline or ground handling staff undertaking a second, pre-boarding document check at the gate. Where possible, ILOs and ILMs attempt to provide guidance or advice to enable a decision to be made about allowing or denying boarding in time for the flight to depart on schedule. The decision rests with the carrier. IEI makes a record of calls, the advice given and the carrier's decision, where known, to inform the overall intelligence picture.

6.84 'Out of hours', or when an ILO or ILM is unavailable, carriers and handling agents are directed to a UK telephone number, which is manned 24/7/365 by Immigration Intelligence Centre (IIC) staff, who advise the carriers and inform the relevant ILOs and ILMs[54] about the advice they have provided.

Denied boarding

6.85 The primary objective of the CL scheme, and the advice and support provided to carriers by IEI, is to stop inadequately documented passengers from embarking for the UK.

6.86 Collecting accurate information on the numbers of people denied boarding is difficult because carriers are not required to report this information to Border Force. However, Immigration Intelligence provided inspectors with denied boarding data taken from a live operational database for April 2008 to December 2019. See Figure 18.

53 CTA – A long-standing arrangement between the UK, the Crown Dependencies (Bailiwick of Jersey, Bailiwick of Guernsey and the Isle of Man) and Ireland which established cooperation between respective immigration authorities enabling British and Irish citizens to move freely between, and live in, these islands.

54 By email to the duty inbox where the ILO/ILM is located.

Figure 18

Immigration Intelligence data for IEI-supported denied boardings

Year	'Harm' Denied Boarding	'Technical' Denied Boarding	Total Denied Boarding
2008	4,148	3,120	7,268
2009	3,691	4,408	8,099
2010	3,156	4,689	7,845
2011	4,341	4,137	8,478
2012	3,710	4,805	8,515
2013	4,165	5,268	9,433
2014	4,313	7,445	11,758
2015	5,709	8,134	13,843
2016	5,710	6,138	11,848
2017	5,836	6,048	11,884
2018	7,686	4,388	12,074
2019	9,609	4,276	13,885
Total	**62,074**	**62,856**	**124,930**

6.87 Immigration Enforcement caveated the data:

> "Current processes of retaining a record of all denied boarding's (sic) supported by overseas teams activity centrally have been in place since 2008.
>
> Denied Boarding data is not published and it is accepted may not reflect the total number of passengers denied boarding by airlines following the training, guidance and individual case discussion with officers overseas. It reflects those reported to us by airlines rather than all their actions."

6.88 Though incomplete, the data appears to highlight two trends in the numbers of IDAs denied boarding where IEI has provided support:

- having peaked in 2015, 'technical' IDAs denied boarding are falling year-on-year
- since 2015, 'harm' IDAs denied boarding have been increasing

6.89 Inspectors saw no evidence that the Home Office had sought to understand the reasons for this and to what extent it reflected a change (and growth since 2014) in the IDA threat or a change in IEI's interactions with carriers.[55]

55 In its factual accuracy response, the Home Office commented: "No evidence was sought of the work done to counter the threat of illegal migration by air, nor was any view sought from either CLS or IEI on reasons behind this shift. Whilst the inspectors may not have seen evidence, Border Force and IE do work closely on the analysis of intelligence on IDAs, with six analysts producing a programme of monthly, quarterly and ad hoc assessments. These reports inform a range of strategic and operational activity, including a regular joint Action Group meeting, which not only seeks to understand the reasons for trends, but to address them." The Home Office did not provide any reports or any further details, so inspectors were unable to examine whether this work fully addressed their concerns.

Legal challenges to specific CL penalties

6.90 In 2015, Ryanair appealed at the County Court against three CL demands for payment. One case involved two falsified passports detected at Edinburgh airport. The other related to a 'no document' case encountered at Gatwick airport.

6.91 The Edinburgh case concerned two Albanian nationals who had travelled on falsified Greek passports. Border Force issued a 'Charge notice – Notification of demand for payment' (form IS80D) to Ryanair after officers at Edinburgh determined that the passports were forged based upon two specific issues:

- there was no green to blue colour shift in the ink spelling the word 'HELLAS' when holding the passports in light and slightly tipping them
- the Greek flag concealed in the top left-hand corner of the biodata page was slightly cut off.

6.92 Ryanair made a representation locally to Border Force managers that the falsities were not "reasonably apparent". Border Force managers disagreed. However, Border Force accepted that the falsified passports were reviewed by the Spanish police at border control in Palma de Mallorca before reaching Ryanair's ground control staff and that the Spanish police did not identify them as suspicious.

6.93 Ryanair appealed the Border Force decision to the Central London County Court. On 21 January 2016, the Court issued its opinion in favour of Ryanair. The Judge wrote that "it is incumbent upon the UK Government to provide specific guidance as far as possible as to what the basic level of knowledge referred to in the current guidance actually is and what is expected of those implementing it." and "to provide the most specific and explicit guidance it reasonably can as to what is reasonably apparent".[56]

6.94 In February and September 2016, CLS wrote to Border Force staff via internal notices entitled 'CLS Bulletin for Border Force'. Both notices informed staff that the County Court judgment was "not binding". The September 2016 CLS Bulletin further stated:

> "It is important to remember that this was not a binding judgment and whilst we should be mindful of the judge's comments, Border Force CL teams should continue to consider forgery cases on their own merits and apply the 'reasonably apparent' test as before."

6.95 The Gatwick case concerned a passenger who claimed to be an Iranian national who had no identity document when he presented himself on 11 July 2015 to Border Force at the primary control point (PCP) at Gatwick airport. Linking back through the airport operator's CCTV footage, Border Force established that the passenger had arrived from Seville on a scheduled Ryanair service. Border Force deemed Ryanair responsible for carrying the passenger and issued an IS80D.

6.96 On 15 September 2015, Ryanair appealed the decision on the grounds that their records indicated that the passenger had checked in with a document (a German passport). The Home Office concluded that it should concede, and the case did not go to court.

56 https://www.bailii.org/ew/cases/EWFC/OJ/2016/B5.html

6.97 Subsequently, the policy for undocumented arrivals to the UK was changed, with the majority of CL charges waived, but with the onus on the carrier to demonstrate that its document checking procedures were robust in order for the charge to be waived. Border Force ports teams were alerted to the change in February 2016, via a 'CLS Bulletin'.

6.98 In October 2020, the Home Office told inspectors that: "the last Carriers' Liability case which was challenged through the County Court was in 2018 and was found in favour of the Secretary of State."

Operational perspectives

Border Force

6.99 In February 2020, inspectors spoke to Border Force frontline staff and managers, ranging from Border Force Officers to Assistant Directors (Grade 7), at three airports: Heathrow, Stansted and Manchester.

6.100 A number of common themes emerged from the interviews and focus groups:

- CL work was not regarded as a priority; it was time-consuming but relatively easy to complete as there were good "check sheets" for completing the paper files
- seasonal workforce (SWF) staff were not given access to CID and relied on Border Force officers to complete a CL record on CID on their behalf
- (as OAD had found) where there was a specialist CL officer or team the process was "smoother" for frontline staff
- at £2,000 per IDA, the CL charge was not high enough to act as a genuine incentive to carriers to comply with the scheme
- feedback from local managers and CL teams to frontline staff on CL matters and outcomes was variable, in some cases, non-existent
- "There's no point doing CL files as the fines never get paid anyway"
- CLS used to send individual "thank you" emails to originating officers when charges had been paid, but no longer did so because of staff shortages[57]
- there was limited formal training in the Border Force Officer training plan: officers are made aware of the CL scheme but do not see or put together a file until they are operational, and it would help to see and create a dummy file in training
- frontline officers were not convinced that the CL scheme was having the intended outcome, as they thought that the numbers of undocumented passengers arriving at their ports was going up.

Immigration Enforcement

6.101 Also in February 2020, inspectors spoke to staff and managers in Immigration Enforcement's Immigration Intelligence Centre and to IEI staff based in the UK and overseas.

57 In its factual accuracy response, the Home Office commented that it no longer sent "thank you" emails "as it was an inefficient use of resource". It explained: "The emails had been introduced as an incentive to remind BFOs to consider CL, but this is a mandated consideration. With thousands of charges each year, it is just not practical to individually thank officers for following due process. CLS already notify Ports if a charge is overturned, and this should suffice for performance management purposes."

6.102 A number of common themes emerged:

- CL processes and workflows need to be reviewed, with the aim of making them more efficient and effective
- Transit Without a Visa (TWOV)[58] was undesirable with "insanely complicated rules"
- the AGC status scheme needed to improve
- the CL penalty charge needed to increase to get carriers to "re-engage more seriously with the whole CL process", and serious consideration should be given to moving from a fixed penalty to an "up to" figure, dependent on the circumstances, including mitigations and repeated non-compliance
- the CL scheme needed to be better aligned and more consistent with the Authority to Carry (ATC) scheme and requirements for passenger data to avoid mixed messages to carriers
- CLS was seriously understaffed to cope with everything it needed to do to make the scheme work effectively: training, administration, quality assurance, carrier engagement, assisting policy development, collaborating with ILOs and ILMs and with IIC, carrying out AGC inspections[59]
- not all IDAs were being recorded properly at ports
- 'No document' penalty charges were almost impossible to maintain.

Future of the CL scheme

6.103 Inspectors spoke to senior managers across BICS about the CL scheme. The consensus was an external consultation and subsequent internal review were long overdue. There was also an acknowledgement that any review would need to take account of the ATC Scheme and requirements for advance passenger and crew data. These had developed individually and now needed to be considered together to ensure the Home Office's needs were met.

6.104 However, inspectors were told that a review was not a priority at present, either for BICS or for ministers and one was unlikely to take place in the foreseeable future.

6.105 When one does, managers believed that the areas that would benefit most from examination were:

- ownership and accountability
- the resources required to administer, develop and operationalise the scheme effectively
- data collection and quality assurance, including data accuracy and completeness at each stage of the process
- record keeping – of information and decisions – in a system that produced reliable, real-time management information
- the level of the penalty, and whether to have a scale dependent on circumstances, in line with other Home Office civil penalty schemes
- communications – with staff and carriers about the impact and benefits of the scheme

58 The Transit Without a Visa (TWOV) concession allows some visa nationals to enter the UK without a UK visa in order to recheck bags, stay overnight, or change airport for onward connections to other countries.

59 In its factual accuracy response, the Home Office pointed out that "whilst CLS were currently modernising processes and seeking to adopt digital and data solutions, it was not yet possible to determine the right level of resource."

- operational practice – standards and acceptable costs in relation to the linking of inadequately documented arrivals to carriers to encompass
- analysis of the benefits and drawbacks of the AGC scheme.

Authority to Carry (ATC) schemes

6.106 Section 124 of the Nationality, Immigration and Asylum Act 2002 empowered the Secretary of State to introduce an Authority to Carry (ATC) Scheme under which a carrier could be refused authority to bring certain passengers to the UK.

6.107 Carriers are required to seek authority to carry all passengers who fall within the scope of such a scheme. If the carrier fails to seek such authority, or if the carrier brings a passenger to the UK in respect of whom authority has been denied, the carrier is liable to a financial penalty.

6.108 The first ATC scheme to be introduced under this legislation was the 'Security and Travel Bans Authority to Carry Scheme 2012'. This came into effect in July 2012 and related only to air passengers. As GOV.UK explained, its focus was national security:[60]

> "Changes to pre-departure checks [have been made] to better identify people who pose a terrorist threat and prevent them from flying to or from the UK."

6.109 The financial penalty regime for failure to comply with the 2012 Scheme was set out in the 'Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012'.[61] Under these Regulations, the penalty was set at "an amount not exceeding £10,000".

6.110 The 'Authority to Carry Scheme 2015'[62] replaced the 'Security and Travel Bans Authority to Carry Scheme 2012'.[63] The new Scheme, which came into force in March 2015, lists the categories of persons who may be refused authority. As well as individuals who have been subject to an EU or UN travel ban, or an exclusion or deportation order, or pose a national security threat, the list includes:

> "individuals using an invalid travel document that is, or appears to be, a passport or other document which has been lost, stolen or cancelled, has expired, was not issued by the government or authority by which it purports to have been issued or has undergone an unauthorised alteration."

6.111 It covers:

- all individuals (including British citizens)
- inbound and outbound travel
- air, maritime and international rail services

60 https://www.gov.uk/government/publications/the-security-and-travel-bans-authority-to-carry-scheme-2012

61 http://www.legislation.gov.uk/uksi/2012/1894/contents/made

62 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419838/49013_Official_ATC_Scheme_accessible.pdf

63 Section 22(10) of the Counter-Terrorism and Security Act 2015 repealed the legislation under which the 2012 Scheme was enacted.

6.112 Under the 2015 Scheme, a carrier that has been served with a written requirement by Border Force[64] (by means of form IS72) is required to:

a. seek authority to carry a person
b. provide specified information by a specified time before travel
c. provide and receive information in a specified manner and form (such as by means of an interactive messaging system)
d. not carry a person they have been refused authority to carry"

6.113 If a carrier breaches any of the requirements of the scheme, they may be liable to a financial penalty, details of which are set out in 'The Authority to Carry Scheme (Civil Penalties) Regulations 2015'.[65] Under these Regulations, the maximum penalty is £50,000.

6.114 Along with an explanatory note, 'Authority to Carry Scheme 2015', published in March 2015, in June 2015 the Home Office issued guidance to carriers entitled 'Passenger Data: Guidance for Commercial Aviation Carriers on Data Quality and the Passenger, Crew and Service Information (Civil Penalties) Regulations 2015'.[66] This guidance contains details of the civil penalty process for passenger, crew and service information breaches, with an easy-to-follow flowchart.

6.115 The guidance also explains the factors that will be taken into account when deciding on whether to pursue a financial penalty. These "may include": previous cooperation with UK requirements; previous breaches; reasonable steps taken by the carrier; deliberate wrongdoing.

6.116 A 'Civil Penalty Calculator' sets out how the Home Office will determine the penalty amount for a first breach and for a second or subsequent breach. The starting amount for the former is £5,000, which may be reduced through "mitigating circumstances" to a minimum of £2,000, thereby aligning it with the Carriers' Liability Scheme. The starting amount for a second or subsequent breach is £10,000, with a minimum of £7,000.

6.117 The maximum penalty for a passenger, crew and service information breach is £10,000. The passenger data guidance refers to "the maximum penalty" for "Deliberate wrongdoing" and "Serious breach of the information requirements [which] could include situations where a carrier repeatedly fails to send any data on time, where a carrier repeatedly sends inaccurate or incomplete data, or repeatedly fails to send data at all." The maximum penalty for an authority to carry breach is £50,000.

6.118 In reality, this has not been tested in relation to the non-provision of data as no penalties had been raised against carriers for this since the 2015 ATC scheme was introduced. Border Force told inspectors it was keen to create a stable process for accurate, timely and consistent data transfer and felt that this was best achieved through mutually beneficial continuous improvement rather than by imposing fines on carriers as "punishments" while work was ongoing.

64 Under paragraph 27 and 27B of Schedule 2 to the Immigration Act 1971. Or by a police officer under section 32 of the Immigration, Asylum and Nationality Act 2006.

65 http://www.legislation.gov.uk/uksi/2015/957/contents/made

66 https://www.eraa.org/sites/default/files/carrier_guidance_information_regulations.pdf

6.119 Overall, according to Home Office data, 13 ATC penalties had been enforced up to the end of 2019. These were against seven different carriers on 12 routes and resulted in receipts of £157,500. See Figure 19.

Figure 19
Authority to Carry Penalties 2015 to 2019

	2015	2016	2017	2018	2019
Notice of potential liability issued	17	11	8	6	4
Warning notice issued	3	6	5	4	0
Penalty notice issued	0	4	3	2	4
Other[67]	14	1	0	0	0

67 Following consideration of representations from carriers in response to the notice of potential liability, carrier engagement was pursued to address underlying data or operating issues.

7. Inspection findings: Sponsorship compliance

UK Points-Based System – Tiers 2, 4 and 5

7.1 The UK points-based system (PBS) was introduced in 2008. Under PBS, non-EEA and Swiss nationals may apply for a visa to enter the UK for the purpose of study ("Tier 4")[68] or employment ("Tiers 2 and 5")[69] under the sponsorship of a Home Office-licensed educational institution or employer.[70] The sponsor issues a Certificate of Acceptance to Study (CAS) or Certificate of Sponsorship (CoS), which is used by an applicant in support of their application to the Home Office for the appropriate visa. See Figure 20.

Figure 20
Characteristics of PBS visas and sponsors

PBS Tier	Tier 4	Tier 2	Tier 5
Type	**Student**	**Worker**	**Temporary worker**
Sub-tiers	Applicants over 18 are 'General' and those under 18 are 'Child'[71]	'General' – main category for skilled workers; 'Intra-Company Transfers' – for international employers moving existing workers to the UK; 'Sportsperson' and 'Minister of religion' – specialist categories	Seven sub-tiers including charity worker, creative and sporting, seasonal worker and youth mobility[72]
Visa length	The duration of a course, with some additional months stay permitted dependent on the length of the course[73]	Up to five years	Up to two years
Visa sponsor	Educational institution	Employer	Employer

68 https://www.gov.uk/tier-4-general-visa

69 https://www.gov.uk/tier-2-general

70 Sponsors may hold more than one type of licence. For example, a higher education establishment enrolling non-EEA students (Tier 4) may also employ non-EEA academics (Tier 2 or 5).

71 In its factual accuracy response, the Home Office clarified that: "A 16-17-year old can apply under Tier 4 (General) (as was) or the Tier 4 (Child) route, depending on where they will be studying and the nature of their studies."

72 https://www.gov.uk/browse/visas-immigration/work-visas

73 T4_Migrant_Guidance_October_2019.pdf

Figure 20 *continued*

Characteristics of PBS visas and sponsors

PBS Tier	Tier 4	Tier 2	Tier 5
Type	**Student**	**Worker**	**Temporary worker**
Sponsor licence duration	Four years	Four years	Four years
Fee for first-time licence	£536 initial fee, followed by a Basic Compliance Assessment (BCA) every 12 months, costing £536	£536 for "small" businesses (annual turnover <£10.2 m, ≤50 staff)[74] £1,476 for 'large' businesses	£536 (flat fee)
Sponsor licence status	'Tier 4 Sponsor' and 'Probationary'[75] (for initial year of being granted a licence). 'Legacy' status refers to an institution no longer accepting new students but continuing to educate current students[76]	Either 'A-rated' or 'B-rated'. B-rating is a short-term measure indicating improvement is required	Either 'A-rated' or 'B-rated'. B-rating is a short-term measure indicating improvement is required
Sponsor licences, like visas, are also grouped by sub-tier. The sub-tiers may impose different restrictions on the migrant and responsibilities for the sponsor.			

Sponsor duties

Principles

7.2 PBS guidance, published by the Home Office, states that:

> "Sponsorship is based on 2 fundamental principles:
>
> - those who benefit most directly from migration (that is the employers, education providers or other bodies who are bringing migrants to the UK) must play their part in making sure the system is not abused
> - the Home Office needs to be sure those applying to come to the UK to do a job or study are eligible to do so, and a reputable employer or education provider genuinely wishes to employ or enrol them"[77]

74 Apply for your licence

75 Tier 4 sponsor status' prior to 6 April 2015 were 'highly trusted' and 'A-rated'. The Home Office commented in its factual accuracy response that the 'highly trusted sponsor' status "was replaced by the Basic Compliance Assessment."

76 In its factual accuracy response, the Home Office noted that: "from 5 October, 'legacy sponsor' status has been removed as part of the simplification of the rules and policy. Legacy sponsors will instead be zero CAS rated, in line with the sanction for higher education providers and independent schools which fail Educational Oversight. https://www.gov.uk/government/publications/student-sponsor-guidance

77 PBS-sponsorship-sponsor-mgmnt-compliance-v15.0.PDF

7.3 The Home Office emphasised to inspectors that it is key that the sponsor can be trusted to act in accordance with the Immigration Rules. The 209-page 'Tiers 2 and 5: guidance for sponsors', published in April 2020, also makes this clear:[78]

> "When a sponsor is granted a Tier 2 or Tier 5 licence, significant trust is placed in them. With this trust comes a direct responsibility to act in accordance with the Immigration Rules, all parts of the Tiers 2 and 5 sponsor guidance, and with wider UK law."

