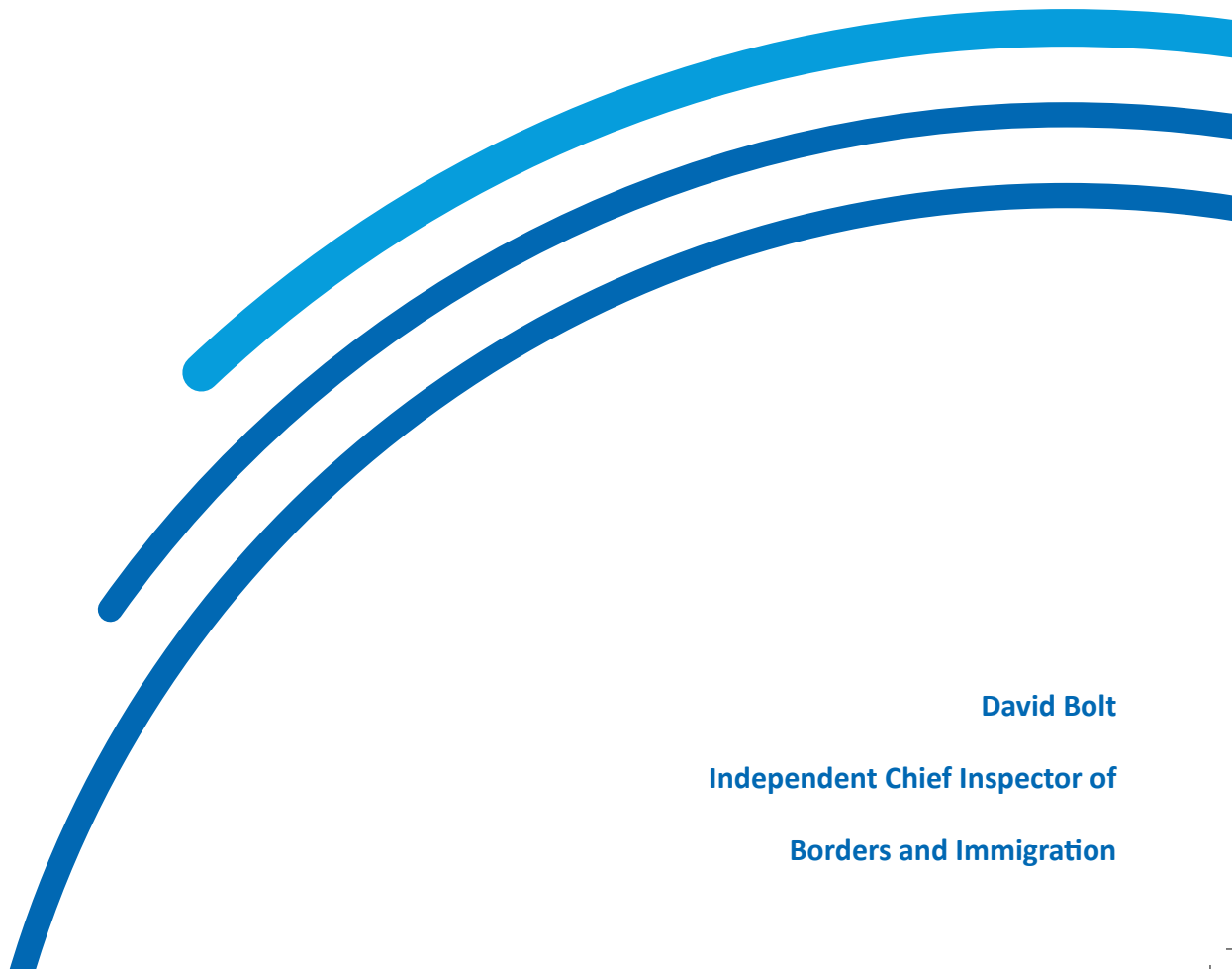




# An inspection of the “Right to Rent” scheme



**David Bolt**  
Independent Chief Inspector of  
Borders and Immigration



# **An inspection of the “Right to Rent” scheme**

Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

March 2018



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# Foreword

The Immigration Act 2014 introduced a range of ‘hostile environment’ measures (since renamed ‘compliant environment’ measures by the Home Office). The government used the Immigration Act 2016 to extend a number of these.

At the end of 2016, I reported on the hostile environment measures relating to driving licences and bank and building society accounts and, separately, on those relating to sham marriages. At the time, I signalled my intention to look at all of the measures in due course.

This inspection focused on the measures introduced in relation to residential tenancies. These were aimed at preventing “persons disqualified by immigration status” from renting accommodation. The key difference between the ‘Right to Rent’ (RtR) scheme and the measures I inspected earlier is that, instead of government agencies, officials or institutions, it relies on compliance with the ‘new’ legislation by private citizens, that is landlords (plus letting agents or sub-letters).

Under the 2014 Act, landlords are required to carry out “reasonable enquiries” to establish that prospective tenants have the “right to rent” before agreeing to lease them premises “for residential use”. The 2016 Act introduced a criminal offence of knowingly leasing a property to a disqualified person, with a sentence of up to 5 years’ imprisonment, or fine, or both. It also included powers to enable landlords to terminate tenancies where the tenant is a disqualified individual.

This inspection looked at the Home Office’s development of the RtR scheme, its implementation and initial evaluation, the operational response by Immigration Compliance and Enforcement teams and others, and what monitoring and evaluation there had been of RtR since it was rolled out across England. The report also summarises concerns from stakeholders about the impact of RtR on issues such as discrimination by landlords against particular groups or types of prospective tenants, exploitation and homelessness, but does not set out to examine and test these concerns thoroughly.

Overall, I found that the RtR scheme had yet to demonstrate its worth as a tool to encourage immigration compliance, with the Home Office failing to coordinate, maximise or even measure effectively its use, while at the same time doing little to address the concerns of stakeholders.

My report contains 4 recommendations, all of which point to the need for more grip and urgency. The report was sent to the Home Secretary on 7 February 2018.

**David Bolt**

**Independent Chief Inspector of Borders and Immigration**



# 1. Purpose and Scope

- 1.1 This inspection examined the efficiency and effectiveness of the 'Right to Rent' (RtR) scheme, created to give effect to new provisions within the Immigration Act 2014 and reinforced by the Immigration Act 2016, aimed at denying migrants with no right to be in the UK access to private rented accommodation.
- 1.2 The inspection focused on 3 areas:
  - the development of the RtR scheme by Borders, Immigration and Citizenship System Policy
  - the implementation, evaluation and monitoring of the scheme by Immigration Enforcement's Interventions and Sanctions Directorate
  - the operational response to RtR by Immigration Compliance and Enforcement teams and others
- 1.3 The following areas were excluded from scope:
  - discrimination by landlords against particular groups or types of prospective tenants, exploitation and homelessness – the report provides a summary of concerns raised about the impact of RtR on these issues, but it was beyond the capacity and competence of the Inspectorate to examine and test them thoroughly
  - decision quality in individual cases, as the small number of caseworkers and decisions mean that any findings could not be relied upon as statistically significant

## 2. Methodology

### 2.1 Inspectors:

- in August 2017, visited 'The Soapworks', Manchester, for a familiarisation briefing by Borders, Immigration and Citizenship System (BICS) Policy and a walkthrough of Interventions and Sanctions Directorate's (ISD) functions and processes
- researched and analysed relevant open source material, including Home Office guidance for landlords
- examined policies and staff guidance available on the Home Office intranet, and performance data and management information provided by the Home Office
- examined a range of published and internal Home Office documents dealing with the Right to Rent (RtR) scheme
- reviewed the findings and recommendations from previous ICIBI inspections, in particular 'An inspection of the 'hostile environment' measures relating to driving licences and bank accounts, January to July 2016', published in October 2016
- called for evidence from stakeholders through the [GOV.UK](https://www.gov.uk) website, and a direct request to members of the Landlords Consultative Panel (LCP)<sup>1</sup>
- in October and November 2017
  - visited Immigration Compliance and Enforcement (ICE) teams in London, Birmingham, Manchester, Leeds and Newcastle, to interview and hold focus groups with ICE and ISD staff (Local Partnership Managers)
  - visited ISD and BICS Policy in Manchester to interview managers and staff
  - carried out telephone interviews with 22 Home Office immigration and asylum caseworkers to establish what they knew about RtR
- on 13 December 2017, presented the high-level emerging findings to senior managers within ISD and BICS Policy

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<sup>1</sup> A group of stakeholders set up to advise the Home Office on the implementation of the RtR scheme. Membership included the Department for Communities and Local Government, landlord associations, charities and Local Authorities, and was co-chaired by the Immigration Minister and Lord Best. The LCP met for the first time in September 2014. The last recorded meeting was in November 2016. The full membership is at Annex A.

## 3. Summary of conclusions

- 3.1 The Immigration Act 2014 (the '2014 Act') introduced a range of 'hostile environment' measures (more recently renamed 'compliant environment' measures by the Home Office). Amongst these were measures, under the heading 'Residential Tenancies', aimed at preventing "persons disqualified by immigration status" from renting accommodation. This was to be achieved by requiring landlords (plus letting agents or sub-letters) to carry out "reasonable enquiries" to establish that prospective tenants have the "right to rent" before agreeing to lease them premises "for residential use".
- 3.2 In September 2014, the Immigration and Security Minister announced that the government would implement "Phase 1" of 'Right to Rent' (RtR) in Birmingham, Walsall, Sandwell, Dudley and Wolverhampton from 1 December 2014. In October 2015, the Home Office announced the roll out of RtR to the rest of England from 1 February 2016.
- 3.3 A number of the "hostile environment" measures were subsequently extended and reinforced in the Immigration Act 2016 (the "2016 Act"), including those in relation 'Residential Tenancies', specifically in respect of 'Offences' and 'Penalties'. In particular, the 2016 Act created a criminal offence of knowingly leasing a property to a disqualified person, with a maximum sentence of 5 years' imprisonment, or fine, or both. The 2016 Act also empowered landlords to terminate tenancies where the tenant is a disqualified individual.
- 3.4 At the time of the inspection, the RtR scheme had been in operation in the West Midlands for just over 3 years, and across the rest of England for approximately 18 months. Between February 2016 and July 2017, 468 referrals were made to the Home Office's Civil Penalties Compliance Team (CPCT), resulting in the issue of 265 civil penalties<sup>2</sup>, and in the levy of £167,520.<sup>3</sup> There had been no prosecutions.
- 3.5 In terms of the Home Office enforcement of RtR, since February 2016, its Immigration, Compliance and Enforcement (ICE) teams in England had gained entry to 10,501 residential properties, but had made a RtR referral to CPCT in only 3% of cases. The Interventions and Sanctions Directorate (ISD), which had overall responsibility for the implementation of RtR and the other measures, of which CPCT was a part, was unsighted about why the referral rates were so low.
- 3.6 ISD managers told inspectors that it was important to think of the compliant environment measures as a "suite" rather than trying to assess them individually. They did not have a timescale for when the RtR scheme would "mature", but likened it to measures to combat illegal working, which had started relatively slowly before accelerating. However, there was no evidence that it had challenged the low referral rate, or why ICE team performance on RtR differed, and why 2 ICE teams had made no referrals at all between 1 April and 31 July 2017.

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<sup>2</sup> Data provided by the Home Office in 'Right to Rent referrals issued 01.02.16 to 31.07.17 - FINAL VERSION'

<sup>3</sup> Data provided by the Home Office in '5 - Q7. Financial Values of CPNs issued FINAL VERSION'. The value of penalties levied may not match the value of penalties paid as landlords may object to the penalty or benefit from a 30% reduction for prompt payment.

- 3.7 While ISD performance measures included “the number of” various elements of the RtR process, but not the “impact”, the performance measures for ICE teams were working against greater use of RtR, which was regarded as a distraction from arrests and removals. Meanwhile, the use of the RtR powers against more serious and organised immigration offenders, which fell to the Home Office’s Criminal and Financial Investigation teams, had been stymied by the dearth of lower level enforcement activity.
- 3.8 Information and intelligence flows about RtR were similarly sluggish, and pointed to poor and ineffective internal communications within IE and across the wider Home Office. ICE teams claimed not to know what Immigration Intelligence (II) wanted to know, while a survey of immigration and asylum caseworkers revealed that a significant proportion were unaware or had misconceptions of RtR. As well as meaning that relevant information was not reaching II or ‘operational’ teams, this raised doubts about whether the correct messages were being given to the migrants with whom the caseworkers were the Home Office point of contact.
- 3.9 ISD’s Business Plan 2017-18 recognised that “For the compliant environment to be truly effective a cross-Government approach is needed, along with sustained and tangible engagement from a range of other public and private sector partners.” There was little evidence, however, that RtR had led to any new or improved partnership working ‘on the ground’, with ICE teams reporting that they already had effective working relationships with police forces and other relevant local agencies. IE’s Local Partnership Managers (LPMs) told inspectors that, having made a “big push” on RtR with Local Authorities prior to the England-wide roll-out in February 2016, they now focused on other initiatives.
- 3.10 Prior to the introduction of RtR, stakeholders representing landlords and also those concerned with the rights and interests of migrants had raised serious worries about how the scheme would work and its consequences. The Home Office and wider government response had a number of strands.
- 3.11 The government’s overall position was that “we don’t want a situation where people think they can come here and overstay because they’re able to access everything they need”.<sup>4</sup> In order to support landlords and encourage compliance, the Home Office created a Landlords Consultative Panel (LCP), a Landlord’s Checking Service, a Landlord’s Helpline, and it published various guidance documents (‘Codes of Practice’ and user guides). The Home Office also held or attended a number of communication events, as well as relying on “the consultative panel and member organisations to disseminate messages”. In practice, there was no direct contact with the vast majority of landlords,<sup>5</sup> 80% of whom were not members of an association.
- 3.12 Home Office data about the recorded use of the Landlord’s Checking Service (LCS) and Helpline indicates that both are being used. However, the volumes bear little relation to the size of the private rental sector, and while the providers of both appeared for the most part to be meeting their set service standards, the 48 hour response time for the LCS has been criticised as unrealistic, particularly in overheated rental markets, such as London, where landlords need a more immediate response.<sup>6</sup>
- 3.13 Concerns about RtR’s impact on racial and other forms of discrimination by landlords, exploitation of migrants and associated criminality, and homelessness, have been raised, repeatedly, by the Joint Council for the Welfare of Immigrants (JCWI), Crisis, Migrants’ Rights Network and others. They have criticised the absence of any monitoring of the scheme by the Home Office.

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4 The Home Secretary speaking in a BBC Radio 4 interview, 10 October 2013

5 HM Revenue and Customs assessed that there were 1.75 million landlords in the UK in 2013-14

6 Commenting on the draft report, the Home Office stated that “the 48-hour response was arrived at after considering the London market in particular and is similar to the market turnaround on tenant referencing.”

