



An Inspection of How the Home Office Tackles Illegal Working

October 2014 – March 2015



David Bolt
Independent Chief Inspector of
Borders and Immigration

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Foreword

There are no reliable estimates for the numbers of migrants working illegally in the UK. They try to stay beneath the radar, and their employers are either negligent in respect of their obligations to check their employees' 'right to work' or complicit in hiding such work from the authorities.

The Home Office acknowledges, and there is broad acceptance, that the actual and perceived ease of finding paid work is a significant 'pull factor' for migrants looking to enter the UK illegally or to remain here without the legal right to do so.

This inspection focused on the efficiency and effectiveness of efforts by the Home Office's Immigration, Compliance and Enforcement (ICE) teams to tackle known and suspected instances of illegal working. ICE teams are part of Immigration Enforcement Directorate (IE). They have powers to interview, arrest and detain immigration offenders found working illegally. The inspection looked at whether these powers were being exercised in accordance with the law and with Home Office guidance. It also looked at the effectiveness of the IE team levying civil penalties against employers who had failed to comply with all regulations.

Prior to 2014, the primary focus for ICE teams was enforcement visits to businesses, mostly restaurants and takeaways, to locate and arrest illegal workers with a view to their enforced removal from the UK. In 2014, the emphasis shifted to 'educational visits' to encourage employers to comply with their obligations, and as a result to deny illegal migrants easy access to paid work and increase the numbers leaving the UK voluntarily.

The comparative effectiveness of this 'new' approach was hard to assess. However, the Home Office's interim evaluation of an operation in the areas with the highest known numbers of illegal workers indicated that it had increased voluntary departures. Alongside this, the Home Office had identified and implemented, or had begun to implement, a number of improvements in related processes, for example: widening the allocation of biometric residence permits to make it easier for employers to check employees' status; reviewing operational guidance and making it more accessible; enhancing local assurance regimes.

The inspection confirmed the need for these improvements and others. It found weaknesses and inconsistencies in operational training and practice. For example, after initial training, new ICE team members were mentored within their team, but this was not supported centrally and therefore varied in content and quality. Detailed examination of 293 official notebooks and other records identified poor record keeping and failures to comply with guidance (and, in some instances, with legislation) in relation to obtaining lawful entry to premises, pursuit of individuals away from target premises, cautioning, questioning and use of handcuffs.

The report makes eight recommendations with an emphasis on operational training, supervision and assurance.

The report was sent to the Home Secretary on 28 October 2015.

David Bolt

Scope and Purpose

Independent Chief Inspector of Borders and Immigration

This inspection examined the efficiency and effectiveness of Home Office actions against illegal working, including action to locate and detain immigration offenders working illegally, and action to encourage employers to comply with their obligations to check an employees' immigration status and, where appropriate, to penalise non-compliance.

The inspection involved:

- a preliminary meeting with Immigration Enforcement senior managers;
- analysis of relevant data and information, including written operational guidance;
- file sampling of 184 illegal working enforcement cases drawn from all enforcement regions and 60 civil penalty files;
- interviews with enforcement and crime investigation staff and managers in three IE regions;
- observation of five enforcement visits;
- a visit to the Civil Penalty Compliance Team (CPCT);
- interviews with six Home Office Senior Civil Service managers ('senior managers') and other managers across strategy and policy, crime investigation, intelligence and enforcement;
- liaison with the Department for Business, Innovation and Skills (BIS), and the Cabinet Office on its Better Business Compliance Partnerships; and
- stakeholder engagement with the Immigration Legal Practitioners' Association (ILPA)¹ and an immigration advisory company.

The high-level emerging findings were presented to the Home Office on 5 February 2015.

¹ ILPA is a member of the Independent Chief Inspector's Refugee and Asylum Forum and has contributed to other inspections.

1. KEY FINDINGS

What was working well?

- 1.1 Immigration Enforcement's shift from a strategy of locating, arresting and seeking the enforced removal of illegal workers towards one that sought greater engagement with businesses to encourage employers to comply with measures to curb illegal working (as exemplified by Operation Skybreaker), was consistent with the Home Office's wider encouragement of voluntary departures as a less expensive and less resource-intensive means of achieving volume removals. In the areas where Skybreaker had operated, the initial indications were that voluntary departures had increased.
- 1.2 Greater engagement with businesses to encourage compliance also chimed with the Prevent strand of the 4Ps approach (Prevent, Pursue, Protect, Prepare) that IE had adopted from July 2014 to bring it into line with other law enforcement and intelligence agencies.
- 1.3 IE had recognised that for the engagement with businesses to work well it needed to ensure that it provided advice and assistance in the most appropriate formats. The focus on 'educational visits' to business premises was consistent with the Department for Business, Innovation and Skills (BIS) 2010 report *From the Business End of the Telescope*, which found that '*business feedback largely indicates that face-to-face support is preferred over online advice: the Forum of Private Business states that it is twice as useful for its members*'. Further, IE had recognised from Operation Skybreaker that it should look to provide information in a range of languages.
- 1.4 Home Office moves to make it easier for employers to check documents by widening the allocation of biometric residence permits were helpful.
- 1.5 Operationally, the quality of entries on the National Operations Database (NOD) had improved since 2014 and NOD was now providing operational managers with useful performance data on a weekly basis. IE managers had recognised that they needed to improve local assurance processes and had recently introduced 100% record checking with a focus on quality. Senior managers had identified that officers were having difficulties accessing information and operational guidance, including via the intranet, and had begun a review of policies and guidance. They had also identified a gap in criminal investigation skills and experience in enforcement teams and had arranged for some officers to receive skills training in first-level investigations.
- 1.6 Moving the Civil Penalties Compliance Team (CPCT) into the bigger IE Interventions and Sanctions Directorate, together with effective management, had addressed backlogs found in the 2010 inspection of that team. Based on the files sampled, CPCT decisions about when to apply a civil penalty were sound. Managers had identified and resolved caseworkers' misunderstanding of the 'co-operation' criteria, which had meant that some penalties had been wrongly reduced. Collection of civil penalties was not straightforward. The Home Office had taken steps to improve collection by outsourcing to specialist debt recovery firms and through 'naming and shaming' businesses and individuals who had defaulted.
- 1.7 The Home Office was working with HMRC, the Insolvency Service and others to close legal and other loopholes, for example blocking individuals without the appropriate immigration status from registering as self-employed and banning individuals linked to illegal working from holding company directorships.

Areas for improvement

- 1.8 The comparative effectiveness of the ‘new’ approach (to encourage employer compliance rather than ‘enforcement first’) was hard to assess, partly because prevention was inherently difficult to measure. Also, IE had no ‘baseline’ performance data, for example for numbers of ‘educational visits’ and related arrests prior to Operation Skybreaker. On the face of it, however, while voluntary removals appeared to have increased in the areas where Skybreaker had operated, overall removals of illegal workers arrested by IE reduced quarter by quarter throughout 2014. IE stated that arrests of illegal workers reduced substantially from April 2014 due to a re-prioritisation of effort to tackle abuse that had been identified in the English Language Testing Sector.
- 1.9 The information available to employers was not as helpful as it could be. For example, information available on the Gov.uk website was in English only and in a style that may not have been easy to understand for someone using English as an extra language. Immigration professionals, including ILPA, believed the Sponsor, Employer and Education Helpline sometimes gave the wrong advice. Large employers who used specialist immigration advisory services to check their ‘right to work’ processes and records might avoid being misled, but most small and medium enterprises (SMEs) would be unlikely to use such services.
- 1.10 IE’s intelligence about illegal working mostly consisted of low-level allegations made by members of the public, which were lacking in detail and the reliability of which was difficult to assess. This had led IE to focus on high street restaurants and takeaways, which was self-reinforcing and limiting in terms of organisational knowledge and the nationalities encountered. Other business sectors and possibly other nationalities had been neglected by comparison.
- 1.11 Intelligence teams were not always doing their pre-visit checks and it was an inefficient use of resources for enforcement officers to have to do them, especially where they might already have been done but not recorded. Record-keeping in relation to Tasking and Coordination Group (TCG) decisions was poor, failing to cover the rationale for deciding to act on or reject a particular intelligence package. Based on these records, it would be difficult for IE to defend any challenges that particular businesses, sectors or individuals were being unfairly targeted.
- 1.12 There were inconsistencies in operational practice in a number of areas, which indicated deficiencies in officer training, supervision and assurance. The areas included: reconnaissance (‘recces’) of target premises; use of non-directed surveillance; obtaining lawful entry to premises; pursuit, cautioning, questioning, and use of handcuffs. Failure to apply the law correctly and to follow IE guidance in relation to any or all of these could compromise the Home Office and the officers involved, as well as infringing the rights of the individuals encountered.
- 1.13 At the local level, non-compliance with record-keeping training and guidance was widespread, particularly in respect of officer notebooks, the use of evidence bags and the storage of papers. Until recently, local assurance of records had been limited to a tick-box exercise confirming that the required documents had been filed. Consequently, it had failed to identify abuses of interviewing and arrest powers and failures to justify the use of handcuffs, for example. Management oversight of visits had also been limited, with Chief Immigration Officers (CIOs) attempting to combine oversight with an operational role as a team member.

- 1.14 Operation Mist suggested that larger-scale illegal working visits required more careful oversight than lower tier visits: the more officers and workers involved, the longer the operation runs and the greater the risk that legislation and guidance may be breached. File sampling and observations identified a general tendency not to adhere to guidance by interviewing beyond the point of '*suspicion of an offence*'. In Operation Mist, this practice resulted in an inefficient use of time and resources, and unfair and unreasonable treatment of individuals.
- 1.15 Officers reported difficulties finding the information they needed to support them in their work, including IE guidance via the intranet, and relied instead on their training and on more experienced colleagues. The lack of central control and assurance of the local mentoring provided to new officers when they joined one of the 19 ICE teams led to misunderstandings and divergence from the training provided centrally (initial training, arrest training and refresher training).
- 1.16 National Operations Assurance (NOA) fulfilled an important central or 'second-line' assurance function. However, its impact on the efficiency and effectiveness of individual ICE teams was limited by the fact that, as resourced, it was able to make an assurance visit to each team on average only once a year.
- 1.17 Based on sampling, the error rate by the Civil Penalty Compliance Team (CPCT) in calculating the penalty amount suggested the need for better assurance of outgoing penalty notices. CPCT also needed to ensure that feedback on referrals reached ICE teams, particularly in relation to proof of employment, insufficient evidence of which meant that civil penalties could not be issued. Current working practices between ICE teams and CPCT were such that cases involving the same business or employer were not automatically linked.
- 1.18 ICE teams needed to be properly equipped for criminal investigation where appropriate. It was evident from the way that non-compliant employers could frustrate debt recovery by 'phoenixing' their business (restarting with a different registered owner) or by selling up before the penalty was issued, that they were unlikely to comply regardless of greater encouragement or civil penalties.

2. SUMMARY OF RECOMMENDATIONS

The Home Office should:

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

3. THE INSPECTION

Background

Harm from illegal working

- 3.1 The Home Office's *Full Guide for Employers on Preventing Illegal Working in the UK (October 2013)*² described illegal working in the following terms:

'Illegal working has harmful social and economic effects on the UK; it undercuts British businesses and their workers that stay within the law and exploits migrant workers. As long as there are opportunities for illegal working the UK will be an attractive place for illegal migrants. That is why we need to put a stop to employers breaking the law by taking tough action against those who do so.'

'There is evidence that some workers employed illegally are paid less than the minimum wage, do not pay tax, and may be doing dangerous work that breaks health and safety regulations. Employers who use illegal workers may do so because they want to avoid providing minimum standards, such as the National Minimum Wage and paid holidays. This is harmful to the workers involved and enables dishonest employers to gain an unfair advantage over competitors who operate within the law.'