7.4 All sponsors are expected to perform certain duties, some of which apply to all sponsors, some to a particular tier or sub-tier. Their purpose is explained in 'Tiers 2 and 5: guidance for sponsors'. It is to:

"
- prevent abuse of assessment procedures
- capture early any patterns of migrant behaviour that may cause concern
- address possible weaknesses in process which can cause those patterns
- monitor compliance with Immigration Rules"

7.5 The duties that apply to all sponsors, include: keeping a record of the sponsored migrant and reporting notifiable events, such as the non-attendance or a change in circumstances within 10 working days; reporting any significant change in the sponsor's circumstances within 20 working days; compliance with immigration law, and other relevant legislation and regulations; and, cooperating with Home Office staff when required to do so, including providing information and documentation.

7.6 Tier 4 sponsors are also required to apply for a Basic Compliance Assessment (BCA), which measures an institution's performance against various targets, every 12 months. Sponsors of students under the age of 18 have additional safeguarding responsibilities[79] which include ensuring that suitable arrangements are in place for travel, reception, care and accommodation for the child in the UK.

Compliance measures

7.7 Where a sponsor failed to comply with its duties, the Home Office has a range of measures open to it. For the most serious breaches, the sponsor licence may be revoked, and the sponsor is barred from re-applying for a licence for a "cooling off" period of 12 months in the case of Tier 2 & 5 and two years ("unless there are exceptional circumstances") in the case of Tier 4. However, the Home Office's aim is to encourage compliance, which means it may suspend rather than revoke a licence and/or agree an action plan with the sponsor to prevent further breaches.

Sponsor Registers

7.8 Tier 4, and Tiers 2 and 5, 'Register[s] of licensed sponsors' are available on the GOV.UK website and are updated every business day.[80]

7.9 Since 2014, while there has been turnover in the sponsors, the numbers of registered Tier 2 and 5 sponsors have remained broadly constant, with 2019 showing the highest numbers for both.

78 2020-04-03_Tier-2-5-sponsor-guidance_Apr-2020_v1.0.pdf
79 Tier_4_Sponsor_Guidance_-_Doc_2_-_Sponsorship_Duties_2019-10_FINAL.pdf
80 register-of-licensed-sponsors-workers & register-of-licensed-sponsors-students

7.10 Meanwhile, the number of Tier 4 sponsors has reduced year-on-year, with the 2019 total standing at roughly three-quarters (73.5%) of the number in 2014. See Figure 21.[81]

Figure 21
Number of sponsors on each register as at the year end

Year	Tier 4	Tier 2	Tier 5
2014	1,590	27,088	3,622
2015	1,466	27,489	3,752
2016	1,323	27,890	3,867
2017	1,239	27,161	3,797
2018	1,212	27,519	3,867
2019	1,169	28,734	3,952

7.11 Between 2009 and 2013, the Home Office made significant efforts to ensure that Tier 4 licence holders were compliant. During this period, it suspended 1,178 Tier 4 licences and revoked 805. Then, in early 2014, a BBC Panorama documentary "uncovered systematic fraud in the student visa system", specifically in relation to English Language testing.[82] The Home Secretary ordered a "tightening the rules to cut out abuse in the student visa system."[83] Tighter controls were introduced for educational institutions in July 2014. This included reducing the percentage of rejected (by the Home Office) sponsorships from a "Highly Trusted Sponsor" before possible compliance action from 20% to 10%.

7.12 UKVI's Sponsorship business area ("Sponsorship") was confident that both the Tier 2 and 5 and Tier 4 registers were more robust and compliant than they had been in the early years of operation, because of the actions taken to remove non-compliant sponsors and stronger systems to assure new sponsor applicants.

7.13 Inspectors were told that, for new Tier 2 and 5 applicants, once an application is submitted electronically, the applicant receives an email that asks a number of generic questions. If, after it has considered the application and the documents submitted, UKVI requires additional information it will tailor its request to that application. The Home Office said that, in some instances, by seeking information up front, an applicant is deterred from pursuing their application and does not send the mandatory documentation. In such cases, the application is rejected, and the application fee is returned.

7.14 Sponsorship also risk-assesses sponsor licence applications. Inspectors were told initially that it aimed to conduct pre-licence visits in 11% of cases, but later that there was no target and that "each application is considered on its own merits". In August 2020, 14% of applications were referred for pre-licence visits. The purpose of such a visit is to assess a would-be sponsor's suitability to hold a licence and ability to comply with the sponsor duties, and Sponsorship considered it an effective measure to weed out those most likely to be non-compliant. Meanwhile, all educational establishments applying to become a Tier 4 sponsor should receive a pre-licence visit.

81 https://www.gov.uk/government/publications/sponsorship-transparency-data-february-2020
82 https://www.bbc.co.uk/news/uk-26024375
83 https://www.gov.uk/government/news/new-immigration-measures-announced

7.15 In addition, Tier 4 sponsors must apply for a Basic Compliance Assessment (BCA) every year via the Sponsorship Management System (SMS).[84] Failure to do so may result in revocation action being started against the sponsor. The BCA focuses on three core requirements:

- a visa refusal rate of less than 10 per cent
- an enrolment rate of at least 90 per cent, and
- a course completion rate of at least 85 per cent.[85]

7.16 While a breach of these requirements will not necessarily lead to compliance action, it will be flagged for further examination by Compliance Caseworkers and considered when assessing whether further action, such as a compliance visit, is required.[86]

7.17 As a monitoring tool, the BCA enables Sponsorship to have some oversight of the Tier 4 Register and its performance and provides an indication of the sponsors that might pose a greater risk.[87] There is nothing similar for Tier 2 and 5 sponsors, although in April 2020 Sponsorship was exploring the use of Digital Assurance Audits (DAA). These would be an additional process to reinforce assurance of the employer sponsor registers through remote assurance practices, for example the use of telephone interviews with sponsors, with cases referred to the Sponsor Assurance and Investigation Team (SAIT) to assess and task, as appropriate.

Exit check data

7.18 Since 8 April 2015, the Home Office has collected data about individuals leaving the UK. By matching data from various sources, including visas, records of entry and outbound travel data captured by carriers (Advance Passenger Information and Travel Document Information), the Home Office seeks to identify who is still in the UK who should have left.[88]

7.19 An ICIBI Inspection of exit checks[89] published in March 2018 found the Exit Check Programme had been closed prematurely and a "significant amount" of work was still required to get full value from exit checks, including "better coordination" within and outside the Home Office and improvements in data quality and completeness.

84 An online system for sponsors to manage their licence, create and assign CAS or CoS and report changes to circumstances.

85 Tier_4_Sponsor_Guidance_-_Doc_3_-_Compliance_2019-10_FINAL.pdf

86 In an addendum to its factual accuracy response, in relation to ICIBI's comment that it was "able to choose how rigorously and how often" it tested sponsor compliance, the Home Office noted: "The student sponsor guidance stipulates that sponsors must pass an annual Basic Compliance Assessment. This is not discretionary. The Compliance section of the guidance sets out the level of seriousness of various compliance failings and the sanctions process and penalty that will be applied. The Home Office must follow this guidance when considering compliance failings." It added: "the policy is that when a sponsor fails its Basic Compliance Assessment (BCA), UKVI will commence revocation action. The sponsor will be given an opportunity to make representations. There are circumstances in which UKVI will undertake a 'Discretionary assessment' of BCA, as set out in the policy."

87 In its factual accuracy response, the Home Office commented: "It should also be noted that the Basic Compliance Audit (BCA) programme was initiated in 2015. This assurance programme essentially automated some of the manual checks conducted previously at compliance / assurance stage and established an early warning system for Tier 4 licence holders and allowed a greater focus on remaining compliant. This of course was easier to introduce once the register had reached a greater level of assurance as a result of earlier compliance activity."

88 The Home Office's fourth report on statistics being collected under the exit checks explains that "The Initial Status Analysis (ISA) system combines data into identities that link an individual's travel in or out of the country with their immigration history, such as visa type and periods of leave granted. The event history is used in combination with agreed business rules in the assessment of an individual's immigration status. The system assigns a status to individuals based on this history, most commonly, those known to be compliant, late departures and those with no departure matched on the ISA system."

89 An_inspection_of_exit_checks.pdf

7.20 Since August 2017, the Home Office has published annual reports on 'statistics being collected under the exit checks', giving numbers of visas expired during the year for various cohorts, including for Tier 2, 4 and 5 visa holders, and the percentages[90] of those cohorts who are known to have departed.

7.21 The 'Fourth report on statistics being collected under the exit checks programme', covering 2018 to 19,[91] was published in August 2019. The Home Office described the numbers it contained as "experimental estimates".

7.22 Figure 22 shows the data for Tiers 2, 4 and 5. The final column is ICIBI's calculation of the number of individuals whose visa had expired who were unaccounted for based on the percentage of known departures in time. Some of these may have left the UK after their visa expired. Known late departure rates are not reported by cohort.

Figure 22
Expired visas and known departures for visa nationals 2018 to 2019

Visa type	PBS	Expired	% known departures in time	Unaccounted for
Work	Tier 2	56,123	96.1%	2,189
	Tier 5	37,231	96.3%	1,378
	Other	18,412	95.4%	847
	Tier 1	3,150	83.5%	520
Study	Tier 4	175,977	96.9%	5,455
	Short term study	107,399	98.5%	1,611
Visitors		1,369,159	96.9%	42,444
Other		49,546	73.1%	13,328
Total non-EEA visas		**1,816,997**	**96.3%**	**67,771**

7.23 There are reasons why departure data may not have been matched,[92] and limitations to the Home Office's data collection.[93] However, the figures suggest a high level of compliance for Tier 4 sponsored students (96.9%) and for Tier 2 and 5 sponsored workers (96.1% and 96.3% respectively) in terms of their departure from the UK on or before expiry of their visa.

7.24 Figures[94] for 2016 to 2017, 2017 to 2018 and 2018 to 2019 combined suggest around 9,438 (of 263,499) expired Tier 2 and 5 visa holders and 13,786 (of 459,619) expired Tier 4 visa holders

90 The second report issued August 2017 included the number of those departed, but since then only the percentage of known departures has been reported.

91 fourth-report-on-statistics-being-collected-under-the-exit-checks.pdf

92 These include; the use of a different travel document to that used to book travel, loss and renewal of a passport whilst in the UK or travel via the Common Travel Area (CTA). Inconsistencies in booking or API data may also prevent a match of data.

93 Only 89% of inbound routes have systems in place to collect passenger data – limitations being rail (0% coverage) and ferry (23% coverage) routes, though this data is reportedly mitigated by data captured at passport examination at the border or juxtaposed controls. Potential coverage of outbound routes is at 100%, however in practice the Home Office reports receipt of data for 99% of aviation voyages and does not comment on that data's completeness, it does not report a measure of voyage level data receipt for rail and maritime travel.

94 Taken from the second, third and fourth reports: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/639621/second-report-on-statistics-being-collected-under-exit-checks.pdf https://www.gov.uk/government/statistics/third-report-on-statistics-being-collected-under-the-exit-checks-programme

were unaccounted for at the end of each year. But it is not possible to say how many of these were or still are overstayers.

7.25 A sponsor's duties start on the day they assign a Certificate of Sponsorship (CoS)/Certificate of Acceptance to Study (CAS) and end when the sponsorship terminates, or the migrant leaves the UK or obtains leave to remain in a category that does not require sponsorship or with a different sponsor. The notifiable events sponsors are required to report focus on breaches of the terms on which a visa was granted rather than overstaying beyond the end of the period for which the visa is valid by which point, by definition, the sponsorship covered by the CoS/CAS will have come to an end.

Home Office structures and processes

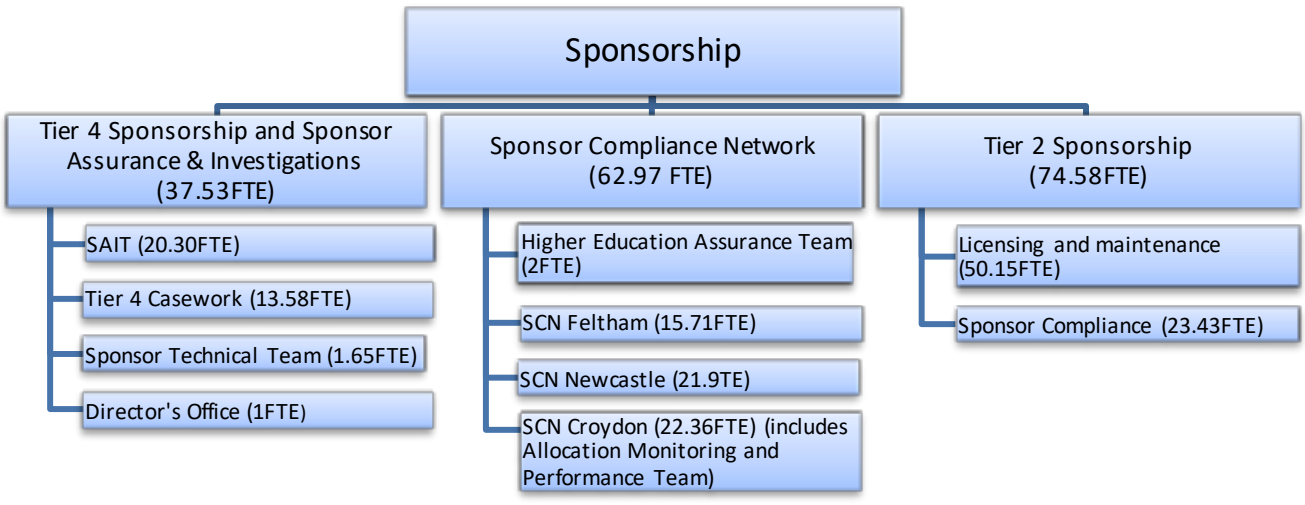
UKVI's Sponsorship business area

7.26 Sponsorship sits in UKVI's Visas and Citizenship Directorate. It is responsible for issuing sponsor licences, monitoring compliance and imposing sanctions.

7.27 Sponsorship is headed by a senior manager (Grade 6), and comprises three operational commands, each managed by an Assistant Director (Grade 7). As at 23 January 2020, Sponsorship had c. 175 full-time equivalent (FTE) staff in post. See Figure 23. Meanwhile, as at 24 March 2020, there were vacant posts in each of the three operational commands, in particular in the Sponsor Compliance Network, which showed 62.8 staff in post versus a planned complement of 77.5 FTEs, a shortfall of 14.7 (19%).[95]

Figure 23

Structure of Sponsorship's three operational commands as at January 2020



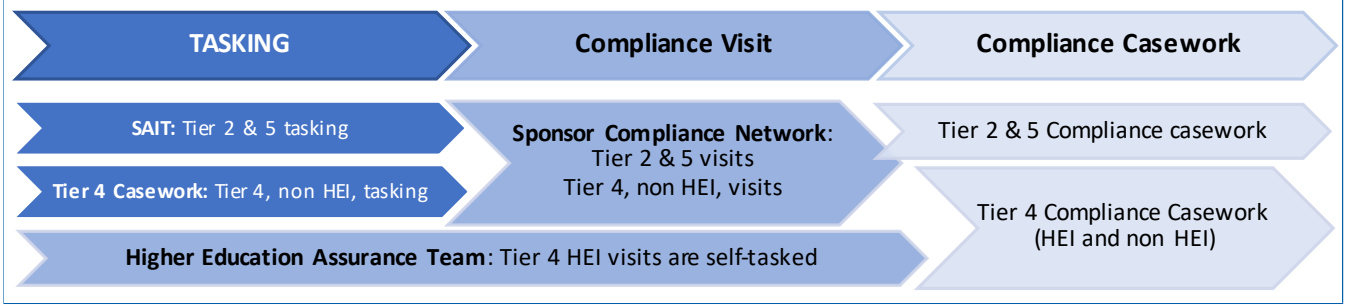
95 In October 2020, the Home Office provided revised staffing figures for SAIT (13 FTE). The change from the January 2020 figure of 20.30 FTE was not explained. The revised total for 'Tier 4 Sponsorship and Sponsor Assurance & Investigations', in which SAIT sits, was 26.23 FTE (down from 37.53 FTE). The revised total for 'Sponsor Compliance Network' (SCN) was 65.10 FTE (up from 62.97 FTE). The revised SCN figure comprised: SCN Feltham (including HEAT) 18.32; SCN Newcastle 24.28; SCN Croydon 21.49. The revised total figure for Sponsorship was 150.55 FTE.

Workflow

7.28 Figure 24 shows how work flows through Sponsorship. Workflow is managed by an Allocation Monitoring and Performance Team (AMPT).

Figure 24

Sponsorship compliance workflow



Tier 2 and 5 tasking

7.29 The Sponsor Assurance and Investigation Team (SAIT) typically tasks the Sponsor Compliance Network (SCN) with 80 to 100 sponsor visits per month, though this is flexed by agreement depending on the SCNs capacity.

7.30 SAIT relies on two main sources to inform the tasking of compliance visits; intelligence referrals from other Home Office business areas received via its email inbox and a "Tier 2 watchlist", produced quarterly by UKVI Central Operations, using intelligence "from numerous sources".

7.31 In January 2020, SAIT officers told inspectors that it received 10 to 15 referrals per week via its inbox, made up from intelligence referrals and "in-house" work generated by Casework teams. However, in January 2020, a senior manager commented that referrals had "fallen away a lot". They were unsure why. They described the intelligence picture regarding sponsors as "pretty good, but not as joined up as it could be". They believed that the work of Sponsorship was often misunderstood as being about the migrants rather than about their sponsors. This meant that relevant intelligence might not be referred. Sponsorship needed to raise its profile.

7.32 Another manager told inspectors about a recent project "to increase the understanding of when to refer cases to SAIT". This involved visits to Tier 2 and 5 entry clearance teams to speak to the managers and, sometimes, their teams to ensure they understood when and how to make referrals. It did not include Immigration Compliance Enforcement teams or other areas that might hold useful intelligence.

7.33 On receipt, SAIT assesses referrals against a checklist of risk factors, including previous compliance visits, type of allegation, source of referral, current circumstances of sponsor,[96] and allocates a score, with those scoring above an agreed total sent to a Tasking Officer (Executive Officer) for review. This may involve further checks of open source information, recent sponsorship activity and migrant history.

96 For example, are they subject to any compliance action; how many CoS/CAS have been issued by the sponsor compared to the number allocated to them; are there any concerns about any of the individuals who have been sponsored?

7.34 If the Tasking Officer judges that a compliance visit is required they complete a referral form and send it to SCN. The form provides details of the sponsor, licence history, Certificate of Sponsorship (CoS)/Certificate of Acceptance to Study (CAS) data, background, areas of concern and any interviews or action that should be performed during the visit.

7.35 In April 2020, the "Tier 2 watchlist" held 16,615 sponsors, of which 898 were risk-rated as 'Red', 5,656 as 'Amber', and 10,061 as 'Green'. Inspectors were told that "almost all" sponsors rated "Red" will have had a visit and any that had not would have been only recently added. However, SAIT staff described the watchlist as "quite a blunt instrument" and said it was used to generate "top-up" work once email referrals had been exhausted.

7.36 Tier 2 and 5 guidance warns sponsors that they will have their licence revoked if they receive an illegal worker civil penalty which is maintained at the maximum amount after appeal rights have been exhausted.[97] Tasking Officers' routine checks included the weekly spreadsheet listing illegal working civil penalties. Tier 2 Compliance Caseworkers also checked the spreadsheet, but only when a sponsor had already come to its attention.

Tier 4 tasking

7.37 Compliance visits to Tier 4 sponsors that are not Higher Educational Institutions (HEIs)[98] are tasked by the Tier 4 Compliance Casework team that is part of 'Tier 4 Sponsorship and Sponsor Assurance and Investigations' command but separate from SAIT. The visits are carried out by SCN Compliance Officers.

7.38 For HEIs, a separate 'Higher Education Assurance Team (HEAT)', comprising one Compliance Officer and one Compliance Manager, is "self-tasking". At the end of December 2019, there were 1,169 Tier 4 sponsors on the Register, of which 180 were HEIs. HEAT is responsible for managing the list of HEIs, carrying out research in the same way as SAIT, scheduling visits, preparing the visit packs and conducting the visits. Most HEIs are also Tier 2 and Tier 5 sponsors of academic staff. During visits, the HEAT Compliance Officer covers Tier 2 and 5, while the Compliance Manager conducts the Tier 4 audit.