- 3.14 The Home Office did complete an evaluation of Phase 1 prior to RtR's wider roll out, although the Home Office conceded that the decision to roll RtR out in England had, in effect, already been taken, subject to not finding that the scheme was causing "significant discriminatory behaviour". The announcement of the roll out at the same time as the evaluation was published appeared to confirm this. Meanwhile, doubt was cast on the evaluation methodology, and it seemed that such evidence as there was of negative impacts (for example, 8 (out of 33) voluntary and charitable sector groups had reported that they had seen the exploitation of people who did not have the right to rent by landlords) was explained away.
- 3.15 In relation to further evaluation and monitoring, in January 2016 the Immigration Minister explained to LCP members that there "were no formal plans ... but the department did keep all policies under review". The LCP itself was encouraged to "provide feedback about unexpected issues that may surface", and it was reported that the government had informed the House of Lords that it would "continue to monitor the effects, particularly in relation to discrimination". However, the inspection found that the LCP had not met since November 2016, instead any contact with LCP members is conducted "offline", and there had been no Home Office evaluation of RtR since Phase 1 or any attempt to measure its intended impact, beyond some internal discussions of how this might be approached.
- 3.16 Overall, the RtR scheme is yet to demonstrate its worth as a tool to encourage immigration compliance (the number of voluntary returns has fallen). Internally, the Home Office has failed to coordinate, maximise or even measure effectively its use. Meanwhile, externally it is doing little to address stakeholders' concerns

## 4. Recommendations

### The Home Office should:

1. Produce a SMART Action Plan to ensure that all areas of the Home Office that need to understand fully and engage with Right to Rent measures in order for them to work as effectively and efficiently as possible are briefed, trained, supported, and have appropriate performance measures/targets in place, backed up by quality assurance checks.
2. Engage with other central government departments and agencies, and with Local Authorities, the police and other local agencies, to produce a multi-level England-wide strategy for the deployment of Right to Rent measures, including specific multi-agency actions such as Operation Lari.
3. Recognise that the success of Right to Rent measures relies on private citizens more than public authorities by creating a new 'Right to Rent Consultative Panel', inviting Landlords Consultative Panel (LCP) members and stakeholders concerned with the rights and interests of migrants who were not previously LCP members to join. The remit of the new Panel should include raising and agreeing how to tackle issues and concerns about the working of the Right to Rent measures. Minutes of meetings and outcomes should be published on GOV.UK.
4. With the new Consultative Panel, develop and make public plans for the monitoring and evaluation of the Right to Rent measures, including (but not limited to) the impact of the measures (where appropriate alongside other "compliant environment measures") on "illegal migrants", on landlords, and on racial and other discrimination, exploitation and associated criminal activity, and homelessness.

## 5. Background

### 2013 consultation exercise

- 5.1 In July 2013, the Home Secretary published a consultation document ‘Tackling illegal immigration in privately rented accommodation’.<sup>7</sup> This explained that the government’s proposed Immigration Bill sought to “make it more difficult for illegal migrants to find accommodation” by creating “a new requirement on landlords to conduct immigration checks on tenants, with penalties for those who provide rented accommodation to illegal non-EEA migrants in breach of the new requirements.”
- 5.2 The consultation document pointed out that it was an established practice for employers to make checks on workers, with a system of civil penalties in place “successfully” since 2008, and that “the policy of requiring checks on tenants sits alongside and complements other steps that have been taken to restrict and discourage illegal immigration.”

### Creating a ‘hostile environment’ – Residential Tenancies

- 5.3 The Immigration Act 2014 (the ‘2014 Act’) introduced this range of ‘hostile environment’ measures (since renamed ‘compliant environment’ measures by the Home Office), a number of which were extended and reinforced in the Immigration Act 2016 (the ‘2016 Act’). Speaking publicly prior to the 2014 Act, the Home Secretary said that the government would:

“create a really hostile environment for illegal migrants’ [because] ‘What we don’t want is a situation where people think that they can come here and overstay because they’re able to access everything they need.’”<sup>8</sup>
- 5.4 The ‘Residential Tenancies’ Chapter of the 2014 Act placed responsibility on the landlord (or sub-tenant) to carry out “reasonable enquiries” that prospective tenants have the “right to rent” before agreeing to lease them premises “for residential use”. Section 22 of the 2014 Act lists the “Persons disqualified by immigration status not to be leased premises”, and Section 23 sets out the penalties if a landlord is found to be in contravention, the amount being “such an amount as the Secretary of State considers appropriate, but the amount must not exceed £3,000.” Later Sections cover the responsibilities of agents acting on behalf of a landlord, and statutory excuses and appeals against penalties. Section 35 ‘Transitional provision’ exempts residential tenancy agreements entered into before the legislation comes into effect.
- 5.5 Section 32 of the 2014 Act required the Home Secretary to publish a code of practice that includes “the reasonable enquiries that a landlord should make to determine the identity of relevant occupiers in relation to a residential tenancy agreement (so far as they are not named in the agreement)”. The Home Secretary was also required, under Section 33, to issue a code of practice “specifying what a landlord or agent should or should not do to ensure ... [he/she] avoids contravening –

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<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226713/consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226713/consultation.pdf) 3 July 2013

<sup>8</sup> BBC Radio 4 interview, 10 October 2013.

- (a) the Equality Act 2010, so far as relating to race, or
- (b) the Race Relations (Northern Ireland) Order 1997”

5.6 The 2014 Act required that a draft is laid before Parliament before issuing (or amending) the codes of practice. In relation to the code on discrimination, it further required that the Home Secretary must have consulted the Commission for Equality and Human Rights and the Equality Commission for Northern Ireland, and “such persons representing the interests of landlords and tenants as the Secretary of State considers appropriate”.

### **“Phase 1” of the Right to Rent scheme**

- 5.7 The 2014 Act was enacted in May 2014. In September 2014, the Immigration and Security Minister announced that the government would implement “Phase 1” of RtR in Birmingham, Walsall, Sandwell, Dudley and Wolverhampton from 1 December 2014.
- 5.8 Implementation of Phase 1 was overseen by the Home Office’s Private Rental Sector Implementation Team (PRSIT). Once it went live, the West Midlands Immigration, Compliance and Enforcement (ICE) team was to refer any contraventions to the Civil Penalties Compliance Team (CPCT, part of Interventions and Sanctions Directorate (ISD)) to consider what penalty, if any, should be applied.

### **Evaluation of Phase 1 and further roll out**

- 5.9 Home Office Science Directorate carried out an evaluation of Phase 1, drawing on research commissioned from 2 commercial companies. BDRC Continental/ESA Retail conducted a ‘mystery shopper’ exercise, making enquiries about renting advertised properties, while IRIS Consulting ran online surveys, interviews and focus groups.
- 5.10 On 20 October 2015, the Home Office published the results of the evaluation of Phase 1 and, at the same time, announced the roll out of RtR to the rest of England from 1 February 2016.
- 5.11 The evaluation document described the aims of the RtR scheme as to:
- “deter those who seek to exploit illegal residents by providing illegal and unsafe accommodation, and increase actions against them
  - deter individuals from attempting to enter the UK illegally,
  - undermine the market for those who seek to facilitate illegal migration or traffic migrant workers
  - tackle rogue landlords by increasing joint working between the Home Office, local authorities (LAs) and other government departments”<sup>9</sup>

### **Support for landlords**

- 5.12 Prior to signing a tenancy agreement, in order to protect themselves against a civil penalty, a landlord or letting agent needs to request sight of documentation that demonstrates the prospective tenant has the right to rent:

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<sup>9</sup> From ‘Evaluation of the Right to Rent scheme Full evaluation report of phase one’, October 2015



- where the requested documents demonstrate the prospective tenant is a UK or EEA national or has some form of permanent residency, no further checks are required
- where they demonstrate some form of time-limited residency, the landlord or letting agent will need to undertake a follow-up check no earlier than 12 months after the initial check

5.13 The Home Office looked to support landlords by means of:

- a published<sup>10</sup> code of practice (in line with Section 32) ‘Code of practice for landlords: avoiding unlawful discrimination when conducting ‘right to rent’ checks in the private rented residential sector’, including lists of relevant documents
- a published<sup>11</sup> code of practice (in line with Section 33) ‘Code of practice on illegal immigrants and private rented accommodation’
- a ‘Landlord’s Helpline’,<sup>12</sup> offering “help with a check”, but not advice on individual cases
- the ‘Landlord’s Checking Service’,<sup>13</sup> an online service where landlords and letting agents can check a prospective tenant who is unable to provide documentary proof of their right to rent. Enquiries are answered within 48 hours with a ‘YES’ or ‘NO’ to the whether the landlord may enter a letting agreement.

## Immigration Act 2016

5.14 The 2016 Act extended and reinforced the hostile environment measures contained in the 2014 Act, including those in relation ‘Residential Tenancies’, specifically in respect of ‘Offences’ and ‘Penalties’.

5.15 Section 39 of the 2016 Act, created the criminal offence of knowingly leasing a property to a disqualified individual, with a maximum sentence of 5 years’ imprisonment, or a fine, or both. In the same section, the power to “arrest without a warrant” was given to an immigration officer who “has reasonable grounds for suspecting” that such an offence has been committed.

5.16 Sections 40 to 41 empower landlords and letting agents to terminate tenancies on the basis the tenant is a disqualified individual, while Section 42 enables the powers contained within the 2014 Act (as amended) to be rolled out to Scotland, Wales and Northern Ireland.

5.17 Sections 39 to 41 commenced on 1 December 2016. At the time of the inspection, Section 42 had not been commenced, and the RtR scheme remained limited to England only.

5.18 Meanwhile, with effect from 12 July 2016, Section 47 of the 2016 Act empowered an immigration officer who “is lawfully on any premises” to “search for” and “seize” any “documents which might be of assistance in determining whether a person is liable to the imposition of a penalty under ... section 23 or 25 of the Immigration Act 2014 (penalty for leasing premises to disqualified person etc.)”.

10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/525897/Right\\_to\\_Rent\\_Code\\_of\\_Practice\\_Feb\\_2016\\_as\\_passed\\_through\\_parliament\\_v1\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525897/Right_to_Rent_Code_of_Practice_Feb_2016_as_passed_through_parliament_v1_0.pdf)

11 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/376789/Code\\_of\\_Practice\\_for\\_Landlords\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376789/Code_of_Practice_for_Landlords_web_.pdf)

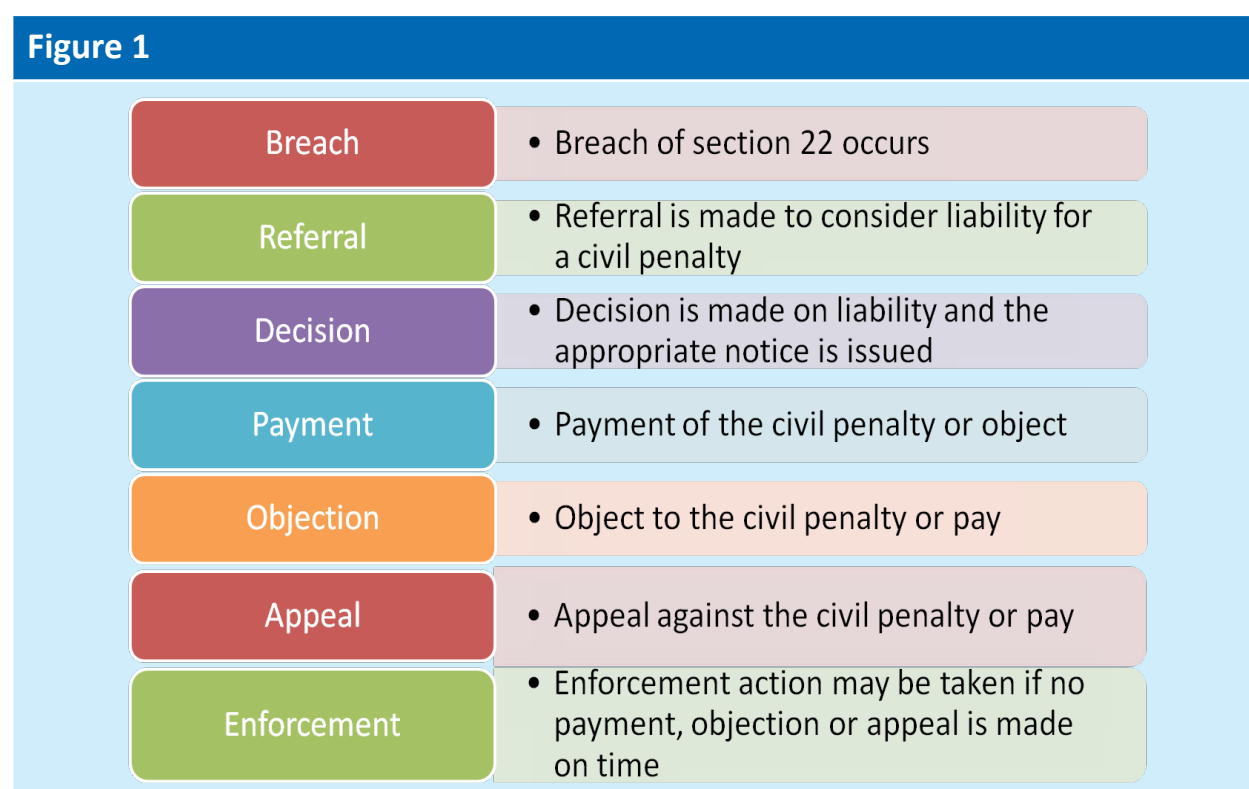
12 The Landlord’s Helpline is open Monday to Thursday, 9am to 4:45pm and Friday, 9am to 4:30pm.

13 GOV.UK guidance says “landlords must use the landlord’s checking service to check whether the tenant’s allowed to rent without the right documents if the Home Office has their documents; they have an outstanding case or appeal with the Home Office; the Home Office told them they have ‘permission to rent’. You’ll get an answer within 2 working days. You’ll need the tenant’s Home Office reference number to use the service.”

## Civil Penalties

### Home Office responsibilities and processes

- 5.19 Immigration Enforcement (IE) has the lead within the Home Office for “operationalising” the compliant environment measures in the 2014 and 2016 Acts. Two parts of IE are particularly concerned with this: CPCT within ISD; and ICE teams, which are part of IE’s regional command structure, and of which there were 19 at the time of the inspection.
- 5.20 While other Home Office casework teams may identify and notify CPCT about contraventions of RtR and other compliant environment measures, the most likely source is ICE teams, who may encounter and question landlords and irregular migrants during residential visits, or other deployments.
- 5.21 The 7-step referral process is shown at Figure 1.<sup>14</sup>



- 5.22 Where a landlord has been found to have let their property to a disqualified person but the Home Office decides not to issue a civil penalty (for example, because one of the statutory excuses applies), a ‘Notice of Letting to a Disqualified Person’ (NLDP) may be served on a landlord. A NLDP can assist the landlord in ending the tenancy. There are specific criteria surrounding service of an NLDP, which may be served by ICE teams during residential visits or referred by ICE to the ISD Evictions Team for consideration of service if they do not meet the criteria to be served during a visit. A landlord may also request a NLDP from the Evictions Team via GOV.UK.

<sup>14</sup> Taken from a Powerpoint slide provided by ISD.

### Informing the Home Office about refusals

- 5.23 Landlords and letting agents are not legally obliged to inform the Home Office where they refuse a tenancy on the basis they are not satisfied the individual has the right to rent. However, they should make a report to the Home Office if, during a follow-up check, they establish that a tenant no longer has the right to rent. In this instance, failure to make a report could render the landlord or letting agent liable for a civil penalty or to criminal prosecution.

### Performance figures

- 5.24 At the time of the inspection, the RtR scheme had been in operation in the West Midlands for just over 3 years, and across the rest of England for approximately 18 months. Between February 2016 and July 2017, 468 referrals were made to CPCT, resulting in 265 civil penalties<sup>15</sup> being issued, and £167,520 levied.<sup>16</sup> There had been no prosecutions.