- 3.2 Measuring activity in the 'shadow economy' is problematic as, by its nature, the activity is concealed. The Institute of Economic Affairs has estimated it at approximately 10% of the UK's Gross Domestic Product.³

Unknown numbers of illegal workers

- 3.3 The Home Office does not know how many migrants are working illegally in the UK, including those who have arrived illegally, overstayers in breach of their leave to remain, and those with leave to enter or remain who are working without permission or beyond the terms of any permission they have.
- 3.4 There have been attempts to estimate the numbers of illegal migrants and overstayers in the UK, of which a proportion will be working illegally. These estimates vary considerably. In 2009, the London School of Economics (LSE) produced an estimate for the Greater London Authority of 'irregular migrants' in the UK (which included overstayers who had entered the UK legally, but excluded children born in the UK) in the UK as at the end of 2007. The LSE estimated the number was in the range 373,000 to 719,000.⁴ Migration Watch (an independent body) disagreed and in 2010 estimated the figure was 1.1 million, including children born in the UK.⁵
- 3.5 The Minister for Security and Immigration, James Brokenshire, summed up the difficulty in his 29 April 2014 response to a written Parliamentary Question about people overstaying their visas. He wrote - *'It is not possible to accurately quantify the number of immigration offenders in the UK as, by their very nature, those that deliberately evade immigration control to enter and stay in the country illegally are not officially recorded until they come to light and are arrested.'*⁶

2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304793/full-guide-illegal-working.pdf

3 <http://www.iea.org.uk/publications/research/the-shadow-economy>

4 <https://www.london.gov.uk/sites/default/files/irregular-migrants-report.pdf>

5 <http://www.migrationwatch.org/briefing-paper/11.22>

6 <http://www.theyworkforyou.com/wrans/?id=2014-04-29b.194952.h&s=%28illegal+immigrants%29+section%3Awrans#g194952.r0>

- 3.6 Equally, the number of individuals with leave to enter or remain in the UK who are working without the necessary permission or in breach of their permission, for example in excess of the specified hours, is not known and there are no robust estimates for this.
- 3.7 Some of those working illegally in the UK are victims of ‘modern slavery’.⁷ The Home Office research paper, *Modern Slavery: an application of Multiple Systems Estimation* estimated that there were between 10,000 and 13,000 victims of modern slavery in the UK in 2013.⁸
- 3.8 The Immigration Act 2014⁹ introduced, with effect from 8 April 2015, the requirement for carrying companies to collect data on departing passengers. According to Gov.uk - ‘*data collected will be provided to the Home Office to give us the most comprehensive picture we have ever had of whether those who enter the UK leave when they are supposed to.*’¹⁰

The business context

- 3.9 The Department for Business, Innovation and Skills estimated that there were 5.2 million private sector businesses in the UK at the start of 2014, of which small and medium enterprises (SMEs)¹¹ made up 99.9% and accounted for 48% of private sector annual turnover.¹²

Employers’ legal obligations

- 3.10 Section 15 of the Immigration, Asylum and Nationality Act 2006¹³ sets out the following under ‘Penalty:

‘It is contrary to this section to employ an adult subject to immigration control if:

- a. he has not been granted leave to enter or remain in the United Kingdom, or*
- b. his leave to enter or remain in the United Kingdom:*
 - i. is invalid,*
 - ii. has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or*
 - iii. is subject to a condition preventing him from accepting the employment.’*

- 3.11 The 2006 Act continues - ‘(2) *The Secretary of State may give an employer who acts contrary to this section a notice requiring him to pay a penalty of a specified amount not exceeding the prescribed maximum.*’ Under the Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) Order 2008, civil penalties were set at a maximum of £10,000 per illegal worker.¹⁴
- 3.12 In May 2014, following a public consultation¹⁵ and discussions with frontline staff, changes were made to employers’ obligations and the penalties for non-compliance. These included reducing the numbers of documents that employers must check, doubling the grace period for employees acquired as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (better known as TUPE),¹⁶ and doubling the maximum civil penalty to £20,000. The Immigration Act 2014

7 Encompasses slavery, servitude, forced and compulsory labour and human trafficking.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf

8 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386841/Modern_Slavery_an_application_of_MSE_revised.pdf

9 <http://www.legislation.gov.uk/ukpga/2014/22/contents>

10 <https://www.gov.uk/government/publications/exit-checks-on-passengers-leaving-the-uk/exit-checks-fact-sheet>

11 <http://www.legislation.gov.uk/ukpga/2006/13/contents>

12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377934/bpe_2014_statistical_release.pdf

13 <http://www.legislation.gov.uk/ukpga/2006/13/contents>

14 <http://www.legislation.gov.uk/uksi/2008/132/contents/made>

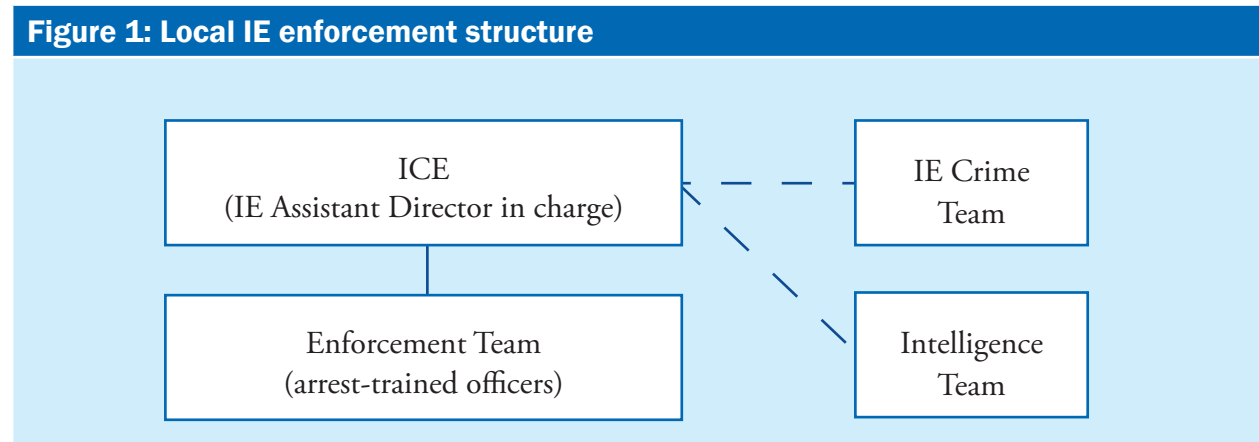
15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249531/Results_of_the_consultation_on_illegal_working.pdf

16 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (see Glossary).

also included provision to make it easier to enforce unpaid penalties in the courts.

Home Office Immigration Enforcement Directorate (IE)

- 3.13 Immigration Enforcement is one of three operational commands under the direct control of the Home Office. The others are Border Force (BF) and UK Visas and Immigration (UKVI). IE is responsible for local immigration enforcement activity via 19 Immigration, Compliance and Enforcement (ICE) teams based across the UK. Local crime and intelligence teams work closely with ICE teams.



- 3.14 IE works to national priorities, but ICE teams may also have local pressures. For example, teams along major routes from ports of entry may have to attend lorry drops of clandestine entrants, affecting their capacity for other operations. The directorate also has staff dealing with criminal investigation, removals, community engagement and sanctions to deter illegal migrants from accessing and abusing UK support systems.
- 3.15 IE follows the National Intelligence Model (NIM), which stipulates three levels of crime:
- *Level 1: Local issues – usually the crimes, criminals and other problems affecting a basic command unit or small force area.*
 - *Level 2: Cross Border issues – usually the actions of a criminal or other specific problems affecting more than one basic command unit.*
 - *Level 3: Serious and Organised Crime – usually operating on a national and international scale.¹⁷*

Inspection Methodology

- 3.16 A preliminary meeting with IE senior managers was held on 8 October 2014.
- 3.17 The on-site phase of the inspection took place between 8 December 2014 and 23 January 2015.

Stakeholder consultation

- 3.18 We:
- met the Cabinet Office to discuss cross-governmental initiative and attended the launch of the Better Business Compliance Partnerships pilots on 13 October 2014;
 - met the Department for Business, Innovation and Skills (BIS) and addressed a meeting of its

¹⁷ A code of practice, signed off by the Home Secretary under section 39 of the Police Act 1996 (as inserted by the Police Reform Act 2002). <http://library.college.police.uk/docs/npia/NIM-Code-of-Practice.pdf>

Business Reference Panel¹⁸ of around 60 organisations representing 750,000 businesses;

- liaised with the Immigration Legal Practitioners' Association (ILPA) and representatives of an immigration advisory company; and
- analysed relevant Home Office management information, policy documents, guidance and published statistics.

Sampling of Home Office case files

3.19 We sampled enforcement visit files and civil penalty files.

File sampling 1 - We requested 200 enforcement visit files at random from between 1 January and 30 June 2014. We examined 184, establishing a baseline for conduct of enforcement visits:¹⁹

File sampling 2 - Taking a random sample of 40 of the 184 files, we made a detailed examination, which included all manuscript notes, to assess officers' conduct and record-keeping:

File sampling 3 - Having observed visits in Glasgow and London (see below), we examined those files plus four preceding visits for each area to check consistency (17 files in total):

File sampling 4 - Civil Penalties. We reviewed 30 civil penalties from February to April 2014 and 30 from June to August 2014 (penalties increased on 16 May 2014):

The on-site phase

3.20 During the on-site phase we:

- interviewed staff and managers (both enforcement and crime investigation) from the following regions:
 - North, Midlands and Wales;
 - Scotland and Northern Ireland;
 - London and South of England;
- observed five enforcement visits – four lower tier²⁰ at Glasgow and East London and one upper tier at a large commercial laundry in North London (Operation Mist); and
- interviewed Home Office senior managers and other managers across strategy and policy, crime investigation, intelligence and enforcement.

Figure 2: Numbers of Home Office staff/managers interviewed, by grade

| Grade (or equivalent) | Number |
|---|-----------|
| Senior Civil Service | 6 |
| Grade 6s and Grade 7s (including ICE team managers) | 6 |
| Senior Executive Officers, Inspectors, Chief Immigration Officers and Higher Executive Officers | 14 |
| Immigration Officers, Executive Officers and Assistant Immigration Officers | 33 |
| Total | 59 |

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263637/brp-terms-of-reference.pdf

¹⁹ Seven files were not provided as they were lost or unobtainable. Nine were categorised as 'out of scope' or unworkable due to not being illegal working enforcement, the wrong dates or the subject of live criminal investigations

²⁰ IE operations are designated as lower, middle or upper tier, dependent on number of offenders, suspected criminality and/or politically sensitive issues.

4. INSPECTION FINDINGS – DIFFERENT APPROACHES TO TACKLING ILLEGAL WORKING

Introduction

- 4.1 We examined 184 enforcement visit files from January to June 2014 chosen at random to establish our own ‘baseline’. They contained information on 179 arrests. We also obtained management information from the Home Office.

Finding illegal workers

- 4.2 IE collected and analysed statistics for illegal workers encountered in intelligence-led visits.²¹ Figure 3 shows Home Office statistics for the top ten nationalities arrested and working illegally between September 2012 and January 2014 (17 months).

Figure 3: Immigration offenders arrested September 2012–January 2014, broken down by nationality and gender

| Nationality | Female | Male | Not recorded | Total |
|-------------|--------|------|--------------|-------|
| Bangladesh | 41 | 3532 | 1 | 3574 |
| Pakistan | 97 | 3469 | 2 | 3568 |
| India | 314 | 2465 | 3 | 2782 |
| China | 299 | 1004 | 7 | 1310 |
| Nigeria | 157 | 295 | 6 | 458 |
| Afghanistan | 0 | 383 | 0 | 383 |
| Sri Lanka | 30 | 339 | 0 | 369 |
| Nepal | 42 | 213 | 0 | 255 |
| Vietnam | 62 | 170 | 0 | 232 |
| Albania | 9 | 221 | 0 | 230 |

- 4.3 In our sample of 184 visit files, the 179 arrests followed the pattern of Figure 3 in terms of the top four nationalities and in that most of those arrested were male. One hundred and seven of the 184 premises visited were high street restaurants and/or takeaways, mostly Indian Subcontinent or Chinese cuisine, with some fried chicken outlets.
- 4.4 Figure 4 shows that in our sample most of those arrested had entered the UK legally but had overstayed their leave to remain. We reported in 2014 on how the Home Office deals with overstayers.²² The second largest group were illegal entrants, including those who had entered the UK clandestinely and remained unknown to the Home Office until arrested.