7.39 Sponsors identified as "high risk" from intelligence analysis[99] are prioritised for a compliance visit, while routine "assurance visits" are tasked according to the date of last visit. If an educational institution does not have students when it reaches the top of the routine visit list the visit does not go ahead. However, inspectors were told that this was uncommon.

7.40 The HEAT Compliance Officer and Compliance Manager were not collocated. One was based in Feltham, the other in Croydon.[100] They told inspectors that the team had shrunk from six staff in 2015 to just two. Although recruitment campaigns had been run, there had been little interest and they believed the job was not perceived as "attractive" as it was seen as a specialist role involving extensive travel.

97 Pg 191 Tier-2-5-sponsor-guidance_Apr-2020_v1.0.pdf

Tier 4 Sponsor Guidance contains a similar warning. "Failure to comply, as an employer, with illegal working requirements" is listed as one of the items likely to be considered a serious breach of sponsorship duties.

98 In October 2020, in its factual accuracy response, the Home Office noted that HEIs were now referred to as Higher Education Providers (HEPs) in the latest sponsor guidance.

99 HEAT uses a risk matrix which considers 15 areas of risk using information from sources including intelligence and compliance teams.

100 In its factual accuracy response, the Home Office commented that: "the fact that the officers were not co-located does not affect their ability to carry out in full their roles and the work of the team."

7.41 Tier 4 Casework Managers also reviewed the weekly spreadsheet of illegal working civil penalties to identify whether any Tier 4 sponsors were included, in which case they would pursue mandatory revocation where the full penalty is imposed and maintained.

Pre-licence visits

7.42 The SCN may be tasked with conducting a pre-licence visit, as well as with other work, including visits to Secure English Language Test (SELT) centres, and non-Sponsorship tasks, such as supporting Criminal and Financial Investigation (CFI) colleagues by undertaking modern slavery-related audits at residential addresses and capturing biometrics.

Quality Assurance

7.43 In January 2020, inspectors were told SAIT had recently introduced a quality assurance regime for decisions by Administrative Officers about intelligence referrals received. Each month, Tasking Officers were required to review a random sample of six cases from outside of their management chain for consistency. However, the tasking packages sent on by SAIT to the SCN were neither countersigned nor quality assured. Inspectors were told that they were "not the sort of thing that can be countersigned".

Compliance visits

7.44 SAIT taskings are passed initially to the Allocation, Monitoring and Performance team (AMPT) in the SCN, who prioritise and risk assess them before allocating taskings to one of the nine regionally-based Compliance Managers to arrange a Compliance Officer visit. Some visits require a minimum of two officers, for example if there are safeguarding, health and safety reasons, or if it is a particularly large institution.

7.45 As at January 2020, SCN had 42.4 FTE Compliance Officers, based in 11 locations: Bedford, Cardiff, Central London, Croydon, Feltham, Glasgow, Hounslow, Manchester, Newcastle, Portishead, and Solihull. Two thirds (28.3FTE) of them were based in London and the South East, with only one in Scotland and none in Northern Ireland.[101]

7.46 SCN Compliance Officers are responsible for visiting all Tier 2 and Tier 5 sponsors, plus Tier 4 sponsors who are not HEIs, and producing a visit report informing SAIT and the Compliance Casework teams whether a sponsor has met or has not met their sponsor duties.

7.47 Figure 25 shows the visits (all types) completed in 2019, broken down by sponsor region, according to data provided by the Home Office.

101 In October 2020, the Home Office provided details of the SCN commands, with revised figures. These showed three commands: "Command 1", comprising Bedfont Lakes (Feltham), Eaton House (Central London), Fleetbank House (Central London) and HEAT, with 18.321 FTE; "Command 2", comprising Croydon 1, Croydon 2 and AMPT, with 21.494 FTE; and, "Command 3", comprising Newcastle/Scotland, Bedford, Wales/West and Solihull/Manchester, with 24.282 FTE. The revised total is 64.097 FTE. The Home Office broke this down by grade but not by role. However, from the grades, it appeared that the number of FTE Compliance Officers was not materially different from the January total.

Figure 25 Compliance Officer visits by sponsor region in 2019			
Region	**Compliance Officers (FTE)***	**Visits**	**Average visits per FTE**
London & South East	28.31	1,073	37.90
Midlands	2.73	244	89.38
North East, Yorkshire & Humber	2.73	97	35.53
North West	3	102	34.00
Scotland & Northern Ireland	1	87	87.00
Wales & South West	4.63	112	24.19
Total	**42.4**	**1,715**	**40.45**

*As at January 2020

7.48 Inspectors were told during focus groups and interviews with HEAT and Tier 4 Casework staff and managers that all Tier 4 sponsors were supposed to receive a compliance visit during the lifetime of a licence (maximum four years).

7.49 However, in January 2020, HEAT told inspectors they had almost completed compliance visits for HEIs last visited in 2012. It was not feasible to visit all HEIs every four years.

7.50 Data provided by the Home Office in April 2020 showed that in the four years from 1 January 2016 to 31 December 2019, 560 Tier 4 sponsors had received a compliance visit. See Figure 26.

Figure 26 Number of Tier 4 compliance visits					
	2016	**2017**	**2018**	**2019**	**Total**
Visits	127	112	139	183	560
Registered sponsors	1,323	1,239	1,212	1,169	N/A

7.51 Inspectors found no reference to this requirement in guidance, and the Home Office later clarified that "there is no policy requirement that a sponsor must be visited by UKVI at least every four years". Guidance for Tier 4 sponsors says, "We will make further checks after we have granted your licence to ensure that your monitoring arrangements are being implemented and closely adhered to" and warns that such visits may be announced or unannounced.

Sponsor visits

7.52 The Home Office provided inspectors with data for sponsor visits completed between 2015 and 2019, broken down by those made before a licence was issued and those made to licence holders. Despite the numbers of licence holders remaining broadly constant, sponsor visits have declined steadily, with half the number of pre-licence visits in 2019 that there were in 2015. The 2015 total for visits to licence holders was inflated as UKVI responded to the exposure of widespread cheating in English Language tests. Nonetheless, since 2016 these visits have reduced by a third. See Figure 27. [102]

Figure 27
Total number of visits completed 2015 to 2019

Year	Total Tier 2, 4 and 5 licences	Pre-licence visits	Compliance visits	Total visits
2015	32,300	1,336	3,024	4,360
2016	32,707	1,269	1,541	2,810
2017	33,080	1,081	1,459	2,540
2018	32,197	758	1,197	1,955
2019	32,598	661	1,054	1,715

7.53 According to the data provided, the number of business sectors visited had also reduced. The same five sectors received most visits each year since 2017 and together accounted for three-quarters (74.4%) of visits between 2017 and 2019. See Figure 28.

Figure 28
Number of compliance visits to "top five" business sectors

Business Sector	2017	2018	2019	Total
Information and Communications	186	226	203	615
Education	161	194	241	596
Professional, Scientific and Technical Activities	256	171	147	574
Accommodation and Food Service Activities	331	108	58	497
Human Health and Social Work Activities	205	140	135	480
Total for top 5 sectors	**1,139**	**839**	**784**	**2,762**
Total visits in period	**1,459**	**1,197**	**1,054**	**3,710**

102 In its factual accuracy response, the Home Office commented: "Sponsorship has worked over the last few years to maximise the effectiveness of their operational capacity and capability. The decline in pre-licence tasking was largely as a direct result of front-end triage by caseworkers, this enabled resource to be released to address those cases where we had assessed the risk to be the highest. This enabled us to focus on risk on the extant register and allowed sponsorship to concentrate efforts on tackling those who posed a continuing risk to the register. These cases are increasingly complex and as a result the resource required to tackle them increased proportionately. So, whilst the number of visits may have reduced, the value of those visits did not."

Compliance Officer 'Goals'

7.54 In January 2020, inspectors were told that Compliance Officers had recently been set 'goals', based on a 'slot system', where each slot was half a day, making 10 slots for a Compliance Officer working full-time Monday to Friday. In this system, a compliance visit is allocated two slots, while a "typical amber case"[103] is expected to require two and a half days (five slots) to review, visit and write up.

7.55 Inspectors were told that the system "doesn't work that well" and "doesn't always cover travel time" since some Compliance Officers "cover vast areas". The officers said that the system allowed two hours for travelling time. Any additional time taken could be accrued as "time off in lieu" (TOIL), but it was difficult to take TOIL and some officers had "written it off" as they couldn't "fit the job into the allocated hours".

7.56 Compliance Managers said that they were under-resourced and "struggling to keep up" particularly with pre-licence visits, which have strict deadlines to enable the licensing teams to meet service standards. One commented that they "could do with double the staff". As at 24 March 2020, SCN had 44.1 FTE Executive Officers (EOs) against a plan for 56.2 FTE EOs.[104]

7.57 Senior management acknowledged "we are short on resource", especially in some regions, with "some risk of creating backlogs". Sponsorship intended conducting a "mapping and planning" exercise looking at intake and the location of its resources, although this had been reviewed around six months before. "We will always need people to travel" but "better IT would allow us to do more onsite" and be "less reliant on coming to the office". The current technology caused difficulties, including requiring officers to visit the office between site visits because they were unable to scan or draft reports remotely.

7.58 Staff guidance requires Compliance Managers to notify AMPT of their weekly capacity three weeks in advance and visits are allocated accordingly. Compliance Managers said that, in practice, they submit details of staff availability six weeks in advance to allow workflow planning.

Visit reports

7.59 After a visit, Compliance Officers complete and submit their report. They are required to do this within five days for a pre-licence visit or 10 days for compliance visit to a licence holder. Reports for all Tiers follow a standard format, with the Compliance Officer providing an assessment of the sponsor against five competencies:

- monitoring immigration status
- maintaining migrant contact details
- record keeping and recruitment practices
- migrant tracking. and
- monitoring and general sponsor duties

Educational sponsors responsible for students aged under 18 are also assessed on their safeguarding practices.

103 According to the Home Office, "an Amber case refers to "post licence" tasked compliance visits which may have been received from any number of internal sources, one of which could be the Tier 2 watch list."

104 In January 2020, there were 42.4 Compliance Officer EOs and one administrative manager EO.

7.60 SCN staff told inspectors that the referral form received from SAIT simply listed areas of concern and they thought there should be greater alignment between the referral form and visit report.

7.61 In February 2018, the SCN stopped making specific recommendations following a sponsor visit and instead recorded only the overall "Met/Not Met" outcome. Home Office data for 2018 and 2019 showed that around two-thirds of all licence holder visits in each year were recorded as "Not Met". However, for Tier 4 sponsors over half (57%) were "Met".

Quality Assurance of visits and visit reports

7.62 'Points-based system sponsor compliance visits' Version 15.0,[105] published in February 2018, states "Sponsor Management have introduced a quality assurance framework, incorporating quality measures for every stage of the end to end visit process". "All reports must be countersigned by a higher executive officer (HEO) or above", and "Managers will also check a cross-section of reports, interview notes and visit preparation documents across a range of visit outcomes".

7.63 Inspectors were told by Compliance Officers that all visit reports were countersigned by a Compliance Manager. Reports produced by a Compliance Manager were countersigned by a colleague of the same grade. There was no evidence of any formal independent audit or cross checking of visit reports, interview notes or case files for consistency of approach across the SCN as a whole. Compliance officers interviewed in January 2020 recalled a system that had been used for a few months but "had lots of glitches" before it became "obsolete".

7.64 In April 2020, the Home Office told inspectors that network-wide assurance was conducted over SCN reports through "Routine analysis of rejections, trends and development needs." This included weekly senior officer discussions to maintain consistency. The Home Office said that the rejection rate of completed compliance visit reports was less than 1%.

7.65 The guidance also states that Compliance Managers should be "observing a percentage of compliance visits to inform training and development and drive performance." The quality assurance framework indicated that this should be done at least once a quarter for each Compliance Officer. Inspectors were told by some Compliance Officers that they had never been observed, while different Compliance Managers said that they did it "from time to time", "regularly" or "once every 6 weeks", "depending on resource".

7.66 All visit reports produced by HEAT for Tier 4 HEIs were reviewed by the SCN Assistant Director (G7).

Assessment of visit reports and despatch of outcome letters

7.67 Compliance visit reports are received by SAIT and Compliance Casework teams through an IT system called Metastorm. Tier 2 and 5 sponsors, who are assessed by the SCN to have achieved a 'Met' rating are sent a 'Maintain-A' letter by SCN notifying them of the compliance visit outcome.

7.68 For those assessed as 'Not Met', the report is sent to the Tier 2 Compliance Caseworker team to action. According to staff, Administrative Officer (AO) caseworkers issue a 'Maintain-A' letter where they have determined that no further action is necessary, or a licence suspension letter

105 PBS-sponsorship-sponsor-mgmnt-compliance-v15.0.PDF

where "simple enquiries" need to be made. Meanwhile, Executive Officer (EO) caseworkers manage cases requiring a licence downgrading[106] or revocation.

7.69 A separate Tier 4 Compliance Casework team receives both 'Met' and 'Not Met' reports. They are reviewed by an EO caseworker or, if complex, by a Higher Executive Officer (HEO) casework manager. Particularly complex cases may be referred to the head of the team, a Senior Executive Officer (SEO). The team issues the appropriate letter or "administers compliance action".

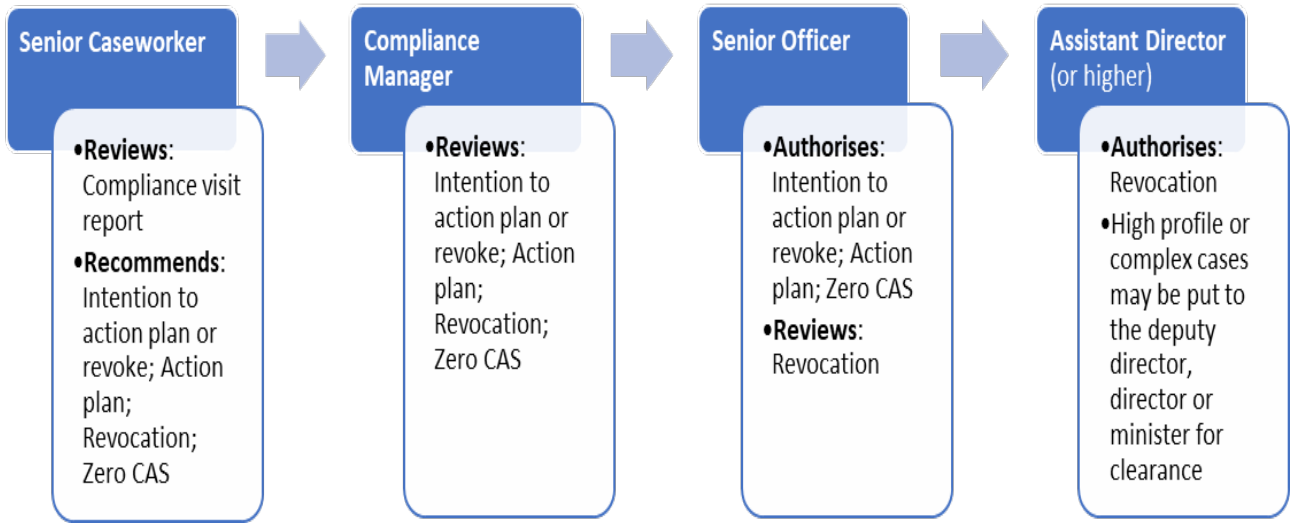
7.70 The Tier 4 team comprises two EOs, three HEOs and one SEO, while the Tier 2 Compliance Casework team has 22.64 FTE staff. Both teams considered they had enough staff, though the Tier 4 team said care had to be taken to manage holidays and emphasised the team's flexibility and close working relationships. A manager acknowledged there was "a need to futureproof the team". The aspiration was to multi-skill all staff in Tier 4 casework, in licensing, maintenance and compliance casework, so that resources can be flexed and any risks to business continuity managed.

Quality Assurance of decisions in response to visit reports

7.71 Both Compliance Casework teams had procedures in place to ensure that where action against a sponsor was proposed, the case was reviewed at a level appropriate to the severity of the sanction. Figure 29 illustrates the Tier 4 compliance casework process.

Figure 29

Tier 4 Compliance casework decision making review and authorisation process



7.72 The process for Tier 2 and 5 is similar to Tier 4. In Tier 2 and 5 cases where the decision is "no further action" assurance is normally provided by the Duty Manager who reviews the "maintain-A" drafted by a "Junior Caseworker" (AO). Tier 4 Compliance Casework Managers told inspectors that while maintain decisions would likely be discussed with a manager, they did not need authorisation. Letters drafted by Caseworkers were not "generally" reviewed by Managers as the current Caseworkers were experienced. However, new staff would have their work reviewed until they were assessed to be competent.

106 UKVI rates sponsors either A or B according to its assessment of their ability to comply with their sponsor duties. B-rated sponsors must meet a time-limited action plan to (re-)gain an A-rating or have the licence revoked.

7.73 Inspectors were told that decision quality was "under constant review" by Tier 2 and 5 Casework Managers, who review letters and record the quality against the Quality Assurance Team Review Outcome (QATRO) system.

7.74 QATRO is a Home Office assurance tool used to monitor decision quality. Results are measured on a five-point scale from DQ1 "less than 20% minor errors" to DQ5 "contains critical errors", including where the decision is incorrect. Tier 2 and 5 Compliance Casework decision notification letters are reviewed and assessed on amendments required by the authorising officer, including spelling, grammar, rewording, restructuring, missing or incorrect content.

7.75 The Home Office provided the QATRO data for 2017-2019. This indicated a significant improvement in quality over the period. See Figure 30.

Figure 30
QATRO Decision Quality ratings for Tier 2 and 5 compliance casework 2017 to 2019

Year	DQ1	DQ2	DQ3	DQ4	DQ5	Total
2017	585	129	93	46	5	858
2018	604	81	34	21	3	743
2019	822	54	22	23	0	921

7.76 However, responding to ICIBI's 'call for evidence', one stakeholder drew attention to the quality of letters advising of the downgrading or suspension of a licence:

> "The reasons for downgrading or suspension are often hidden in a lengthy letter where paragraphs of the guidance are simply copied and pasted. The exact reason for the compliance action is often 2 or 3 points which are difficult to identify given the length of the correspondence provided."

7.77 Tier 4 Casework Compliance did not use QATRO, but the Home Office said:

> "The sign off process for Tier 4 casework, sometimes to senior levels, has meant that the level of supervisory scrutiny on Tier 4 decision making and drafting is consistent. This chain of review highlights areas where best practice can be achieved, where there are potential gaps in process and can identify training needs."

Training

7.78 Inspectors were told that training for new starters was delivered through a combination of desk-based reading of policy guidance and locally-delivered, one-to-one training and mentoring. There were no rigid timescales for the latter. Mentoring would end when the manager judged the staff member to be competent. In Compliance Casework, the Metastorm setting for a new staff member was for 100% checks of their work. This remained in place until manually altered by a manager.

7.79 From the details provided to inspectors, it appeared that it was expected to take around 10 weeks for a Compliance Caseworker to become proficient. The training focused on sponsor notifications and suspension of licences. It included an overview of other areas of Sponsorship, including Pre-licence, Restricted Certificate of Sponsorship (RCoS),[107] Sponsor Investigations,

107 Some Tier 2 (General) migrants are subject to an annual limit. Sponsors must apply for a RCoS if they wish to sponsor them. The RCoS team sits within Tier 2 Casework and is responsible for receiving and processing these applications.

Renewals and Workflow. For Senior Caseworkers there is further desk-based training covering re-rating sponsors, action plans, reinstating and revoking licences. User guides are available for Metastorm for each action, though these were last updated May/June 2016.

7.80 There was no formal training plan for Tier 4 Compliance Casework. The unit tailors training to fit the staff member's previous experience. Staff are required to learn the Tier 4 guidance and receive one-to-one support. Inspectors were told:

> "The overall approach to training delivery is to provide a one-to-one bespoke learning and scenario-based platform to scaffold the employee during their upskilling journey. This has been a positive approach. [A senior manager] is reviewing this approach to identify potential improvements and build on this work as part of our continual improvement activity."

7.81 Managers believed that Caseworkers developed through experience rather than by a formal learning package. They told inspectors "Caseworkers are our eyes and ears". The role "can't be taught", "it's a big learning curve", "it's something you learn by doing." Meanwhile, "it takes 12-18 months to really learn the Compliance Manager job". They also believed that "people shy aware from Tier 4 because they think it's going to be complicated".