### Evaluation of Right to Rent

- 5.25 Since Phase 1 of the RtR scheme was evaluated in 2015, the Home Office had not carried out any further evaluations of the scheme or of the 'Residential Tenancy' measures contained within the 2014 and 2016 Acts. Inspectors were told about the possible future evaluation of "the impact of the compliant environment holistically", but no date has been set for this.<sup>17</sup>

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<sup>15</sup> Data provided by the Home Office in 'Right to Rent referrals issued 01.02.16 to 31.07.17 - FINAL VERSION'.

<sup>16</sup> Data provided by the Home Office in '5 - Q7. Financial Values of CPNs issued FINAL VERSION'. The value of penalties levied may not match the value of penalties paid as landlords may object to the penalty or benefit from a 30% reduction for prompt payment.

<sup>17</sup> An internal Home Office document from 2017 titled 'Evaluation of the compliant environment: Analytical options' suggested "a wide-ranging, long-term, ambitious programme of work to understand the impact of the compliant environment holistically", but nothing specific to measure the impact of RtR against the 4 criteria from the 2015 Evaluation.

## 6. Encouraging compliance

### Evidence

- 6.1 The following evidence, provided by the Home Office in respect of compliance, was not made available to the inspection team until after the onsite phase of the inspection, and therefore inspectors were unable to test it in interviews and focus groups.

### RtR compliance ‘tools’

- 6.2 ISD and BICS Policy senior managers told inspectors that the ‘Right to Rent’ (RtR) scheme was more about compliance than enforcement outcomes. In order to encourage compliance, in addition to any effect from enforcement activity and civil penalties, the Home Office had introduced:

- The Landlord’s Consultative Panel
- The Landlord’s Checking Service
- The Landlord’s Helpline
- Guidance and Communications

### Landlords Consultative Panel

- 6.3 The Landlords Consultative Panel (LCP) consisted of key stakeholders. It was set up to advise the Home Office on the implementation of the RtR scheme. Members included the Department for Communities and Local Government (DCLG), landlord associations, charities and Local Authorities. LCP was co-chaired by the Immigration Minister and by Lord Best, a parliamentarian with an interest in housing.
- 6.4 The LCP met 13 times between September 2014 and November 2016. At the time of the inspection, no date had been set for a further meeting. Inspectors were told that any Home Office contact with LCP members was now done “off line”.<sup>18</sup>
- 6.5 The LCP did not perform a governance function. It was not a Steering Group or Implementation Board. The Home Office retained these functions.<sup>19</sup> The minutes of LCP meetings suggest it acted as a ‘sounding board’ for the Home Office:
- presenting sector viewpoints on all aspect of the scheme from pre-Phase 1 to post-Phase 2 implementation
  - working on the codes of practice, and helping the Home Office to make changes

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<sup>18</sup> Comment made by Home Office manager during an interview with inspectors.

<sup>19</sup> The IE response to ICIBI preliminary evidence request explained that the Private Rented Sector Steering Group set the direction, provided governance and oversaw the implementation of the RtR scheme. It reported into the Compliant Environment Programme Board (CEPB), and the CEPB reported into the Home Office Board.

- working on the list of documents prospective tenants were required to show landlords, and suggesting changes

6.6 Describing the LCP, a GOV.UK news article reported that:

“The government has been working with an expert consultative panel, which includes trade bodies, local authorities and charities, to listen to feedback from the first phase of the scheme. The panel has advised on an updated landlords code of practice which includes changes to the acceptable document list to make it even simpler to conduct a check.”<sup>20</sup>

6.7 The Joint Council for the Welfare of Immigrants (JCWI) told inspectors it was concerned that there was no “formal”<sup>21</sup> monitoring done by the LCP, which did not have a data gathering or evaluation function. As such, it felt LCP discussions would have been “anecdotal” and “incomplete”. JCWI said that its own research had identified “complex structural issues”, which LCP members could not have been expected to know about without the means to measure and monitor the scheme.

6.8 But, JCWI also recognised that the LCP had had little “leverage” over the scheme. For example, LCP minutes from 11 June 2015 (LCP Meeting 7) stated that:

“the Minister emphasised that he wanted a full discussion on roll-out options, with in-depth evaluation of the findings at the next Panel in July, this would inform policy thinking as to how the roll-out should be adopted in consideration of a range of options for implementation (such as UK wide or England only, or expansion by area) and that he was keen to get the views from the Panel on the optimum approach.”

6.9 However, LCP minutes from the following meeting, in July 2015, do not reflect “a full discussion” of members’ comments about roll out options. Various members raised concerns and asked for further time to evaluate the scheme fully. In a letter to the Immigration Minister, a group of them wrote:

“In our view the purpose of the first phase was to test whether the scheme could operate satisfactorily in a sample area, providing evidence about the issues and obstacles that inevitably arise. Even running the scheme for six months has given very limited time to do this and indeed the consultants appointed by the Home Office have only very recently begun their work.”<sup>22</sup>

6.10 They urged the government to wait before rolling out Phase 2, to allow Phase 1 to demonstrate that:

- the checks are operating comprehensively and satisfactorily from landlord and tenant viewpoints and difficulties are being quickly resolved
- the scheme is working across the whole sector, including among small landlords and in the poorer parts of the sector with problematic or unscrupulous landlords who already ignore the law
- it is doing so without any significant incidence of discrimination against legitimate applicants for lettings

20 <https://www.gov.uk/government/news/landlords-in-england-get-ready-for-right-to-rent> 8 January 2016

21 JCWI written submission to ICIBI, November 2017

22 ‘Letter to Rt Hon James Brokenshire MP dated 11th June 2015

- the whole enterprise has been shown to be worthwhile through evidence that it is preventing lettings taking place

6.11 A prominent LCP member told inspectors in a written submission that they:

“were naturally surprised when the government later announced its decision to roll-out the scheme nationally before an evaluation of the pilot had taken place”

and that

“there was little opportunity for discussion on it. It was clear that the Home Office had already decided not only to roll-out the scheme nationally but also, of course, to toughen the sanctions for non-compliance with it, in the 2015 Immigration Bill.”<sup>23</sup>

### The Landlord’s Checking Service

6.12 Information about the Landlord’s Checking Service (LCS) can be found on GOV.UK. The LCS enables landlords to contact the Home Office to verify a prospective tenant’s right to rent. It consists of an online checking service (with a telephone option for those without internet access) for landlords and letting agents to use when a prospective tenant is unable to produce the documents on the Home Office’s published list so that these can be checked. The Home Office commits to providing a ‘Yes or No’ answer within 48 hours where:

- the tenant’s documents are with the Home Office as they are pursuing an application or appeal to remain in the UK
- the tenant has requested ‘Permission to Rent’ from the Home Office

6.13 The LCS is run by Immigration Checking & Enquiry Services (ICES), part of UK Visas and Immigration (UKVI). This reflects the fact that UKVI holds the data required to make such decisions on the main immigration casework system, CID.

6.14 In the January 2016 meeting, the LCP received a presentation on the LCS. UKVI’s Head of Performance and Customer Service informed the LCP that the LCS was based in Sheffield, run by Home Office staff, that there were 23 trained staff at that time, and this was sufficient to handle 8 times the number of enquiries the LCS was then receiving.

6.15 Prior to the implementation of Phase 1 of RtR, there was a “high level of nervousness about the capacity and capability within UKVI to deliver the Landlords Checking Service”.<sup>24</sup> However, at the time of the inspection, the LCS was operational, accessible online (to anyone with internet access), and meeting its service standards.

6.16 According to Home Office figures, between 1 February 2016 and 31 May 2017, the LCS received 9,757 requests for checks, all of which were completed within the two-day service standard.<sup>25</sup> By way of context, Newham (one of 33 London boroughs) has over 27,000 landlords registered on its licensing scheme, who together rent out over 50,000 properties.<sup>26</sup>

<sup>23</sup> Chartered Institute of Housing letter to ICIBI 10 November 2017

<sup>24</sup> Source: Home Office document ‘RtR Phase 2 Lessons Learned paper March 2016’

<sup>25</sup> Source: Home Office internal document ‘IE response to ICIBI preliminary evidence request Annex A Standard evi v1 0 final’

<sup>26</sup> Landlord statistics from The Guardian (online), ‘Half of landlords in one London borough fail to declare rental income’, 13 August 2017 (accessed 15 August 2017).

- 6.17 The minutes of the initial LCP meeting state that the LCS was “developed in conjunction with many panel members via working groups”. However, LCP members and other stakeholders who contributed to the inspection<sup>27</sup> raised concerns about the speed, accuracy and practicality of checks after the roll out of Phase 1.
- 6.18 One LCP member commented that the “optimal turnaround would be immediate rather than two working days.”<sup>28</sup> This was particularly pertinent in an “overheated” rental market, such as London, where it was not uncommon for properties to be let the same day they were advertised.
- 6.19 Other stakeholders expressed concern about the “lag time” between the Home Office receiving data and it being entered on CID, as someone who had the right to rent could be shown as not having it if their details on the system were not up to date. JCWI reported that, on many occasions, “the Home Office database is not up to date and people are wrongly refused.”<sup>29</sup> Meanwhile, the Migrants’ Rights Network reported that they were aware of “discrepancies” between LCS and an individual’s immigration status, leading to the landlord being “incorrectly” informed the tenant did not have the right to rent.<sup>30</sup>
- 6.20 GOV.UK does not contain any information about what the Home Office had done to identify “incorrect” LCS checks, or to compensate those affected, or to prevent errors going forward.
- 6.21 Another stakeholder described the “unreasonable risk that I cannot mitigate”<sup>31</sup> of being unable to validate a passport. They would like to see an online means of validating any passport within 24 hours.

### The Landlord’s Helpline

- 6.22 The Landlord’s Helpline is a telephone enquiry line for landlords, providing general guidance on the RtR scheme and answering simple queries. It does not advise or provide information about prospective tenants. The Helpline is operated by a commercial partner, SITEL UK,<sup>32</sup> who provide other telephone answering services for UKVI. It is open from Mondays to Thursdays 09.00 to 16.45 and Friday 09.00 to 16.30.
- 6.23 Basic information about the helpline is available on the GOV.UK LCS webpage, where it states: “Call the landlord’s helpline to get help with a check.” There is no further information: no description of the services on offer, service standards or complaints procedure. The January 2016 presentation to the LCP by UKVI explained that a service provided by a commercial partner was better able to deal with “spikes in demand”. According to UKVI, as of January 2016, (prior to Phase 2 roll out) sufficient staff had been trained to deal with 10 times as many calls as they were then receiving.
- 6.24 Home Office data showed that between February 2016 and February 2017 the Helpline received 12,194 calls.<sup>33</sup> LCP minutes from January 2016, noted that in the previous week the commercial partner had answered 97% of calls within the service standard.<sup>34</sup> The Home Office recorded the number of calls made, the number answered, and the response outcomes as either ‘Yes’, ‘No’, ‘Not appropriate’ and ‘Out of Time’. The ‘Lessons Learned March 2016’ report noted that no calls were recorded as “Out of Time” for 27 February 2017.<sup>35</sup>

27 Stakeholders who contacted the Inspectorate in response to the ‘call for evidence’ on GOV.UK

28 From LCP Meeting 1 minutes 11 September 2014

29 JCWI written submission to ICIBI, November 2017

30 From Migrants’ Rights Network written submission November 2017

31 Stakeholder response to the ‘call for evidence’ on GOV.UK

32 <https://sitel.com/en-uk/>

33 ‘Revised Right to Rent MI WC 27 02 17’

34 LCP minutes 16 January 2016. The minutes did not define the service standard.

35 ‘Lessons Learned March 2016’ – an internal Home Office document reviewing the implementation of Phase 2 of RtR.

- 6.25 Stakeholders told inspectors that there had been problems initially with the quality of the advice provided by the Helpline, with some landlords receiving “incorrect” information. The Home Office described this as “a teething issue” in ‘Lessons Learned March 2016’, and gave the following reasons:
- in Phase 1, the helpline was over-staffed in case of sudden increases in volume, but the low volumes meant that call handlers did not have the chance to build up expertise
  - the helpline was not widely publicised in order to encourage users to use the online materials, which again reduced opportunities to gain experience
  - the contract with the commercial partner did not include sanctions for poor quality service
  - by only training call handlers who had been “ring-fenced” for landlords calls, some calls had been answered by less skilled agents
- 6.26 The same document noted that: “The quality issues have now been addressed through greater scrutiny of calls and targeted additional training”, but also commented in relation to timeliness that: “it would have been better to implement these remedies sooner, to ensure quality was as required before the scheme rolled out.”
- 6.27 Meanwhile, the document was silent on what had been done to identify and compensate those affected by landlords having been provided with “incorrect” information.
- 6.28 Inspectors were told that calls to the helpline were quality assured, with monitoring done by the commercial partner under the terms of the contract. There was a quality assurance (QA) form to aid consistency, listing 10 criteria, including “polite customer service” and “demonstrates knowledge”.
- 6.29 Home Office service managers carried out additional QA checks “to validate and calibrate quality assurance”. For example, on 27 October 2017, 9 calls were quality assured. Comments included: “agent is a little abrupt but information given was correct”.

### Guidance and communications

- 6.30 As required by the Immigration Act 2014, the Home Office published codes of practice for the RtR scheme. These are available on the GOV.UK website:<sup>36</sup>
- ‘Code of practice for landlords: avoiding unlawful discrimination when conducting ‘right to rent’ checks in the private rented residential sector’ – a 13-page guide first published in October 2014, detailing landlords’ duties under the law, with advice on how to avoid discrimination and ‘signposts’ to further information
  - ‘Code of practice on illegal immigrants and private rented accommodation’ – a 33-page guide (first published for the national scheme in December 2015<sup>37</sup>) to the RtR scheme aimed at landlords, outlining which letting arrangements fall under the scheme, who is liable for a civil penalty, statutory excuses, and the acceptable document list
  - ‘Document Checks: A user Guide’ – a 39 page document first published on 30 November 2016 including pictures of documents, and tips and reassurance

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<sup>36</sup> <https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>

<sup>37</sup> A previous code of practice was published for the Phase 1 area in October 2014 on the GOV.UK site.