²¹ ‘Visit’ is the preferred term used by Home Office IE throughout its training and guidance.

²² <http://icinspector.independent.gov.uk/wp-content/uploads/2014/12/Overstayers-Report-FINAL-web.pdf>

| Figure 4: Immigration status of the 179 arrestees | |
|--|------------|
| Overstayer | 81 (45%) |
| Illegal Entrant | 36 (20%) |
| Sch2 Detention* | 24 (13%) |
| Worker in Breach | 23 (13%) |
| Not Known | 10 (6%) |
| Other** | 5 (3%) |
| Total | 179 |

*Sch2 Detention – Schedule 2 of the Immigration Act 1971 provides powers for Immigration Officers to question persons who are arriving, or who have arrived, in the UK and make decisions regarding their admissibility. Once a decision has been made, a power to detain that person applies.

**Other - 1 arrested after entering in breach of a Deportation Order, 2 arrested due to non-compliance and 2 arrested who had absconded directly from a port of entry.

Removals of illegal workers

- 4.5 Figure 5 sets out the outcomes achieved by the Home Office when they undertook an illegal working visit between 2009 and 2014. The results show that 14,493 (50%) of arrests made during an illegal working visit resulted in a removal.

| Figure 5: Outcomes from illegal working visits | | | | | | | |
|---|------------------------|--------------|---|------------|--------------|------------------------------|------------|
| Year | Illegal working visits | Arrests made | Visits with no illegal workers identified | | NOPLs served | Arrests resulting in removal | |
| 2009 | 5712 | 4472 | 3774 | 66% | 1938 | 2437 | 54% |
| 2010 | 6552 | 4313 | 4943 | 75% | 1609 | 2799 | 65% |
| 2011 | 5482 | 3922 | 3955 | 72% | 1527 | 3254 | 83% |
| 2012 | 5365 | 4500 | 3797 | 71% | 1568 | 1335 | 30% |
| 2013 | 7856 | 7253 | 4668 | 59% | 3188 | 3179 | 44% |
| 2014 (to 30/09) | 5414 | 4653 | 3475 | 64% | 1939 | 1489 | 32% |
| Total | 36381 | 29113 | 24612 | 68% | 11769 | 14493 | 50% |

- 4.6 Removal may be delayed or may not happen for a number of reasons for example, inability to obtain a travel document, an asylum application or an appeal awaiting a hearing. Figure 6 shows the methods used during the removal of the 1489 people who were arrested during illegal working visits during the period January to September 2014.

Figure 6: Breakdown of the removal methods used 01/01/2014 to 30/09/2014

| Month | Assisted voluntary return ¹ | Contact management ² | Embark ³ | Enforced ⁴ | Facilitated return scheme ⁵ | Voluntary departure ⁶ | Total removals |
|--------------|--|---------------------------------|---------------------|-----------------------|--|----------------------------------|----------------|
| Jan | 36 | 0 | 2 | 190 | 1 | 30 | 259 |
| Feb | 22 | 1 | 4 | 157 | 1 | 24 | 209 |
| Mar | 15 | 1 | 1 | 174 | 0 | 28 | 219 |
| Apr | 2 | 2 | 0 | 177 | 0 | 48 | 229 |
| May | 0 | 0 | 0 | 105 | 1 | 30 | 136 |
| Jun | 0 | 0 | 0 | 122 | 1 | 41 | 164 |
| Jul | 1 | 1 | 1 | 73 | 0 | 25 | 101 |
| Aug | 0 | 0 | 0 | 52 | 0 | 20 | 72 |
| Sep | 0 | 0 | 0 | 72 | 0 | 28 | 100 |
| Total | 76 | 5 | 8 | 1122 | 4 | 254 | 1489 |

¹**Assisted voluntary return (AVR)** – where an individual departs the UK with additional resettlement assistance from the Home Office.

²**Contact Management** – the process whereby individuals are contacted by the Home Office and encouraged to leave.

³**Embark** – where an individual leaves the UK of their own accord, often without Home Office involvement

⁴**Enforced** – where an individual's removal from the UK is enforced by the Home Office.

⁵**Facilitated Return Scheme** – the process whereby foreign national prisoners with no Deportation Order in place are encouraged to leave the UK

⁶**Voluntary Departure** – where an individual voluntarily leaves the UK with Home Office involvement.

- 4.7 A senior Home Office manager told us that there was a general awareness within IE that enforcement visits encountered and removed only a small proportion of offenders and that IE would never have the resources to resolve the overall problem. They described it as *'not a realistic working model'*. Another senior manager commented: *'It's a business model that hasn't moved on'*.

Senior management vision for IE

- 4.8 From July 2014, in keeping with other law enforcement and intelligence organisations, senior management had framed IE's business objectives around the 4Ps (Prevent, Pursue, Protect and Prepare). Senior managers had visited ICE teams to explain the 4Ps approach:
- *Prevent: Remove incentives for people to stay illegally and create incentives for compliance;*
 - *Pursue: Target the criminality that supports illegal migration;*
 - *Protect: manage high harm individuals to reduce the risk to the public; and*
 - *Prepare: Increase our capability to remove people who are in the country illegally and/or acting unlawfully.'*
- 4.9 Senior managers had focused on improving performance by introducing assurance and weekly management information covering all tasks. Some performance problems had already been identified. Two-day refresher training had been increased to three days, and policy and guidance were being overhauled. The most recent external recruitment campaign had targeted graduates and those with significant experience in a relevant law enforcement role. There was also ongoing consideration of whether the 19 ICE teams were in the most appropriate locations.

Operation Skybreaker – a change in approach

- 4.10 Operation Skybreaker ran from July to December 2014. The operational order stated that IE was *‘revising its approach to tackling illegal migration, moving from a model that seeks predominantly to arrest and remove individuals, to a model that seeks also to prevent illegal migration, drive compliance with the entirety of the immigration rules and tackle the underlying causes of illegal migration including criminal activity’*.²³
- 4.11 The Home Office used its records to identify the ten areas with the highest concentrations of ‘known’ illegal migrants. All ten were London wards covered by three ICE teams. Focusing first on enhanced community impact assessment, it used engagement with businesses and local community groups to publicise the operation and the opportunities for voluntary departure. The operational order said that *‘voluntary departures should be prioritised over enforced removals’*.
- 4.12 The operation comprised nine work streams:
- Increasing visibility;
 - Pursuing rogue employers;
 - Tackling rogue landlords;
 - Preventing crime/anti-social behaviour;
 - Increasing voluntary returns through partnerships;
 - Preventing sham marriage;
 - Preventing student abuse;
 - Preventing access to benefits; and
 - Employer compliance.
- 4.13 Under Operation Skybreaker, before making an enforcement visit to a business to follow up information received about individuals suspected of working there illegally, IE would first visit the business to encourage them to comply with employment requirements.
- 4.14 We asked the Home Office for removal figures for 2014 to see the impact of the change to encouraging employer compliance as the first priority. Figure 7 sets out the figures for all types of removals throughout 2014.

²³ Operation Skybreaker Operational Order, Home Office internal document.

Figure 7: Numbers of persons removed after having been arrested during illegal working visits – 2014

| Quarter | Figures at end 2014 | Updated figures at July 2015 |
|---------------------|---------------------|------------------------------|
| January to March | 687 | 731 |
| April to June | 529 | 576 |
| July to September | 273 | 307 |
| October to December | 161 | 183 |
| Total | 1650 | 2590 |

- 4.15 IE had not analysed the reasons for the quarter by quarter reduction in removals. However, it highlighted some factors: from 2 June to 14 June 2014, Operation Centurion had focused intensively on illegal workers and increased arrest and removal figures in the first half of the year;²⁴ from July to December, Operation Skybreaker prioritised employer engagement and voluntary departure over formal removal in significant areas of London; and, from April 2014 to February 2015, the priority nationally for IE was to respond to reported abuse of student English language testing.²⁵
- 4.16 The Home Office evaluation of the impact on all categories of illegal migrants described Operation Skybreaker as ‘*having succeeded in intensifying activity in the top ten hot spot areas*’.²⁶ For example, compliance visits were conducted on 3,118 employers. Intelligence generated from these led to 65 arrests. According to the evaluation, the operation increased voluntary departures of all illegal migrants by 158 in the wards covered, compared to the same period in the previous year. It was not possible to disaggregate those detected during illegal working operations. The evaluation assessed that the additional 158 voluntary departures represented notional savings of approximately £2.2 million compared to Home Office enforcing removal after arrest.
- 4.17 The Operation Skybreaker approach of engaging with businesses to improve compliance was not entirely new. IE guidance already covered how to carry out ‘*educational visits*’ to encourage compliance. We asked IE for data on past visits, but were told this information was not routinely collected. The Operation Skybreaker evaluation noted that the recording of engagement with local businesses and stakeholders needed more effective management.
- 4.18 The evaluation recorded that approximately half of the employers visited could not provide their ‘right to work’ checks. At one regional focus group, officers told us that local police advised employers to store them remotely for security (for example, with their accountants). The guidance for employers on Gov.uk stated: ‘*You must make and keep copies of the documents and record the date you made the check*’ and ‘*Keep copies during the worker’s employment and for 2 years after they stop working for you*’.²⁷ It did not specify that they must be kept on the business premises. As a result of Operation Skybreaker, IE told us that they ‘*considered changing these requirements but decided not to on balance*’.
- 4.19 The evaluation also reported that consideration would be given to producing compliance guidance in a range of languages based on the experience of the Skybreaker compliance visits.

24 IE worked with enforcement partners on employment sectors beyond the high street (construction, recruitment agencies and food processing). It confirmed non-compliance linked to criminal behaviour, for example a restaurant arrest visit also netted 40 credit cards, 50 driving licences, 100 cheque books and multiple counterfeit British passports.

25 <http://www.theguardian.com/uk-news/2014/feb/10/student-visa-tests-suspended-fraud>. See <http://icinspector.independent.gov.uk/wp-content/uploads/2015/07/Inspection-of-Tier-4-Sponsor-Management-16.07.2015.pdf> for inspection of this matter.

26 Operation Skybreaker Evaluation Report, April 2015, Home Office internal document.

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

Better Business Compliance Partnerships

- 4.20 In October 2014, the Cabinet Office launched Better Business Compliance Partnerships. Pilots in five locations (Cheshire West and Cheshire, Cornwall, Hertfordshire, Ealing, and Manchester and Salford) aimed to improve compliance with business regulations by encouraging front-line regulatory staff to share observations outside their own powers. For example, IE might encounter sub-standard accommodation or food hygiene inspectors might identify suspected illegal workers.
- 4.21 We liaised with the Manchester and Salford pilot. This was targeting the neighbouring Strangeways (Manchester) and Broughton (Salford) areas. There were some 1,200 businesses in these two areas combined, and a broad spectrum of non-compliance.
- 4.22 The pilot reported having built a better understanding of the issues and challenges facing partners and also of the types of information of value to partners. We asked the Cabinet Office about overall progress. Ahead of the formal evaluation, we were told that there had been benefits for all partners, including IE, from data-sharing and assessing risks together, while HM Revenue & Customs (HMRC) had collected taxes that had previously gone undeclared.

Online information for employers regarding compliance

- 4.23 The Gov.uk website contained information (in English only) for employers regarding compliance. It included the *Code of Practice on preventing illegal working, which set out the Civil Penalty Scheme for employers*²⁸ and information on how to check job applicants' right to work. Points were explained fully and the information was updated regularly.