Feedback and communication across the Sponsorship commands

7.82 In conversation with inspectors, Compliance Officers estimated that around 70-80% of sponsors received an overall 'Not Met' rating in visit reports. They described the decisions made by Compliance Caseworkers as "inconsistent" and said there was a "lack of common sense". But, the latter said that most "Not Mets" were not serious, for example it could be the case that "a specific document has not been kept".

7.83 Compliance Officers said it was a struggle to speak to SAIT to clarify tasking referrals before a visit and that they received limited feedback about their visit reports. Compliance Casework teams agreed that they "did not give enough feedback on good reports". Most caseworkers thought visit reports were "good" or "generally fine", though some said that the quality "varied" and one commented "I often see that the CO hasn't followed the referral, there are gaps". Another said: "I've rejected three this week",[108] but described this as "a blip".

7.84 Senior management recognised that SCN and other Sponsorship teams felt disconnected. The structure had been designed to make workflow easier, but one manager said it had not worked. They believed there needed to be more communication, while another said they would like to see more job shadowing and staff exposed to each stage of the process. Inspectors heard that some new starters had, in fact, been sent to shadow other teams "to learn how their decision making and what they do impacts on others".

7.85 Inspectors were told that senior managers (SEOs) held a dial-in workflow meeting where issues could be raised. In addition, a quarterly Operational Excellence (OpEx) forum was set up to help address the "big disconnect" between the teams. This was an opportunity for operational managers from across Sponsorship, plus policy teams, to raise matters relating to operational delivery. Staff understood that they could escalate issues to the OpEx forum, though they did not always hear the outcome.

108 SAIT and Casework teams can reject reports that do not satisfy the tasking referral.

7.86 Other initiatives had included a one-day workshop hosted by SAIT for Compliance Officers. Meanwhile, SAIT said that Tasking Officers were encouraged to go out on visits as were Tier 2 Caseworkers "so that they can see what happens with allegations".

Sanctions

Rationale for applying sanctions

7.87 Published guidance clearly explains the principles of sponsorship, including the importance of being able to trust sponsors to fulfil their duties and the rationale for sanctioning of any breaches:

> "We have a duty to ensure that all sponsors discharge these responsibilities and will take compliance action when it is considered that a sponsor has failed to do so, or otherwise poses a risk to immigration control."

7.88 'Tier 2 and 5 of the points-based system: Guidance for sponsors' contains four annexes setting out the circumstances in which UKVI "may" and "will" refuse a sponsor licence application, downgrade a licence to B-rating, or revoke a licence.

7.89 The compliance and sanctions process for Tier 4 sponsors is contained in a 22-page document, 'Tier 4 compliance', also available at GOV.UK,[109] although there is also a separate 100-page 'Sponsorship duties' guidance document. 'Tier 4 compliance' contains a "non-exhaustive" list of possible breaches of sponsorship duties, indicating those considered "serious", along with charts setting out how breaches will be handled.

7.90 The Home Office therefore meets the Macrory "test" for Regulators in relation to publishing its enforcement policy for Tier 2, 4 and 5 sponsor licences and being transparent in the way in which it applies and determines administrative penalties.

Use of sanctions – trends and comparisons

7.91 As part of the Migration Transparency data, the Home Office publishes quarterly data for sponsor licensing,[110]including the number of sponsors, time taken to issue new licences, and action taken against sponsors.

7.92 The data shows that the number of Tier 2 and 5 licence suspensions and revocations peaked in 2015, since when the numbers have fluctuated, dipping in 2018 but increasing in 2019. Since 2016, the numbers of Tier 4 notifications of the intention to revoke and revocations have been low, reflecting the measures taken to tighten up the Tier 4 sponsor list following the English Language test issue. See Figure 31.

109 https://www.gov.uk/government/publications/sponsor-a-tier-4-student-guidance-for-educators
In its factual accuracy response, the Home Office pointed out that the title of this guidance had changed (in early October 2020) to 'Student sponsor compliance'.

110 https://www.gov.uk/government/publications/sponsorship-transparency-data-february-2020

Figure 31

Numbers of sponsor licences suspended or revoked 2012 to 2019

Year	Tier 2		Tier 5		Tier 4	
	Suspended	Revoked	Suspended	Revoked	Intention to Revoke	Revoked
2012	677	442	59	30	278	216
2013	726	446	101	53	291	208
2014	773	604	71	51	216	150
2015	1,037	763	109	89	215	97
2016	673	594	83	48	55	42
2017	750	605	69	53	24	18
2018	414	265	53	27	17	4
2019	541	378	50	29	30	7

7.93 In May 2020, the Home Office provided inspectors with data for sponsors "Re-rated to B rating with action plan". These figures are not included in the published transparency data. See Figure 32. This shows that this measure has been relatively rarely used, and less so in more recent years. The data relates primarily to Tier 2 and 5 sponsors. Inspectors were told that the 2016 total included two Tier 4 sponsors and the 2017 total included one. In January 2020, inspectors were told that one Tier 2 sponsor was currently on an action plan.

Figure 32

Number of sponsors re-rated to B rating with an action plan 2015 to 2019

Year	Number
2015	83
2016	53
2017	25
2018	15
2019	15
Total	**191**

Impact of sanctions on visa holders

7.94 While a sponsor licence is suspended, the sponsor may not issue a Certificate of Sponsorship (CoS) or Confirmation of Acceptance to Study (CAS), preventing them from sponsoring new visa applications. GOV.UK advises sponsored migrants that they could be affected if their sponsor's licence is suspended, but only if the migrant has applied to extend their visa, when their application will not be processed until the suspension is lifted, or if the migrant has applied for a visa from outside the UK, in which case they will be contacted by UKVI.[111]

111 https://www.gov.uk/employee-lose-sponsor-licence

7.95 If a Tier 2 or 5 sponsor licence is revoked, either immediately or following a period of suspension, existing CoS are cancelled, and the visas issued to employees are curtailed to 60 calendar days (or the time left on the visa if shorter). For Tier 4 revocations, the Home Office will consider whether sponsored students can continue to be taught for up to six months[112] by a sponsor whose licence has been revoked. If not, existing CAS will be cancelled and leave curtailed for existing visa holders, as with employees.

Action plans

7.96 Where a Tier 2 or 5 sponsor is downgraded to a B-rating, the sponsor has ten days to accept Sponsorship's proposed action plan and pay the associated fee, £1,476 from 6 April 2020,[113] or the licence will be revoked. One stakeholder told inspectors, that "many sponsors are disappointed at the lack of detail provided [in action plans] in comparison to the fee paid".

7.97 A sponsor must make the specified improvements within a maximum of three months, and while subject to an action plan "will not be able to assign any CoS to new migrants" but may do so to existing migrants in certain limited circumstances specified in the Tier 2 and 5 guidance. Compliance Officers carry out a further visit to check that the required improvements have been made, and sponsors may request this before the end of the period set in the action plan if they choose.[114]

7.98 A Tier 2 or 5 sponsor can be downgraded to a B-rating twice during the validity of a particular licence, after which any further breach of duty will result in the licence being revoked.

7.99 There is no provision to downgrade Tier 4 sponsors. However, Sponsorship can place a Tier 4 sponsor on an action plan, in which case it may apply any limitations to the licence it considers appropriate, including zero CAS for the duration of the action plan.

7.100 The public 'Register[s] of licensed sponsors' identify those Tier 2 and 5 sponsors that have a B-rating, or those Tier 4 sponsors "subject to an action plan". As at 19 August 2020, there were nine of the former and two of the latter.

Notification of intention to suspend or revoke

7.101 Normally, only serious breaches result in an immediate suspension or revocation. It is usual practice to notify a sponsor in writing of the intention to suspend or revoke their licence, in which case they are given 20 working days to make representations. 'Tier 2 and 5 of the points-based system: Guidance for sponsors' states:

> "We will tell you of our decision within 20 working days of receiving your response unless the consideration is exceptionally complex or we are waiting for information from a third party such as HM Revenue & Customs. In this case, we will tell you of the delay."

7.102 Where new information is received or sought from a sponsor the 20-working day cycle for representations and replies begins again. Casework teams told inspectors that this was the only published performance target they were held to, but the emphasis was on providing "quality" responses since there was less chance of litigation.

112 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843579/Tier_4_Sponsor_Guidance_-_Doc_3_-_Compliance_2019-10_FINAL.pdf

113 https://www.gov.uk_home-office-immigration-and-nationality-fees-6-april-2020

114 gov.uk-PBS-sponsorship-sponsor-mgmnt-compliance-v15.0.PDF

7.103 Caseworkers considered that the compliance process provided "lots of opportunities for sponsors to engage". However, responding to ICIBI's 'call for evidence', immigration law firms were critical of communication from Sponsorship, including the time taken to notify sponsors of the outcome of a compliance visit. One commented: "Communication of the outcome of an audit can often be received up to six months after the audit, if at all." They recommended that there should be a service standard for this, as earlier notification would allow a sponsor to take remedial action more quickly.

7.104 The Home Office provided performance data for the Compliance Casework teams in respect of the 20-day service standard. This showed that while fewer representations were received from Tier 2 and 5 sponsors each year performance against the service standard actually worsened. See Figure 33.

Figure 33

Replies to sponsor representations, % within the 20-working day service standard

Year	Tier 2 and 5 Compliance casework			Tier 4 Compliance Casework		
	Total	Within 20 days	%	Total	Within 20 days	%
2017	584	237	40.58%	19	18	95%
2018	435	170	39.08%	16	16	100%
2019	288	82	28.47%	33	30	90%

Advisory letters

7.105 Where a compliance visit identifies that a sponsor is not in breach of their sponsor duties but could make improvements, a caseworker can issue an "advisory letter" notifying them that their status remains unchanged but suggesting actions they could take.

7.106 Compliance Caseworkers told inspectors they preferred to use advisory letters or suspensions, as they gave the sponsor "more options and potentially a quicker outcome", rather than action plans which were more restrictive. Tier 4 Casework senior management explained that "there is a lot more trying to work with the institution to explain why it doesn't meet the requirement".

7.107 The Home Office does not regard advisory letters as a sanction. Where they were quality assured, it was in the same way as "Maintain-A" letters". Inspectors were told that, while advisory letters remained on the sponsor's file and would be visible to a Caseworker when the sponsor was next reviewed, they were not routinely followed up.

7.108 This undermines their value. The Macrory report recommends that low-level enforcement actions, such as warning letters or improvement notices, should be followed up, suggesting that a failure to do so shows a lack of commitment by a regulator which can lead firms to disregard such letters.

Judicial Reviews

7.109 The Compliance Casework teams emphasised the importance of "reasonable" and "proportionate action" that was fully defensible if it went to litigation. Reflecting Macrory's 'Principle' of using penalties to change non-compliant behaviour, caseworkers said they were "not here to purge the list but to get compliant sponsors" and believed that most sponsors want to comply with their obligations but occasionally needed a steer.

7.110 Sponsors are not able to seek an Administrative Review of any action taken against them. They are able to seek a Judicial Review (JR), though this can be both time-consuming and costly. Normally, to be granted a JR the would-be litigant is expected first to have sent a Pre-Action Protocol (PAP) letter to the other party setting out their case and seeking a resolution.

7.111 In May 2020, the Home Office provided data for PAPs and JRs in relation to sponsorship compliance decisions for the period 2015 to 2019. Notwithstanding the possibility that some PAPs and JRs relating to 2019 decisions may not have been received by the end of the year, the trend in both was downwards. See Figure 34.

Figure 34
Pre-Action Protocols and Judicial Reviews received in relation to sponsorship compliance decisions 2015 to 2019

	2015	2016	2017	2018	2019
PAPs	141	140	101	54	30
JRs	30	87	76	25	13

7.112 The Home Office also provided data for the outcomes of the PAPs received, as recorded within the litigation database (JIRA). This shows that the original decision was maintained in the majority of cases (332 out of 466, or 71%) and few licences reinstated. See Figure 35.

Figure 35
Outcome of Pre-Action Protocols received in relation to sponsorship compliance decisions 2015 to 2019

Outcome	2015	2016	2017	2018	2019
Decision maintained	86	113	73	41	19
Reconsideration being undertaken	46	17	25	9	6
Licence re-instated	4	3	0	1	1
Other	5	7	3	3	4
Total	**141**	**140**	**101**	**54**	**30**

7.113 Of the 13 JRs decided in 2019: 11 resulted in the Home Office decision being maintained; one in the re-instatement of the licence; and one was "referred for reconsideration/ licence reinstated".

Complaints

7.114 Where a person (in this case a sponsor) is dissatisfied with the service they have received from the Home Office, or with the conduct of a Home Office official, they are able to make a formal complaint. According to the Home Office, between 2017 and 2019 Sponsorship received three formal complaints, two from Tier 2 and 5 sponsors and one from a Tier 4 sponsor. Two of the complaints related to changes made by UKVI to the sponsor's licence status. Neither was upheld.[115]

Communication with sponsors

7.115 Stakeholders working with Tier 2 and 5 sponsors identified poor communication between Compliance Casework and sponsors as a cause for concern. It was problematic that there was no direct point of contact for sponsors.

7.116 UKVI has a business 'Helpdesk' which assists UK businesses and Tier 1 (Investors) by email. Sponsors can also call the 'Sponsorship, employer and education helpline'. The lines are open Monday to Thursday 09.00 to 17.00 and Friday 09.00 to 16.30.[116] [117] Both services provide general advice but cannot comment on the progress of a particular case. The contact details are signposted in the guidance published on GOV.UK.

7.117 Employer sponsors can also apply to become "premium sponsors",[118] provided they meet certain criteria.[119] Premium sponsors have access to a dedicated Customer Service Team, their own Account Manager who can assist with any immigration queries, and access to a bespoke account management portal which allows the sponsor to track and manage interactions with their Account Manager. A similar premium customer service is available to Tier 4 sponsors.[120]

7.118 The premium service fee is £25,000 a year for large organisations and £8,000 for small, medium or charitable organisations, and educational establishments. For educational establishments, the fee includes the cost of the annual Basic Compliance Assessment (BCA), currently £536.[121] These fees were re-confirmed in April 2020. They have remained unchanged since 2014.

7.119 In addition to improved points of contact, the premium package offers "unique access to a number of additional services and benefits, including an annual event, tailored workshops and training packages and closer working with compliance teams". Meanwhile, non-premium sponsors are invited to attend a quarterly business user forum. This is co-chaired with the CBI. According to the Home Office, it "brings representatives from business together to represent employers, rather than being open to all sponsors".

115 See also https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/898660/An_inspection_of_the_Handling_of_Complaints_and_MP_s_Correspondence_by_the_Home_Office_Borders__Immigration_and_Citizenship_System.pdf

116 https://www.gov.uk/uk-visa-sponsorship-employers/apply-for-your-licence

117 As at 3 June the helpline was closed due to Covid-19

118 www.gov.uk/guidance/employer-sponsorship-premium-customer-service-scheme

119 They must not have received any civil penalties in the last three years, and any received before then must have been paid in full. They must have an A-rating in all Tiers for which they have a licence and have passed a compliance check.

120 www.gov.uk_tier-4-premium-customer-service-for-sponsors

121 https://www.gov.uk_home-office-immigration-and-nationality-fees-6-april-2020

A new Points-Based System

7.120 On 19 February 2020, the Prime Minister and Home Secretary announced that on 1 January 2021[122] a new points-based immigration system would replace the existing system. The new system would treat EU and non-EU nationals in the same way.[123] The Home Office had previously announced that in the future immigration system there would be "no cap on the number of skilled workers who can come to the UK"[124]

7.121 On 13 July 2020, the Home Office published its 'UK points-based immigration system: further details statement', a 130-page document providing further narrative.[125] This stated:

> "As part of the Points-Based System, we are committed to delivering radical changes to the sponsorship process, streamlining and simplifying it for users, and substantially reducing the time it takes to bring in a migrant."
>
> "We will ensure our enforcement system is fair, protects the public, upholds our immigration policies, and acts as a deterrent to those who might seek to frustrate those policies. Encouraging and supporting compliance will be at the heart of the Points-Based System. Compliance with UK immigration laws and rules is an essential part of an immigration system which operates fairly, robustly and with integrity."

7.122 Home Office internal briefings have noted that simplified rules and guidance will mean an improved process for non-EU nationals but a big change for EU nationals not previously subject to immigration control. For UKVI, the changes will mean training new casework staff and "gearing up to onboard new sponsors". While the number of employers requiring a sponsor licence is expected to increase, the scale of this was hard to predict, particularly while the Covid-19 pandemic continues.

122 www.gov.uk_home-secretary-announces-new-uk-points-based-immigration-system

123 www.gov.uk/the-uks-points-based-immigration-system-policy-statement

124 https://homeofficemedia.blog.gov.uk/2019/06/24/future-immigration-system-at-a-glance/

125 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899755/UK_Points-Based_System_Further_Details_Web_Accessible.pdf

8. Inspection findings: Access to Work, Benefits and Services (AWBS)

Creating a "hostile environment"

8.1 The Immigration Act 2014, which passed into law on 14 July 2014, contained "new powers to regulate migrants' access to services".[126] In introducing these measures, the government sought to restrict access to work, benefits and services (AWBS) and create a "hostile environment" (later rebranded "compliant environment") that it hoped would:

- deter migrants from breaching the conditions of their leave
- incentivise individuals to regularise their status or to depart the UK voluntarily, and
- reduce the 'pull factor' for anyone thinking to come to the UK to settle illegally.

8.2 The measures in the 2014 Act covered residential tenancies, bank and building society accounts, work, driving licences, and charges for health services. Some were entirely new, some amendments to earlier legislation.

8.3 The Immigration Act 2016, which took effect on 12 May 2016, added further powers. 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."[127]

8.4 In presenting its case for new powers to create the "hostile environment", the government argued that the measures it planned to introduce were right in principle and would be seen as fair by most people. However, serious concerns were expressed by some stakeholders that the effect of the measures would be divisive and damaging to individuals and communities.

Intervention and Sanctions Directorate

Structure

8.5 Immigration Enforcement's Intervention and Sanctions Directorate (ISD) was created in June 2013. ISD's purpose was to enforce the 'hostile environment' at the operational level "through a series of legislative and non-legislative measures, built upon a framework of compliance, deterrence and data-sharing."[128] Figure 36 shows the structure and staffing of ISD as at November 2019.[129]

126 From 'Explanatory Notes' https://www.legislation.gov.uk/ukpga/2014/22/notes/contents

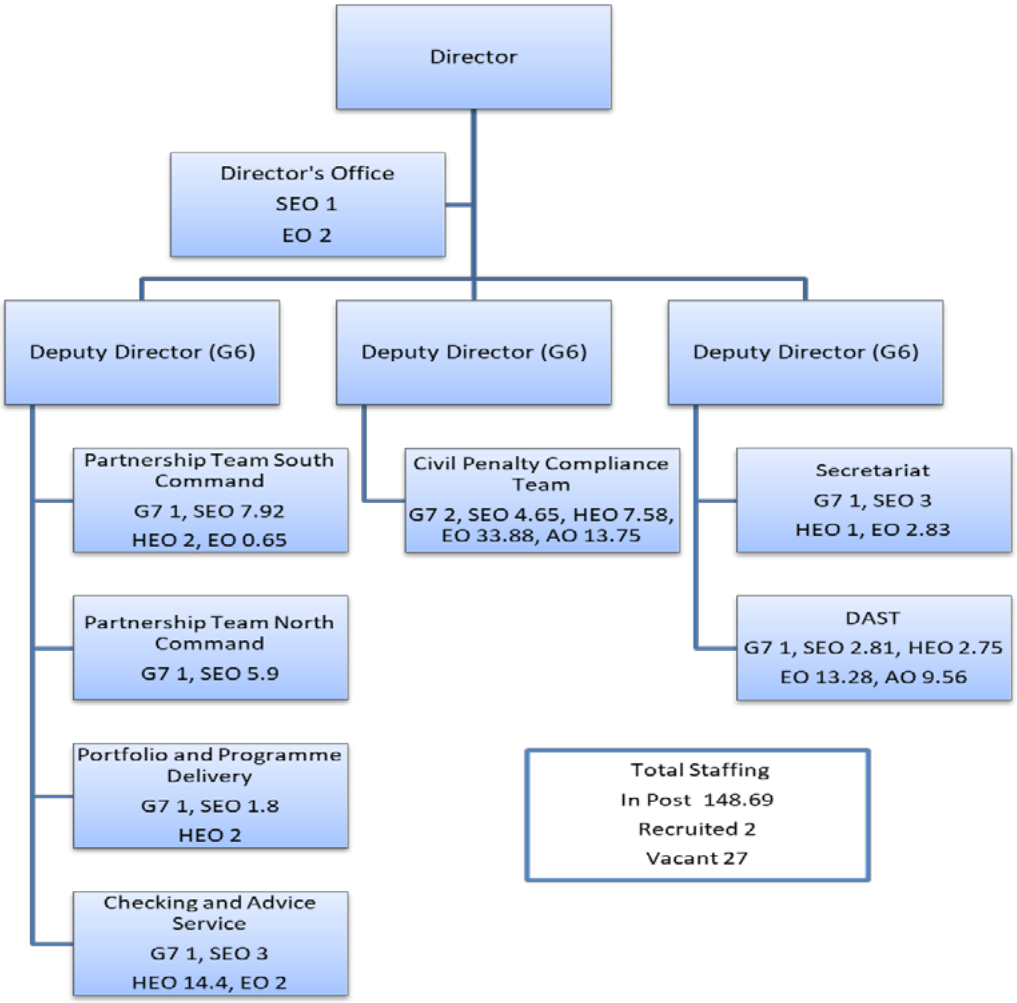
127 From 'Explanatory Notes' https://www.legislation.gov.uk/ukpga/2016/19/contents/enacted

128 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774736/An_inspection_of_Home_Office_collaborative_working_with_OGDs_and_agencies_web_version.pdf

129 In its factual accuracy response, the Home Office explained that the Director's Office staff report into the Portfolio and Programme Delivery Team.