- ‘A Short Guide on Right to Rent’ - a 13-page document published in June 2016 and presented as a list of ‘FAQs’

- 6.31 An internal Home Office document from February 2017<sup>38</sup> noted that since February 2016 there had been 59,570 GOV.UK RtR landing page ‘hits’, and 35,505 uses of online tools. This indicated that the guidance documents were being used, although the absence of a feedback/complaints/contact option meant that the Home Office was not capturing whether they were meeting users’ needs, and the number of ‘hits’ must be seen in context of the total numbers of private rental sector landlords.
- 6.32 The guidance documents were revised with the help of the LCP after Phase 1. The Home Office commented:
- “The Panel played an important part in shaping the checks, drafting of guidance and oversaw the design and delivery of the evaluation of the first phase of the roll out.”<sup>39</sup>
- 6.33 Recognising that landlords might find RtR complex, the guidance aimed to present what they needed to know and do in the most straightforward way. However, an ICE team told inspectors that some of their other compliance materials had been printed in foreign languages, and this was something the Home Office could consider if it wanted the compliance message to reach some of the key ‘voluntary departure’ communities. At the time of the inspection, all of the guidance was in English only.
- 6.34 Inspectors were shown ‘The Right to Rent Communications Plan 2015-2018’ (‘the Plan’). The strategy had been to push people towards online content, and there had been no appetite to spend on advertising the scheme. The LCP minutes from 28 October 2015 stated that communications for RtR will “consider paid-for marketing when it has exhausted free channels”.
- 6.35 While the Home Office had held or attended a number of communication events, one of the main channels recommended in the Plan was “Use the consultative panel and member organisations to disseminate messages”.<sup>40</sup> This had the attraction of requiring little or no public expenditure, but 80% of landlords were not members of an association. However, the Plan also outlined the efforts required to reach this ‘informal’ (“cottage industry”) sector: “Plan, deliver and evaluate a paid for communications campaign targeting landlords directly with RtR messaging, focusing specifically on the ‘hard-to-reach’ landlords”. Alongside this entry, it stated “To be scoped and approved (following research)”. At the time of the inspection, it was not clear if this had happened.<sup>41</sup>
- 6.36 The Plan also included “Ensure that Compliant Environment messages are delivered wherever appropriate directly to the audience – upstream through visa application, overstayer communications, reporting centres, and frontline staff”. The evidence from caseworkers and others interviewed for this inspection indicated that this had not been achieved.

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38 Revised Right to Rent MI WC 27 02 17

39 From ‘IE response to ICIBI Preliminary Evidence request’

40 From ‘Right to Rent Communication Plan 2015-18’

41 Commenting on the draft report, the Home Office stated “landlords renting properties on an assured shorthold tenancy are legally required to register their deposit(s) with one of three government-backed Tenancy Deposit Protection (TDP) schemes within 30 days of receiving a deposit. The TDP schemes operating in England are the Tenancy Deposit Scheme (TDS), the Deposit Protection Service (DPS) and MyDeposits. Since June 2016, DCLG and the HO have been working together to deliver messages to landlords about the R2R scheme on TDP websites. Since February 2017 all three of the TDP scheme websites reference the R2R scheme, reaching a wide range of landlords, including those who are not members of a professional body. “ ICIBI note: TDP schemes do not extend to lodgers.

6.37 ISD managers told inspectors that there was a new communications strategy awaiting approval from ministers, and that they “needed to get the message out there”. However, they also reminded inspectors that the illegal working scheme had taken time to become well-known by stakeholders, and they felt that RtR was still a relatively young scheme that would “mature” in the coming years.

### **‘Permission to rent’**

6.38 A migrant may wish to ask the Home Office if they have the right to rent. Where it is clear that they do, the Home Office should advise them of this at the point of first contact, and can do so orally or in writing. Where it is less clear, the query should be passed to the unit that currently ‘owns’ the migrant’s case.

6.39 A migrant without the right to rent can be granted ‘permission to rent’ by the Home Office. The limited circumstances under which this is possible were listed in Home Office guidance, but the process was not spelt out for applicants. In January 2016, this was the subject of a Freedom of Information request from a solicitor, who claimed the Home Secretary had “failed to provide or publicise information to prospective applicants on how to obtain such permission”.<sup>42</sup>

6.40 ‘A Short Guide on Right to Rent’, published in June 2016, explained that migrants already in contact with the Home Office could use their usual contact, and others should contact the Voluntary Returns Service (VRS).<sup>43</sup>

6.41 JCWI pointed out that a Home Office caseworker may be not be aware of all of the facts relevant to a ‘permission to rent’ decision, for example the applicant might not be able to present evidence of the effect refusal would have on them or their children. JCWI reported that it had had cases where individuals had been denied permission, only for it to be granted when JCWI had intervened and contacted the Home Office. But, not all migrants were in a position to ask JCWI for such assistance, and some could be pushed towards the ‘informal’ private rental sector and put at risk of exploitation.

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42 [https://www.whatdotheyknow.com/request/in\\_formation\\_about\\_how\\_to\\_apply](https://www.whatdotheyknow.com/request/in_formation_about_how_to_apply) Freedom of Information request dated 8 January 2016

43 [https://www.GOV.UK/government/uploads/system/uploads/attachment\\_data/file/529155/A\\_short\\_guide\\_on\\_right\\_to\\_rent\\_v2.1.pdf](https://www.GOV.UK/government/uploads/system/uploads/attachment_data/file/529155/A_short_guide_on_right_to_rent_v2.1.pdf).

The Voluntary Returns Service is part of the Home Office.

# 7. Interventions and Sanctions Directorate (ISD)

## ISD's responsibilities

- 7.1 Since at least 2013, Immigration Enforcement (IE) has been looking to shift away from reliance on a traditional enforcement agenda of arrests and removals of irregular migrants towards a broader range of interventions and sanctions.
- 7.2 In June 2013, it created the Interventions and Sanctions Directorate (ISD). The Home Office intranet describes ISD as:
- “responsible for increasing compliance with the immigration laws by creating a hostile environment (sic) for migrants who are living in the UK illegally. It aims to limit illegal migrants’ access to health, housing, credit, and driving licences and manages the civil penalty scheme.”
- 7.3 To deliver this, ISD works with and through national and local partners, including other government departments and agencies and Local Authorities. ISD’s 2017-18 Business Plan stated:
- “For the compliant environment to be truly effective a cross-Government approach is needed, along with sustained and tangible engagement from a range of other public and private sector partners.”<sup>44</sup>
- 7.4 The Business Plan gave ISD’s 2017-18 budget as £7.6m. As at 24 March 2017, ISD had just over 145 full time equivalent (FTE)<sup>45</sup> staff in post, deployed in 7 teams including: the Private Rental Sector Implementation Team (PRSIT), the Civil Penalty Compliance Team (CPCT), and the Local Partnership Manager (LPM) network.
- 7.5 Since Phase 1 of RtR, ISD has had overall ‘ownership’ of the scheme. On a day to day basis, this involves:
- Oversight for the scheme through PRSIT
  - Consideration of civil penalty referrals, issuing of penalty notices, no action notices, NLDPs, and collecting payments, through CPCT
  - Increasing engagement with Local Authorities through the LPM network
  - Providing initial and refresher RtR training for ICE teams
  - Providing support to the private rental sector (PRS) through the ‘Landlord’s Helpline’ (run by a contractor), online guidance and the Landlord’s Checking Service (run by UKVI)

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44 ‘Interventions and Sanctions Directorate Business Plan 2017 – 2018’ p3

45 ISD has 145.73 FTE staff according to ‘Interventions and Sanctions Directorate Business Plan 2017 – 2018’ p12.

## Collection and use of Management Information (MI)

- 7.6 At the time of the inspection, ISD was recording the number of:
- landlords or letting agents issued with a referral notice as potentially liable for a civil penalty as a result of letting a property to an individual or individuals without the RtR
  - landlords or agents issued with a civil penalty, having determined the correct checks were not undertaken and there was no statutory excuse
  - landlords or agents who are liable for criminal prosecution as a result of knowingly letting a property to an individual or individuals without the RtR.
  - enquiries made to the Landlord's Checking Service (LCS)
  - phone calls to the Landlord's Helpline
  - individuals identified as being in the UK unlawfully as a result of a referral to the LCS
- 7.7 ISD was also producing a 'Monthly Management Landlord Civil Penalties' report<sup>46</sup> that detailed the number of:
- initial decision outcomes produced by CPCT and referrals received year to date (total and by Immigration and Compliance Enforcement (ICE) team)
  - objection outcomes produced by CPCT and number of objections received year to date (total and by ICE team)
  - appeals outcomes and number of appeals lodged by landlords year to date (total and by ICE team)
  - Referrals to Penalty conversion rate by ICE team
  - Monthly debt recovery figures and year to date total
- 7.8 Inspectors found that there was no MI in relation to the 4 main aims of the RtR scheme as listed in the 2015 Evaluation of Phase 1:
- how difficult it is for illegally resident individuals to gain access to privately rented accommodation
  - deterring those who provide illegal and unsafe accommodation
  - deterring individuals from attempting to enter the UK illegally
  - how rogue landlords have been tackled by increasing joint working
- 7.9 The Terms of Reference (ToR) of the RtR Implementation Steering Group,<sup>47</sup> from November 2015, listed 4 "critical" success factors for the implementation of Phase 2. These were:
- "A fully functional Checking Service that offers a simple and user-friendly online service, supported by telephone helpline, to provide a yes/no response about right to rent within 48 hours.

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<sup>46</sup> Referred to in narrative provided by ISD titled 'IE response to ICIBI preliminary evidence request Annex A Standard evi v1 0 final' p.13

<sup>47</sup> 'An internal Home Office document setting out the Terms of Reference for the steering group overseeing the implementation of the Right to Rent scheme

- All relevant information and intelligence is captured, referred and actioned as appropriate to maximise enforcement opportunities.
- Data-sharing and joint working with external partners pursued to maximise penalties served and create wider hostile environment.
- Enforcement of the Landlords provisions is delivered as Business as Usual alongside wider enforcement activity”.

A fifth bullet point (in red text) stated:

- “• [Numerical success criteria to follow once pilot area identified]”

- 7.10 Later minutes from the Private Rented Sector Implementation Programme Board<sup>48</sup> did not include these numerical success criteria, and it appeared that ISD had not developed qualitative performance indicators for the main aims of the scheme.<sup>49</sup>
- 7.11 ISD managers told inspectors that it was important to think of the compliant environment measures as a “suite” rather than trying to assess them individually. They did not have a timescale for when the RtR scheme would “mature”, but likened it to measures to combat illegal working, which started relatively slowly before accelerating. A senior manager told inspectors that they were “in it for the long game”.

### Operational effectiveness – “Impact”

- 7.12 The 2015 evaluation report of RtR Phase 1<sup>50</sup> contained a number of questions under the headings “Impact” and “Process”.
- 7.13 Inspectors found that ISD had answered some “Process” questions, for example it had collected evidence to show that the scheme had been delivered to plan and on schedule, and that operational units had been provided with workable processes.
- 7.14 However, no MI had been collected to answer “Impact” questions, such as “Have checks helped identify illegal/unsafe housing and tackle rogue landlords?” An ISD senior manager told inspectors that referrals from Immigration, Compliance and Enforcement (ICE) teams and civil penalties issued by CPCT demonstrated that there was an “operable” policy, but the “enforcement outcomes” questions under “Impact” had not been investigated.
- 7.15 The Terms of Reference of the Implementation Board, from November 2015, stated that Phase 2 of the scheme was “operationally realistic and desirable”. This statement was not further explained. The document was produced 3 months before the roll out of Phase 2 in February 2016. It noted that Home Office Science “awaits commissioning” for the evaluation for Phase 2. ISD managers told inspectors they were working with Home Office Science to develop ways of measuring the scheme. However, at the time of the inspection, evaluation of Phase 2 had not begun.
- 7.16 The same document recommended evaluation “throughout the scheme to maximise the effectiveness”, and described a “critical success factor” as “All appropriate encounters with relevant individuals within all locations, make reference to the requirements of the Landlords provisions.”

48 A board consisting of Home Office staff with responsibility for the implementation of the Right to Rent scheme.

49 In response to the draft report, the Home Office produced a document entitled ‘Performance Framework for Landlord Implementation’, which listed 6 ‘Measures of success’, 5 of which began ‘volume of...’, while the 6th was “Engagement with partners to share information and provide a stronger, more coherent response to illegal migration”. It stated “These were agreed by the Steering Group around October 2014”. The document did not include targets for the volume measures, or an explanation of how the “Engagement ...” would be measured.

50 ‘Evaluation of the Right to Rent scheme Full evaluation report of phase one Research Report 83 October 2015’ Annex A p.35.

- 7.17 At the time of the inspection, around 10,000 residential visits had been made since the roll out of Phase 2. From internal ICE team performance data, only 3% of these had resulted in a RtR referral to CPCT. Nothing was reported to ISD regarding the other 97% of residential visits, and inspectors found no evidence of any attempts by ISD to capture whether reference was made to RtR in “all appropriate encounters”.<sup>51</sup>
- 7.18 In reality, ISD was unsighted on whether ICE teams were asking appropriate questions and, if so, why no referral was made. ISD had not challenged why the overall referral rate was so low, why it differed between ICE teams, or why 2 ICE teams had not made any referrals between 1 April and 31 July 2017. The Issue Log for the PRSIT Risk Register was blank.
- 7.19 In fairness to ISD, ICE teams themselves did not collect, record and collate this information routinely or in a standard format. They might record it on the National Operations Database (NOD)<sup>52</sup> or on local spreadsheets, to which ISD did not have access, but these records included free text fields that would make any analysis difficult and time-consuming.
- 7.20 An ISD senior manager told inspectors that, while their priority was compliance above enforcement, they would be “disappointed” if ICE teams were not applying the RtR measures and making referrals whenever possible.
- 7.21 In June 2016, the ISD Risk Register<sup>53</sup> listed the risk of RtR not being used by ICE as “business as usual” as “low”, but the impact if this was not happening as “high”. By August 2017, the PRSIT Risk Register<sup>54</sup> listed “Operational Effectiveness” as only having “medium” impact, but reiterated that not using RtR where applicable could lead to “low volumes” of referrals, which in turn could lead to:
- “Fewer civil penalties, less joint working, issue of NLDPs and prosecutions of non-compliant landlords leading to a less effective Compliant Environment impact.”
- 7.22 An internal Home Office report, ‘Right to Rent Phase 2: Implementation in England End of programme report’,<sup>55</sup> mentioned a 3-month assurance project to identify “gaps” in performance, stating that it would, “support the ability of ICE managers to challenge and drive performance on this key Compliant Environment measure.” However, inspectors did not find issues with the “ability” of ICE managers to do this, and the latter had apparently effective quality assurance processes in place for similar measures, such as those focused on illegal working.
- 7.23 The more relevant “gap” appeared to be that ICE managers and teams had no performance targets for RtR activities. An ICE team Grade 7 told inspectors they were no longer tasking residential visits, and an ICE Director described it as “human nature” for Immigration Officers to prioritise arrest for removal work over compliance activity, and questioned whether ICE teams were the appropriate vehicle for civil penalty work.

### **The ISD Business Plan 2017-18 - defining outcomes and managing risk**

- 7.24 ISD’s 2017-18 Business Plan referred to defining expected outcomes:

“Moving forward, for every intervention and sanction we deliver we must define what we want to achieve, what we expect the outcomes to be at the outset”.

51 Commenting on the draft report, the Home Office stated “PRSIT was assured regularly by ICE leads and at OWG that RtR was being considered on all visits. ISD received assurances from both ICE senior managers that their officers had implemented the provisions as business as usual, that they were asking the questions on all appropriate visits and they routinely worked with LAs in the Private Rented Sector.”

52 NOD is the internal Home Office IT system where ICE teams record their operational activity.

53 Document provided to ICIBI by ISD saved as ‘Landlords Risk Register 08 06 16’.

54 Document provided to ICIBI by ISD saved as ‘PRSIT Risk Register August 2017’.

55 February 2017.

7.25 The Business Plan also stated:

“At an operational level, we will engage our partners as part of our day-to-day work, seeking to understand any attitudinal or behavioural barriers to compliance and working together to overcome them, ensuring our partners have bought into our objectives.”

7.26 Within the “Risk” section of the Business Plan, it noted: “Lack of evidence of the success of intervention and sanctions measures will limit our ability to demonstrate how our measures have a positive impact”. The mitigation recorded for this risk was:

“A paper on evaluating the impact of the compliant environment has been presented to the Compliant Environment Programme Board and Home Office Science will explore and build short to mid-term indicators into their research proposals.”