The Sponsorship, Employer and Education Helpline

- 4.24 The Gov.uk website also advised employers to 'call UKVI's employers' helpline for help with making sure your employees are entitled to work in the UK.' An employer could telephone and check, for example, whether an individual had the right to work. As indicated by its title, the Sponsorship, Employer and Education Helpline dealt with a wide range of immigration matters in addition to illegal working.
- 4.25 The Immigration Law Practitioners' Association (ILPA) told us that, in its members' experience, the Helpline had given incorrect advice on EEA workers (and their non-EEA family members) exercising their Treaty right to work in the UK.²⁹ These nationals may apply to the Home Office for documents to show that they are exercising their Treaty rights but this is not mandatory. ILPA also provided us with case studies of a number of non-Treaty cases where Home Office records had been incorrect or not updated. ILPA told us that some employers were wrongly dismissing individuals from their jobs.
- 4.26 We consulted a company that provided an immigration advisory service and was registered with the Office of the Immigration Services Commissioner (OISC). The company told us that many large UK-based businesses chose to pay immigration advisers to check their 'right to work' processes and records rather than rely on their in-house recruitment teams, motivated in part by the risk to their reputation of getting it wrong. The company also said that it had experienced difficulties with the timeliness and accuracy of information provided by the Helpline.

Biometric Residence Permits

- 4.27 The Home Office was aware of employers' difficulties in checking documents. At the time of writing this report, it had begun to widen the allocation of the Biometric Residence Permit. It intended that, over time, this would become the key document proving permission to stay and any right to work.

²⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311668/Code_of_practice_on_preventing_illegal_working.pdf

²⁹ The 1992 Maastricht Treaty expanded the 1957 Treaty of Rome and set out the right to move and reside freely within the Member States (subject to limitations and conditions).

Conclusion

- 4.28 IE's shift from a strategy of locating, arresting and seeking the enforced removal of illegal workers towards one that sought greater engagement with businesses to encourage employers to comply with measures to curb illegal working, as exemplified by Operation Skybreaker, was consistent with the Home Office's wider encouragement of voluntary departures as a less expensive and less resource-intensive means of achieving volume removals.
- 4.29 Greater engagement with businesses also chimed with the Prevent strand of the 4Ps approach (Prevent, Pursue, Protect, Prepare) that IE had adopted from July 2014 to bring it into line with other law enforcement and intelligence agencies.
- 4.30 Accepting that IE had not completed its evaluation of Operation Skybreaker at the time of this inspection, the comparative effectiveness of the 'new' approach was hard to assess, partly because prevention was inherently difficult to measure, and also because there was no 'baseline', for example for the numbers of 'educational visits' and related arrests prior to Operation Skybreaker. However, while voluntary removals appeared to have increased in the areas where Skybreaker had operated, overall removals of illegal workers arrested by IE reduced quarter by quarter throughout 2014. IE stated that arrests of illegal workers reduced substantially from April 2014 due to a re-prioritisation of effort to tackle identified abuse in the English Language Testing Sector.
- 4.31 IE had recognised that for the engagement with businesses to work well it needed to ensure that it provided advice and assistance in the most appropriate formats. The focus on visits to business premises was consistent with the Department for Business, Innovation and Skills (BIS) 2010 report *From the Business End of the Telescope*, which found that 'business feedback largely indicates that face-to-face support is preferred over online advice: the Forum of Private Business states that it is twice as useful for its members'. Further, IE had recognised from Operation Skybreaker that it should look to provide information in a range of languages. However, the information available to employers online on the Gov.uk website was in English only and in a style that may not have been easy to understand for someone using English as an extra language.
- 4.32 Immigration professionals believed the Sponsor, Employer and Education Helpline sometimes gave the wrong advice. This might be less of an issue for large employers who use immigration advisory services to check their 'right to work' processes and records. However, it was unlikely that most small and medium enterprises (SMEs) would do this.
- 4.33 Home Office moves to make it easier for employers to check documents by widening the allocation of biometric residence permits were helpful. It is relevant here that the 2010 BIS report noted that 'In longer standing BME³⁰ businesses, knowledge is often passed down through family networks and so the communication of regulatory changes appears to be more important for this group, which may be more disengaged from mainstream support and have a low awareness or low estimation of the advice services available.'

³⁰ Black and Minority Ethnic.

Recommendations

The Home Office should:

1. Use the evaluation of Operation Skybreaker, and of the Better Business Compliance Partnerships, to identify what quantitative and qualitative data needs to be routinely captured in order to be able to 'baseline' and assess the relative effectiveness of future initiatives or changes in strategy and/or operational priorities in relation to illegal working.
2. Produce information and advice for businesses in the first language of the business owners and managers most often encountered during compliance and enforcement visits, both to hand out and online.
3. Review the content of the notes, guidance and training provided to staff fielding employment calls to the Sponsor, Employer and Education Helpline, and the assurance mechanisms for checking that callers are being given the correct information and advice.

5. INSPECTION FINDINGS – OPERATIONAL PRACTICE

Examination of files and notebooks

- 5.1 We examined 184 files, 40 of which, selected at random, were examined in greater detail with particular emphasis on manuscript entries in the related 165 notebooks. We observed enforcement visits and reviewed those records in detail. In all, we scrutinised 293 notebooks.

Premises visited

Figure 8: Types of businesses visited in the sampled files

| | |
|---------------------------------------|------------|
| SMEs | 156 |
| Other (e.g. food and non-food chains) | 21 |
| Not applicable (residential visits) | 6 |
| Not known (file unclear) | 1 |
| Total | 184 |

- 5.2 One hundred and seven of the 156 SME visits were to restaurants or takeaways. Nineteen were to local convenience stores. Seven visits in our sample were to industrial sites (manufacturing, construction and food processing) and two were to care homes.
- 5.3 Some ICE managers told us that more attention should be paid to other sectors. In August 2015, the Home Office announced that IE would work with partners such as HMRC, the Gangmasters Licensing Authority³¹ and the Care Qualities Commission³² to target their business sectors.³³

Intelligence gathering and processing

- 5.4 IE uses the National Intelligence Model (NIM) 5x5x5 intelligence management system, which is common to UK law enforcement organisations. A source is evaluated from A (always reliable) to E (untested); the particular information is evaluated from 1 (known to be true without reservation) to 5 (suspected to be false); and dissemination (who can see the information) is determined on a scale from 1 to 5. Figure 9 shows the source and information evaluations for the intelligence on which the visit was based for sample files.

31 The GLA licensing scheme regulates businesses which provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law. www.gla.gov.uk

32 The CQC is an independent regulator of health and social care in England and checks standards at all care and nursing homes in England. <http://www.cqc.org.uk>.

33 Operation Magnify, initiated in October 2015, will target illegal workers across industry sectors beyond the focus on high street hot food providers found in this inspection. The Chief Inspector's forthcoming inspection of intelligence is expected to be published in 2016.

| Figure 9: Intelligence evaluations in the sample 184 files | | |
|---|---|------------|
| B2 | Mostly reliable source, information known to source but not to officer. | 19 |
| B3 | Mostly reliable source, information not known personally to source, but corroborated. | 1 |
| B4 | Mostly reliable source, information not known personally to source, and cannot be corroborated. | 1 |
| E3 | Untested source, information not known personally to source, but corroborated. | 8 |
| E4 | Untested source, information not known personally to source, and cannot be corroborated. | 98 |
| Not Known | Intelligence rating not shown or not clear in file. | 57 |
| | Total | 184 |

- 5.5 In September 2012, the Home Office introduced the Intelligence Management System (IMS) for central recording of all allegations from the public. This was inspected in 2014.³⁴ The public can provide information via the Gov.uk website,³⁵ Crimestoppers³⁶ or by calling the Immigration Enforcement hotline (number given on the Gov.uk website).

Pre-visit checks

- 5.6 Prior to making an enforcement visit, IE guidance required intelligence teams to complete and record a set of basic checks, ensuring that Home Office systems had been reviewed for information, risks and updated intelligence. Where checks had not been completed, it required the reasons to be recorded. Figure 10 shows the results from our file sample.

| Figure 10: Completion of standard pre-visit checks on sampled files | |
|--|------------|
| All checks completed | 113 |
| Some checks completed | 21 |
| Record of checks unclear | 50 |
| Total | 184 |

- 5.7 Where they were unable to tell from the record whether the intelligence team had done particular checks, some enforcement teams did the checks for themselves.

Deciding which intelligence to action

- 5.8 The local Tasking and Coordination Group (TCG) decided which of the intelligence 'packages' it received to action. The files that we sampled had no record of the reasons why the TCG had decided to action that particular intelligence package. The file sample did not include examples of intelligence packages rejected by a TCG. However, we observed a TCG meeting in Cardiff where reasons for acting on, or rejecting, the visits proposed by the intelligence team were discussed in detail.

³⁴ <http://icinspector.independent.gov.uk/wp-content/uploads/2014/10/An-inspection-of-the-Intelligence-Management-System-FINAL-WEB.pdf>

³⁵ <https://www.gov.uk/report-immigration-crime>

³⁶ Crimestoppers Trust, to which the public can give information anonymously online or by phone, works with partners such as the police <https://crimestoppers-uk.org/give-information/>

- 5.9 On 17 June 2014, IE had conducted an assurance check of the North London ICE team. The official report noted that the local TCG meeting was well led, with comprehensive discussions about successes and challenges, effective feedback, and clear audit trails.

Reconnaissance

- 5.10 An intelligence package adopted by a TCG was passed to the ICE team to plan the operation. Officers in plain clothes conducted visual reconnaissance (known as a 'recce') to gather information about the target premises, for example entry and exit points.
- 5.11 Twenty of the 40 files we examined in depth contained detailed recces. The other 20 either lacked basic information or contained confusing or contradictory details. A senior manager told us that poor recces had been identified as a problem, and another said that consideration was being given to not requiring a recce for every visit.
- 5.12 We observed officers failing to enter through the front door of premises as planned. The recce had not identified that the door was secured with a buzzer system. In this instance, there was a short delay before entry was gained via a side door.
- 5.13 Surveillance activities, including recces, are governed by legislation. The Regulation of Investigatory Powers Act 2000 (RIPA)³⁷ defines '*directed surveillance*' as surveillance undertaken:
- *in a covert manner;*
 - *with regard to a specific operation or investigation; and*
 - *likely to result in the gathering of private information.'*
- 5.14 A 'non-directed surveillance' authority form allows ICE teams to demonstrate that their proposed actions do not fall under the RIPA definition of '*directed surveillance*'. Of the 40 visits examined in detail, only six contained a signed 'non-directed surveillance' authority form.
- 5.15 The Police Act 1997³⁸ covers entry onto private property. Figure 11 illustrates the risk of breaching this legislation.

³⁷ Regulation of Investigatory Powers Act 2000.

³⁸ Police Act 1997, <http://www.legislation.gov.uk/ukpga/1997/50/contents>.

Figure 11: Case study illustrating breach of legislation

Enforcement officers:

- in plain clothes, entered a car park for restaurant patrons, climbed an external staircase attached to the property, and took photographs of a residential area which was concealed from public view.
- had put on the ‘*non-directed surveillance*’ authority they completed, that they would collect ‘only details about the property that would be available to any member of the public walking past’.

Home Office IE comment:

‘The entering onto private property to undertake any form of surveillance, including the taking of photographs, should not take place without authorisation under the Police Act 1997. Therefore, the officers were not authorised to access a private staircase.’

Operational briefing before the enforcement visit

- 5.16 The team briefings we observed in Glasgow and East London included reminders of relevant legislation, an update on the appearance of the named offenders, and mandatory checks of officers’ equipment.
- 5.17 The scale of the North London operation (Operation Mist) generated additional logistical issues, with more officers to organise, but otherwise followed the pattern of the smaller briefings.

