

AN IER SUBMISSION

**Call for evidence:
An inspection of how the
Home Office is tackling
illegal working**

By

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This document responds in brief to the Independent Chief Inspector's call for evidence in relation to how the Home Office is tackling illegal working. It focuses on four areas:

1. **Continuing evidence of community targeting in relation to raids on businesses and its consequential effects;**
2. **Continuing failure to follow guidance in relation to raids on businesses and the consequential effects;**
3. **The exclusion of employment law protection from those without documents; and**
4. **Why it is that, despite sanctions, some employers will continue to employ those without documents.**

Immigration status is the outcome of government policy or in some cases the misapplication of government policy as the recent Windrush cases have so clearly demonstrated. Any consideration of Home Office practices should start from an acknowledgement that individuals themselves are not 'illegal', it is their presence that may be made illegal through government policies that change from time to time or indeed that are misapplied. It also needs to be recognised that sanctions cannot eliminate 'illegal working', indeed the 2014/15 report of the Chief Inspector acknowledges: 'enforcement visits encountered and removed only a small proportion of offenders and that IE would never have the resources to resolve the overall problem.'

The push to migrate, either for economic, family or political reasons, the numbers involved and the needs of business for workers, altogether ensure that Home Office policy is neither effective or efficient while at the same time it is damaging to local communities, fosters antagonism between different communities and encourages the targeting of individuals and ethnic groups so that it could be seen as counterproductive. In turn, workers affected experience debt, low pay, harsh working conditions (including long working hours and unsocial hours patterns) as well as physical and psychological risks at work. Yet their voices and experiences are in general absent from the discussion of illegal working and are not included in the evidence which the Chief Inspector collects.

1. Community targeting

The 2014/15 report of the Independent Chief Inspector (*An Inspection of How the Home Office Tackles Illegal Working, October 2014 – March 2015*) states (para 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.**' (our emphasis).

Such critique of intelligence gathering is not new; the previous report of the Independent Chief Inspector similarly noted the targeting of particular sectors and national groups (both in terms of employers and migrant workers). This is in the absence of any national data which can, with any degree of accuracy, show the countries of origin of the major groups of migrants without documents. The Inspector's report does suggest that the largest group of

those working without documents are overstayers. This should lead to the conclusion that those found to be working without permission would include persons from Canada, Australia, the USA and New Zealand, all countries with significant numbers of visitors to the UK; indeed in the last year more than 40 per cent of visitors to the UK originated from North America. Yet it seems, from the Chief Inspector's report, that the likelihood of workplace raids encountering nationals from these countries is extremely slight. This inevitably leads to a conclusion that certain national groups are targeted, differentiated mainly by their ethnicity and visibility. This has negative consequences within communities that identify with these groups who experience this targeting as exclusionary and racist. The policy is thus counter productive in terms of community cohesion. Similarly, the focus on specific sectors concentrates on specific nationalities and, as the Chief Inspector's report states: 'it would be difficult for IE to defend any challenges that particular businesses, sectors or individuals were being unfairly targeted.' Indeed from the estimates on the numbers of persons without documents (cited in the Chief Inspector's report) it is obvious that neither all (nor even a majority) could be employed in the restaurant and catering sectors – these sectors are not sufficiently large to absorb such numbers.

The policy on immigration, sanctions and raids also fits uneasily within a general government agenda of support for deregulatory policies in relation to business and again cannot but make minority ethnic businesses feel that they are treated differently and that their economic success is not valued.

The IER suggests: There is a need to engage with the communities that have been targeted for workplace raids, both employers and migrant representatives, to understand how they experience raids and what alternatives they might propose. There also needs to be a move away from low level intelligence that encourages racial profiling.

2. Failure to comply with guidance

The 2014/15 report notes failures to comply with guidance in relation to arrests, detentions, questioning and safety. A catalogue of abuses is documented, including handcuffing and detentions that are not in line with ACPO guidelines (para 5.31) and the use of questioning following formal arrest (para 5.33). The safeguarding issues raised in para 5.43 damage the reputation of the authorities concerned, contribute to a distrust in them and in other bodies of State authority by those affected and imply that the rule of law is not applied equally. There is the need for rigorously enforced procedures based not just on guidance but on legislative requirements that impose legal obligations on officials in the enforcement of immigration rules. Although the 2014/15 report notes some improvements it is clear that individuals detained during workplace raids are not treated in accordance with the law.

The IER suggests: The continuous failures to follow the recommendations on workplace raids indicate that these are inadequate and should be replaced by legally binding measures which, in cases of their non application, carry with them penalties on officials conducting and ordering the workplace raids.

3. The exclusion of employment law protection

Save in some very specific cases, those who work without documents have no right to enforce employment law protection. If such protection did apply a key argument that government makes for the elimination of undocumented work (that it undercuts) would disappear. This does not amount to ‘rewarding’ those in irregular work; it simply ensures that business cannot benefit from their otherwise vulnerable status. Many employment law protections are regarded as fundamental in national and international law, such as the right to maternity protection, the right not to be unfairly dismissed, the right to a minimum wage and the right to protections in relation to hours of work. These protections are no less fundamental simply on the basis of immigration status. We do not agree that immigration law should usurp employment law. The reward (pay) is for the work undertaken; it is not in relation to the immigration status of the individual. Indeed a government that supported the enforcement of fundamental principles of employment law could provide incentives for those who denounced employers who did not uphold employment rights.

The IER suggests: Employment law should be applicable in all cases (even in cases of impending deportation). Furthermore consideration could be given to offering incentives to those who report the non application of employment rights.

4. The causes of undocumented migration

A tightening of immigration controls over the last 30 years has limited routes to lawful entry for those forced to migrate whether for personal, economic or political reasons. In the absence of policies that properly address the reasons for migration and provide alternative solutions for those forced to migrate, it is difficult to see how Home Office policy could be successful. Workers do not choose to work without permission; in the absence of legal routes to migrate and to work such workers have no other options. Studies make it clear that those without legal status experience more exploitative working relationships, are less likely to report violations and are less likely to join trade unions. There is also evidence that immigration laws are used to break worker organisation and to push workers into the most marginal and dangerous forms of work. Those without the right to a voice at work are most at risk of employer malpractice, with threats to report workers to the immigration authorities where they challenge such practices.

At the same time there are other factors that impel some employers into hiring those without documents. These include family obligations and political obligations, solidarity, their own experiences of having been vulnerable workers and of course the need for labour. Skill shortages in some sectors of employment (likely to increase if and when the UK leaves the European Union) drive employers to accepting labour where it can be found.

The IER suggests: Both the causes of undocumented migration and the reasons why it is that some employers will risk sanctions need to be examined in a context where the discourse is not one that appears to be based on pursuing some national groups above others.