### Local Partnership Managers

7.27 ISD’s Local Partnership Managers (LPMs) are based regionally with ICE teams. Inspectors interviewed 6 LPMs: from East London, West Midlands, Manchester, Leeds, Newcastle and Wales. They also interviewed 2 LPM managers, responsible for the national network.

7.28 Describing the role in ‘The Enforcer’<sup>56</sup>, an internal Home Office newsletter, one LPM said:

“My role as a LPM is to implement the ISD strategy and compliant environment at a local level, supporting external partners in developing their processes to ensure they identify individuals without status attempting to access their services.”

7.29 The article continued:

“One of the main challenges of the LPM role is to maintain good working relationships, ensuring our external partners<sup>57</sup> continue to support the compliant environment agenda...

... As well as external partners, I will have contact with other teams across the business such as ICE and intel.”

7.30 Inspectors found that ensuring internal stakeholders continued to support the compliant environment agenda was, in practice, at least as great a challenge for LPMs.

7.31 After Phase 2 of the scheme was announced in October 2015, for implementation in February 2016, the LPM Team held 22 RtR events around England. These were attended by 557 delegates from 253 Local Authorities. According to ISD, this represented 77% of all Local Authorities in England.<sup>58</sup> The purpose of these events was to:

- raise awareness of the Right to Rent Scheme amongst Local Authorities, the Private Rental Sector and relevant other government departments
- share the experience of West Midlands Local Authorities from Phase 1, and encourage and identify opportunities for joint working with ICE teams to tackle rogue landlords
- identify opportunities to spread the message to landlords via Local Authority communication channels

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<sup>56</sup> ‘Enforcer 38 A Day in the Life...ISD’ Wednesday 22 February 2017 accessed on 25 September 2017.

<sup>57</sup> LPMs told inspectors during interviews that external partners included, for example, NHS trusts and local authorities.

<sup>58</sup> Data from Home Office document ‘IE response to ICIBI preliminary evidence request Annex A Standard evi v1 0 final’.

- 7.32 The events included presentations from LPMs about the background to the legislation, findings from Phase 1, and a demonstration of how to conduct a check. At some events, Her Majesty's Revenue and Customs (HMRC) gave a presentation on the hidden economy, and at others ICE teams attended and explained their enforcement work.
- 7.33 The LPMs told inspectors that an initial "big push" of external engagement had tailed off since the roll out of Phase 2,<sup>59</sup> and their role was now to act as a point of contact for any queries. One commented that RtR engagement was "not one of our main strands of work". The 'Right to Rent Phase 2: Implementation in England End of Project Report'<sup>60</sup> stated:
- "Right to Rent Phase 2 included a considerable communications and engagement effort, to raise awareness of the scheme amongst landlords and lettings agents, and with Local Authorities. This focussed engagement has steadily decreased since the scheme went live, and is brought to an official end in England by the closure of this project."
- 7.34 The 'RTR Phase 2 Lessons Learned paper', dated March 2016, echoed this. Noting that LPMs had been under "significant time pressures" between the announcement and roll out of Phase 2, it said:
- "The Local Partnership Manager (LPM) Network played a significant contribution in raising awareness of the scheme on a regional level with Local Authorities".
- 7.35 The paper did not give the same attention to internal stakeholders. Some ICE team members were invited to launch events to show a "joined up approach", but LPMs did not engage frontline officers outside these events.<sup>61</sup> Nor did LPMs routinely go out on enforcement visits prior to implementation of the scheme to gain an understanding of the issues involved.
- 7.36 One LPM said that their role was to ensure that ICE teams made the "Hostile Environment" (sic) (including RtR) a priority, and that it was a challenge to keep the message "tangible" for frontline staff. There was strong support for this view in the focus groups inspectors held at each location. ICE team members told inspectors that they had not been asked by their LPM for feedback on the "operability" of the scheme.
- 7.37 The 'Summary of Phase two 3 month review KC (2)',<sup>62</sup> stated that they had identified areas that had not been serving Referral Notices, and that there would be "more engagement" with the ICE teams to understand the reasons for this and address any training needs.
- 7.38 A senior manager told inspectors that there was a "management issue" with LPMs, and that some did not engage as fully with ICE teams as they should. Most of the LPMs interviewed by inspectors felt that their priorities lay elsewhere and saw engagement with the NHS, for example, and their individual lead responsibilities, such as the taxi licensing workstream, as taking up the majority of their time. One ICE team told inspectors that they did not know who their LPM was, or what an LPM was. ICE's own review of RtR featured a 19-point Action Plan to improve operational effectiveness, which made no mention of LPMs.<sup>63</sup>

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<sup>59</sup> The evidence provided to the inspection recorded 21 LPM events between April 2016 and September 2017.

<sup>60</sup> An internal Home Office document provided to ICIBI as part of the inspection's evidence.

<sup>61</sup> Commenting on the draft report, the Home Office stated "LPMs are based within ICE teams and engage with frontline officers on a daily basis with regard to Compliant Environment work, as well as providing updates on ISD's work at team training events." However, in interviews and focus groups ICE teams were unequivocal that this was not happening in relation to RtR.

<sup>62</sup> An internal Home Office document.

<sup>63</sup> The action plan is included in a May 2017 document 'Thematic Review - Right to Rent V1'. The review examined "standards of practice within Immigration Enforcement teams within England when dealing with residential tenancy measures and Right to Rent procedures".



- 7.39 A senior ISD manager told inspectors that it was “a shame” that frontline staff had not embraced the “hostile environment” (sic) message, and that a cultural change was required where IE needed to accept that “you can’t arrest your way out of a problem”. This was reiterated by other stakeholders.

#### **Civil Penalty Compliance Team (CPCT) caseworkers**

- 7.40 At the time of the inspection, there were 2 caseworkers in CPCT with responsibility for issuing and administering civil penalties, but only 1 worked on RtR due to the low volume of referrals. This was described to inspectors as “1 or 2” cases per week, but Home Office data indicated there were 468 referrals between February 2016 and July 2017, an average of roughly 6 per week. The CPCT caseworkers told inspectors they had received sufficient training and were coping well with their workload. According to CPCT KPI data for 2017-18, they were meeting most performance measures.<sup>64</sup>
- 7.41 Caseworkers were also able to provide feedback to ICE teams on all RtR referrals via email using a standard form. CPCT managers told inspectors that they reviewed caseworker decisions for QA purposes, but the quality of the feedback to ICE teams was not part of that process.
- 7.42 An ISD senior manager thought that ICE teams should be producing referrals on every occasion when a person of interest was encountered or there was no statutory excuse applicable. CPCT caseworkers told inspectors that the “general rule” was that every time an ICE team was in a position to refer something they must refer it.
- 7.43 The caseworkers told inspectors they would expect a referral even with just a name and telephone number of the landlord, whereas ICE teams told inspectors that this was not enough evidence for them to send a referral. A CPCT manager thought that the ICE teams were aware that the CPCT caseworkers might carry out further investigations on receipt of a referral,<sup>65</sup> while ICE teams told inspectors they thought this was part of their role.

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<sup>64</sup> This data is in a document titled ‘CPCT Key Performance Indicators (KPI) Report 2017-18’. It does not distinguish between individual sanctions in all areas, but shows that CPCT is meeting its debt collection target of £4000 per month.

<sup>65</sup> Commenting on the draft report, the Home Office gave the example of a referral that did not establish the correct liable landlord and there were options that had not been explored by ICE.

## 8. ‘Operational’ use of Right to Rent Immigration, Compliance and Enforcement (ICE) teams

8.1 According to the Home Office intranet, Immigration Enforcement (IE) is responsible “for preventing abuse of, and increasing compliance with, immigration law and pursuing immigration offenders.”

8.2 IE’s strategic objectives are to:

- “remove incentives for people to stay in the UK illegally
- target the criminality that supports illegal immigration
- effectively manage high harm individuals to reduce risk to the public
- continue to increase the number of individuals we remove from the UK”

8.3 Immigration, Compliance and Enforcement (ICE) teams:

“work with the public and alongside police, HM Revenue & Customs, local authorities and other local partners. Their purpose is to ensure compliance with immigration laws for the benefit of the community and the economy, and to enforce immigration law (including tracking down illegal migrants and targeting companies that flout the rules by employing workers illegally).”<sup>66</sup>

At the time of the inspection, there were 19 ICE teams, working from different locations around the UK.

8.4 For this inspection, inspectors observed and interviewed 5 ICE teams and their operational managers (in London, Solihull, Manchester, Leeds, and Newcastle).

### Statistics

8.5 Figures provided by the Home Office showed that in the 18 months between the roll-out of Phase 2 of RtR on 1 February 2016 and 31 July 2017 ICE teams in England:

- deployed on 24,477 occasions
- gained entry to a residential property on 10,501 of those occasions
- issued 410 landlord referral notices, relating to 300 of the 10,501 visits<sup>67</sup>

### Operational Priorities

8.6 In 2016, IE began a transformation programme known as “IE2020”. This set out IE’s vision that by 2020, it would “reduce the size of the illegal population and the harm it causes” supported by 6 “services”, 2 of which refer to the ‘compliant environment’: “Encouraging Compliance” and “Protecting UK Services From Abuse”.

<sup>66</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/581743/Annex\\_C\\_-\\_ICE\\_teams.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/581743/Annex_C_-_ICE_teams.pdf)

<sup>67</sup> More than one landlord referral notice can be issued on a single visit.

8.7 In relation to “Encouraging Compliance”, IE2020 stated:

“We will evaluate and develop our ‘nudge’ contact with migrants pre- and post- the expiry of their leave.”

and

“We will work with key stakeholders, including employers, landlords, community, voluntary and faith groups in the UK to change perceptions of illegal migration and drive compliance, including direction towards our new Voluntary Returns Service.”

8.8 In relation to “Protecting UK Services From Abuse”, IE2020 stated:

“We will work with partners to share data, identify threats and opportunities and make more informed decisions. We will build a digital platform which allows us to offer a real-time, automated status checking service to our partners, including other government departments and employers, enabling them to check the right to live, work and access services in the UK. Our work with partners will encourage compliance by making the UK less attractive to illegal migrants who will be unable to access benefits and services to which they are not entitled.”

and

“We will take visible enforcement action against illegal working: prosecuting illegal workers and employers, closing businesses and seizing assets.”

8.9 IE also produced the ‘Annual Threat Assessment of Immigration Abuse for Immigration Enforcement and UK Visas and Immigration, 2017’, the purpose of which was “to support decision making and prioritisation of organisational responses to immigration abuse.” This assessed illegal working in the UK to be the second highest ranked threat, and highlighted access to housing as an “enabler” that supported this threat:

“either through complicit landlords not undertaking effective right to work checks,<sup>68</sup> or the use of fraudulent documents. This is often multi occupancy housing in unsanitary and cramped conditions.”

8.10 ICE team members and managers told inspectors, consistently, that the current overriding, almost exclusive, priority for ICE teams was to arrest offenders for removal. They believed that senior managers would judge a team’s performance against this metric. While they were aware that RtR should be “business as usual”, it was not given any priority or scrutiny. None of the teams to whom inspectors spoke had a performance target for RtR.

8.11 ICE team members said that IE’s focus on securing removals was a disincentive to pursuing more RtR referrals. Invariably, the effort required to gather the evidence and compile a landlord referral was not valued by operational managers, whose performance was judged on removals statistics. This meant that as soon as a team had arrested the offenders encountered on a residential visit they were encouraged to move on to the next location to try to make more arrests, rather than staying on to gather evidence about non-compliant landlords.

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<sup>68</sup> This should read “complicit landlords not undertaking effective right to rent checks”.

## Training

- 8.12 Interventions and Sanctions Directorate (ISD) had delivered training to all ICE teams in England. The 'RTR Phase 2 lessons learned paper, March 2016'<sup>69</sup> commented that:

“Implementation of such a complex scheme required face to face training to be delivered to every ICE team in England, comprising over 800 operational staff. This was completed successfully.”

- 8.13 The training was delivered by just 2 ISD staff members, over a 5-6 week period, delivering 37 sessions at 13 different locations, and involved “direct engagement with managers” to ensure good attendance.
- 8.14 In interviews with inspectors, ICE teams confirmed that the standard of training had been good, and it had given them the knowledge and confidence to be able to take RtR work forward as ‘business as usual’. It had covered all aspects of the work required to make a referral to the Civil Penalty Compliance Team (CPCT), including the noting of interviews with tenants, the collection of documentary evidence and the compilation and submission of the referral pack itself.
- 8.15 Between October 2016 and August 2017, ISD had provided refresher training to approximately 185 ICE team members during 8 sessions at 7 locations.
- 8.16 The ISD trainers told inspectors that when running the training events they found that ICE team members were split roughly 50:50 between those “sold on” RtR and those not.
- 8.17 At the time of the inspection, ICE teams and CPCT had established single points of contact (SPOCs) for RtR and ICE teams had Business Embedded Trainers (BETs) in place.<sup>70</sup> Further refresher training had been delivered, focusing on how to ask the ‘right’ questions, but nothing had been done specifically to win the ‘hearts and minds’ of the 50% who were “not sold” on RtR.
- 8.18 The Home Office told inspectors that managers from the West Midlands ICE team, who had been involved in Phase 1 of RtR, were consulted on the training package for Phase 2, however inspectors were unable to find anyone who had been consulted to understand what influence the team had had.

## ‘Business as usual’

- 8.19 All of the ICE teams interviewed expressed the view that the amount of work required to gather, collate and submit the evidence for a successful referral to the CPCT “wasn’t worth it for an £80 fine”. Frontline officers contrasted the low penalties for non-compliant landlords with the potential £20,000 fines for employers employing a person with no right to work.
- 8.20 At the time of the inspection, there was no standard operating model for ICE teams when entering a residential property, in terms of mandatory actions or topics that must be raised during questioning in support of the compliant environment agenda. This had led to an inconsistent approach to RtR work by ICE teams.

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<sup>69</sup> ‘RTR Phase 2 lessons learned paper, March 2016’, an internal Home Office document.

<sup>70</sup> Business Embedded Trainers are ICE staff who train other team members.

- 8.21 Most of the teams interviewed stated that they would ask the bare minimum of questions about an encountered person's tenancy, but saw little value in pursuing the matter beyond that. They all said that, more often than not, the occupants claimed not to know who their landlord was, and paid their rent weekly in cash to an individual who collected it on behalf of the landlord. Usually, there was no written tenancy agreement, so the task of identifying the landlord for the purpose of a referral was extremely difficult, if not impossible. One ICE team admitted to no longer bothering to make RtR enquiries, such was their scepticism about ever getting any answers or usable evidence.
- 8.22 Without exception, operational managers told inspectors that their team's performance was measured on a regional and national basis on removals, and no operational targets were set or metrics scrutinised for RtR work. Consequently, it was given no priority, and it was left to the officer in charge of the team to decide, on a visit by visit basis, whether to carry out any RtR questioning. It certainly was not 'business as usual' at a frontline operational level.

