

News story: An inspection of the Home Office's approach to Illegal Working

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

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

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

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

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

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

The lessons from the Windrush scandal are the subject of an independent review, due to report shortly, and there is a compensation scheme for those affected. Therefore, I did not look specifically at how Windrush generation individuals had been impacted by Immigration Enforcement's illegal working measures. However, it was evident that Windrush had had a significant effect

on Immigration Enforcement, operationally (as a result of the 'pausing' of data sharing with other departments) and psychologically (with IE perceiving that other departments and agencies, employers and the general public were now less supportive, and that having dispensed with removals targets it was no longer clear, at least to ICE teams, what success looked like).

My report, which was sent to the Home Secretary on 6 February 2019, made six recommendations. The majority focus on improving the mechanics of illegal working compliance and enforcement but, while important and necessary, these are not enough by themselves to answer the criticism that the Home Office's efforts are not really working and may have had the unintended consequence of enabling exploitation and discrimination by some employers.

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

The Home Office has accepted all six recommendations. However, it seems that implementation of the key recommendations remains some way off and, while it is entirely sensible for it to look to the various reviews of the immigration system, including of Windrush Lessons Learned, to inform the updated illegal working strategy, in the meantime the problems identified in my report persist, with little clarity about the Home Office's thinking or intentions.