Figure 36

Structure and staffing of ISD



CPCT and DAST

8.6 Within ISD, the Civil Penalty Compliance Team (CPCT) and the Data and Sanctions Team (DAST) are responsible for the administration of a range of AWBS sanctions and penalties on behalf of the Home Office. Most of these sanctions and penalties, particularly those involving DAST, are "owned" and imposed by partner agencies with input from DAST or CPCT.

Figure 37

Responsibilities of the Data and Sanctions Team (DAST) and Civil Penalty Compliance Team (CPCT)

Sanction/Penalty	Responsibility
Employer Nudge Letter[130]	**CPCT**
Illegal Working Civil Penalty[131]	**CPCT**
Director disqualification	**CPCT**
Notice of Letting to a Disqualified Person	**CPCT**
Landlord Civil Penalty	**CPCT**
Bank account refusal or closure	**DAST**[132]
Driving licence refusal or revocation	**DAST**
Alcohol and Late-Night Refreshment Licensing	**DAST**
HMRC benefits and credits revocation	**DAST**
DWP benefits revocation	**DAST**
NHS referrals (invoices for and denial of treatment)	**DAST**

Suspension of AWBS sanctions and penalties

8.7 In April 2018, in the wake of the Windrush scandal, ISD suspended the use of all AWBS sanctions and penalties. For those measures administered by CPCT, this "pause" lasted for three months, with operations resuming in July 2018 with specific safeguards in place to exclude potential members of the Windrush generation.

8.8 However, as at 24 January 2020 restrictions remained in place in relation to bulk data sharing by ISD. This was permitted only in relation to individuals born after 1 January 1989 (when the Immigration Act 1988 came into force), since the Home Office was confident that anyone born after that date would either have documentation or there would be official records to evidence their arrival in the UK.[133]

8.9 This restriction affected both CPCT and DAST, but the impact on DAST was greater. CPCT continued to use the matches produced through data sharing with HMRC to identify individuals working in breach of their leave conditions, but the age restriction meant that the volumes dropped. Meanwhile, prior to April 2018, DAST had been sharing bulk data with other

130 In September 2019, in response to ICIBI's request for a list of all sanctions and penalties available to BICS, the Home Office listed "Employer Nudge Letter". In October 2020, in its factual accuracy response, the Home Office stated that the Employer Nudge Letter was not a sanction or penalty.

131 In September 2019, in response to ICIBI's request for a list of all sanctions and penalties available to BICS, the Home Office listed "Notice of Letting to a Disqualified Person". In October 2020, in its factual accuracy response, the Home Office stated that NLDP was not a sanction or penalty.

132 This is a joint responsibility with the ISD Partnership Team.

133 In its formal evidence, the Home Office told inspectors that 1 January 1989 was chosen because: "Those arriving in the UK between 1 January 1973 and 31 December 1988 are not in the same position as those who arrived prior to 1973, because they must have had some status to enter the UK. Many of those who arrived during that period either came with indefinite leave to enter, or have since acquired indefinite leave to remain, or become British. However, there are a number of individuals – often those who arrived shortly after 1973 – who have struggled to demonstrate their status. In 1988, the Immigration Act changed the position for Commonwealth citizens so that they could lose indefinite leave to remain if they left the UK for more than two years, thus putting Commonwealth citizens in a comparable position to nationals from the rest of the world and so 1988 was deemed the most sensible cut off point. Anyone who was in the UK before 1988 and resided here since will have been in the UK for at least 30 years. This time period is also consistent with the private life route for those who have been in the UK for 20 years who can qualify for settlement after completing 10 years' temporary leave to remain. To apply this restriction to data sharing processes, date of birth was used as a proxy for this purpose because our systems cannot always determine an individual's date of arrival."

government departments, public bodies and some private organisations, with the aim of having services to individuals without the correct immigration status denied or withdrawn.

8.10 DAST managers told inspectors that a "triple lock process" had been put in place to ensure that anyone with permission to remain in the UK is protected. This involved applying business rules to identify the right cases for sharing; dip sampling by DAST staff of 100 cases each month to ensure that the business rules were being applied correctly; and, manual checking of matched cases by DAST to ensure that the individual's status had not changed since sharing and that the case was suitable for other departments to consider applying a sanction.

Non-compliant Employers and Landlords

8.11 CPCT administers those sanctions and penalties that target non-compliant employers and landlords who employ or rent a residential property to someone who is not entitled by virtue of their immigration status to work or enter into a private residential tenancy agreement in the UK.

Employers

Types of sanctions and penalties

8.12 The sanctions and penalties used against non-compliant employers by the Home Office or by other parties in collaboration with the Home Office cover the range of measures described by Macrory:

- enforceable undertaking – in the form of an Employer Nudge Letter[134]
- denial or withdrawal of a service or privilege – Director disqualifications and Closure Notices
- monetary administrative penalty – Illegal Working Civil Penalty

The legislation

8.13 The act of working while prevented from doing so by the conditions of one's leave to remain in the UK has been a criminal offence since 1971.[135] Meanwhile, Section 8 of the Asylum and Immigration Act 1996 ("the 1996 Act") introduced the offence of employing "a person subject to immigration control".

8.14 It also introduced a defence if the employer can prove, by means of a copy or a proper record of the relevant document, that "before the employment began" he was presented with "a document which appeared to him to relate to the employee and to be of a description specified in an order made by the Secretary of State", in effect a document proving the right to work in the UK. Under the 1996 Act, a person found guilty of employing an illegal worker is liable to a fine "not exceeding level 5 on the standard scale".[136]

134 In its factual accuracy response, the Home Office stated that it did not recognise the Employer Nudge Letter as an enforceable undertaking since the checks to which it refers are not enforceable by law "so the nudge letter itself is not a penalty or sanction and is not written in[to] legislation". This is correct. However, the Nudge letter serves the same purpose as an enforceable undertaking in that if the recipient chooses to ignore it the Home Office may take enforcement action.

135 While it did not refer explicitly refer to illegal working, section 24 of the Immigration Act 1971 had the effect of making the act of working while in the UK without leave a criminal offence.

136 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

8.15 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".

8.16 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 the Home Secretary regarding a penalty notice for a breach of the illegal working provisions in the 2006 Act, 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.

8.17 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."

8.18 The Immigration Act 2016 gave the Home Office (Immigration Enforcement) enhanced powers to search, seize and detain. In 2018,[137] the Home Office had 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.[138]

8.19 Schedule 6 of the 2016 Act covers 'illegal working closure notices and illegal working compliance orders' and empowers IE to shut down businesses found to be employing illegal workers.

Process

8.20 Most Illegal Working Civil Penalties (IWCP) result from referrals from Immigration Compliance and Enforcement (ICE) teams. Where an ICE team encounters an illegal worker, it will serve the employer with a Referral Notice (RN), a copy of which, together with any relevant information gathered during the enforcement visit, is sent to CPCT.

137 This is explanation was provided to inspectors for 'An inspection of the Home Office's approach to Illegal Working (August – December 2018), published in May 2019.

138 The power enabling Immigration Officers to seize cash in respect of immigration offences was originally introduced in section 24 of the UK Borders Act 2007

8.21 CPCT is responsible for:

- making initial decisions on liability for a Civil Penalty
- serving Civil Penalty Notices (CPNs), Warning Notices or No Action Notices (NAN), as appropriate
- making decisions about any objections received
- working with the Government Legal Department (GLD) in England and Wales, Crown Solicitors in Northern Ireland, the Advocate General's Office in Scotland, to defend any appeals

8.22 Where CPCT decides on the basis of the RN, and any other information provided by the ICE team, that no breach 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. If the employer is able to establish a statutory excuse, CPCT will issue a NAN.

8.23 Where no defence is established, the employer is served with a Civil Penalty Notification (CPN) and has the right to object to the penalty within 28 calendar days of receipt. Taking into account any further evidence that is 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.

8.24 The maximum Civil Penalty was last increased in May 2014. For a first breach in a three-year period, an employer is liable to a penalty of £15,000 per illegal worker. For a second or subsequent breach in a three-year period, the penalty is £20,000. A discount is available for fast payment (within 21 days). In May 2014, this was increased from 20% to 30%. Employers can apply to pay via an instalment plan of up to 24 or, exceptionally, 36 months.

Performance

8.25 The Home Office provided inspectors with data showing the number of IWCPs issued between 2016 and 2019. See Figure 38. The annual total fell from 3,110 in 2016 to 2,337 in 2017, and again to 1,208 in 2018, before rising to 1,848 in 2019. In 2018, the Home Office explained that the 2016 was the result of a one-off data-sharing exercise with HMRC. Meanwhile, the "sharp fall" in 2018 Q2 and Q3 was "as a direct result of the pause following Windrush". ISD senior management told inspectors in 2018 that "the "plateauing" of IWCPs was a reflection of their success as employers were now more compliant."[139]

139 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_inspection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

Figure 38

Number of Illegal Working Civil Penalty Notices issued by quarter 2016 to 2019

Year/Quarter	CPNs issued
2016 Q1	1,301
2016 Q2	444
2016 Q3	662
2016 Q4	703
2017 Q1	681
2017 Q2	432
2017 Q3	600
2017 Q4	624
2018 Q1	438
2018 Q2	119
2018 Q3	202
2018 Q4	449
2019 Q1	530
2019 Q2	416
2019 Q3	574
2019 Q4	328

8.26 The Home Office also provided data for IWCPs resulting from ICE team Illegal Working Visits. Most referrals to CPCT come from ICE teams, with much smaller numbers received from other BICS business areas, such as Immigration Intelligence and Sponsorship, HMRC and other bodies. Unsurprisingly, the data shows a correlation between ICE team illegal working activity and IWCP referrals. Since 2015, the ratio of visits to referrals has remained roughly 3:1 (ranging between 34.2% and 37.3%).

Figure 39

Illegal Working Civil Penalties resulting from ICE referrals 2014 to 2019

Year	Number of ICE visits	Referrals from ICE	CPNs from ICE referrals	O'turned objection stage	O'turned appeal stage	O'turned %
2014	7,104	2,865	2,181	151	49	9.1%
2015	6,738	2,513	1,923	120	39	8.2%
2016	6,886	2,459	1,640	123	41	10.0%
2017	6,692	2,349	1,659	121	17	8.3%
2018	6,496	2,221	1,021	102	14	11.3%
2019	5,613	2,049	1,752	103	14	6.6%
Total	**39,529**	**14,431**	**10,176**	**720**	**174**	**8.7%**

8.27 The ratio of referrals to CPNs issued has fluctuated. It was lowest in 2019, at less than 2:1 (46%). Senior managers said that this was due to "the three-month Windrush pause". In 2019, 85.5% of ICE referrals resulted in CPNs. Averaged out since 2014, the figure is 70%. Meanwhile, fewer than 10% of the CPNs issued have been overturned, suggesting that the evidence of illegal working is generally strong.

Employer Nudge Letters

8.28 Nudge letters are generated through data matching with HMRC. According to the Home Office, "as part of the bulk data sharing, known immigration offenders are matched against PAYE information". Where individuals are identified through this exercise CPCT sends the employer a nudge letter, requesting that they check the individual's right to work in the UK. The data is cross-referenced again three months later, and where there is still a match the employer's liability for a Civil Penalty is considered. See Figure 40.

Figure 40

Illegal Working Civil Penalties from Nudge Letter Referrals 2015 to 2019

Year	Nudge Letters	CPN after nudge letter	O'turned objection stage	O'turned appeal stage	O'turned %
2015	11,841	194	43	3	23.7%
2016	13,559	1,295	266	31	22.9%
2017	11,185	595	115	16	22.0%
2018	311	182	27	10	20.0%
2019	207	78	12	1	16.6%
Total	**37,103**	**2,344**	**463**	**61**	**22.4%**

8.29 The first nudge letters were issued in 2015. Though erratic, the figures for 2015 to 2017 for CPNs issued following a nudge suggest that the letters had some impact, at least in reducing the data matches. The effect on employer compliance is harder to judge. Meanwhile, the overturn rates, particularly at first, suggest issues with data quality or with the matching process.

8.30 From 2018, the use of nudge letters as a routine tool effectively stopped. But, while the age restriction imposed post-Windrush explains the drop off in letters from 2018 Q2 onwards it does not entirely explain why the 2018 total was so much lower than that for 2017. In January 2020, CPCT confirmed to inspectors that, since 20 April 2018, data sharing with HMRC had been restricted to those born after 1 January 1989, in line with Windrush safeguards. Again, this does not entirely explain the lower numbers of nudge letters issued in 2019. While the percentage of CPNs overturned has reduced, it would be reasonable to expect fewer overturns given the small number of letters, so questions remain over the quality of the data and the matching process.

Illegal Working Civil Penalties debt collection

8.31 Because Civil Penalties are subject to objections and appeals, it can take a number of months for payment to become due and it can also be made in instalments over 24 or, exceptionally, 36 months. Therefore, receipts for each year do not correlate to the penalties imposed.

Figure 41
Illegal Working Civil Penalty debt collection 2014 to 2019

Year	Penalties referred for collection	Penalty value (£)	Total collected (£)
2014	2,252	22,648,500	6,358,570
2015	2,203	35,772,300	10,594,975
2016	3,089	39,473,550	16,169,908
2017	2,337	33,811,175	15,030,285
2018	1,208	17,887,500	10,810,246
2019	1,845	30,274,850	11,458,188
Total	**12,934**	**179,867,875**	**70,422,172**

8.32 The pattern of increased penalties (numbers, value and debt collected) between 2014 and 2016 was broken in 2017. Over the course of six years to the end of 2019, the Home Office had imposed penalties of £179,867,875. This was the initial figure, before any reductions as a result of objections or appeals, or faster payment discounts (up to 30%). Over the same period, it collected £70,422,172. The Home Office commented that "the value of initial penalties is not reflective of the collectable debt", but even allowing for reduced penalties and payments by instalment, the debts recovered by the end of 2019 represent a poor return.

8.33 In January 2020, ISD staff told inspectors that they were concerned that since it was increased in 2014 the level of the Civil Penalty may have had the effect of forcing some smaller employers out of business, and therefore unable to pay, rather than of encouraging future compliance. This risk was identified by Professor Macrory, who pointed out that monetary administrative penalties have a far greater impact on small businesses.[140]

Director disqualification[141]

8.34 In both the 2015 and 2018 ICIBI inspections of illegal working, the Home Office identified 'Phoenixing', where business owners dissolve their business and start up again under a different name, as a way that employers were avoiding paying IWCPs.

8.35 Then and now, the Home Office did not appear to have done any analysis of the extent of this problem. However, it did share data with the Insolvency Service in order to mitigate the risk and to enable the disqualification of non-compliant directors. Disqualifications from holding company directorships can last for up to 15 years.[142] See Figure 42.

140 During the inspection, inspectors understood from CPCT that ISD was "awaiting Ministerial approval to examine this issue in depth." However, in October 2020, in its factual accuracy response, the Home Office said that it was not clear to what this was referring. ISD did "not currently intend to review the 'level' of Civil Penalty [and was] not awaiting Ministerial approval".

141 In its factual accuracy response, the Home Office stated: "CPCT are not responsible for the Director Disqualification. The powers to disqualify directors are within insolvency service (IS) legislation and sharing civil penalty data with the IS may result in Director disqualification in some cases."

142 In its factual accuracy response, the Home Office added: "CPCT lodge objections via Companies House against those companies seeking to dissolve/liquidate in order to avoid payment of a civil penalty as a measure to prevent phoenixism."

Figure 42

Number of company directors disqualified as a result of information sharing with the Insolvency Service 2014 to 2019

Year	Directors disqualified
2014	31
2015	63
2016	80
2017	113
2018	127
2019	45
Total	**459**

8.36 Disqualification is a legal process that requires an order from a judge in the absence of a voluntary disqualification undertaking. Both CPCT and the Insolvency Service told inspectors that this was a reason for the low numbers. The process is resource intensive. The Insolvency Service has limited powers of investigation for some of these cases. The Home Office is required to provide affidavits and attend court as the "witness of fact".

8.37 The Home Office explained that the dip in disqualifications in 2019 was not Windrush-related, but due to the roll-out of the Immigration Enforcement Pronto database, which had led to difficulties in extracting the relevant data. In February 2020, the Home Office was confident that these difficulties would soon be resolved and that disqualification numbers would return to pre-2019 levels. It had informed the Insolvency Service that it could support 10 cases a month. Meanwhile, senior staff at the Insolvency Service told inspectors that it had capacity to take on 15-20 cases a month.[143] However, in September 2020, inspectors understood that the Insolvency Service had not received any new cases from the Home Office since April.[144]

Illegal Working Closure Notices

8.38 The Immigration Act 2016 (Schedule 6) created the power to issue an Illegal Working Closure Notice to an employer who was found to be persistently employing illegal workers and for whom previous civil or criminal sanctions had not succeeded in curbing their non-compliance.

143 In its factual accuracy response, the Home Office stated: "This is incorrect. The MOU dictates that all cases (per month) that meet the criteria for data sharing are sent to the Insolvency Service there are no capacity considerations for CPCT. When the mechanism for transferring cases was adapted for digitisation, we reduced the flow initially whilst the transition took place."

144 In October 2020, in its factual accuracy response, the Home Office stated: "This is a data share which is not resource intensive. The pause in working with the Insolvency Service on Director Disqualification is not based on lack of Home Office resourcing. The work was temporarily impacted by a pause while the Home Office and IS undertook a joint review of the data-sharing MOU to ensure compliance with our Public Sector Equality Duty and some delays were the result of technical issues resulting from the new digital process which enabled the electronic transfer of files from CPCT to IS. These issues were resolved following a review with IS. Firstly, from the Home Office: "This referral mechanism is currently paused as part of our operational response to Coronavirus. We have sought Ministerial approval to restart civil penalty activity and proactive debt recovery and this data sharing will resume once approval is obtained." Secondly, the Home Office quoting the Insolvency Service: "Comment from the Insolvency Service: NB: INSS confirmed the fact that immediately following "Windrush" there were no new referrals. No attribution to the reason was possible or offered by INSS. We confirmed that in this pause period we were informed that HO were reviewing the existing data share protocols and/via the then existing MoU." Some of these statements appear contradictory, however there was no opportunity for inspectors to test them.

8.39 Closure Notices require "an Immigration Officer of at least the rank of Chief Immigration Officer" (Higher Executive Officer) to be "satisfied on reasonable grounds" that "an employer operating at the premises is employing a person over the age of 16" who does not have the right to work in the UK and "the employer, or a connected person":

"a. has been convicted of an offence under section 21 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"),

b. has, during the period of three years ending with the date on which the illegal working closure notice is issued, been required to pay a penalty under section 15 of the 2006 Act, or

c. has at any time been required to pay such a penalty and failed to pay it."

8.40 A Closure Notice closes business premises initially for a period of up to 24 hours, or up to 48 hours if authorised by 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.