### **Recording of RtR work by ICE teams**

- 8.23 Both of the main IT systems used by ICE teams to record their work, the Case Information Database (CID) and the National Operations Database (NOD), were established long before the compliant environment measures were introduced. However, both systems had been modified to enable RtR activity to be recorded. ICE teams used NOD to record whether a referral had been made.
- 8.24 Many of the ICE teams interviewed told inspectors that they were unlikely to record much detail about any RtR work, and if they did it would be recorded in the 'Notes' field on NOD. Most of the teams also maintained local spreadsheets, detailing operations and outcomes.
- 8.25 All of the ICE team members said that they would record any RtR questions asked and actions taken at a residential premises in their personal notebook (PNB), along with the other details of their visit. Some said that the Chief Immigration Officers (CIOs)<sup>71</sup> reviewed their PNBs as part of a general quality assurance regime, but this review did not focus on the routine recording of the extent and quality of RtR work. The CIOs confirmed this.
- 8.26 The way that ICE teams recorded RtR activity meant it was not possible for inspectors to establish, for example, how often RtR questions were asked but it was decided that a referral could not be made, or why such a decision was taken.

### **Evaluation of RtR work by ICE teams**

- 8.27 The IE monthly performance packs included returns for the number of landlord referrals made to CPCT, the conversion rate (% of referrals that resulted in a fine being issued), and the number of notices (Notice of Letting to a Disqualified Person (NLDP)) issued. The 'ICE North Performance Pack – Aug 17'<sup>72</sup> included figures for 1 April to end 30 June 2017 – see Figure 2.

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<sup>71</sup> Chief Immigration Officers are warranted Home Office employees who manage immigration officers within teams. ICE CIOs will also undertake front line operational activities for example residential visits.

<sup>72</sup> Source: Home Office document 'ICE North Performance Pack – Aug 17 (CPRN referrals conversions)'.

**Figure 2: Data from 'ICE North Performance Pack – Aug 17' August 2017 (covering the period 1 April to 30 June 2017)**

	Landlord referrals	Conversion rate	Number of residential visits	Number of arrests	Landlord referrals per residential visit	Notices of letting to a disqualified person
<b>London &amp; South East</b>	83	66%	1,443	674	12%	34
<b>Rest of England</b>	24	56%	1,147	498	5%	6
<b>Total</b>	<b>107</b>	<b>64%</b>	<b>2,590</b>	<b>1,172</b>	<b>9%</b>	<b>40</b>

- 8.28 Although the referrals per residential visit percentages were small, particularly outside London and the South East, the conversion rates suggested that the quality of the evidence provided by ICE teams met CPCT’s threshold in roughly two-thirds of cases.
- 8.29 ICE team managers told inspectors they were rarely asked about RtR performance during their monthly conference calls with IE senior managers. Although it was included in the ICE Performance Pack, there were no targets associated with RtR. One senior manager told inspectors it was up to individual ICE teams to determine how best to operate it, as they were the ones “on the ground”. The ICE teams and their managers, meanwhile, told inspectors that RtR actions and outcomes did not form part of any team discussions.

### Operational Review

- 8.30 In July 2017, IE completed its own thematic review of the implementation of the RtR measures by ICE teams in England. The ‘Review on Standards of Practice of Right to Rent and Residential Tenancy Measures in Immigration Enforcement Teams in England’ found that data inputting on NOD was inconsistent, leading to inaccurate reports. It also noted: “Despite revised instructions being sent out, teams are still not inputting data correctly.”
- 8.31 Guidance for ICE team members about record keeping in relation to residential visits and RtR was readily accessible on the Home Office’s intranet as “Right to Rent: Post Visit and Recording of Findings”. However, the IE review found that ICE teams did not fully understand when to raise a ‘Special Conditions’ flag on CID, leading to under-reporting of RtR work.
- 8.32 The review made 19 recommendations. The first 2 were: that record keeping in officers’ personal notebooks needed to be improved; and, that “Assurance checklist detail on Right to Rent to be updated for ICE teams to be accountable”.
- 8.33 At the time of the inspection, inspectors found no evidence of any meaningful action to implement the recommendations. However, the Home Office subsequently reported that ICE and CPCT had met on 20 September 2017 “to formulate an action plan to address the various recommendations”. The Home Office stated that “Most were to be addressed through refresher training which was delivered to ICE Business Imbedded Trainers (BETs) and SPOCs in October/ November 2017.”

## Feedback

- 8.34 ICE team members who had submitted RtR referrals confirmed that they received feedback from CPCT about the content and quality of every referral. They told inspectors they welcomed feedback, but also said that the advice given was sometimes vague and not always that helpful.

## ICE team capacity for RtR work

- 8.35 All of the ICE teams interviewed agreed that they were best placed (within the Home Office) to perform the on-the-ground RtR work, as they were present in residential premises to interview offenders and search for evidence. It was therefore an extension of their existing routine ways of working.
- 8.36 However, they did not think that all the tasks needed to complete a CPCT referral should fall on ICE teams, for example completing Land Registry checks and photocopying PNBs and statements. They saw these administrative tasks as an inefficient use of arrest-trained officers' time.
- 8.37 In practice, this work was often completed by the officer in charge (OIC) for the visit, usually a few days later during rostered 'admin days' (days set aside to complete a variety of paper and IT records to ensure visit records were completed and correctly stored). The teams told inspectors they would ideally like to have administrative support to help with this task, allowing them to spend more time out of the office attempting to locate offenders. They also felt that CPCT could do some of this work, such as Land Registry checks.

## Criminal Investigations

### ICE team interactions with Criminal & Financial Investigations (CFI) teams

- 8.38 The 2014 Act sought to tackle 'rogue landlords' who knowingly and persistently rented accommodation to tenants with no legal right to remain in the UK. The 2016 Act made this a criminal offence, with effect from December 2016. Part of the thinking was that these landlords were likely to be housing tenants in substandard, dangerous or overcrowded conditions, and may be involved serious criminality, including exploitation, human trafficking and modern slavery.
- 8.39 All of the ICE teams interviewed said that their CFI counterparts had no interest in pursuing RtR referrals made to them by the ICE teams, of which there had been only 1. They explained that the CFI teams felt that the level of criminality involved was too low, in terms of seriousness or volume, to meet their threshold for beginning an investigation.
- 8.40 CFI teams investigate organised immigration crime, in order to disrupt the gangs facilitating abuse of the immigration system and to seize the proceeds of crime. In some circumstances, CFI will consider adopting 'volume' cases for investigation, depending on the level of harm they present to national security, immigration and border controls, or to the community. In deciding whether to adopt a case, IE will consider other available sanctions, for example civil penalties.
- 8.41 The CFI senior manager told inspectors that the RtR criminal offence was "quite straightforward". However, its focus could be interpreted as volume crime rather serious or organised crime. This had created some tension with ICE teams, who believed they had identified cases suitable for prosecution under the 2016 Act, where CFI was unwilling to adopt the case because it was not serious or complex organised immigration crime.

8.42 CFI had highlighted to ICE teams the importance of proportionality when using criminal sanctions, and the expectation that civil penalties should be used in the first instance to attempt to encourage compliance by making letting to disqualified persons unprofitable. As there had been only 1 'repeat offender' identified for civil penalty purposes, CFI did not consider that any RtR cases referred by ICE teams would merit escalation to a criminal prosecution. CFI believed it was more likely it would receive a case that was suitable for criminal investigation from Immigration Intelligence than from an ICE team.

### Joint working

8.43 In October 2015, the evaluation of Phase 1 of RtR<sup>73</sup> included as a key objective "tackle rogue landlords by increasing joint working between the Home Office, local authorities and other government departments." Based on qualitative evidence, the Home Office found that, without additional resources and using normal tasking priorities, Phase 1 had resulted in an increase in joint working. Meanwhile, some joint work had also been tasked specifically in support of RtR.

8.44 Home Office Borders, Immigration and Citizenship (BICS) Policy told inspectors there had been an expectation that RtR would result in referrals to agencies more suited than IE to tackle the issues identified. This included modern slavery referrals through the National Referral Mechanism (NRM),<sup>74</sup> referrals to the Gangmasters and Labour Abuse Authority (GLAA),<sup>75</sup> and to the Fire Service, for example.

8.45 Inspectors found little evidence of increased joint working between ICE teams and partner agencies as a consequence of the national roll out of RtR. ICE teams told inspectors that any joint working in relation to RtR was simply an extension of the close working relationships that already existed between them and other agencies. There was no evidence that RtR had changed ICE methods of operation or added to their list of local partners. If, in the course of a residential visit, an ICE team came across unfit or dangerous accommodation, overcrowding, excessive rental charges, or potential abuse, poor welfare or vulnerability, they were confident they could report it to the appropriate agency, and that they would respond.

### Operation Lari

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

8.47 CFI teams were on stand by to support ICE teams should the latter identify a landlord who might be liable for prosecution under the 2016 Act for knowingly renting to illegal migrants. One potential case was identified, but CFI did not adopt it as it felt that criminal prosecution should be used only where a landlord had received first and subsequent RtR civil penalty referral notices.<sup>76</sup>

8.48 The intention had been to use Her Majesty's Revenue and Customs (HMRC) data to support the intelligence picture. In the event, this was not available in time to be of use to the Operational Intelligence Units (OIUs) responsible for identifying suitable targets.

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<sup>73</sup> 'Evaluation of the Right to Rent scheme Full evaluation report of phase one', October 2015

<sup>74</sup> The NRM is a framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support.

<sup>75</sup> The GLAA operate a licensing scheme which regulates businesses who provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law. Part of their role is to protect vulnerable and exploited workers.

<sup>76</sup> Op Lari (Magnify) Evaluation Report, July 2017



- 8.49 Although there were no criminal prosecutions from Operation Lari, there were 21 joint working operations and “11 landlords/properties” were identified that were of interest to partner agencies, including the Fire Service, Local Authority housing and environmental health officers, and HMRC.
- 8.50 At the time of the inspection, Operation Lari 2 was in the process of being tasked. A data sharing agreement with HMRC was in place. At a national level, IE was partnering with HMRC, the Department for Work and Pensions, and the National Crime Agency (NCA), while ICE teams would be looking to work with police forces and other local enforcement partners.

## Intelligence collection and use

- 8.51 Immigration Intelligence (II) is responsible for collecting, analysing and disseminating intelligence that identifies, targets and prevents immigration abuse. II looks to support both policy development and operational activity at all levels, in the UK and overseas.
- 8.52 In the case of RtR, II’s role has been to generate intelligence ‘packages’ for ICE team tasking. Inspectors observed a tasked residential visit by an ICE team. This produced no meaningful RtR results. At a local level, Intelligence units have sought to build relationships with Local Authorities and community police teams as sources of information on HMOs, for example.
- 8.53 ICE team officers have been encouraged to pass information to their II colleagues through a referral mechanism, the Intelligence Management System (IMS), marking RtR work “landlord”.
- 8.54 The ICE teams interviewed said that they were unaware of what information about landlords II wanted, and therefore made very few, if any, referrals. Equally, they seldom received intelligence-led tasking about particular landlords. They also said that making an intelligence referral was just one of numerous administrative tasks they had to complete at the end of a residential visit, and it was not a priority at that point.
- 8.55 In July 2017, IE’s ‘Review on Standards of Practice of Right to Rent and Residential Tenancy Measures in Immigration Enforcement Teams in England’, recognised that there was a problem with information flows, and recommended (Recommendation 7) that:
- “ICE leads to ensure IMS referrals to be part of the norm by officers as Intel are receiving very little information back on HMOs (Houses of Multiple Occupation) and any new information obtained”.
- 8.56 An II senior manager told a similar story to that of the ICE teams. II understood that the priority for IE was to identify and remove individuals with no right to be in the UK, and II’s resources were geared to this, with limited capacity for workstreams that may not generate ‘packages’ ICE teams would choose to task. The II senior manager was unable to identify any RtR success that could be directly attributed to II intelligence.
- 8.57 The II senior manager told inspectors that a name and a telephone number could be useful intelligence, confirming what CPCT had said, but at odds with ICE team practice. The senior manager acknowledged that the generic IMS referral form did not always make it quick or easy to make reports, but said that work was underway to develop referral templates specific to particular business areas in order to make the process quicker and encourage more referrals. Work was also underway on a Single Intelligence Platform (SIP) to give ICE teams ‘read-only’ access to collated intelligence and enable them quickly to identify and pursue any local trends.

## Data

- 8.58 The Home Office did not record the number of RtR-related allegations received or intelligence packages developed in a way that allowed it to report this separately. Intelligence referrals from Home Office teams (not solely ICE teams) and marked “landlord” included allegations about ‘beds in sheds’ and modern slavery, while allegations from the public made online<sup>77</sup> or via the IE ‘Hotline’ were not coded, so no data was available. The II senior manager believed that while there had been some allegations relating to the RtR scheme, the public was more focused on the irregular migrants than on those who may be facilitating them.
- 8.59 Home Office data showed that of 652 allegations (internal referrals) made by Home Office staff between 1 February 2016 and 31 August 2017:
- 190 could not be actioned as no offence was identified
  - 263 were actionable but were not pursued
  - 130 were actioned, of which
    - 62 were referred to ICE teams, of which 55 were actioned
    - 1 was tasked to CFI, but did not appear to have been adopted
    - 56 individuals were ‘flagged’ on Home Office systems in case they came to attention again
    - 3 were disseminated internally to other Home Office business units

## Awareness and use of RtR by immigration and asylum casework units

- 8.60 Home Office immigration casework units have 2 roles in relation to RtR. Firstly, to decide whether a migrant who does not have the right to rent but has requested ‘permission to rent’ should be granted permission. Secondly, to refer cases to ISD where a breach of RtR has been identified.
- 8.61 To establish the level of awareness and understanding of RtR, inspectors invited 46 immigration and asylum caseworkers to take part in a brief survey:
- 22 (out of 46) responded
- 15 (of the 22) had heard of the RtR scheme
  - 8 (of the 15) had heard about it through presentations at work
  - 3 had come across it while working on a case
  - 2 had found out about it from sources outside the Home Office
  - 2 could not remember how they had found out about it
  - 5 (of the 15) knew nothing more about RtR than the title
- 8.62 From the launch of the scheme until 27 November 2017, 12,645 ‘RtR check’ case types were opened on CID, over 10,000 by ISD’s Landlord’s Checking Service.

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<sup>77</sup> <https://www.amsallegations.homeoffice.GOV.UK/default.aspx/RenderForm/?F.Name=Lf62UB7cz4C>

- 8.63 Amongst casework units, the Family Returns Unit (part of IE's Removals Preparation Directorate) had made the most decisions relating to RtR, opening 2,080 cases. Only 5 other casework units had opened a 'RtR check' case type, with just 21 cases between them. The remainder were dealt with by ISD, ICE Teams or Reporting and Offender Management (ROM) teams.
- 8.64 None of the caseworkers who spoke to inspectors had received a 'permission to rent' request, and only 2 knew where to find the guidance to enable them to make such a decision. Inspectors did not find any evidence of assurance in relation to RtR or 'permission to rent' decisions made by units outside ISD.
- 8.65 Home Office data showed that, between 1 February 2016 and 31 July 2017, 3 referrals of an individual identified as not having the right or permission to rent were made to ISD by casework units, 2 of which resulted in a civil penalty notice being issued. In the same period, ICE teams made 394 referrals (with 226 civil penalty notices issued), ROMs made 46 (with 33 civil penalty notices issued), and Intelligence teams made 6 (with 5 civil penalty notices issued).
- 8.66 The low number of referrals from casework units was consistent with the lack of awareness of the scheme revealed by the survey. Of the 22 respondents, only 4 knew to refer evidence of letting to a disqualified individual to ISD, while 2 said they would refer it to "Intel", and 1 said they would try to contact the landlord. The remainder said that they would either do nothing or, now that they were aware of the scheme, they would seek advice from a manager.
- 8.67 ISD had recognised that caseworkers were potentially a rich source of referrals, given that evidence of residence may be submitted in family or private life applications. The 'Thematic Review – Right To Rent', dated 26 May 2017, recommended that ISD liaise with heads of casework units to promote intelligence referrals and RtR 'flagging' on Home Office systems. One Local Partnership Manager said they were aware of some scoping work in connection with this, but inspectors found no evidence that any 'liaison' had actually happened.