Legal authority to enter premises

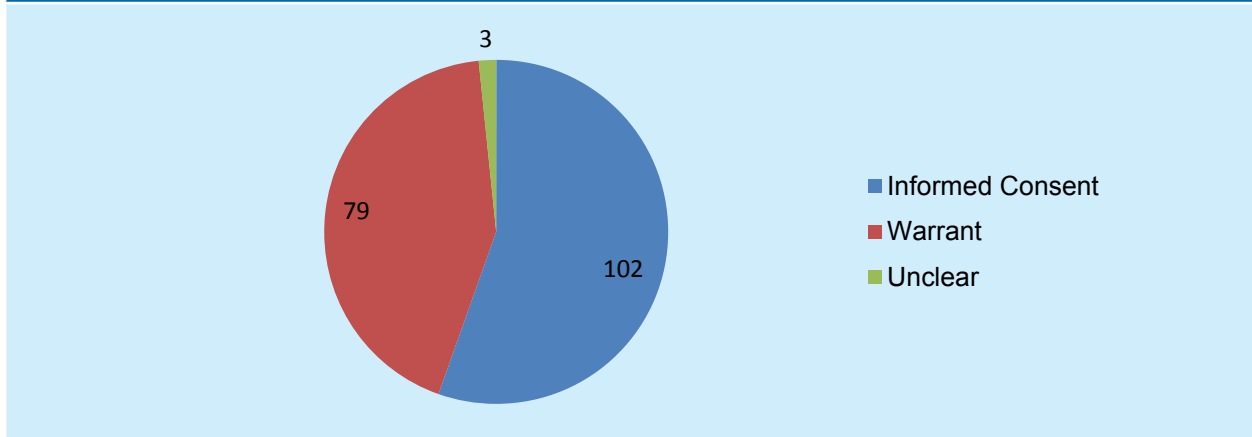
- 5.18 IE have no statutory power of entry to search for immigration offenders. Officers may apply to a magistrate (or sheriff in Scotland) for a warrant to enter premises for specified purposes without requiring the owner’s consent, or may gain entry with the ‘informed consent’ of someone in authority at the premises. IE guidance describes ‘informed consent’ as ‘*a person’s agreement to allow something to happen after the person has been informed of all the risks involved and the alternatives*’.
- 5.19 In the past, IE had made extensive use of Section 28CA of the Immigration Act 1971.³⁹ This allowed officers to enter business premises and make arrests with a Home Office Assistant Director’s authority (an ‘AD letter’) in specific circumstances without recourse to a warrant. Our 2014 report *An Inspection of the Use of the Power to Enter Business Premises Without a Search Warrant* found that there had been widespread non-compliance with the guidance and ineffective assurance processes but also that senior managers had identified this issue and were beginning to improve performance and compliance.

Methods used to authorise entry in our file sample

- 5.20 We found no AD letters in the files we sampled or the operations we observed for this inspection. Senior IE managers confirmed that the use of this power was now much more tightly controlled to ensure compliance with the legislation. Figure 12 shows the methods used to authorise entry in our wider file sample.

³⁹ <http://www.legislation.gov.uk/ukpga/1971/77/section/28CA>

Figure 12: How entry was authorised in the 184 sampled files



- 5.21 ICE teams debriefed after visits, but we found no records that these meetings, or the assurance regime, routinely reviewed whether the most appropriate method of authorising entry had been used. Managers at all levels thought that warrants were used in the majority of cases, although this was not reflected in our file sample.

Figure 13: Case Study of Seeking Entry by Consent

The ICE team:

- had intelligence that a named individual, who was known to be an immigration offender was working at a particular address;
- had recently made arrests at the address and noted that it was the same director, although the named owner had changed;
- decided to gain entry by informed consent;
- noted in the case file that ‘verbal authority’ to enter was given and then withdrawn as soon as the name of the person they were seeking was disclosed;
- abandoned the operation and left the premises when the ‘verbal authority’ was withdrawn.

Chief Inspector’s comments:

- ‘verbal authority’ is not a recognised term;
- the guidance requires ‘*fully informed*’ consent in writing by a person ‘*entitled to grant entry*’;
- by choosing informed consent rather than seeking a warrant, the ICE team were left with no option but to abandon the operation when consent was withdrawn.

Home Office IE responded:

- the ICE team has recognised this is a case where an application for a search warrant would have been appropriate, but there is no record of why an application wasn’t made;
- where practicable, consent must be given in writing before a search begins. We would not have expected the search to begin before the written consent was obtained.
- We have recognised that clarification of the procedure to be followed to obtain informed consent was required and this was published to staff in December 2014.

- 5.22 The visit records we examined, including the case above, did not note specific enquiries to comply with the requirement to establish that the person consenting to entry must be *'entitled to grant entry'*. In most premises visited, English was not always the first language of those encountered, and files rarely documented how officers confirmed that consent was *'fully informed'* as required.

Pursuit

- 5.23 Where an individual was seen to leave the premises while entry was being gained, IE guidance did not allow officers to pursue them unless they were aware of the person's immigration status. The guidance states *'An Immigration Enforcement officer (including an IO designated as arrest trained) must not pursue any person who absconds from the premises, including circumstances where that person is suspected of committing an arrestable offence which is not connected with their immigration functions.'*
- 5.24 In six of the 184 cases sampled we found that officers had failed to comply with this guidance and had given chase in an effort to apprehend the individuals, raising issues about unlawful detention and/or arrest, and officer safety.
- 5.25 We were advised by IE that pursuit policy and guidance was under review. Figure 14 shows an example of confusion and misunderstanding in relation to the pursuit guidance in place at the time and illustrates that pursuit can lead to further procedural failings and breaches.

Figure 14: Case study of pursuit followed by handcuffing and questioning

An enforcement officer:

- saw a man exit the rear of a restaurant while colleagues were seeking consent to enter;
- stopped him, placed him in handcuffs, and led him back inside; and
- questioned him for 25 minutes prior to arresting him.

Home Office IE responded that:

- *'the [IE] guidance did not allow for the pursuit and questioning of this person'*;
- *'the officer's actions in applying and recording the use of handcuffs was not sufficiently in keeping with the Association of Chief Police Officers guidelines'*;
- *'an officer should cease questioning once suspicion of an offence has been established'*.

Identifying persons of interest

- 5.26 Where intelligence had placed a 'named offender' at an address, IE guidance required enforcement activity to cease immediately this person was identified. Officers could not question anyone who was clearly not the named offender (e.g. someone of different gender, age or ethnicity). Guidance allowed others on the premises to be *'invited to answer questions'*, but only if they had brought themselves to attention, such as by *'behaviour (for example an attempt to conceal himself or leave hurriedly)'*.
- 5.27 In such circumstances, officers could, according to their guidance, lawfully seek to stop a person but ask them only *'consensual questions'* about their identity and immigration status. However, the guidance went on: *'should a person seek to exercise their right not to answer questions and leave, there is no power to arrest that person purely on suspicion of committing an immigration offence'*.
- 5.28 In the 184 files we sampled there was no record of anyone being *'invited'* to answer *'consensual questions'*. The files showed that officers typically gathered everyone on the premises together, regardless of the information known or people's actions.

- 5.29 Officers must also abide by the *Singh v Hammond* judgement.⁴⁰ This held that ‘An immigration officer is entitled under paragraph 2 of Schedule 2 to the Immigration Act 1971 to conduct an examination of a person who has arrived in the United Kingdom away from the place of entry and on a date after the person has already entered if he has information in his possession which causes him to inquire whether the person being examined is a British citizen, and if not whether he may enter the United Kingdom without leave, and if not whether he should be given leave and on what conditions.’

Figure 15: Case study of breach of pursuit policy and potential for breach of *Singh v Hammond*

Enforcement officers:

- arrived at a restaurant intending to gain entry via consent;
- saw a number of men leaving (one notebook showed two, another showed three);
- confronted them on the pavement, where one was arrested as an immigration offender, and another gave consent to enter;
- approached three men in a transit van parked on the public highway outside, escorted them into the premises and questioned them, and found that all three had leave to be in the UK.

Chief Inspector’s comments:

- These officers breached IE pursuit policy and interviewing guidance with regard to their powers to question people.
- According to IE guidance, members of the public (in this case the three men in the van) could be ‘*invited to answer questions*’ only after they had done something that brought them to officers’ attention. There was no record that they had done so, other than to be parked outside the target premises.

Home Office IE responded that:

- ‘*the males leaving the address are clearly covered by the pursuit policy and officers should not have pursued them*’;
- ‘*the males in the van are not covered by the pursuit policy and were identified as being connected to the premises as they were making a delivery. It is noted within the officer’s notebook that all three males consented to accompany the officers into the premises and their details were taken for record-keeping*’.

⁴⁰ *Baljinder Singh v. Hammond*, [1987] 1 All ER 829, [1987] Crim LR 332, United Kingdom: High Court (England and Wales), 29 October 1986

Use of cautioning

- 5.30 Questioning ‘under caution’ makes interviewees aware of their legal rights and the consequences of answering questions. It also ensures that answers are admissible in evidence in any prosecution. IE officers use the standard Police and Criminal Evidence Act 1984 caution when a criminal offence might have been committed: ‘*You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say can be used in evidence.*’ At the beginning of questioning when no suspicion of offence has yet been formed, they use the ‘caution+2’ from their administrative powers. This is as above with the addition of: ‘*You are not under arrest, and you are free to leave at any time.*’
- 5.31 IE guidance required officers to record giving a caution. Twenty-eight of the 40 records we examined in detail contained a record of a caution having been given. In 17 of the 28 the caution was given at the appropriate time. In the other 11, it was either given too late (after establishing suspicion of an offence) or not at all. In 22 of the 28 cases, the caution+2 was noted, but officers failed to record when they moved to the standard caution at point of arrest.

Figure 16: Case Study illustrating confused use of caution+2

Enforcement officers:

- detected an individual hiding behind a restaurant door;
- Officer A gave the individual a caution+2 (including ‘*you are free to leave at any time*’); but
- Officer B applied handcuffs on the basis that the individual was ‘*looking to escape*’;
- the handcuffed individual was then questioned under the caution+2 for 22 minutes and then arrested.

Home Office responded that:

- the giving of a caution+2 was not compatible with the use of handcuffs in this case and it did not consider that the use of handcuffs was in line with ACPO guidelines.

Questioning

- 5.32 IE guidance was clear that questioning was intended to identify ‘*suspicion of an offence*’ and that ‘*an officer should cease questioning once suspicion of an offence has been established*’. The guidance also required officers to ‘*avoid excessive questioning*’ and to cease questioning as soon as they had ‘*suspicion of an offence*’,⁴¹ or were content that the person was not an immigration offender.
- 5.33 Eighteen of the 40 arrests we examined in detail complied with the guidance in relation to questioning. In 15 cases, questioning continued after the person was formally arrested for an offence in contravention of the guidance.
- 5.34 We observed similar failures to comply with guidance in relation to questioning during an enforcement visit to a commercial laundry in North London (Operation Mist), when a number of interviewees admitted their immigration offences but officers continued to question them. The three examples below illustrate interviewing beyond the point where a decision whether to arrest could have been made:
- A Ukrainian male, who had presented an Estonian document to secure employment, admitted after five minutes of questions that he had entered the UK illegally and did not have permission to work. He was questioned for a further 30 minutes after his admission before being arrested.

41 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/334354/Chapter_37_FIG_20140728.pdf

- A Ukrainian female, who maintained for 15 minutes that she was Danish, was identified by a Home Office record. When confronted with her real identity, she said ‘*This is me*’ and pointed at the true details. The officer confirmed this, but then proceeded to ask her questions via an interpreter for 45 minutes before arresting her.
 - A Polish-born British female was questioned for 17 minutes before receiving a caution+2, and then for a further 25 minutes before she was cleared. This woman’s British passport had been photocopied by her employer, as required, and Home Office records confirmed her naturalisation and the date of her citizenship ceremony. However, another officer subsequently considered that she resembled the photograph of the ‘named offender’, and re-questioned her for a further 50 minutes before she was cleared again. She was then referred to the debriefing team, who spoke to her for a further 45 minutes.
- 5.35 The laundry phase of the operation ran for five hours, but the operation ran for around 10 hours overall, as arrests at the laundry led to residential visits to retrieve and check identity documents. The length of the laundry phase was mostly due to the officers questioning individuals past the point of suspicion of an offence, in breach of their guidance. As questioning became protracted, inspectors observed employees arriving for work and, while most were intercepted, some started working, creating potential health and safety risks from machinery being switched on.
- 5.36 Compared with other IE operations, a large number of officers were deployed on Operation Mist, including some who were inexperienced and being mentored. As the operation progressed, mentors were drawn away from supervising to conduct interviews, leaving inexperienced officers to process individuals without supervision, which led to some delays and errors.