8.41 Closure Notices are regarded as an operational tool, for use primarily by ICE teams. Home Office guidance 'Illegal working closure notices and compliance orders. Guidance for frontline professionals', issued in 2017, tells staff:[145]

> "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 Courts would consider justifiable and proportionate in each individual case."

8.42 ICIBI's report, 'An Inspection of the Home Office's approach to Illegal Working (August-December 2018)',[146] published in May 2019, focused on the work of ICE teams. It found that Closure Notices were "not routinely being used". Closure Notice data provided to the 2018 inspection is reproduced at Figure 43.

Figure 43
Use of Closure Notices 2016 to 2018[147]

Year	Closure Notices issued
2016-17	9
2017-18	25
2018-19 (to end Aug 2018)	1
Total	**35**

8.43 In November 2019, inspectors requested data for use of Closure Notices issued since 2018 but were told that this data is not recorded in a reportable format. However, the Home Office gave no indication of any changes that would have significantly increased their usage since the ICIBI Illegal Working inspection was completed.

145 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/608708/Closure_notice_and_compliance_order_guidance_Jan_17.pdf

146 https://www.gov.uk/government/publications/an-inspection-of-the-home-offices-approach-to-illegal-working

147 From 'An Inspection of the Home Office's approach to Illegal Working (August- December 2018)' Figure 19.

8.44 The Illegal Working report had recommended (Recommendation 6) that the Home Office should:

> "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 Immigration Enforcement 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."

8.45 The Home Office accepted this recommendation, stating that:

> "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."

8.46 The Home Office also said that it was reviewing training. Meanwhile, training was: "planned for all frontline staff on the powers of entry and other measures introduced in the 2016 Immigration Act", and operational guidance was being updated.

8.47 Finally, "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 12 months."

8.48 In January 2020 inspectors were told:

> "Measures to address this will be included in the draft of the illegal working strategy, which we are currently preparing, along with advice for Ministers. Collection of better data on the use of powers to be discussed with Operational Performance Team.
>
> An experienced ICE lead is being seconded to the team to lead the response to this recommendation. He started immediately before Christmas [2019] and his first objective is to produce a project plan for this piece of work."

Implementation of other ICIBI illegal working recommendations

8.49 ICIBI's 2019 Illegal Working inspection made six recommendations in total. Recommendations 5 and 6 addressed sanctions and penalties. Recommendation 5 was that the Home Office should:

> "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."

8.50 In January 2020 the Home Office told inspectors that there was no update on b). With regard to a), it reported:

> "As of the end of October 2019 we have provided Right to Work (RtW) refresher training to ICE staff. 96% of these staff have reported an increase in their knowledge in the delivery of the scheme following the training.
>
> In July 2019 the Civil Penalty Compliance Team (CPCT) introduced the ICE pulse, a dashboard document which provides Immigration Compliance and Enforcement (ICE) leads and their teams with figures to illustrate their performance in delivery of the Right to Work civil penalty scheme e.g. debt recovered, number of penalties issues, conversion rates, etc. and provides key messages and updates on trends and areas for development.[148]
>
> In January 2019 CPCT launched a new feedback tool providing ICE teams with timely constructive feedback on each illegal working civil penalty referral they have made to CPCT. This feedback highlights positive aspects of the referrals made reinforcing the effective evidence gathered and assists their continuous improvement identifying areas for development.
>
> Communications activity has been completed with the full implementation of ICE feedback, a monthly ICE Pulse dashboard providing performance statistics, key messages, updates on trends and areas for development, and the successful delivery of the ICE training and engagement action plan."

8.51 With regard to c), it wrote:

> "The Home Office has already put in place measures with the Insolvency Service to prevent companies dissolving as a means to avoid paying their civil penalty debt. In addition, the Home Office is in the very early stages of working with Companies House to test our ability to link new businesses to those that previously dissolved with unpaid debts."

Landlords

Legislation and roll out of the 'Right to Rent' Scheme

8.52 The Immigration Act 2014 ("the 2014 Act") introduced a measure, under the heading 'Residential Tenancies', aimed at preventing "persons disqualified by immigration status" from renting accommodation. This required landlords (and letting agents or sub-letters) to carry out "reasonable enquiries" to establish that prospective tenants have the "right to rent" before agreeing to lease them premises "for residential use".

8.53 'Phase 1' of the 'Right to Rent' scheme (RtR) was piloted in Birmingham, Walsall, Sandwell, Dudley and Wolverhampton from 1 December 2014. In October 2015, the Home Office announced the roll out of RtR to the rest of England from 1 February 2016.

148 In its factual accuracy response, in October 2020, the Home Office indicated that the dashboard also covered the Right to Rent civil penalty scheme.

8.54 The Immigration Act 2016 ("the 2016 Act") extended and reinforced the 'Residential Tenancies' measures. The 2016 Act created a criminal offence of knowingly leasing a property to a disqualified person, with a maximum sentence of five years' imprisonment, or fine, or both. The 2016 Act also empowered landlords to terminate tenancies where the tenant is a "disqualified" person.

Landlord Civil Penalties

8.55 Civil penalties raised against landlords (LCP) start at £80 for a first-time offence of renting to a lodger in one's own home, £1,000 for a first-time offence of renting to a tenant. These increase to £500 and £3,000 respectively for subsequent offences. Landlords can benefit from a 30% reduction if they pay within 21 days. Landlords are able to object and appeal against a LCP.

Performance

8.56 There is no reliable data for the effect of the 'Residential Tenancies' measures on landlord behaviour and the ability of disqualified persons to rent a property. Landlords are not required to inform the Home Office if they refuse to rent a property to a person on the basis that they are disqualified.

8.57 In 2013, during initial planning and consultation for the Immigration Act 2014, the Home Office committed to "conducting a review of the effectiveness and impact of the policy [Right to Rent] after two years, as part of the normal impact assessment procedures." An evaluation of Phase 1 was published in October 2015,[149] ten months after the scheme went live. Since then, the Home Office has not published any further evaluations of RtR.

8.58 Home Office data for Landlord Civil Penalties issued each quarter since the beginning of 2016 show that they have been used far less frequently than the Illegal Working Civil Penalties. The four-year total is just 592 (101 in 2016; 264 in 2017; 93 in 2018; and, 134 in 2019). See Figure 44.

149 'Evaluation of the Right to Rent Scheme: full evaluation report of phase 1', October 2015. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf#:~:text=Evaluation%20of%20the%20Right%20to%20Rent%20scheme%20Full,and%20Border%20Analysis%2C%20Home%20Office%20Science%29%20October%202015

This report led to the roll out of RtR across England from February 2016. It employed surveys with Home Office staff, local authorities, letting agents and housing associations; a "mystery shopping" exercise recording 332 encounters; focus groups with landlords and a review of management information from the first six months of the scheme. The latter included data on removals following an RtR sanction – nine removals out of 109 migrants without status who were identified through Home Office intelligence and enforcement activity in the 6-month period.

Figure 44 Number of Landlord Civil Penalty Notices issued by quarter 2016 to 2019	
Year/Quarter	**CPNs issued**
2016 Q1	13
2016 Q2	21
2016 Q3	31
2016 Q4	36
2017 Q1	58
2017 Q2	76
2017 Q3	75
2017 Q4	55
2018 Q1	39
2018 Q2	13
2018 Q3	18
2018 Q4	23
2019 Q1	40
2019 Q2	29
2019 Q3	43
2019 Q4	22

8.59 The Home Office's Impact Assessment for the landlord provisions of the Immigration Act 2014, produced in October 2013, included an estimate of the 'Cost of Civil Penalties to Landlords' over a 10-year period.[150]

Figure 45 Estimated 'Cost of Civil Penalties to Landlords'	
Type of Landlord	**10-year cost in £ millions**
Individual	2.7
Business	1.1
Letting Agent	0.2
Landlord to lodger	2.8
Total	**6.8**

8.60 £6.8 million was the central estimate. The low estimate was £3.7 million, and the high estimate was £13.4 million. In fact, in the first five years of the LCP the total value of LCPs imposed was £329,980, and total debts collected were £205,055. See Figure 46.

150 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251968/Landlords_Impact_Assessment.pdf

Figure 46 Landlord Civil Penalty debt collection 2014 to 2019			
Year	**Penalties referred for collection**	**Final penalty value (£)**	**Total penalties collected (£)**
2015	12	9,880	4,141
2016	102	57,680	26,098
2017	264	147,420	81,374
2018	93	42,040	45,380
2019	133	72,960	48,062
Total	**604**	**329,980**	**205,055**

8.61 While Windrush had had an impact on the numbers of LCPs imposed since 2018, ISD senior management explained that "the judgment last year had more effect than Windrush". It later clarified that this was "in terms of the volumes of referrals made to ISD from ICE teams".

Judicial Review of the Right to Rent Scheme

8.62 In June 2018, the Joint Council for the Welfare of Immigrants (JCWI) sought a judicial review of the Right to Rent Scheme, alleging that the scheme encouraged landlords to discriminate against prospective tenants on the grounds of race and nationality. JCWI argued that the Right to Rent Scheme, as brought in by the Immigration Acts of 2014 and 2016, and its proposed roll-out to the rest of the UK beyond England would cause landlords to commit nationality and/or race discrimination, contrary to Article 8 and Article 14 of the Convention, and that the Secretary of State had failed to carry out adequate evaluation of the Scheme.

8.63 On 1 March 2019, the High Court ruled that the RtR scheme was incompatible with Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention of Human Rights (ECHR). Mr Justice Martin Spencer stated;

> "In my judgment, a decision by the Defendant to commence the Scheme in Scotland, Wales or Northern Ireland without any further evaluation of its efficacy on the one hand and its discriminatory impact on the other in the form of an exercise to measure each of those matters effectively would indeed be irrational and a breach of Section 149 of the Equality Act 2010. The reasons are essentially those which have already been considered in relation to the application for a declaration of incompatibility. Given that I have found that there is little or no evidence of efficacy in relation to the Scheme and convincing evidence that the Scheme causes landlords to behave in a discriminatory way, and in particular in a racially discriminatory way, no reasonable Home Secretary could decide to extend the Scheme further without first securing evidence to dispel the evidence garnered by the Claimant and the interested parties and which I have found convincingly demonstrates that the Scheme is discriminatory in its effect, with little evidence of its efficacy."

8.64 The judge also ruled that:

> "It seems to me that a further evaluation exercise would be essential before the Home Secretary could possibly justify any further roll-out of this Scheme and any decision to do so without such further evaluation would be irrational and a breach of Section 149 of the Equality Act 2010".[151]

8.65 In conclusion, the judge issued the following two orders;

> An Order pursuant to Section 4 of the Human Rights Act 1998 declaring that sections 20-37 of the Immigration Act 2014 are incompatible with Article 14 ECHR in conjunction with Article 8 ECHR; and
>
> An Order declaring that a decision by the Defendant to commence the Scheme represented by sections 20-37 of the Immigration Act 2014 in Scotland, Wales or Northern Ireland without further evaluation of its efficacy and discriminatory impact would be irrational and would constitute a breach of Section 149 of the Equality Act 2010.

8.66 In January 2020, the Home Office's appeal was heard in the Court of Appeal, which delivered its judgment on 21 April 2020 agreeing with the High Court's view that the scheme does result in landlords discriminating against tenants without British passports on the basis of their actual or perceived nationality, however, holding that this discrimination is justified.

8.67 The presiding judges noted:

> "While the degree to which the Scheme has contributed to its aim of discouraging illegal immigration is difficult to quantify – and, I accept, more data collection and analysis might have been done in attempt to assess it – in my view, the evidence points towards the Scheme having made *some*, and more than insignificant, contribution to that aim. I note that, as recorded above (paragraph 113), it is common ground that (i) the objective of the Scheme as a measure is sufficiently important to justify the limitation of a protected right, (ii) the measure is rationally connected to the objective and (iii) a less intrusive measure could not have been used without unacceptably compromising the achievement of the objective. In my view, the judge was wrong to dismiss the public benefits derived from the Scheme; and to conclude, as he did, that the Scheme has had "little or no effect" so far as its aim of curbing illegal immigration is concerned.
>
> In respect of the Scheme's adverse effects, Ms Kaufmann submitted that Parliament enacted the provisions unaware of the discrimination that would be (and, in the event, has been) caused by them; and the judge said that he assumed and hoped that those Members of Parliament who voted in favour of the legislative Scheme "would be aghast to learn of its discriminatory effect as shown by the evidence…" (at [123]). However, it is clear that, when enacting the provisions, Parliament was aware of the risk of discrimination by landlords implementing the Scheme against potential tenants who did not have a British passport and, in particular, those who did not have ethnically British attributes such as name; and was aware of how it was proposed that that risk be managed through section 33 of the 2014 Act (which was introduced to deal with that identified risk) and the Discrimination Code of Practice. We simply do not know, and cannot properly speculate, as to what might have been the expectation of Parliament as a whole, and its individual members, with regard to the management of that risk. It certainly cannot be assumed that they considered

151 https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2019/452.html&query=JCWI

the risk would be managed so that the discrimination by landlords against potential tenants on grounds of nationality and/or race would not increase as a result of the introduction of the Scheme. In any event, in respect of the original enactment of the provisions, it is not to the point that the discrimination which has in fact occurred may be greater than that then expected. If the discrimination is greater than Parliament envisaged when enacting the provisions, about which I express no view, then that is a matter for Parliament (or the Secretary of State) to address."

8.68 The Court of Appeal held that this discrimination was justified. It found that the scheme was consistent with EU Council Directive 2002/90/EC:

- that the scheme did have an impact on immigration control
- that unlawful discrimination was not the intention or the direct result of the scheme that any discrimination was attributable to a minority of landlords who were acting unlawfully
- and that there exists effective remedy against unlawful discrimination by landlords.

8.69 Following the judgment, JCWI immediately stated its intention to appeal to the Supreme Court. At the time of writing (August 2020), RtR remained in operation only in England.

Notice of Letting to a Disqualified Person

8.70 Where appropriate, the Home Office may serve a landlord with a 'Notice of Letting to a Disqualified Person' (NLDP). Up until 2018, ICE teams could served an NLDP during a residential visit or one could be served by CPCT following a referral. The practice of ICE teams serving an NLDP was stopped following a Judicial Review and ICE teams were informed of this change in December 2018. At this time, a "minded to serve" process was introduced. In this process, prior to the issue of an NLDP, CPCT issues a "minded to serve" notice to the disqualified person, providing an opportunity for them to present evidence of their right to rent. If CPCT is subsequently satisfied that the person is disqualified from renting it will issue an NLDP to the landlord.

8.71 An NLDP can help the landlord to end a tenancy, and landlords may request an NLDP via the GOV.UK portal. In such cases, CPCT follows the "minded to serve" process. Landlords are under no obligation to report to the Home Office when they end a tenancy using an NLDP.

8.72 NLDPs were issued for the first time in 2016 Q4. See Figure 47.

Figure 47
NLDPs issued 2016 to 2019

Year	NLDPs issued	Tenancy terminations*
2016	21	1
2017	344	58
2018	72	29
2019	2	1
Total	**439**	**89**

*Voluntary reporting through the GOV.UK portal.

ICE team referrals

8.73 Most of the Landlord Civil Penalties that have been issued have resulted from an ICE team referral following a residential enforcement visit. See Figure 48.

Figure 48
Landlord Civil Penalties resulting from ICE referrals 2014 to 2019

Year	Number of ICE visits	Referrals from ICE	CPNs from ICE referrals	O'turned objection stage	O'turned appeal stage	O'turned %
2015	10,971	42	12	1	0	8.3%
2016	9,874	201	94	5	0	5.3%
2017	8,237	362	220	8	0	3.6%
2018	7,342	241	84	6	0	7.1%
2019	4,562	198	132	3	0	2.3%
Total	**40,986**	**1,044**	**542**	**23**	**0**	**4.2%**

8.74 Whatever the impact from 2018 onwards of the JCWI legal action and of Windrush, the data shows that between 2015 and 2017, just 2.1% of 29,082 ICE team residential visits resulted in a referral. Over half (53.8%) of these referrals led to an LCP. While fewer than 5% of CPNs were overturned, by comparison with the conversion rate to referrals and penalties from ICE illegal working visits, the LCP regime has proven significantly less efficient and effective.

Previous ICIBI Recommendations regarding the Right to Rent scheme

8.75 ICIBI's 'An Inspection of the Right to Rent Scheme' was published in March 2018.[152] It provided an insight into why so few residential enforcement visits resulted in a LCP referral:

> "ICE team members and managers told inspectors, consistently, that the current overriding, almost exclusive, priority for ICE teams was to arrest offenders for removal. They believed that senior managers would judge a team's performance against this metric. While they were aware that RtR should be "business as usual", it was not given any priority or scrutiny. None of the teams to whom inspectors spoke had a performance target for RtR.
>
> ICE team members said that IE's focus on securing removals was a disincentive to pursuing more RtR referrals. Invariably, the effort required to gather the evidence and compile a landlord referral was not valued by operational managers, whose performance was judged on removals statistics. This meant that as soon as a team had arrested the offenders encountered on a residential visit they were encouraged to move on to the next location to try to make more arrests, rather than staying on to gather evidence about non-compliant landlords."

152 https://www.gov.uk/government/publications/an-inspection-of-the-right-to-rent-scheme

8.76 The report concluded that:

> "Overall, the RtR [Right to Rent] scheme is yet to demonstrate its worth as a tool to encourage immigration compliance (the number of voluntary returns has fallen). Internally, the Home Office has failed to coordinate, maximise or even measure effectively its use. Meanwhile, externally it is doing little to address stakeholders' concerns."

8.77 The report contained four recommendations. One was rejected. This was that the Home Office should:

> "Recognise that the success of Right to Rent measures relies on private citizens more than public authorities by creating a new 'Right to Rent Consultative Panel', inviting Landlords Consultative Panel (LCP) members and stakeholders concerned with the rights and interests of migrants who were not previously LCP members to join. The remit of the new Panel should include raising and agreeing how to tackle issues and concerns about the working of the Right to Rent measures. Minutes of meetings and outcomes should be published on GOV.UK."

8.78 In response, in March 2018, the Home Office wrote:

> "While we reject the call to create a new Right to Rent consultative panel at this time, the Home Office will instead reconvene the existing Landlords Consultative Panel for the rest of 2018. The objectives of the existing panel will address the Chief Inspector's recommendation in full, including how to secure wider engagement with private citizens/landlords.
>
> The Panel will work together to focus on improving the communications efforts with landlords regarding the scheme. The Panel will examine how to drive up landlords' compliance with the scheme and work on improving the existing guidance for landlords on avoiding unlawful discrimination. The Panel will also be invited to comment and assist us is shaping the action plan.
>
> We will continue also to explore different channels of communication and feedback through engagement at the local level, such as at local authority led landlords' events. 3.5 We wish also to point to the fact that we engage with stakeholders in Scotland, Wales and Northern Ireland through separate fora.

8.79 In January 2020, the Home Office provided inspectors with an update on its implementation of the other three recommendations.

8.80 Recommendation 1:

> "Produce a SMART Action Plan to ensure that all areas of the Home Office that need to understand fully and engage with Right to Rent measures in order for them to work as effectively and efficiently as possible are briefed, trained, supported, and have appropriate performance measures/targets in place, backed up by quality assurance checks."

8.81 The Home Office wrote:

> "We have developed a SMART Action Plan which sets out how the HO will ensure all staff who, through the course of their work encounter evidence of illegal migrants accessing private rental accommodation, will consider compliance with the Right to Rent scheme as business as usual, then how we will deliver monitor and evaluate the plan. We have reviewed our QA process with ICE, as part of the FLE transformation we have introduced a new QA feedback tool, to be completed following all referrals to CPCT. It will be sent to the individual who submitted the referral and the Assurance team who will monitor patterns and trends."

8.82 Recommendation 2:

> "Engage with other central government departments and agencies, and with Local Authorities, the police and other local agencies, to produce a multi-level England-wide strategy for the deployment of Right to Rent measures, including specific multi-agency actions such as Operation Lari."[153]

8.83 The Home Office wrote:

> "We will continue to review and revise the draft strategy. This recommendation will be further progressed once the Wendy Williams review has been published, as well as taking account of the outcome of the Court of Appeal hearing, which took place 15-17 January [2020]."

8.84 Recommendation 4:

> "With the new Consultative Panel, develop and make public plans for the monitoring and evaluation of the Right to Rent measures, including (but not limited to) the impact of the measures (where appropriate alongside other 'compliant environment measures') on 'illegal migrants', on landlords, and on racial and other discrimination, exploitation and associated criminal activity, and homelessness."