## 9. Evaluation

### Original “success criteria”

- 9.1 In 2013, the Home Office’s ‘Tackling illegal immigration in privately rented accommodation consultation document’<sup>78</sup> referred to 3 “success criteria” for any scheme. It should:
- Minimise impact on the Private Rental Sector (PRS)
  - Support the compliant landlord
  - Be ‘light touch’ and proportionate
- 9.2 As a consequence, landlords were not required to report that they had carried out RtR checks on every prospective tenant, or to report individuals they suspected to be irregular migrants (although the mechanism exists to do so via the IE ‘Hotline’). Responsibility for any data collection about the working of RtR rested with the Home Office.

### Phase 1

- 9.3 The evaluation of Phase 1 of RtR was completed by Home Office Science Directorate, drawing on commissioned research carried out by 2 commercial companies, BDRC Continental/ESA Retail (who made ‘mystery shopping’ enquiries to rent advertised properties) and IRIS Consulting (who ran online surveys, interviews and focus groups).
- 9.4 The evaluation report referred to the RtR scheme’s 4 main aims:<sup>79</sup>
- “deter those who seek to exploit illegal residents by providing illegal and unsafe accommodation, and increase actions against them
  - deter individuals from attempting to enter the UK illegally,
  - undermine the market for those who seek to facilitate illegal migration or traffic migrant workers
  - tackle rogue landlords by increasing joint working between the Home Office, local authorities (LAs) and other government departments”
- 9.5 The findings, which were reported to the Landlords Consultative Panel (LCP) before they were published in October 2015, were broadly positive about the Home Office’s implementation of Phase 1, and about the scheme’s adoption by the private rental sector in the Phase 1 area (Birmingham, Walsall, Sandwell, Dudley and Wolverhampton). In summary, they were:

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<sup>78</sup> ‘Tackling illegal immigration in privately rented accommodation Consultation document’ 2013  
[https://www.GOV.UK/government/uploads/system/uploads/attachment\\_data/file/226713/consultation.pdf](https://www.GOV.UK/government/uploads/system/uploads/attachment_data/file/226713/consultation.pdf)

<sup>79</sup> ‘Evaluation of the Right to Rent scheme Full evaluation report of phase one’, October 2015.

### **Implementation of the scheme**

Finding: RtR checks were carried out by landlords and the Landlord's Checking Service (LCS) and civil penalties regime had both been successfully established.

### **Awareness of the scheme and communications**

Finding: "broadly speaking", people (landlords, tenants, Local Authorities) felt informed about the RtR scheme.

### **Immigration enforcement outcomes**

Findings: 37 enforcement visits were made as a 'direct' result of a RtR referral; 109 individuals were identified as being in the UK illegally (63 previously unknown to the Home Office), of which 9 were removed by the time the report was published. Also, some joint working with Local Authorities and other government departments had taken place as a result of the scheme.

### **Impacts on tenants**

Findings: there were no major differences in tenants' access to accommodation between the Phase 1 area and the comparator area (Coventry). Also, there was evidence of an increase in the number of landlords and letting agents requesting documentation from potential tenants as a result of the scheme.

### **Impacts on the housing sector**

Finding: the introduction of the sanction had had no obvious impact on the housing market.

### **Impacts on Local Authorities and the voluntary and community sector**

Finding: respondents provided a 'mixed picture' of the scheme's impact in terms of increased workload.

## **Further evaluation of RtR and other compliant environment measures**

9.6 Throughout this inspection, the Home Office made it clear that the "compliant environment" is a long-term strategy, and its evaluation is similarly a long-term task.

9.7 In 2017, IE's Research and Analysis (R&A) team had considered the options for analysing the compliant environment, and the difficulties:<sup>80</sup>

"ISD have developed a performance framework which allows it to quantify its activities and outcomes, capturing the number of sanctions which have been applied. However, this cannot be used to show a causal relationship, or impact of sanctions on voluntary returns.

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80 Evaluation of the compliant environment: Analytical options (2017)

As outlined, the compliant environment is made up of a number of different sanctions, and therefore the impact of these should ideally be considered cumulatively as well as on a sanction by sanction basis. Sanctions viewed in isolation may not demonstrate a direct link to returns, even in situations where such a link may exist for combinations of sanctions.”

- 9.8 R&A’s report did not include a plan or timescale for any evaluation, and inspectors found no evidence that any such plan existed.

### England-wide roll out of RtR

- 9.9 Inspectors looked for evidence that the Home Office was capturing the quantitative and qualitative data that would be required for any future evaluation of RtR post-Phase 1, guided by the 4 aims for the scheme identified in the Phase 1 evaluation.

#### **To make it more difficult for illegally resident individuals to gain access to privately rented accommodation, and so deter those who are illegally resident from remaining in the UK**

- 9.10 The evaluation of Phase 1 had stated: “within research with letting agents and landlords there was some indication that access to the private rental sector was being restricted.” It went on to provide 3 examples of non-EEA migrants who had been turned away as they could not produce passports or other acceptable identification. Similarly, some landlords and letting agents had reported that a small number of prospective tenants did not continue with their enquiry after they were asked whether they were able to provide documentation confirming their immigration status. The evaluation stated that this could be a sign that it was working, but it was not known in any of these cases whether the prospective tenants were illegal migrants.
- 9.11 The Home Office was recording levels of usage of the services put in place to support landlords (for example, use of the Landlord’s Checking System (LCS), website hits on GOV.UK for the codes of practice, calls to the Landlord’s Helpline). But, it had not set any targets, or considered usage levels in the context of the total number of landlords in England, except to recognise that 80% of landlords were not members of landlord associations.
- 9.12 The fact that the LCS had responded ‘No’ to a number of checks meant that some migrants without the right to rent should have been refused tenancies, and to that extent was an indicator (rather than a measurement) of it being “more difficult for illegally resident individuals to gain access to privately rented accommodation”. But again, no targets had been set or any sense of scale applied, nor any conclusions drawn.
- 9.13 R&A acknowledged that ISD data about the number of sanctions applied could not “be used to show a causal relationship, or impact ... on voluntary returns”. Home Office data from the VRS from 1 February 2016 to 31 August 2017 indicated that of 9,127 VRS users who gave a reason why they wished to leave the UK, only 7 cited their inability to rent property.<sup>81</sup> A further 179 reported that they were “unhappy/feel unwelcome in the UK”, which might be the effect of compliant environment measures, but could be a general perception of the UK as unwelcoming.
- 9.14 Whatever the truth of any causal relationship, the recorded figures for voluntary departures showed no overall increase since the compliant environment measures were introduced as shown at figure 3.

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<sup>81</sup> This data is internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics.

**Figure 3: Voluntary departures from the UK 2008-2017<sup>82</sup>**

Year	Number
2008	17898
2009	20520
2010	27609
2011	24925
2012	29750
2013	31647
2014	29322
2015	27117
2016	25306
2017	20691

**To deter those who seek to exploit illegal residents by providing illegal and unsafe accommodation, and increase actions against them**

- 9.15 Measuring most forms of criminal activity is inherently difficult: the perpetrators will seek to conceal it, and the victims may not wish to report it. However, inspectors found no evidence that the Home Office had sought to establish a baseline for exploitation of illegal residents by providing illegal and unsafe accommodation, however imperfect, prior to the implementation of RtR.
- 9.16 While it would have required a considerable amount of work, involving partner agencies, it would have been possible to quantify and codify the actions taken against exploitative landlords where these had been identified. Inspectors found no evidence that this had been attempted.
- 9.17 The introduction of civil penalties had **de facto** increased actions against landlords letting to illegal migrants, but those landlords were not necessarily exploiting migrants, nor were the properties necessarily “illegal and unsafe”.
- 9.18 The direction from both BICS policy and ISD senior managers was that they did not expect ICE teams to prioritise RtR operations outside of normal tasking procedures. It was therefore unclear how the Home Office expected other actions to increase, or how they would be identified, for example ICE officers are not housing enforcement officers and may not identify that accommodation is illegal and unsafe.

**To deter individuals from attempting to enter the UK illegally, and undermine the market for those who seek to facilitate illegal migration or traffic migrant workers**

- 9.19 For obvious reasons, the numbers of individuals attempting to enter the UK illegally can only ever be estimated. However, the Home Office has repeatedly declined to recognise estimates published by other bodies or to produce its own estimate. Again, this makes measuring any deterrent effect of RtR on illegal entry difficult to measure, and reliant on intelligence and anecdote. Inspectors found no evidence of the Home Office attempting to collect either expressly for this purpose.

<sup>82</sup> <https://www.GOV.UK/government/collections/immigration-statistics-quarterly-release>. Years are October to September.

## To tackle rogue landlords by increasing joint working between the Home Office, local authorities and other government departments

- 9.20 As with the number and type of actions taken against exploitative landlords prior to RtR, no benchmarking was done of the level of joint working. At the national level, Operation Lari was an example of increased joint working, although it was too soon to say whether Operation Lari 2 was a success and what it might lead to in terms of further joint work.
- 9.21 However, the clear message to inspectors from their interviews with ICE teams was that the working relationships with local partners existed and functioned effectively prior to RtR. Meanwhile, ISD's Local Partnership Managers told inspectors that, after an initial "big push", external engagement had tailed off since RtR was rolled out. Their role was now to act as a point of contact for any queries and RtR engagement was "not one of our main strands of work".

## Stakeholder reactions and assessments

### Phase 1

- 9.22 A number of serious criticisms were levelled at the Home Office's evaluation of RtR Phase 1, both at the time it was published and during this inspection.
- 9.23 On 3 September 2015, the Joint Council for the Welfare of Immigrants (JCWI) published its own report 'No Passport Equals No Home'. This also evaluated the impact of the RtR scheme in the Phase 1 area. It listed within its findings that:
- "Due to the timing, location and duration of the 'pilot', it cannot capture the impact of the policy if rolled out nationwide.
  - The policy has resulted in instances of discrimination against tenants, including BME tenants, who **do** have the Right to Rent in the UK. The current safeguards against discrimination are insufficient.
  - There is evidence that landlords are prepared to discriminate against those with complicated immigration status and those who cannot provide documentation immediately.
  - Many landlords have found the checks confusing and have therefore undertaken them incorrectly.
  - The checks increase the bureaucratic and financial burden on tenants and landlords.
  - The 'Code of Practice on Avoiding Discrimination' and the 'Code of Practice for Landlords' are difficult for landlords and agents to understand.
  - The policy has not and will not achieve its stated aim to deter irregular migration or prevent irregular migrants from settling in the UK."
- 9.24 Responding to the inspection's 'call for evidence', the Chartered Institute of Housing (CIH) questioned the value of the Phase 1 'mystery shopper' exercise. CIH pointed to the fact that Crisis<sup>83</sup> had pulled out of advising the Home Office on the 'mystery shopper' activity because of its concerns about comparing the experience of a vulnerable migrant applying for a tenancy with, for example, a "middle class" black person of British nationality.

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83 Chartered Institute of Housing letter to ICIBI, 10 November 2017



9.25 CIH also had its own concerns about how the scheme would work at the less formal end of the private rental sector (PRS), writing that:

“Most commentators had no doubts about the ability of the ‘professional’ end of the PRS to manage the scheme; the doubts applied to the large number of small landlords. How would they find out about the scheme if they were not members of bodies like the NLA or RLA (which cover only a small proportion of the sector)? Who would give them guidance on document checking? Would they actually carry out the checks?”

9.26 An LCP member, responding to the inspection, criticised the Home Office for putting no resources into informing the private rental sector about the scheme. According to this member, the professional bodies on the LCP had done most of the work to publicise the scheme, and the Home Office had not paid for any advertising because, it had said, “Twitter is free”. While the Home Office had been successful in getting some articles published in the trade press, and some positive coverage in the national press, the LCP member believed the Home Office Twitter account had mentioned the scheme just twice. (The Home Office reported 8 RtR-related uses of the departmental Twitter account).

9.27 The LCP member identified landlords with lodgers as a group that was not aware of the scheme or that it extended to them. Another LCP member agreed, and told inspectors that the professional bodies could perhaps claim 75,000 members nationwide, but in London alone there were an estimated 400,000 landlords. They had asked the Home Office about its appetite for spending money on communication, and were told there was none.

9.28 The Home Office evaluation of Phase 1 had noted that both the quantitative and qualitative research had indicated far less awareness of the scheme amongst smaller landlords. It had also identified a number of “hidden landlords”, for example those with lodgers. While the Phase 1 evaluation had stated that strategies for reaching the “hidden landlords” might be considered as part of the wider roll-out, inspectors found no evidence that any had since been given serious consideration. None of the respondents to the LCP survey had seen any improvement in Home Office communications when Phase 2 was being rolled out.

9.29 Respondents to the inspection ‘call for evidence’ felt that the Home Office had “oversold” the evaluation’s impact on the decision to roll the scheme out further. They pointed to the fact that Phase 2 was clearly signposted prior to the evaluation, for example in a speech by the Prime Minister in May 2015.<sup>84</sup> They were critical of government announcements about the expansion of RtR before the Phase 1 evaluation had been completed, for example in a press release by DCLG in August 2015.<sup>85</sup>

9.30 Although the LCP had discussed the contents of the evaluation prior to it being published, it was released on the first day of the Committee stage of the 2015 Immigration Bill in the House of Commons, and as the Home Office announced the national roll out to England from February 2016. A number of respondents felt this was rushed, and did not demonstrate a genuine intention from the Government to subject Phase 1 to a meaningful evaluation.

9.31 The Home Office was clear with inspectors throughout this inspection that Phase 1 was not a “pilot”. The Home Office said it had always been committed to rolling the scheme out nationally. However, it recognised that it would have had to revisit this had the scheme been found to cause significant discriminatory behaviour.

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<sup>84</sup> <https://www.gov.uk/government/speeches/pm-speech-on-immigration>

<sup>85</sup> <https://www.gov.uk/government/news/new-measures-to-crackdown-on-illegal-immigrants-renting-properties>

## Monitoring of the RtR post-Phase 1

9.32 A number of organisations raised concerns that the Home Office had not yet examined whether the RtR scheme was working. In 'Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England',<sup>86</sup> JCWI wrote:

“The Government is failing to adequately monitor the scheme to measure whether or not it is working as intended, or whether it is causing discrimination. The only monitoring that has occurred is through a consultative panel that has met infrequently. This does not allow for monitoring in a manner that would provide data on: discrimination resulting from the scheme; the cost effectiveness of the scheme; whether the scheme is resulting in migrants voluntarily leaving the UK or driving them into the hands of rogue landlords; or the impact of the scheme on agents and landlords. This is completely insufficient.”