Handcuffing

- 5.37 ACPO guidance on use of handcuffs states that ‘*any intentional application of force to the person of another is an assault. The use of handcuffs amounts to such an assault and is unlawful unless it can be justified.*’
- 5.38 IE guidance prevented officers from using reasonable force (including handcuffs) prior to arrest, except where they believed that they were at imminent risk of an assault. Use of handcuffs post-arrest was permitted as long as it was justified, for instance if the detained person was violent, had a known history of violence or posed an escape risk. Justification for the use of handcuffs had to be recorded, which would usually be done in an officer’s official notebook.
- 5.39 In our file sampling and in focus groups we found misunderstandings and misuse of handcuffing as well as inconsistencies in handcuff use across regions. Where files contained justifications for handcuffing these were adequate for record-keeping purposes, but lacked detail should they come to be relied upon in court.
- 5.40 There might be occasions where officers were required to use force. For this reason, in addition to handcuffs, officers are equipped with stab vests and extending metal batons. In our sample of 184 files we found one case where officers had used force to manage a situation when an illegal worker assaulted a female officer.
- 5.41 We brought our findings on handcuffing practices to the attention of the Home Office as early as possible in the inspection. Assurance had not picked up this problem and IE responded: ‘*We recognise an immediate need to remind our officers of the relevant guidance relating to handcuffing. A bespoke note to staff is being worked on now and will be issued this week, in conjunction with local manager-led briefings to ensure the message is fully understood and embedded.*’ IE confirmed that a note had been sent out to all staff on 5 February 2015 reminding them of the handcuffing guidance.

Safeguarding

- 5.42 Safeguarding children is a key Home Office requirement and officers receive appropriate training. In our file sample we identified one case which underlined the need to record safeguarding actions. A restaurant manager asserted that a small child was ‘scared’ during an enforcement visit. The Premises Search Book (PSB)⁴² recorded the officer in charge (OIC) speaking to the child but with no note of what was said or of the child’s details, which was not in line with IE guidance and meant that the OIC could not demonstrate that they had fulfilled their safeguarding responsibilities. IE agreed and stated: *‘Full details should have been recorded in the PSB and relevant officers’ notebooks as to the circumstances of the encounter, as should full consideration of safeguarding issues and, if appropriate, justification for not taking further safeguarding action in respect of the child.’*
- 5.43 Operation Mist also raised safeguarding issues. The workers were placed in an area with no seating, and some were standing throughout the five-hour laundry phase of the operation. While they were permitted to use the toilet, no other concessions were made. There was no record of an initial enquiry about individuals’ medical conditions that might be exacerbated by standing or going without food. There was no initial enquiry whether anyone was pregnant, although most of the workers were women.
- 5.44 Twenty-eight workers were arrested during Operation Mist and placed in the prisoner transports (large vans with a single lockable compartment). Early arrestees were held in the vans for several hours. One officer’s notebook recorded that he contacted a senior officer at the two-hour mark expressing concern about the extended detention of the arrestees already placed into a prisoner transport. The notebook indicated that the senior officer undertook to examine the situation, but we could find no further mention in any records.
- 5.45 The signed witness statement for the visit recorded that one female arrestee was kept in a prisoner transport (not handcuffed) for a total of 6 hours 51 minutes. We reviewed the notes, which were split between two notebooks, and established that, while it was recorded that she was brought out of the vehicle twice to have access to toilet facilities, there was no record that she was offered food and/or water. We had asked about the potential for individuals to be held in transports for lengthy periods at the pre-inspection meeting with IE and had been told that teams were alert to the risk.

Conclusion

- 5.46 Intelligence relating to illegal working comprised mostly low-level allegations made by members of the public; these were lacking in detail and their reliability was difficult to assess. Based on our sample, this intelligence led IE to focus on high street Indian Subcontinent and Chinese restaurants and takeaways and the nationalities directly involved in that business sector. These nationalities are among the hardest to remove because of the difficulties of obtaining travel documents. As well as being self-reinforcing and limiting in terms of organisational knowledge and the nationalities encountered, other business sectors and possibly other nationalities had been neglected by comparison.
- 5.47 Intelligence teams were not always doing their pre-visit checks and it was an inefficient use of resources for enforcement officers to have to do them, especially where they might already have been done but not recorded. While it appeared from observation that Tasking & Coordination Group (TCG) meetings were efficient and effective in considering which intelligence packages to action, the record-keeping in relation to their decisions, including the rationale for deciding to action or reject a particular intelligence package, was poor. Based on the records, it would be difficult for IE to defend any challenges that particular businesses, sectors or individuals were being unfairly targeted.

⁴² One officer has the designated role of making notes in this book to record events briefly, officers present and persons encountered/arrested. It also acts as the formal record of consent being given (if relevant to the visit).

- 5.48 There were inconsistencies in operational practice in a number of areas, which pointed to deficiencies in officer training, supervision and assurance. The areas included: reconnaissance ('recces') of target premises; use of non-directed surveillance; obtaining lawful entry to premises; pursuit, cautioning, questioning, and use of handcuffs. Failure to apply the law correctly and to follow IE guidance in relation to any and all of these compromises the Home Office and the officers involved, as well as infringing the rights of the individuals affected.
- 5.49 From the files and observations, we identified a general tendency to interview beyond the point of '*suspicion of an offence*'. In Operation Mist, we saw the impact of this in inefficient use of time and resources, and unfair and unreasonable treatment of individuals.

Recommendation

The Home Office should:

4. Review, and where necessary revise, its operational guidance in relation to illegal working to ensure that it is aligned with all relevant legislation, and is clear in terms of what is required from officers at each stage of an operation from the Tasking & Coordination Group (TCG) decision to take action, through planning, to operational deployment and any follow-up.

6. INSPECTION FINDINGS – SYSTEMS AND PROCESSES

Central records and management information

- 6.1 Our 2014 report on the use of the power to enter business premises without a search warrant⁴³ highlighted issues with the quality of information held on the National Operations Database (NOD). In response, the Home Office undertook to issue *'further instructions ... to ensure that ... Chief Immigration Officers routinely review entries on NOD post-enforcement visits'* and said that *'NOD entries will also be reviewed to improve data quality'*.⁴⁴
- 6.2 The current inspection found that the entries on NOD had improved significantly, were broadly accurate, and demonstrated evidence of assurance. Data was being input by teams and a weekly email containing comprehensive performance data was sent to all managers. This enabled a comparison of effectiveness across all IE tasks. This improvement had been driven by senior management's approach to the use of performance data, and local managers told us they found it effective.

Individual record-keeping

- 6.3 The 2014 report also found problems with IE's record-keeping, including *'weak'* justification for actions, and records containing *'conflicting information'* that *'had not been completed correctly'*. We concluded that it was *'imperative that adequate records are maintained in order that decisions can be justified and challenges resisted'*.
- 6.4 In the current inspection we noted that IE training and guidance in relation to the use of notebooks included the 'NO ELBOWS' acronym, directing that officers should avoid:
- Erasures;
 - Leaves torn out;
 - Blank spaces;
 - Overwriting;
 - Writing between lines; and
 - Statements not written in direct speech.
- 6.5 We examined 165 notebooks as part of our detailed look at 40 illegal working cases. We found a low level of compliance with notebook guidance. For example, only 34 had new entries dated and timed and only 29 contained an interviewee's signature. However, 101 did have all unused spaces crossed through in line with the NO ELBOWS guidance.

ICE teams' control of paperwork and documents

- 6.6 Seven of the files we originally requested at random for sampling were lost or unobtainable. In the 184 we received and reviewed (which included at least one from every ICE team) we found different approaches to storing papers. Some visit papers were secured within Home Office file covers, but the majority were held loosely in cardboard wallets marked in manuscript with reference and date. The

43 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/03/AD-letters-report-Final-Version-for-Web.pdf>

44 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/03/Home-Office-response-to-AD-LETTER-report.pdf>

latter met IE guidance with regard to retrievability, but some of the wallets were so overstuffed that the seams were ripping open, risking papers becoming lost. In terms of auditability, some reference numbers were confusing in that they could refer to a number of visits to the same premises.

- 6.7 The files we sampled included many open evidence bags, most containing items of no apparent evidential value, although one contained an identity document that had been fraudulently altered. We noted that enforcement officers had signed elsewhere that the evidence bags had been sealed, as was required to protect the ‘chain of evidence’.

Training

- 6.8 New enforcement officers had 25 days of initial training covering 66 modules. Other training included a three-day ‘refresher package’, which had been expanded from two days, and a three-week ‘Arrest Training’ course, which covered ‘ACPO approved arrest techniques’ and was provided by the College of Policing.
- 6.9 Experienced officers in ICE teams mentored new Assistant Immigration Officers (AIOs) from their arrival after initial training until they were assessed to have met the requirements to become Immigration Officers (IOs). This development ‘pathway’ was tailored to each individual, but was expected typically to take around 18 months. We found that IE had no formal training for mentors to support consistency of practice across the 19 ICE teams.
- 6.10 All ICE teams work to the Immigration Rules which apply throughout the UK. However, initial training did not cover laws and procedures applying outside England and Wales, for example, the Criminal Procedure (Scotland) Act 1995. The expectation was that where required this would be covered by local mentors.

Use of Guidance

- 6.11 We asked enforcement officers at each location we visited about the IE guidance.⁴⁵ They were all critical of the intranet search engine and there was general agreement that it was difficult to find information. Rather than refer to the guidance, the majority relied on their initial training, the mentoring they received as part of development and the knowledge of more experienced colleagues. This echoed our 2013 inspection of sham marriages, which found that IE officers made little use of central guidance and relied heavily on their training.⁴⁶
- 6.12 Senior managers had already identified that guidance was too long and, in some places, contradictory. We also found inconsistencies in relation to tasks such as handcuffing and interviewing. At the time of this inspection a ‘*root and branch*’ review of policy and guidance had started and revised guidance was expected to be in place before the publication of this report.

Local assurance

- 6.13 We found an inconsistent approach to local assurance in our sample files. Where it existed, assurance comprised a simple checklist to ensure that relevant documents from a visit had been collated. These included photocopies of the notebooks of all the officers involved. The local process did not consider quality and accuracy, or look to contribute to continuous improvement.

Central assurance

- 6.14 The National Operations and Assurance team (NOA) has the role of reinforcing operational consistency and compliance. As currently resourced, it is able to visit each ICE team on average once

45 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301388/Chapter_31v8.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/334994/Chapter_61_EIG_v5_1_20140728.pdf

46 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/An-Inspection-of-a-Sham-Marriage-Enforcement-Operation-Web-PDF.pdf>

a year. In June and July 2014 the NOA observed a TCG meeting and two subsequent lower tier enforcement operations carried out by the North London ICE team, the same team we observed in Operation Mist. The NOA report (dated September 2014) noted that the assurance verification process was designed to:

- *‘empower business unit leaders and operational managers to monitor, review their team’s performance and drive up their quality of work;*
- *ensure ICE leaders take ownership of the results of this verification visit and implement improvements;*
- *enable local performance to be tested, evaluated and determine appropriate action plans;*
- *identify specific business units which need particular support and require clarification in particular areas;*
- *determine national (generic) training, policy and guidance needs; and*
- *identify best practice for sharing’.*⁴⁷

6.15 The NOA report identified lack of consideration of legislation and incomplete application of powers, insufficiently detailed files and poor recces. The NOA’s findings were mirrored in our inspection.

IE’s ‘First Line Assurance’

6.16 One senior manager told us that introduction of formal assurance within IE had taken longer ‘*to bite*’ and deliver improvements than expected. During our inspection, senior managers introduced an enhanced assurance process with 100% file checking and a focus on quality.

6.17 A Chief Immigration Officer (CIO) would accompany an enforcement team on some visits. However, CIOs told us they were not able to provide full management oversight of the visit as they also fulfilled a team member role. The new assurance process included observations of visits by local ICE managers above CIO, and senior managers were sitting in on further training being rolled out to local ICE managers to provide a further layer of assurance.

Conclusion

6.18 With regard to record-keeping, the quality of entries on the National Operations Database (NOD) had improved (since 2014) and NOD was now providing operational managers with useful performance data on a weekly basis. At the local level, however, non-compliance with record-keeping training and guidance was widespread, particularly in respect of officer notebooks, the use of evidence bags and the storage of papers.