8.85 The Home Office wrote:

> "The private beta phase of the right to rent online digital checking service has been successfully completed, with input from a wide range of landlords and letting agents, next steps are under consideration. Guidance on Right to Rent checks for EEA nationals post Brexit and B5JSSK e-gates visitors (biometric passport holders from Australia, Canada, Japan, New Zealand, Singapore, South Korea and USA) who will have a right to rent for up to 6 months has been published on GOV.UK[154]
>
> Work continues with both Strategic and EU Communications to promote post Brexit guidance more widely.

153 Operation Lari, in May 2017, was an attempt by IE to maximise joint working through higher-level operations. It targeted Houses in Multiple Occupation (HMOs). IE aimed to lead and co-ordinate a multi-agency response to illegal working by conducting targeted enforcement operations at HMOs known to be occupied by immigration offenders, linking the latter to employers with poor right to work records and to those who had avoided coming to law enforcement attention. One of the key objectives of Operation Lari was to identify and prosecute rogue landlords.

154 https://www.gov.uk/government/collections/landlords-immigration-right-to-rent-checks

The Right to Rent evaluation continues to progress which will involve mystery shopping of agents and landlords and will also undertake surveys of landlords, to better understand issues relating to potential discrimination. This will sit alongside a call for evidence.[155]

The Right to Rent Consultative Panel will be reconvened, pending the outcome of the Court of Appeal hearing."

8.86 From these responses, it appeared that the Home Office had made some progress in updating training and communications for ICE teams, on which it was reliant to drive up LCP numbers, so that they were better informed of processes and practicalities of applying the penalty. But, notwithstanding the JCWI legal challenge and Windrush, from the data provided there is no evidence that this has had any discernible effect on either the numbers of referrals or on their quality (indicated by the proportion that result in LCPs).

8.87 For the rest, the Home Office seemed to have adopted a largely 'wait and see' approach pending the outcome of legal proceedings and the Windrush Lessons Learned Review. Less progress has been made with engagement with external stakeholders. While arguably pragmatic, it means that little or no progress had been made either in reviewing the effectiveness of the measure or of measuring the impacts of particular outcomes.

Home Office Civil Penalty Reviews

8.88 In February 2018, the Home Office Continuous Improvement Unit produced an internal document entitled 'BICS Civil Penalty Steering Group Diagnostics Review'. This sought to improve end-to-end Civil Penalty processes. It was mainly concerned with improving payment and collection rates for all civil penalties. The report was subtitled 'How can Border Force and Immigration Enforcement improve the end-to-end Civil Penalty process for Aviation, Hauliers and Employers by March 2018'.

8.89 In mid-April 2018, the then Senior Civil Servant – "Civil Penalties Champion" – presented a paper to the BICS Board entitled 'The BICS Civil Penalty Review', identifying a number of problems, including: insufficient analysis of impact; insufficient staffing; insufficient accountability; and significant obstacles to debt recovery. It identified a need to intensify debt collection; review staffing levels; improve IT infrastructure and undertake work to better measure and understand the impact of civil penalties.

8.90 The Home Office provided inspectors with the report of a study entitled: 'Social Media Discourse on the Compliant Environment. An overview of exploratory analysis in 2017 and 2018'. This was completed by Immigration Enforcement Research and Analysis. The study sought to compare social media comments about the compliant environment pre- and post-Windrush.

8.91 Analysis of Twitter found that: the compliant environment had featured far more regularly following the Windrush scandal; a broader range of sanctions had been discussed following Windrush; while the majority of tweets supported the overall aims of the complaint environment, 73% were critical of the way the policy had been implemented. The report made no policy recommendations.

155 This evaluation was intended to be finished in March 2020. At the end of February 2020, the Home Office replied told inspectors: "On timings, this work is being staged, with the call for evidence to take place over the next few months, and panel surveys and mystery shopping taking place at different times of the year to allow for possible seasonal variation. Taken as a whole, the work is expected to be completed in late 2020."

Windrush Lessons Learned Review

8.92 The Windrush Lessons Learned Review (WLLR) examined RtR in considerable detail. In March 2019, the Home Secretary had asked Wendy Williams specifically to consider RtR in light of the High Court judgment.[156]

8.93 The WLLR looked in particular at the issue of discrimination and the effect of RtR on members of the Windrush generation and their children. Wendy Williams found that the Home Office had identified the likelihood of discrimination at almost every stage of policy development and implementation of RtR but had not acted sufficiently to address this risk. Home Office policy documentation was:

> "a. overly optimistic of the policy's likely impact on those in the Windrush generation
>
> b. overly optimistic of the effectiveness of the proposed "mitigations"
>
> c. illustrative that the potential for indirect discrimination and for stoking harassment or direct discrimination by third parties was not presented in a balanced and rigorous manner"[157]

8.94 The WLLR also focused on work the Home Office had done to assess the effectiveness of RtR and of the "compliant environment" measures more generally, quoting a Public Accounts Committee[158] report from February 2019 that found:

> "It was a dereliction of duty for the Department not to monitor the impact of its compliant environment policy on vulnerable members of our society. The Department has essentially devolved the enforcement of its compliant environment policies on housing and employment to landlords and employers. Despite the risk of potential inconsistency and discrimination, the Department has not evaluated the impact of its compliant environment measures and acknowledges that it will struggle to do so."

8.95 The WLLR made 30 recommendations for change and improvement. Recommendation 7 dealt with the "compliant environment" measures:

> "The Home Secretary should commission officials to undertake a full review and evaluation of the hostile/compliant environment policy and measures – individually and cumulatively. This should include assessing whether they are effective and proportionate in meeting their stated aim, given the risks inherent in the policy set out in this report, and its impact on British citizens and migrants with status, with reference to equality law and particularly the public sector equality duty. This review must be carried out scrupulously, designed in partnership with external experts and published in a timely way."

156 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

157 Windrush Lessons Learned Review. 'Assessing Policy Impact: losing sight of equalities' p.86

158 'Windrush generation and the Home Office' https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/1518/151802.htm

Home Office plans to evaluate RtR

8.96 In March 2020, inspectors were informed that an evaluation of RtR was in the planning stage and was due to be completed in late 2020. From the details provided, the approach looked broadly similar to the 2015 evaluation of the RtR pilot. The Home Office stated:

> "This evaluation is made up of three components:
>
> 1. A call for evidence to tenants, landlords and letting agents, about the current functioning of the Scheme. This will allow us to look again, for example, at the potential for documentation issues to arise for British citizens without passports.
> 2. A mystery shopping exercise (a blend of face-to-face, phone, and email contacts with landlords and agents), to identify issues of race discrimination resulting from the Scheme. This will follow a similar model undertaken in the first right to rent evaluation (via independent contractors).
> 3. Surveys of landlords to look at, for example, attitudes towards renting properties to different tenant groups (via independent contractors).
>
> On timings, this work is being staged, with the call for evidence to take place over the next few months, and panel surveys and mystery shopping taking place at different times of the year to allow for possible seasonal variation. Taken as a whole, the work is expected to be completed in late 2020."[159]

Other sanctions and penalties

Measures built on cross-departmental data matching

8.97 A number of the sanctions and penalties contained in the Immigration Acts 2014 and 2016 are reliant on matching data held by the Home Office with data held by other government departments (OGDs) and other public bodies. Data sharing is managed by ISD's Data and Sanctions Team (DAST).

Bank and building society accounts

8.98 Since 12 December 2014,[160] banks and building societies have been prohibited from opening new current accounts for "disqualified persons". Under the Immigration Act 2014, a "disqualified person" is a person who "(a) is in the UK, and (b) requires leave to enter or remain in the UK but does not have it" and "for whom the Secretary of State considers that a current account should not be provided by a bank or building society".[161]

8.99 The Money Laundering Regulations 2007 require financial institutions to satisfy themselves regarding the bona fides of their customers. Banks and building societies carry out anti-fraud checks through Cifas,[162] and the Home Office has shared data with Cifas since December 2011. However, the first "disqualified persons list" was shared in December 2014.

159 This evidence was provided before the Covid-19 pandemic.

160 http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted

161 In its factual accuracy response, the Home Office commented: "Individuals with an outstanding application or appeal, or those granted leave, including refugee status will not be considered 'disqualified'."

162 Cifas (previously known as the Credit Industry Fraud Avoidance System).

8.100 The Immigration Act 2014 requires financial institutions to carry out a check through a specified anti-fraud organisation to establish whether a person is a "disqualified person". The Immigration Act 2014 (Specified Anti-Fraud Organisation) Order 2014 specifies Cifas as the anti-fraud organisation with which financial institutions must make that check.

8.101 Banks and building societies are not required to report to the Home Office when they refuse to open a new account for a disqualified person. As 'An inspection of the 'hostile environment' measures relating to driving licences and bank accounts (January to July 2016)'[163] observed:

> "By not including in the 2014 Act the requirement for institutions to report when they refuse a customer a current account on immigration grounds, the government avoided possible resistance from the industry and ensured full take up of the measures (which the Financial Conduct Authority has confirmed).[164] However, it means that there is no systematic data collection about refusals resulting from immigration status checks."

8.102 From 1 January 2018,[165] banks and building societies were required to conduct quarterly immigration checks via Cifas of "each current account held with it" and notify the Home Office of any matched account holders that it identified. [166]

8.103 Where there is a match between the data held by the bank and by Cifas, the Home Office conducts a further manual check of its data before instructing the bank or building society on what action to take, including whether the account is subject to closure.[167] Banks and building societies can delay closure for a reasonable period to recover debt or disentangle the affairs of third parties. They are also able to comply without closing the account if steps can be taken to prevent the account from being accessed or operated by the disqualified person.

8.104 The Immigration Act 2016[168] extended the measures to accounts opened before the Immigration Act 2014 prohibition came into force and to accounts opened during a period of lawful stay but where the migrant has remained in the UK after their leave expired.

8.105 In addition to the duty to close, the 2016 Act empowered the Home Office to apply to the courts for an order to freeze accounts of a disqualified person. The 'Immigration Act 2014 code of practice: freezing orders (bank accounts measures)' sets out the factors that should be considered.[169] If an account is frozen, it will be unfrozen when the disqualified person leaves the UK. Since the implementation of the 2016 Act banking measures, the Home Office has not applied for any freezing orders.

8.106 As at September 2019, the Home Office had received confirmation from the banking sector that 23 accounts had been closed as a result of the Immigration Act 2016 provisions. The number is small, particularly when compared to the size of the disqualified persons list shared with Cifas. See Figure 49.

163 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/567652/ICIBI-hostile-environment-driving-licences-and-bank-accounts-January-to-July-2016.pdf.

164 In an 'implementation report' prepared for the Home Office in 2015 by the Financial Conduct Authority (FCA) in its monitoring and enforcement role, the FCA concluded that firms active in the personal current account and business account markets were 'complying with the requirements of the Act, identifying disqualified individuals and declining accounts when necessary.'

165 The Immigration Act 2016 banking measures came into force on 30 October 2017, but checks were introduced in 2018 Q1.

166 Immigration Act 2016, Schedule 7.

167 Immigration Act 2016, Section 40G(2).

168 http://www.legislation.gov.uk/ukpga/2016/19/contents/enacted

169 http://www.legislation.gov.uk/uksi/2017/930/made

Figure 49 Disqualified persons list shared with Cifas	
Date uploaded to Cifas	**Names on the disqualified persons list**
10 August 2015	58,844
4 January 2016	59,706
4 July 2016	198,133
3 January 2017	199,749
3 July 2017	113,741
8 January 2018	90,947
2 July 2018	16
2 January 2019	13
1 July 2019	11

8.107 Figure 49 clearly shows the impact of Windrush on the sharing of data with Cifas. The Home Office provided details of the changes made to the list in 2016, 2017 and 2018 that explained the fluctuations in the numbers of persons listed. For example, in 2016, one of the actions taken was to remove the restriction that "addresses must not be over 5 years old"; in 2017, the actions included "deletion of cases with addresses that are over 3 years old"; and, during 2018, there were numerous actions, including "exclude individuals from the Caribbean Commonwealth countries born before 1/1/73", "exclude individuals with [date of birth] earlier than 1/1/1988 except Foreign National Offenders" and "exclude all FNOs over 30 years old based on DOB before 31/12/1988".

8.108 The Home Office told inspectors that:

> "Each week amendments, inserts and deletions to the disqualified persons list are sent from the Home Office to Cifas, who make the appropriate changes to the disqualified persons list on the Cifas National Fraud Database and send the reconciled disqualified persons list to the Home Office (MIDAS).[170] This data is originally sourced from the Home Office's IT database – CID."

8.109 The Home Office told inspectors that the banking measures in the Immigration Acts 2014 and 2016 did not include a right of appeal. However, an individual can make a complaint to the Home Office if they believe they "are not unlawfully present in the UK or there is another reason why [their] account should not be closed". This is explained in a leaflet that banks should provide to anyone whose account has been closed because they are in the UK without leave to enter or remain. [171]

8.110 Where the Home Office finds on review that someone should not be included on the disqualified persons list it can amend the list immediately. However, opening or allowing access to an account remains a decision for the bank.

170 MIDAS stands for Management Information & Data Analytics Service.

171 https://www.gov.uk/government/ publications/current-account-closed-or-refused-based-on-immigration-status

8.111 Between January and June 2018, the Home Office received 16 complaints, eight of which were upheld. Of the eight, three were against refusal of an account and five against closure of an account. Between July 2018 and January 2020, eight complaints were received. None was upheld.

8.112 ICIBI's 2016 inspection,[172] raised concerns about data quality (along with the arrangements for data sharing, for processing matches and for making use of the resulting knowledge and intelligence), warning that: "If the 'disqualified persons' list is to continue to be extracted automatically, the Home Office needs to improve the accuracy of its record keeping, and to introduce some measure of quality assurance for the extracted data." However, it rejected the recommendation (one of 14) that it should:

> "Cleanse the list of 'disqualified persons' of all individuals who should not be included because they have leave to remain or an outstanding application, appeal, or other 'barrier' e.g. an outstanding application for Judicial Review."[173]

8.113 The Home Office argued that "the costs would disproportionately outweigh the benefits" and that it had "a number of safeguards in place to mitigate against the risk of an individual being included on the 'disqualified persons' list in error". The Windrush scandal suggests that this approach was a misjudgement.

8.114 The 2016 inspection also recommended that the Home Office should ensure that the Memorandum of Understanding between the Home Office and Cifas (and the MoU with the DVLA – see below) is "reviewed regularly and updated as required by the Code of Practice published by the Information Commissioner's Office". [174]

8.115 The Home Office informed inspectors that this recommendation had been actioned and was closed in December 2016. It was unclear from the evidence provided by the Home Office in early 2020 whether regular reviews and updates were being completed. However, in April 2018, the Government Internal Audit Agency (GIAA) had carried out an audit of 'the Immigration Skills Charge and Bank Accounts', which had focused on data-sharing between the Home Office and Cifas. In relation to the MoU, GIAA stated:

> "We are satisfied that it provides sufficient oversight to ensure access and use is controlled".

8.116 Inspectors were made aware of one potential data breach involving the offshoring of data. According to the Home Office, Cifas had informed it of "the possibility of a Cifas member incidentally accessing disqualified persons data outside the EEA when dealing with credit file related queries from customers". Inspectors reviewed ISD's Risk Register for January to March 2020. This noted that "As a precaution, Home Office data has been removed from the Cifas National Fraud Database and CIP Portal" and "Home Office Data Protection Officer has asked that once further information regarding the incident is received from Cifas this be sent through to them to consider next steps." In February 2020, inspectors were told that the matter was being investigated by ISD senior management with a view to reporting it to the Information Commissioner's Office.[175]

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172 https://www.gov.uk/government/publications/inspection-report-of-hostile-environment-measures-october-2016

173 https://www.gov.uk/government/publications/home-office-response-to-the-report-an-inspection-of-the-hostile-environment-measures-relating-to-driving-licences-and-bank-accounts-january-july

174 The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. Website information at https://ico.org.uk/

175 In October 2020, in its factual accuracy response, the Home Office highlighted that the decision whether to make a referral did not sit with ISD. The Home Office Data Protection Office's opinion, based on the information available, is that there is no evidence of any inappropriate or unauthorised access to personal data.

Driving licences

8.117 As with banks, the Home Office had been working with the Driver and Vehicle Licensing Agency (DVLA) for a number of years prior to the Immigration Act 2014. Since 2005, it had had an officer embedded at DVLA to assist with immigration status checks.[176] However, Section 47 of the 2014 Act empowered the Secretary of State to serve notice in writing revoking a full or provisional UK driving licence where "a licence holder is not lawfully resident in the UK", and requiring them to surrender the licence "forthwith".

8.118 The Immigration Act 2016 extended the powers. Sections 43 and 44:

- gave police and immigration officers the power to search person (not lawfully in the UK) and premises and seize any (UK) driving licences.
- created a new criminal offence of "driving when unlawfully in the UK", which carries a custodial sentence of up to six months and/or a fine of up to the statutory maximum. The vehicle used may be impounded and, upon conviction, the court may order its forfeiture.

8.119 The Home Office looks to identify individuals in the UK without leave who hold a UK driving licence by matching Home Office immigration data with data held by DVLA and by the Driver & Vehicle Agency (DVA) Northern Ireland). In such cases, DAST issues a warning letter advising of potential revocation action and giving the individual the opportunity to make representations regarding why the licence should not be revoked.

8.120 If after 10 working days it has not received successful representations, DAST provides DVLA or DVA (NI) with the details and DVLA and DVA (NI) revoke the licences in question, sending a notice to the holder.

8.121 The Home Office provided inspectors with data for records shared and licences revoked. See Figure 50. Neither DVLA nor DVA (NI) retain records of driving licences denied.

Figure 50
Home Office records shared with DVLA and DVA (NI) and licences revoked

Year	DVA (NI)			DVLA		
	Records shared	Licences revoked	%	Records shared	Licences revoked	%
2014-15	10	9	90%	484,523	31,776	6.5%
2015-16	312	35	11.2%			
2016-17	638	27	4.2%			
2017-18	650	28	4.3%	107,201	4,261	3.9%
2018-19	292	6	2%	24,691	1,076	4.3%
2019-20*	24	1	4.2%	4,311	255	5.9%
Total	**1,926**	**106**	**5.5%**	**620,726**	**37,368**	**6.0%**

* To end December 2019.

176 In October 2020, in its factual accuracy response, the Home Office stated that there was no longer an officer embedded in DVLA in this role.

8.122 Windrush and the ministerial embargo, since May 2018, on sharing data for individuals born before 1 January 1989, explain the reductions in records shared in 2018 to 2019 and 2019 to 2020, but the numbers were already reducing in the case of DVLA.[177] The reduction in revocations was sharper in percentage terms, until an upturn in 2018 to 2019 and 2019 to 2020, but against much-reduced datasets.

8.123 The data from 2014/2015 to 2016/2017 suggests that, initially, this measure enjoyed some success,[178] though whether this translated into the desired "hostile environment" outcomes was less certain. In October 2016, 'An inspection of the 'hostile environment' measures relating to driving licences and bank accounts (January to July 2016)' identified that only a small proportion of revoked licences had actually been surrendered, which:

> "undermines the intended two-fold impact of revocation: stopping illegal migrants from being able to drive lawfully, and from using a driving licence to access other benefits and services. While powers exist to prosecute for the non-surrender of a revoked licence, they are rarely used."

8.124 It recommended that the Home Office should work with DVLA and prosecuting authorities to increase the number of surrendered licences, and with the police and motor insurers to ensure that the measures in the 2014 and Acts were understood and used to full effect. Both recommendations were accepted.

8.125 The 2016 inspection also noted that:

> "some individuals were being wrongly flagged to DVLA as present in the UK without leave, while others who were present without leave were being missed."

8.126 It concluded that the Home Office did not appear to appreciate the seriousness of [licences revoked in error] for the individuals affected, a view that was reinforced by its refusal to cleanse the disqualified persons list. However, according to the Home Office, DVLA data for July 2014 to October 2019 indicated only 115 appeals against revocation, just five of which were successful. Appeals are addressed to DVLA in the first instance but can be escalated to a Magistrates' Court.

Premises licence

8.127 Schedule 4 of the Immigration Act 2016 covers the denial of a licence for premises used for a licensable activity as defined by the Licensing Act 2003, which includes "the supply of alcohol", where the person is not entitled to work in the UK by virtue of their immigration status.