9.33 JCWI informed inspectors that it had met with the Home Office in July 2017,<sup>87</sup> following which [we]:

“remain deeply concerned that no robust or adequate system for monitoring and evaluating the scheme’s operation and measuring its success, cost-effectiveness and proportionality has been put in place, nor is there any plan to do so.”<sup>88</sup>

9.34 The Information Commissioner’s Office (ICO) was concerned that the absence of data on the outcomes of the RtR scheme made it difficult to evidence that the collection of personal data was necessary for the purpose it was intended to achieve. However, the Home Office told inspectors that it had put a number of Memoranda of Understanding and data-sharing agreements in place to ensure that any joint working that involved sharing data was governed by the data protection principles and inspectors were shown examples.

## Wider concerns

9.35 Discussions with stakeholders and the Inspectorate’s ‘call for evidence’ produced a number of responses that drew attention to the negative impact of the RtR scheme on discrimination, exploitation of migrants and homelessness. The inspection had ruled these areas out of scope as beyond the capacity and competence of the Inspectorate to examine and test thoroughly. However, the contributions and points expressed to inspectors provide an important perspective on the working of the scheme.

9.36 All of the respondents were critical of the fact that, following the initial evaluation, the Home Office was not looking at the harm the scheme may be causing. The main areas of concern they identified were:

- wrong RtR decisions
- racial and other discrimination
- exploitation
- homelessness

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86 [http://www.jcwi.org.uk/sites/default/files/2017-02/2017\\_02\\_13\\_JCWI%20Report\\_Passport%20Please.pdf](http://www.jcwi.org.uk/sites/default/files/2017-02/2017_02_13_JCWI%20Report_Passport%20Please.pdf)

87 According to the Home Office, the meeting was in September 2017.

88 JCWI written submission to ICIBI, November 2017.

## Wrong decisions

- 9.37 Migrants' Rights Network (MRN)<sup>89</sup> identified misconceptions by landlords and letting agencies about migrants' eligibility to rent. MRN quoted the example of individuals holding Tier 1 visas with pending applications for Indefinite Leave to Remain (ILR), who had been refused by a landlord.
- 9.38 This raised the concern that landlords may not understand the guidance and/or not apply it correctly, with the effect that legal migrants would be denied access to the private rental sector. The Landlords Helpline and the Landlord's Checking Service (LCS) were created to mitigate this risk, but were dependent on landlords recognising that they needed to seek advice and doing so.
- 9.39 Another respondent to the 'call for evidence' claimed that the fact that the majority of enquiries to the LCS were about individuals who had the right to rent was an indication that landlords were not clear about how RtR worked. (Home Office data showed that of 12,645 referrals to LCS, 8,319 concerned individuals who had the right to rent, while a further 2,669 individuals requested and were given 'permission to rent').
- 9.40 On a related matter, the ICO told inspectors that it was "unclear" whether the Home Office had undertaken any reviews to determine if landlords were following the codes of practice and ensuring they were complying with data protection requirements, including clearly advising prospective tenants about how their data would be used.<sup>90</sup>

## Racial and other discrimination

- 9.41 The Home Office evaluation of Phase 1 did not find evidence of racial discrimination. However, JCWI stated in its reports 'No Passport Equals No Home' and 'Passport Please', that it had found evidence of it.<sup>91</sup>
- 9.42 More recent research by the Residential Landlords Association's Private Renting Evidence, Analysis and Research Lab (PEARL)<sup>92</sup> and Crisis<sup>93</sup> says that:
- 42% of landlords were now less likely to rent to someone without a British passport (which was stated to include 17% of British nationals)
  - 49% of landlords were less likely to rent to someone with limited leave to remain
  - 44% of landlords would only rent to those with documents familiar to them
- 9.43 In 'Home No Less Will Do'<sup>94</sup>, Crisis commented:

"Changes in Government policy (taxation, Universal Credit, LHA caps, immigration checks) transfer too much risk and liability to private landlords. Even those of us wanting to support disadvantaged tenants and invest in local communities are being put off."

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89 From Migrants' Rights Network written submission November 2017.

90 ICO response to the ICIBI 'call for evidence' dated 9th November 2017.

91 JCWI report 'Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England', February 2017

92 Simcock, T.J., (2017). *State Intervention into Renting: Making sense of the impact of policy changes*. Manchester: UK Residential Landlords Association. Available from: <https://research.rla.org.uk/wp-content/uploads/state-intervention-into-renting-2017-report.pdf>

93 [https://www.crisis.org.uk/media/237166/home\\_no\\_less\\_will\\_do\\_crisis.pdf](https://www.crisis.org.uk/media/237166/home_no_less_will_do_crisis.pdf)

94 [https://www.crisis.org.uk/media/237166/home\\_no\\_less\\_will\\_do\\_crisis.pdf](https://www.crisis.org.uk/media/237166/home_no_less_will_do_crisis.pdf)

9.44 Research by Sheffield Hallam University for Crisis found that 48% of landlords were more reluctant to let to benefits claimants, and 49% were more reluctant to let to homeless people, as a result of the immigration checks. This highlighted that the discriminatory effect of RtR extended beyond race and affected other vulnerable groups who may not be able to provide the required documents.

9.45 Crisis linked this to a failure by the Home Office to provide sufficient support for landlords:

“In our experience the support available to landlords is not satisfactory as landlords are simply choosing not to rent to tenants who do not have easily recognisable documentation.”

9.46 Previously, the Home Office had drawn attention to the role of the Landlords’ Consultative Panel (LCP) in monitoring the effects of the RtR scheme on landlords and tenants, referring to the Equality and Human Rights Commission’s membership of the LCP.<sup>95</sup> In responding to a question about any plans for further evaluation or monitoring, the minutes of the January 2016 meeting of the LCP recorded that:

“The Minister explained there were no formal plans as there had been for the pilot, but the department did keep all policies under review. There were formal gatekeeping mechanisms by which all legislation was reviewed. He would like this panel to provide feedback about unexpected issues that may surface. Lord Best told the meeting he did raise this in the House of Lords, and Lord Bates said the government would continue to monitor the effects, particularly in relation to discrimination. Lord Best agreed that continuing the Panel meetings would be helpful.”

9.47 The LCP last met in November 2016. Inspectors asked the Home Office for any data or reports relating to the monitoring referred to in the January 2016 LCP minutes. The Home Office responded:

“We continue to monitor the impact and effectiveness of the Right to Rent scheme and this includes having regard to matters relating to discrimination. The scheme is subject to a code of practice on avoiding unlawful discrimination which sets out that anyone who believes that they have been discriminated against, either directly or indirectly, by a landlord or an agent on the grounds of race may bring a complaint before the courts. This code also provides links to the Equality and Human Rights Commission and the Equality Commission for Northern Ireland.

We also provide for individuals to contact the Home Office on matters relating to the Right to Rent scheme and their immigration status.

We maintain contact with members of the Landlords Consultative Panel which met regularly to oversee the roll out of the scheme across England and then prepare for the bringing into force of the Immigration Act 2016 residential tenancies measures in England on 1 December 2016.

We have also carefully considered reports and surveys conducted by third parties, including the Joint Council for the Welfare of Immigrants.

We do not hold any data or reports relating to monitoring.”

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<sup>95</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-11/59523/>

9.48 At the time of the inspection, there was no mechanism by which a migrant, or any other person, who believed that they had suffered discrimination from a landlord as a consequence of RtR could report it to the Home Office. The latter was therefore unsighted on whether this was happening, if so on what scale, and what changes, if any, were needed to the RtR scheme to combat it.

9.49 The 'Code of practice for landlords: avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector' did advise: "Anyone who believes that they have been discriminated against, either directly or indirectly, by a landlord or agent on the grounds of race may bring a complaint before the courts". However, it was unclear whether and, if so, how the Home Office expected to be informed of such cases. The Home Office told inspectors that 1 complaint had been raised through the Landlord's Helpline by a refused prospective tenant.

### Exploitation

9.50 The Migrants' Rights Network (MRN) raised a concern that migrants who are unable to provide documents to prove their status, or who are denied rental accommodation due to misconceptions about their eligibility, are often forced into 'informal' accommodation and become vulnerable to exploitation and abuse.

9.51 Similarly, JCWI noted that there had been no attempt by the Home Office to identify or monitor whether RtR was driving irregular migrants into the hands of rogue landlords, or into other types of accommodation, and therefore having the opposite effect to what was intended.

9.52 In fact, the Home Office's evaluation of Phase 1 did acknowledge that this might be a problem:

"At the same time, some landlords and agents considered that the Right to Rent scheme was only being observed by the 'responsible' players in the private rental sector, and that 'rogue' elements might be getting away with non-compliance. Some participants in the landlord and agent focus groups felt that the more exploitative end of the sector could increase as a result of the Right to Rent scheme, as immigrants unable to provide the required documents might be channelled into this part of the private rental sector."

9.53 The Phase 1 evaluation noted that 8 (out of 33) voluntary and charitable sector groups had reported that they had seen the exploitation of people who did not have the right to rent by landlords.

9.54 When discussing exploitation with inspectors, Home Office BICS Policy said that ICE officers needed to be alive to the possibility of modern slavery. However, aside from Operation Lari, which reported no National Referral Mechanism referrals as a result of tasked operations, inspectors found no evidence that the Home Office was actively monitoring to see whether there were any links between individuals identified as victims of modern slavery and use of RtR.

9.55 The BBC television show 'Inside Out' (broadcast on 16 October 2017) provided some evidence that RtR had made it more difficult for migrants to access private rental accommodation. Its focus was the increased production and sale by criminals of forged documents for migrants to use to pass the RtR checks. Again, inspectors found no evidence of the Home Office taking steps to monitor or deal with exploitation and criminality linked to RtR.

- 9.56 The Home Office told inspectors that the ‘Inside Out’ programme had demonstrated a problem “only in London.” In 2015, 26% of households in London were in private rental accommodation,<sup>96</sup> while in 2016 the Office for National Statistics (ONS) estimated that 23% of London’s population were non-British nationals.<sup>97</sup>
- 9.57 Home Office BICS Policy told inspectors that they did not accept that RtR would “automatically” drive irregular migrants further underground and into exploitation and criminality in order to remain in the UK. Some might choose to regularise their status or to leave the UK.
- 9.58 Landlords were also put at risk by the availability of forged documents. A landlord who managed over 40 rooms in Houses in Multiple Occupation (HMOs), and was a member of a professional body, raised the concern that they might be prosecuted for letting to a disqualified individual who had used forged or fraudulently obtained documents.
- 9.59 The Home Office did not expect or require landlords to be forgery experts. However, it may not take the same view as others about what constitutes a ‘reasonably apparent’ forgery<sup>98</sup>. While the context is different, the case of *Ryanair v SSHD* [2016] EWFC B5<sup>99</sup> is relevant. Here, the County Court found the Home Office had applied too high an expectation of an airline in identifying forged documentation.

### Homelessness

- 9.60 In Phase 1 of RtR, a Local Authority involved stated that it had not seen any increase in homelessness linked to RtR. There had been an increase in homeless acceptances, but both for EEA and non-EEA nationals. This was seen as an indication that factors other than RtR were at work.
- 9.61 In the second “pulse check” during Phase 1, 6 out of 33 voluntary and charitable organisations reported “homelessness” as an impact of RtR on the people they worked with or represented. Some Local Authority staff in the No Recourse to Public Funds (NRPF) teams reported seeing an increase in families applying for support as they could no longer access the private rental sector.
- 9.62 In responding to this inspection, a number of organisations identified homelessness as a result of RtR as a significant concern. One stakeholder was adamant that homelessness should not be viewed as an “unintended consequence” of RtR, as any scheme that sought to make it more difficult to access accommodation had to recognise that it could result in an increase in homelessness.
- 9.63 “Homelessness” in this context was not limited to “rough sleeping”. According to Shelter,<sup>100</sup> in England a person is legally homeless if they stay for short periods with different friends or family (“sofa-surfing”) because they have nowhere settled to stay.
- 9.64 JCWI reported that of 1,000 calls to its helpline<sup>101</sup> 3% were from people who were ‘homeless’, 59% were staying with friends, family, or were sofa-surfing. JCWI believed the 3% response understated the problem, but noted that, in addition to this 3%, 8% of callers were in state provided accommodation (Home Office, including asylum accommodation, or Local Authority housing), and a further 2% were in accommodation provided by charitable organisations.

96 [https://www.london.GOV.UK/sites/default/files/housing\\_in\\_london\\_2015.pdf](https://www.london.GOV.UK/sites/default/files/housing_in_london_2015.pdf)

97 <https://www.ons.GOV.UK/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/ukpopulationbycountryofbirthandnationality/2016#london-has-the-highest-proportion-of-non-british-nationals>

98 A Short Guide on Right to Rent

99 <http://www.bailii.org/ew/cases/EWFC/OJ/2016/B5.html>

100 [http://england.shelter.org.uk/housing\\_advice/homelessness/rules/legally\\_homeless](http://england.shelter.org.uk/housing_advice/homelessness/rules/legally_homeless)

101 JCWI written submission to ICIBI, November 2017.

- 9.65 Crisis raised concerns about the eviction powers introduced in the Immigration Act 2016. Crisis pointed to the potential for rogue landlords to abuse these powers and perform illegal evictions, as there is no judicial oversight of the eviction process, and rights afforded to tenants under other legislation (in particular a tenant’s right to challenge a notice via the court system and the limits to the notice period) were removed.
- 9.66 According to Crisis, cases of illegal evictions were rarely investigated and landlords prosecuted, and Local Authorities rarely used the powers they had. The lack of oversight and shorter notice period could make it more difficult for tenants to obtain advice about whether the action to evict them was lawful, and to obtain legal representation to fight it where it was not.
- 9.67 Crisis was also concerned that the 2016 Act empowered the landlord to repossess a property if any adult occupier (not necessarily the tenant) did not have the right to rent. This provided no protection for other tenants living in the property, which could make sharing far less attractive, which was problematic given changes to the shared accommodation rate benefits to include single people up to 35 (up from 25).
- 9.68 Compounding the weakening of tenants’ rights, Crisis believed that the “deputising” of bodies responsible for protecting tenants’ interests to enforce immigration laws could potentially alienate tenants, and prevent them from reporting and seeking Local Authority assistance with bad landlords or unsafe properties.

# Annex A: Members of the Landlords Consultative Panel

## Panel members from beginning

**ARLA** Association of Residential Letting Agents

**BPF** British Property Federation

**Crisis**

**EHRC** Equality and Human Rights Commission

**NAEA** National Association of Estate Agents

**NALS** National Approved Letting Scheme

**NHF** National Housing Federation

**NLA** National Landlords Association

**RICS** Royal Institution of Chartered Surveyors

**RLA** Residential Landlords Association.

**UK ALA** UK Association of Letting Agents

**UUK** Universities UK

**Birmingham City Council**

**Dudley Metropolitan Borough Council**

**Sandwell Metropolitan Borough Council**

**Walsall Metropolitan Council**

**Wolverhampton City Council**

**BIS** Department for Business, Innovation and Skills

**DCLG** Department for Communities and Local Government

**UKVI** UK Visas and Immigration

## Joined after initial set up

**UCL** University College London (began attending from LCP 4, 27 January 2015)

**Shelter** (began attending from LCP 10, 28 October 2015)

**GLA** Greater London Authority (began attending from LCP 10, 28 October 2015)

**Newham Council** (began attending from LCP 11, 2 December 2015)

**Your Move** (began attending from LCP 15, 29 November 2016)



## Annex B: Role and remit of the Independent Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief

Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

# Acknowledgements

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## **Inspection Team**

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