6.19 Although new local assurance processes had recently been introduced, focusing on quality, local assurance of records had previously been limited to a tick-box exercise confirming that the required documents had been filed. Consequently, it had failed to identify, for example, abuses of interviewing and arrest powers and failures to justify the use of handcuffs. Management oversight of visits had also been limited, with Chief Immigration Officers (CIOs) attempting to combine oversight with an operational role as a team member. Operation Mist suggested that larger-scale illegal working visits required more careful oversight than lower-tier visits, as the more officers and workers involved the longer the operation runs and the greater the risk that legislation and guidance may be breached,

6.20 Officers reported difficulties finding the information they needed to support them in their work, including IE guidance via the intranet, and relied instead on their training and on more experienced colleagues. The lack of central control and assurance of the local mentoring that was provided to new officers once they joined one of the 19 ICE teams led to misunderstandings and divergence from the training provided centrally (initial training, arrest training and refresher training). Senior managers

⁴⁷ NOA, September 2014. Internal Home Office document.

had already identified the difficulties of accessing information and guidance and had begun a review of policies and guidance.

- 6.21 National Operations Assurance (NOA) fulfilled an important central or second-line assurance function. However, its impact on the efficiency and effectiveness of individual ICE teams was limited by the fact that, as resourced, it was only able to make an assurance visit to each team once a year, on average.

Recommendations

The Home Office should:

5. Review, and where necessary revise, its training and supervision (including mentoring) of Immigration Enforcement (IE) officers deployed on illegal working operations to ensure that it is comprehensive, consistent and fit for purpose.
6. Ensure that all policies and guidance relevant to illegal working are readily accessible to IE officers, including online. Ensure that the resources and mechanisms are in place locally and centrally to provide continuing assurance that policies and guidance are understood and are being applied correctly and consistently.

7. INSPECTION FINDINGS – PENALTIES AND SANCTIONS

Civil Penalty Scheme

- 7.1 We sampled 60 civil penalty files (relating to 128 illegal workers), spoke to senior managers and visited the Civil Penalty Compliance Team (CPCT) in Manchester, and we considered a range of performance information.
- 7.2 The civil penalty process began when, having found an illegal worker, an enforcement team issued a Referral Notice to a business. The Referral Notice alerted the employer to a potential penalty. A caseworker then issued a penalty unless the employer had a statutory excuse, for example that they had conducted the prescribed ‘right to work’ checks.⁴⁸ Where penalties were issued, they could later be reduced or cancelled as a result of objections and appeals.
- 7.3 In our sample of 60 files, the decision whether to issue a civil penalty had been made in relation to 100 of the 128 illegal workers found. Based on the available information, 93 of these decisions were in line with guidance. Of the 67 penalties issued in those cases, 46 were consistent with the Codes of Practice in place at the time. Of the remaining 21, one penalty appeared to be too low and 18 too high. In two cases the penalty was cancelled by CPCT. The 67 penalties totalled £585,000. Objections and appeals reduced this figure to £437,500 (-25%).
- 7.4 We found that moving CPCT into the bigger IE Interventions and Sanctions Directorate in August 2013, coupled with effective management, had addressed the backlogs found when we inspected the team in 2010.⁴⁹ A senior manager explained plans to contribute to the ‘hostile environment’ beyond simply processing IE visit penalties. For example, the Home Office will alert companies before an employee’s right to work status expires and HMRC will check whether the individual works beyond that date.

Penalties

- 7.5 The maximum civil penalty is £20,000 per worker. Where an employer has ‘*not been found to be employing illegal workers within the previous three years*’, penalties began at £15,000, leaving the maximum to be used for second and subsequent offences.⁵⁰ Based on the Code of Practice, the £15,000 could be reduced to £10,000 where the employer co-operated by: *providing Home Office officials with access to your premises, recruitment and employment records and document checking systems when requested;*
- *responding promptly, honestly and accurately to our questions and information requests;*
 - *making yourself available to our officials during the course of our investigations if required; and*
 - *fully and promptly disclosing any evidence you have which may assist us in our investigations.*

48 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378926/employers_right_to_work_checklist_november_2014.pdf

49 http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/An-Inspection-of-the-Civil-Penalties-Compliance-Team_Illegal-Working1.pdf

50 See footnote 47. Table 2: Civil Penalty Calculator.

- 7.6 Our sample included cases where the penalty had been reduced but only one of the Code of Practice conditions had been met. CPCT confirmed that employers needed to meet all of the conditions for the reduction to apply and that this misunderstanding had already been identified. The decision paperwork was amended so that it *'clearly informs the employer that they must meet all four criteria'*.

Problems of proving employment

- 7.7 Pursuing a civil penalty against an employer requires proof of employment. Enforcement staff and managers told us that employers frequently claimed that an individual found cooking in the kitchen was not employed by them but a visitor preparing food for himself or a potential employee taking a cooking *'trade test'*.
- 7.8 Two cases from our file sample illustrate the difficulty of securing the necessary evidence that the worker was –
- *'remunerated;*
 - *subject to the employer's control (they can be asked to perform tasks); and*
 - *obligated to perform certain duties or actions and vice versa (the employee works a number of hours and the employer pays them in return).*⁵¹
- 7.9 During a restaurant visit, officers photographed an individual wearing a chef's hat and *'holding a wok'*. They recorded that the man stated that he was not working, merely visiting. We asked why CPCT had decided not to issue a penalty. CPCT responded *'While the evidence highlighted suggests the person may have been involved in work-based activity, the evidence does not demonstrate employment as defined in the 2006 Act.'*
- 7.10 In another case, a man found wearing the business's printed tee-shirt claimed to have been helping there for up to a year without pay. CPCT concluded that employment was not proven, and did not issue a penalty, as the manager said that the man was not employed but had been given the work wear that day as a matter of hygiene: *'He was wearing a shirt that wasn't appropriate for sitting in a pizza shop'*.
- 7.11 We asked about the value of photographic evidence. CPCT staff explained that a few cases had been proven by photographing an official hygiene certificate bearing an immigration offender's name. Otherwise, photographs would need to show an individual working or present in *'staff only'* areas. Our 184 sample files contained some photographs of men in work wear, but all appeared to have been photographed after they had been removed from *'staff only'* areas. IE guidance, under *'Evidence that is useful'* simply refers to *'photographs taken at the scene'*.
- 7.12 CPCT told us that they provided feedback on both good and poor quality referrals, but some ICE team members told us that where they had previously seen regular feedback they no longer saw it.

Debt Recovery

- 7.13 CPCT's record in debt recovery had previously raised media and public concern.⁵² As a result of the July 2013 public consultation, a payment incentive was introduced by reducing the penalty by 30% if paid within 21 days. The scheme already allowed payment by instalments. The Home Office had also contracted two specialist debt recovery firms (members of the Credit Services Association). The most recent figures showed that around 31% of debt raised was recovered and that it took an average of 28.4 months to recover it.

⁵¹ <https://www.gov.uk/employment-status/worker>

⁵² Example - <http://www.bbc.co.uk/news/uk-23535938>

‘Phoenixing’⁵³ of businesses and abuse of directorships

- 7.14 ICE team staff and managers identified ‘phoenixing’ as an obstacle to debt collection. This was where a business owing a penalty closed down and a new one started up owned by the same family but registered to a different family member. Our file sample contained examples of changes of directors or company secretaries within the same family.
- 7.15 While some businesses were ‘phoenixed’, others may be quickly sold on. As the new owner did not commit the offence they were not liable for the civil penalty, although they might have received a demand to pay as the Home Office was not able to monitor such changes of ownership.
- 7.16 During the inspection, a senior manager told us of work that was going on to ban individuals linked to illegal working offences from holding company directorships. On 26 March 2015, the Insolvency Service, BIS and Home Office issued a joint press release announcing that 16 directors had been banned in the last nine months following collaboration between the Insolvency Service and IE. The directors ‘*had collectively employed 52 illegal workers who were caught during intelligence-led Home Office enforcement operations*’.⁵⁴
- 7.17 The Companies Act 2006⁵⁵ permits non-British nationals, whether or not domiciled in the UK, to be directors of UK-registered companies. It does not require someone domiciled in the UK to have a legal immigration status here. We brought this omission to the attention of Home Office and Cabinet Office senior managers.
- 7.18 Our file sample contained two non-EEA nationals working as self-employed hairdressers. Civil penalty legislation defines an employer, but does not extend to the self-employed, meaning that these persons could not be served with civil penalties. The Home Office was aware of this and had written to the Prime Minister on 25 July 2014 setting out plans for a data-matching pilot with HMRC to check that non-EEA nationals who registered as self-employed had permission to work here.

Publishing penalty data

- 7.19 The data in Figure 17 is drawn from two quarterly reports covering our file sample period. These reports did not name the businesses involved as the objection and appeal stages had not been completed.

Figure 17: Anonymised regional reports published on Gov.uk of illegal working civil penalties 1 January to 30 June 2014

| Region | London & South East | Midlands & East | North East, Yorkshire and Humberside | North West | Scotland and Northern Ireland | Wales & South West |
|---------------------------------|---------------------|-----------------|--------------------------------------|------------|-------------------------------|--------------------|
| Number of illegal workers found | 1,002 | 189 | 219 | 186 | 222 | 122 |
| Number of penalties issued | 605 | 110 | 159 | 114 | 114 | 122 |
| Value of penalties issued *(£) | 5,050,000 | 958,750 | 1,158,750 | 953,750 | 1,116,250 | 998,700 |

* gross value of penalties issued – the recoverable value reduces after adjustment for successful objections/appeals.

53 The Insolvency Service defines ‘company phoenixing’ as ‘company directors avoiding “legal sanction by dissolving the company concerned and starting up another to pursue the same business strategy”’
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251143/2013-05-01-RPC13-DCMS-1754-sharing-of-information-between-ofcom-the-information-commissioners-office-and-the-insolvency-service.pdf.

54 <https://www.gov.uk/government/news/more-restaurant-bosses-banned-over-immigration-offences>.

55 <http://www.legislation.gov.uk/ukpga/2006/46/contents>.

‘Naming and shaming’ businesses

- 7.20 On 3 December 2014, as part of creating a ‘hostile environment’ for non-compliant employers, the Home Office published six regional reports giving the location and trading name of businesses and/or individuals liable for unpaid penalties. The reports ‘named and shamed’ employers on whom civil penalties have been imposed for not complying with illegal working legislation and who have:
- *‘not paid them or are not making regular payments towards them 28 days after they have exhausted all their objection and/or appeal rights; or*
 - *been served with a second or further penalty once they have exhausted all their objection or appeal rights regardless of whether they have made any payments.’*
- 7.21 These reports identified that £5,607,335 was owed in residual penalties by 653 businesses, a third (36%) of which were in London and the South East. 75% of the businesses ‘named and shamed’ were restaurants and other hot food retailers.

Prosecutions

- 7.22 IE crime teams, which typically included seconded police officers, had little capacity to pursue local, low-level prosecutions, and were focused on higher-level, regional and/or organised criminality. At the same time, most ICE team officers were not experienced in investigating and prosecuting criminal cases. The case study at Figure 18 is an example of how potential opportunities to prosecute an employer might be missed because ICE team and CPCT processes were not joined up and officers lacked awareness. At the time of the inspection, the crime team had belatedly become aware of the case and had initiated enquiries towards a prosecution.

Figure 18: Case study of linked cases with potential for prosecution

Enforcement officers from an ICE team:

- conducted visits to two business premises owned by the same individual;
- made multiple arrests in each premises, but sent the two case files off separately to CPCT, without flagging the link or alerting the crime team.

CPCT:

- processed the cases separately (although the two caseworkers had information to show that the other case existed);
- failed to alert the crime team to consider prosecution, although required to do this in all cases of six or more arrests;
- considered that the identity documents provided by many of those arrested were fraudulent, but determined that this was not ‘readily apparent’ so cancelled all but one civil penalty.

The IE crime team:

- subsequently became involved.