8.128 ICIBI's recommendation from 'An inspection of the Home Office's approach to Illegal Working (August – December 2018)' that the Home Office should "explore whether more effective use could be made of licence revocations and Closure Notices" encompassed the denial of premises licences. The recommendation was accepted.

177 In its factual accuracy response, the Home Office stated that "the reduction [prior to Windrush and the ministerial embargo] was primarily due to the stock of cases that had been fed through to DVLA over the first two years of data sharing".

178 The 2016 ICIBI inspection noted that: "a target of 10,000 driving licence revocations by the end of 31 March 2015 had been agreed with the Cabinet Office".

8.129 In February 2020, inspectors were told that DAST is sighted on all licence applications made to local authorities for premises to sell alcohol and late-night refreshments and that it reviews 10% of these, selected at random, and carries out checks on named individuals against all Home Office immigration systems to see if there is a reason to oppose the licence application. DAST also checks the address of the premises with CPCT to see if a financial penalty has been levied before and a Companies House check is carried out to identify any other listed directors – if any are identified, their details will also be checked against Home Office systems.

8.130 DAST also receives referrals from ICE teams where they have identified illegal workers at licensed premises. In such cases, DAST sets up a licence review with the local authority but ICE teams are responsible for preparing relevant statements and attending licence hearings.

8.131 According to Home Office data, during 2018 and 2019 DAST initiated 56 licence reviews. Of these: 14 were withdrawn, "following a change in circumstances"; 42 went ahead, leading to 17 licence revocations and five suspensions. In 16 cases, conditions were added to the licence, and in seven cases conditions were added regarding the designated premises supervisor. Three warnings were issued to the licence holder.

8.132 ISD managers acknowledged that the figures were low: "It is not where we wanted to be". One manager commented that resources may not have been focused on the right cases.

Taxi Licensing[179]

8.133 Transport for London (TfL) is responsible for licensing taxis and private hire operators and drivers[180] in London. Outside London, the responsibility rests with local authority licensing departments and processes for issuing, refusing and revoking licences vary.

8.134 Under section 61 of the Local Government (Miscellaneous Provisions) Act 1976, a licensing authority can suspend, revoke or refuse to renew a driver's hackney carriage or private hire licence on the grounds: "That since the grant of the licence a person has … been convicted of an immigration offence or required to pay an immigration penalty."

8.135 The Immigration Act 2016 required Licensing Authorities (LA) not to issue a licence to a person who is not entitled to work in the UK by virtue of their immigration status. LAs can carry out 'Right to Work' checks, via GOV.UK,[181] at the beginning of the application process. As part of the checking process, LAs may choose to submit immigration status check enquiries to the Home Office's Status Verification Enquiries & Checking (SVEC).[182] SVEC notifies DAST if any checks it returns to LAs may result in a licence refusal or revocation.

8.136 However, LAs are not obliged to conduct checks with the Home Office if they are satisfied a valid document has been presented, nor are they mandated to report the presentation of an invalid document and decision to refuse or revoke a licence.

8.137 To comply with Section 55 of the Immigration Act 2016 , which enables a public authority or someone acting on behalf of a public authority to supply information (including documents and articles) to the Home Office for immigration purposes, DAST works with LAs to identify and collate information about taxi licence refusal or revocations.

179 In its factual accuracy response, the Home Office commented: "DAST only record information from decision making authorities. They are not involved in either process regarding refusal or revocation [of taxi licenses]."

180 https://tfl.gov.uk

181 https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks

182 Home Office's Status Verification Enquiries & Checking (SVEC) sits in UKVI.

8.138 In addition, an On-Site Immigration Official (OSIO)[183] is embedded in TfL's Taxi Licensing Department at TfL's request. The OSIO provides immigration status information to TfL, which is used in the assessment process for issuing, refusing or revoking a licence. TfL's decision may be appealed to the local Magistrates' Court. The Home Office told inspectors it did not hold any information about appeals.

Figure 51
Taxi licence refusals and revocations

Sanction	Pre-2018/2019	2018/2019	2018/2019
Licence refusals	31	40	23 (to Oct 2019)
Licence revocations	13	5	6 (to Aug 2019)

Construction Skills Certification Scheme

8.139 Construction Skills Certification Scheme (CSCS)[184] cards are issued by the Construction Industry Training Board (CITB).[185] Most major contractors and house builders require construction workers employed on their sites to hold a valid CSCS card. CSCS cards issued since August 2016 have stated that "Cards issued by CSCS do not confirm the holder's right to work in the UK", to avoid employers being unclear about this.

8.140 ISD's Partnership Team shares data with CITB so that it may revoke CSCS cards where a person does not have the right to work in the UK. Inspectors were told that this:

> "does not require a MoU as this activity takes place on an ad hoc basis, as opposed to bulk data sharing, so we (ISD) share data with CITB under common law powers".

8.141 During the 2018 Illegal Working inspection, inspectors were told that ICE may also collaborate directly with CITB where a team encounters a person working illegally on a construction site who is holding a CSCS card.

8.142 The Partnership Team did not hold data for the number of CSCS cards revoked as a result of this collaboration, but it did provide data for requests it had made for a card to be revoked.

Figure 52
Partnership Team requests for CSCS card revocation

	2016-17	2017-18	2018-19	2019-20
Revocation requests	33	2	3	8

8.143 The annual totals suggest that this measure has had little or no meaningful impact on the "hostile environment". However, this may be less a matter of the effectiveness of DAST's arrangement with the CITB and more one of the small numbers of building/construction sites visited by ICE teams.

183 On-Site Immigration Officials (OSIO) are Home Office staff who work with partner organisations on a part time or full-time basis. This work can be either embedded (on-site) within the organisation or working from a Home Office location. OSIOs provide dedicated support to partners at their request to assist in their understanding of entitlement rules, immigration status and processes

184 CSCS cards provide proof of the appropriate training and qualifications for the job a construction worker is doing on site. The card contributes to improving standards and safety on UK construction sites. https://www.cscs.uk.com

185 CITB is the industry training board for the construction sector in England, Scotland and Wales. https://www.citb.co.uk

8.144 'An inspection of the Home Office's approach to Illegal Working (August – December 2018)', reported that of 23,413 illegal working deployments by ICE teams between 1 April 2015 and 31 August 2018, just 157 were to building/construction sites, with the number visited reducing each year.

National Health Service

8.145 Since 1982,[186] the NHS has had a statutory obligation to make and recover charges for the treatment of overseas visitors to the UK. Whether a patient is required to pay for treatment depends on whether they are "ordinarily resident" in the UK and on the type of treatment.

8.146 Health is a devolved matter and legislation varies between England, Wales, Scotland and Northern Ireland. Some treatments are free to all patients, including primary care services, such as GP services and accident and emergency services (all regions of the UK). However, most secondary healthcare in NHS hospitals is not automatically free of charge.

8.147 Some charges for EEA nationals can be recovered from the relevant home country via reciprocal agreements. However, for non-EEA nationals, or EEA nationals not covered by a reciprocal arrangement, NHS healthcare providers are required to recover the charge directly from the patient.

8.148 In April 2015, new rules extended the charging regime to non-EEA students and temporary migrants, who were required to pay an Immigration Health Surcharge (IHS) when submitting their visa application.

8.149 The NHS refers cases to the Home Office where a person subject to immigration control has an outstanding invoice for chargeable NHS care. Since 2016, the threshold for reporting the debt has been £500, outstanding for two months (previously, it was £1,000, outstanding for three months). The NHS does not notify the Home Office of individuals with outstanding invoices under £500 or of debts paid on time. Where a person has an outstanding NHS debt, the Home Office may refuse any application for leave to enter or remain in the UK.

8.150 NHS Trusts are required to report the repayment of debts in a monthly NHS Debtor return, along with debts that have been cancelled by the NHS Trust, or ones where a repayment plan has been agreed with the debtor. ISD told inspectors that details of how much has been repaid, or whether the debt is ever paid in full, are not provided in every case. As a result, ISD does not hold a complete and accurate record of the amount of debt recovered by Trusts. Where it is informed that the person has agreed a repayment plan, repaid their debt, or that the debt has been cancelled, ISD updates CID and other relevant systems.

8.151 In November 2019, ISD told inspectors it was aware of 3,864 invoices that had been raised by the NHS as a result of DAST referrals, with a total value of almost £24 million. These cases were referred to DAST from other Home Office business areas that had assessed that an individual may be accessing NHS services to which they are not entitled free of charge. DAST quality assures each referral it receives to ensure it is suitable to pass to the NHS. The Windrush safeguards apply, and data for individuals born before 1 January 1989 is not being shared.

186 http://www.legislation.gov.uk/uksi/1982/898/pdfs/uksi_19820898_en.pdf

8.152 The NHS deals with any appeals raised against these invoices. The Home Office is not informed of numbers or outcomes. Similarly, inspectors were told that NHS Trusts do not inform the Home Office when they deny treatment based on information shared by the Home Office. This was the case when ICIBI inspected BICS collaborative working arrangements with other government departments and agencies in 2018. Then, inspectors found that most Trusts were not submitting returns or returns were submitted late and the quality varied in terms of errors and omissions.

8.153 Inspectors asked the Department of Health and Social Care (DHSC) for any statistics held on the number of times Trusts had denied treatment following Home Office data sharing. DHSC responded:

> "Unfortunately, we do not have this data, it simply isn't collected. No statistics are collected by the NHS on denial of treatment. It should be noted that treatment can only be withheld if it is considered non-urgent and the individual doesn't pay in advance".

Her Majesty's Revenue and Customs

8.154 On a monthly basis, DAST shares immigration data with HMRC to enable it to check that individuals in receipt of benefits and credits are entitled to receive them. The DAST data relates to individuals whom the Home Office suspects of committing an offence under Section 24/24A of the Immigration Act 1971.[187]

8.155 The legal basis for this data sharing is contained in Section 21 of the Immigration and Asylum Act 1999,[188] and Section 36 of the Immigration, Asylum and Nationality Act 2006, [189] which imposes a duty on both parties to share data that "is likely to be of use for" their respective purposes. As head of a government department, the Home Secretary may also rely on common law powers to do whatever a natural person may do, although this may be restricted by confidentiality rights or agreements.

8.156 HMRC writes to any individuals identified through this data sharing. Payments are suspended immediately for those in receipt of child benefit, pending investigation, and the individual is given 30 days to respond. For those in receipt of tax credits, payments are not suspended, but again the individual has 30 days to respond and if they fail to do so, or if the response does not satisfy HMRC, the benefit/credit is stopped.

8.157 There is a right of appeal against the decision to the First-tier Tribunal (Social Entitlement Chamber). HMRC deals with any appeals. Details of numbers and outcomes are not shared with the Home Office, however HMRC does provide data on benefits or credits stopped. See Figure 53.

187 https://www.legislation.gov.uk/ukpga/1971/77/section/24
188 https://www.legislation.gov.uk/ukpga/1999/33/section/21
189 https://www.legislation.gov.uk/ukpga/2006/13/section/36

Figure 53 Benefits or credits stopped by HMRC as a result of Home Office data sharing					
	2015 to 2017	**2017 to 2018**	**2018 to 2019**	**2019 to 2020 (To Dec 2019)**	**Total**
Records shared	404,086	122,527	20,557	4,663	551,833
Benefits or Credits stopped	2,679	621	75	5	3,380
Value £	**20,800,000**	**4,400,000**	**691,000**	**24,000**	**25,915,000**

8.158 The Home Office explained that "the [volume of] data shared decreased due to the introduction of the triple lock safeguard in November 2018. Business rules are applied to the data, that removes cases that do not fit the data-sharing criteria. This process was adopted as BAU [business as usual] in February 2019."[190] The figures for 2018/2019 onwards also clearly reflect the effect of Windrush and the Ministerial embargo since May 2018 on sharing data for persons born before 1 January 1989. But, the impact of data sharing on stopping benefits and credits had already peaked prior to this.[191]

Department for Work and Pensions

8.159 The tailing off of financial savings also appeared to be true for Department for Work and Pensions (DWP) welfare, pensions and child maintenance payments. See Figure 54. The Home Office told inspectors that DWP was unable to verify the number times a benefit had been stopped as a result of this data sharing.

Figure 54 Benefits stopped by DWP as a result of Home Office data sharing					
	2016 to 2017	**2017 to 2018**	**2018 to 2019**	**2019 to 2020 (To Dec 2019)**	**Total**
Records shared	34,648	30,456	4,819	856	70,779
Value £ of Benefits stopped[192]	**5,100,000**	**2,400,000**	**875,800**	**63,100**	**8,420,900**

190 This is achieved using triage tools to assess the removability and level of harm posed by immigration offenders, automate the identification and prioritisation of cases, and to provide information on the length of time a barrier to removal has been in place.

191 In October 2020, in its factual accuracy response, the Home Office commented that: "The higher numbers of cases being shared in the first two years of data sharing was primarily due to the stock of cases that had been fed through to partners over those first two years."

192 The Home Office told inspectors that DWP was "unable to verify the number of incidents where a benefit has been stopped".

8.160 Where it is matched with a National Insurance Number (NINO), the DAST data shared with HMRC is shared with DWP, so that DWP can check that individuals in receipt of benefits are entitled to them.[193] Like HMRC, DWP writes to the individual, giving them 30 days to contact the DWP compliance section or their benefit claim is closed. The individual has a right of appeal. The Home Office informed inspectors that:

> "DWP has confirmed they are aware of five appeals; however, they don't keep accurate records of these and have stated some appeals may go through other avenues. Details on volumes and outcomes are not passed back to ISD".

Previous ICIBI inspection of data sharing

8.161 Numerous ICIBI inspections have drawn attention to deficiencies in the quality of Home Office record keeping and the frailty of its data and management information as a result.

8.162 Between August and October 2018, an external consultant commissioned by the Home Office conducted an assurance review of ISD processes relating to data sharing with third parties. The report, submitted in November 2018, made recommendations about formalising data sharing processes; assessing staff performance; assuring output; checking DAST data files prior to disseminating to partners; and creating an overarching assurance management system, all of which have been recommended previously in one form or another.

8.163 This review ran concurrently with ICIBI's 'An inspection of Home Office (Borders, Immigration and Citizenship System) collaborative working with other government departments and agencies (February – October 2018). The inspection report was published in January 2019. It recommended that the Home Office should:

> "develop a standard methodology … that includes as a minimum: performance measures, supported by the routine collection of data and evidence – the measures need to be capable of demonstrating not only that the collaboration is meeting its objectives, but that where data is being shared this is proportionate and necessary"

8.164 The recommendation (which contained several other elements) was "partially accepted", although the idea of a standard methodology was rejected as "too prescriptive". The response did not directly address routine collection of performance data except to say that "collection and appropriate use of performance data" was used to deliver "major programmes". The department's inability to provide the key data for the current inspection, as it was not reported by the recipient and user of the data, did not support this assertion.

193 Data sharing from HMRC to DWP is covered by Section 122b of the Social Security Administration Act 1992. The Home Office told inspectors that DWP does not receive the "same full list" as HMRC as can be seen in the different volumes of data shared.

Windrush Lessons Learned Review

8.165 Wendy Williams raised the same issues in her Windrush Lessons Learned Review (WLLR). Recommendation 22 stated:[194]

> "The Home Office should invest in improving data quality, management information and performance measures which focus on results as well as throughput. Leaders in the department should promote the best use of this data and improve the capability to anticipate, monitor and identify trends, as well as collate casework data which links performance data to Parliamentary questions, complaints and other information, including feedback from external agencies, departments and the public (with the facility to escalate local issues). The Home Office should also invest in improving its knowledge management and record keeping"

Post-Windrush Safeguards

8.166 In February 2020, Home Office senior management assured inspectors that safeguarding measures remained in place to protect the Windrush generation:

> "All compliant environment measures and data-sharing have been paused since April 2018, except for individuals born after 01/01/89. This ensures that the Windrush generation and their dependents are not caught up. ISD is confident that mitigation and safeguards are now in place and are awaiting ministerial authorisation to "un-pause" data sharing again".

8.167 The Windrush safeguarding measures have reduced the volumes of data shared by the Home Office with other government departments and other bodies. The "results" achieved by the latter have also diminished, but the relationship between data volumes and outcomes has never been explored and is not well understood, either by the Home Office or its partners.[195]

Performance monitoring

8.168 Internally, until March 2018, the monthly ISD performance pack contained reports on the numbers of voluntary and enforced returns following imposition of a sanction, notwithstanding the Home Office's position that individual sanctions and penalties should not be measured in isolation, but as a "package".

8.169 This showed that for 2017/18 there had been 1,431 "Voluntary Returns after sanctions" and 1,059 "Enforced Returns after sanctions". The sanctions included "matches with data from DfE, DVLA, DWP, NHS and HMRC. It also includes matches from data flagged locally on Right to Rent and Construction Skills Certification Scheme".

8.170 In February 2020, the Home Office published 'How many people are detained or returned'.[196] See Figure 55.

194 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

195 ISD Performance Pack – November 2019. This was caveated: "All data assessed and produced in this report are based upon internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change."

196 https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/how-many-people-are-detained-or-returned

Figure 55 Published data for enforced and voluntary returns					
	2015	**2016**	**2017**	**2018**	**2019**
Enforced returns	**13,690**	**12,469**	**12,049**	**9,405**	**7,361**
EU	3,848	4,905	4,914	3,783	3,498
Non-EU	9,842	7,564	7,135	5,622	3,863
Voluntary returns	**28,189**	**27,157**	**20,502**	**15,323**	**11,421**
EU	669	775	724	254	107
Non-EU	27,520	26,382	19,778	15,069	11,314

8.171 The accompanying 'Notes' state:

> "'Enforced returns' cover enforced removals from detention, non-detained enforced removals and other returns from detention where the Home Office will have been required to facilitate or monitor the return."
>
> "'Voluntary returns' are subject to significant upward revision as matching checks are made on travellers after departure. 'Voluntary returns' also include a variety of departures, including assisted voluntary returns, controlled returns and other verified returns (for example, through data matching). These data are not comparable over time, hence comparisons with the previous 12 months for voluntary returns have not been included in the table."

8.172 In the case of voluntary returns, the text adds that "comparisons over time should be made with caution" as "it can take some time for the Home Office to become aware of the departure [of individuals whom it has told to leave] and update the system."

8.173 Accepting the need for caution, the published data indicates that enforced and voluntary returns are declining. Meanwhile, the Home Office has not published any data regarding the numbers of "returns after sanctions". In the absence of evidence to the contrary, it would be reasonable to assume from the other data provided to inspectors that these too have reduced.

8.174 The February 2020 publication observed that:

> "in the latest year, the largest number of recorded voluntary returns was of Indian nationals (1,816, or 16% of the total), followed by Chinese (1,051, or 9%) and Pakistani nationals (1,049, or 9%). These nationalities accounted for over one-third (34%) of the total recorded voluntary returns (11,421)."

8.175 However, any link to Illegal Working Civil Penalties is arguably more consequential than causal. As the 2019 Illegal Working inspection identified, 44% of ICE visits to business premises between 2015/2016 and 2018/2019 were to restaurants and takeaways and certain nationalities (those where "there was a realistic prospect of removal") were more likely to be targeted for working illegally. Bangladeshis, Indians, Pakistanis and Chinese made up almost two-thirds (63%) of all illegal working arrests.

Review of Compliant Environment measures[197]

8.176 On 3 June 2018, the Home Secretary announced that the compliant environment measures were being reviewed in the wake of the Windrush scandal.[198] In March 2020, the WLLR followed this up with the recommendation (Recommendation 7) that:

> "The Home Secretary should commission officials to undertake a full review and evaluation of the hostile/ compliant environment policy and measures – individually and cumulatively. This should include assessing whether they are effective and proportionate in meeting their stated aim, given the risks inherent in the policy set out in this report, and its impact on British citizens and migrants with status, with reference to equality law and particularly the public sector equality duty. This review must be carried out scrupulously, designed in partnership with external experts and published in a timely way."

8.177 The Home Office accepted all of the WLLR recommendations. At the time of writing, the Home Secretary was due to make a statement on the work it had done in response to the WLLR.

197 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

198 https://www.itv.com/news/2018-06-03/home-offices-hostile-environment-faces-review-after-windrush-sajid-javid/

Annex A: 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 her 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 Inspectorate of Constabulary and Fire & Rescue Services (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 her 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 she 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 B: ICIBI's 'expectations'

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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