The Home Office commented:

- *‘These cases were received by the CPCT on different dates as two separate referrals. Cases are dealt with in date of receipt order and each individual Referral Notice has its own unique file reference and entry onto the CPCT database. There is no guidance or process instructing the caseworkers to deal with multiple referrals for businesses under the same ownership together. If possible, though, multiple referrals for businesses under the same ownership would be considered together, but this will depend on the dates the referrals are received and also the resources available. We did not follow our usual process of referring a case with an excess of six workers to the crime team.’*

Building capacity and awareness

- 7.23 ICE managers told us that many enforcement officers failed to realise the importance of their notebooks for the evidential audit trail because they were rarely tested in court. Senior managers told us that they had made plans to train some 80 officers across teams to investigate for prosecutions at the first crime level. This was expected to build greater professional awareness in teams, for example of the importance of record-keeping, as well as to provide prosecution capacity.⁵⁶ During the drafting of this report, we were informed that the training of 61 officers (6.6% of the operational resource) had been completed, and IE had decided this was sufficient but would keep it under review.
- 7.24 Data indicated that in 2014/15 ICE team officers had pursued criminal investigations into 23 offences (17 individuals) related to illegal working. This excluded any investigations recorded under the name of a crime team mentor during training. As at August 2015, the figures for 2015/16 were 73 offences (48 individuals).

Conclusion

- 7.25 Based on the files sampled, the Civil Penalties Compliance Team’s decisions about when to apply a civil penalty were sound and in line with guidance. Managers had already identified and resolved caseworkers’ misunderstanding of the ‘co-operation’ criteria, but the error rate by CPCT in calculating the penalty amount suggested that there had been a need for better assurance of outgoing penalty notices. CPCT also needed to ensure that feedback on referrals actually reached all ICE team members, particularly in relation to proof of employment, insufficient evidence of which meant that civil penalties could not be issued.
- 7.26 Collection of civil penalties was not straightforward. The Home Office had taken steps to improve collection by outsourcing to specialist debt recovery firms and through ‘naming and shaming’ businesses and individuals who had defaulted. However, non-compliant business owners were able to frustrate debt recovery by ‘phoenixing’ their business (restarting with a different registered owner, often a family member) or by selling up before the penalty was issued. The Home Office was working with HMRC, the Insolvency Service and others to close loopholes, for example blocking individuals without the appropriate immigration status from registering as self-employed and banning individuals linked to illegal working from holding company directorships.
- 7.27 IE crime teams prioritise NIM Level 2 and 3 criminality (regional and/or organised crime). IE subsequently told us that crime teams undertook Level 1 (local crime) investigation when resources allowed and that these accounted for 50-65% of their investigations. However, the general lack of ICE experience in criminal investigation meant that there was a capability gap at Level 1. IE had taken steps to address this by training 61 officers in Level 1 investigations. ICE teams’ and CPCT’s working of cases separately, without promptly flagging or linking instances where the same employer

⁵⁶ This was formerly known as PIP Level 1, as the first stage of the ‘Professionalising Investigation Programme’. It is now known as ‘Priority and Volume Crime’.
<https://www.app.college.police.uk/app-content/investigations/introduction/#pip-level-1>

was involved, meant that opportunities for more serious penalties and sanctions, including criminal prosecutions, might be missed. It was evident that some employers were unlikely to comply regardless of greater encouragement or of civil penalties, and that ICE teams needed to be properly equipped to investigate Level 1 (local) offenders with a view to criminal prosecution where appropriate.

Recommendations

The Home Office should:

7. Improve communication between ICE teams, crime teams, and the Civil Penalties Compliance Team and ensure that their priorities and working practices are complementary.
8. Ensure that ICE teams have the skills, experience and capacity to pursue criminal investigations and prosecutions of local non-compliant employers where appropriate.

Appendix 1: Role & Remit of the Chief Inspector

The role of the Independent Chief Inspector ('the Chief Inspector') of the UK Border Agency (the Agency) was established by the UK Borders Act 2007 to examine and report on the efficiency and effectiveness of the Agency. In 2009, the Independent Chief Inspector's remit was extended to include customs functions and contractors.

On 26 April 2009, the Independent Chief Inspector was also appointed to the statutory role of independent Monitor for Entry Clearance Refusals without the Right of Appeal as set out in section 23 of the Immigration and Asylum Act 1999, as amended by section 4(2) of the Immigration, Asylum and Nationality Act 2006.

On 20 February 2012, the Home Secretary announced that Border Force would be taken out of the Agency to become a separate operational command within the Home Office. The Home Secretary confirmed this change would not affect the Chief Inspector's statutory responsibilities and that he would continue to be responsible for inspecting the operations of both the Agency and the Border Force.

On 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. His statutory responsibilities remain the same. The Chief Inspector is independent of the Home Office and reports directly to the Home Secretary.

On 26 March 2013 the Home Secretary announced that the UK Border Agency was to be broken up and brought back into the Home Office, reporting directly to Ministers, under a new package of reforms. The Independent Chief Inspector will continue to inspect the UK's border and immigration functions, as well as contractors employed by the Home Office to deliver any of these functions. Under the new arrangements, UK Visas and Immigration (UKVI) and Immigration Enforcement (IE) became operational commands under the direction of Directors General.

Appendix 2: Inspection Criteria

The criteria used in this inspection were taken from the Independent Chief Inspector's Inspection Criteria.

| Inspection Criteria used for producing this report |
|--|
| Operational Delivery |
| 1. Decisions on the entry, stay and removal of individuals should be taken in accordance with the law and the principles of good administration. |
| 2. Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted. |
| 3. Resources should be allocated to support operational delivery and achieve value for money. |
| Safeguarding Individuals |
| 5. All individuals should be treated with dignity and respect and without discrimination in accordance with the law. |
| 6. Enforcement powers, should be carried out in accordance with the law and by members of staff authorised and trained for that purpose. |
| Continuous Improvement |
| 9. The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions. |
| 10. Risks to operational delivery should be identified, monitored and mitigated. |

Appendix 3: Glossary

| Term | Description |
|---------------------------------------|--|
| A | |
| ACPO | The Association of Chief Police Officers; it was replaced by the National Police Chiefs' Council (NPCC) in April 2015, as the body which coordinates policing at the national level. |
| Assistant Director (Grade 7) | A management title used in Home Office immigration functions - subordinate to Deputy Director (Grade 6), superior to Inspector/Senior Executive Officer. Each ICE team is headed by an Assistant Director. |
| Assistant Immigration Officer (AIO) | Entry grade for recruits to Immigration Enforcement. A 12-18 month development and training programme (the 'AIO Pathway') progresses the recruit to the Immigration Officer grade. |
| Assisted Voluntary Return | Voluntary return programmes provided by the International Organisation for Migration (IOM). The IOM arranges flights and onward transportation to the home doorstep and, under schemes for asylum seekers, families and young people, reintegration assistance is also provided. |
| B | |
| Biometric Residence Permit | Includes biometric identification information of ten digit finger scans and a digital photograph. |
| Border Force | The part of the Home Office responsible for front-line border control operations, encompassing immigration and customs functions. |
| Business, Innovation and Skills (BIS) | The government department for economic growth, which also protects consumers and reduces the impact of regulation. It has 50 agencies and public bodies. https://www.gov.uk/government/organisations/departments-for-business-innovation-skills |
| C | |
| Cabinet Office | The corporate headquarters for government (in partnership with HM Treasury) which supports the Prime Minister and takes the lead in certain critical policy areas. https://www.gov.uk/government/organisations/cabinet-office |

| | |
|---------------------------------------|--|
| Care Quality Commission (CQC) | The CQC is an independent regulator of health and social care in England and checks standards at all care and nursing homes in England. http://www.cqc.org.uk . |
| Casework Caseworker Caseworking | Terms in use for working through individual civil penalty cases. |
| Chief Immigration Officer (CIO) | Management grade above Immigration Officer, equivalent to Higher Executive Officer (HEO). |
| CPCT | The Civil Penalty Compliance Team is based in Manchester and administers the civil penalty system. |
| Credit Services Association | UK trade association for the debt collection and debt purchase industry. http://www.csa-uk.com/ |
| D | |
| Department for Work and Pensions | Government department responsible for welfare and pensions policy. https://www.gov.uk/government/.../department-for-work-pensions |
| E | |
| EEA | The European Economic Area was established on 1 January 1994. It contains the Member States of the European Union plus Iceland, Liechtenstein and Norway from the European Free Trade Area (EFTA). All EEA nationals enjoy free movement within the EEA. Switzerland's nationals also benefit under a separate agreement. |
| F | |
| Franchise | Under a 'business system franchise agreement' the owner of an established business format (the franchiser) grants to another person (the franchisee) the right to distribute products or perform services using that system. For more detail see https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim57601 |
| G | |
| Gangmasters Licensing Authority (GLA) | The GLA licensing scheme regulates businesses which provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law. www.gla.gov.uk |
| Grade 7 | Subordinate to Grade 6. See also 'Assistant Director'. |
| Grade 6 | Subordinate to Senior Civil Service, superior to Grade 7. |

| H | |
|--|--|
| Her Majesty's Revenue and Customs (HMRC) | Responsible for the collection of taxes, the payment of some forms of state support, and the administration of other regulatory regimes. https://www.gov.uk/government/organisations/hm-revenue-customs |
| Home Office | Lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police. https://www.gov.uk/government/organisations/home-office |
| I | |
| Immigration Officer (IO) | Grade superior to Assistant Immigration Officer, and subordinate to Chief Immigration Officer. |
| Independent Anti-Slavery Commissioner | Leads the UK's fight against modern slavery. https://www.gov.uk/government/news/uks-first-independent-anti-slavery-commissioner-announced |
| Immigration Rules | A key part of the legislation that makes up the UK's immigration law - updated on a regular basis. https://www.gov.uk/government/collections/immigration-rules |
| Insolvency Service | An executive agency of BIS, it administers compulsory company liquidations and personal bankruptcies and deals with misconduct through investigation of companies and enforcement. https://www.gov.uk/government/organisations/insolvency-service |
| Intelligence | Intelligence is created by enhancing 'raw' information with additional research and risk consideration, with the objective being to allow enforcement action or an investigation to commence. |
| N | |
| Notice of Liability (NOL) | In the event that a civil penalty is to be issued, a Notice of Liability is produced by CPCT and served on the employer. |
| Notice of No Liability | Following an investigation by CPCT, if it is deemed that no penalty is appropriate, a Notice of No Liability is served on the employer. |
| O | |
| Office of the Immigration Services Commissioner (OISC) | Regulates immigration advisers, ensuring they are fit and competent and act in the best interest of their clients. https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner |
| Overstayer | Someone granted time-limited permission to be in the UK who remained here after that permission expired. |

| R | |
|---|--|
| Referral Notice | Issued to an employer by an enforcement team at the time illegal workers are detected. Previously known as a Notice of potential liability (NOPL). |
| Removal | The process by which the Home Office removes, or otherwise encourages to leave, those without a valid basis for remaining in the UK. |
| S | |
| Statutory Excuse | Employers may be able to establish a ‘statutory excuse’, that is one recognised by legislation, so may not be liable for a civil penalty. Statutory excuses include that it was not reasonably apparent that the illegal worker who presented a document was an imposter or that it was not reasonably apparent that a document presented was false. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313369/Statutory_Excuse_Checksheet.pdf |
| T | |
| Takeaway | A colloquial expression for a business premises selling hot food which will be eaten elsewhere. |
| Tasking and Coordination Group (TCG) | In this report, this refers to the local approach to prioritising threats, setting objectives and planning resources and action. |
| Trafficking | The facilitation or movement of a person (or persons) around, into or through a country, for the purpose of exploiting that person. It may be done against their will or with their permission (for example, on the promise of employment). |
| Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) | A part of UK employment law which protects employees whose employer’s business is transferred to another business. https://www.gov.uk/government/publications/tupe-a-guide-to-the-2006-regulations |
| U | |
| United Kingdom Visas and Immigration (UKVI) | One of the operational commands set up under the direct control of the Home Office in place of the UK Border Agency. It handles all overseas and UK immigration and visa applications including settlement and nationality, and EEA applications for UK documentation. |

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