

Illegal Working Group - eleventh meeting, 15 July 2004

Date: 15 July 2004; Time: 1630

Location

Room 1027, Home Office, Queen Anne's Gate

Present

Ministers

Des Browne, Minister of State for Citizenship, Immigration and Nationality (Chair); Gerry Sutcliffe, Parliamentary Under-Secretary of State for Employment Relations, Competition and Consumers.

Members

Ian Barr (CRE); Mark Boleat (ALP); George Brumwell (CSCS); Kay Carberry (TUC); Jason Cole (HSE); Martin Couchman (BHA); John Furlong (HSE); Shaun Leavey (NFU); Mary Senior (STUC); Anthony Thompson (CBI).

Officials Attending

Nick Baird; Tim Woodhouse; Catherine Pool; Alex Martin; Nicola Mortlock; Peter Whittington; Jane Whewell.

Apologies

Tom Hadley; Justin McCracken; Colin Moffat (J Sainsburys); Lewis Sidnick (BCC).

1. Welcome

The Chair thanked members for making time in their diaries at such short notice for a further meeting of the group soon after June's meeting. Due to unavoidable interruptions to the previous meeting, the group had not been able to cover all the items it had hoped to. The Chair was pleased to have the opportunity to follow up the issues that had been missed at the last meeting before the recess, and to get to know group members better at the reception that would follow the meeting.

The Chair welcomed John Furlong from the Health and Safety Executive, attending in Justin McCracken's absence, and gave Tom Hadley, Colin Moffat, Justin McCracken and Lewis Sidnick's apologies.

2. Matters Arising

It was agreed that the minutes from the last meeting of the steering group were an accurate account of the meeting, and would be published on the website.

The Chair updated the group on progress against the action points identified in the minutes:

The Gangmaster Licensing Bill received Royal Assent on 8 July. DEFRA was taking forward more detailed work, through secondary legislation, on setting up the Licensing Authority.

- Following the presentation on research at the last meeting, comments had been gratefully received from one member. Other members' were encouraged to e-mail their thoughts on research to Rachel Prime and the steering group secretary.
- IND officials had contacted the Commission for Racial Equality about revising the anti-discrimination code of practice on section 8 and the CRE was seeking a suitable date for all to attend to discuss the revisions. IWSG would be updated on progress with this work at the next meeting.
- The action point identified at June's meeting to take forward work with DfES to make young people aware of the documents they would need to enter employment had not yet been followed up. This work would be developed over the summer and group members would receive an update in due course.
- IWSG members had received a copy of the ministerial statement containing early information from the Worker Registration Scheme on 7 July. There would be an opportunity to discuss this later in the meeting.
- A revised application form for the Worker Registration Scheme had been distributed to group members at the beginning of the meeting. Members would receive this electronically. Many of the comments IWSG members had made had already been taken into account in revisions to the form, but officials would welcome members' views on the revised form by noon on 19 July. The Chair explained that the short time-scale was due to print deadlines, as the form needed to be ready for use on 1 August.
- At the previous meeting of the IWSG, a member asked if advising an accession state employee on applying to the registration scheme should be considered a relevant matter for the purposes of the Office of the Immigration Services Commissioner. Home Office legal advice was that advice/services provided in the course of a business in connection with a registration application was a "relevant matter", as defined in section 82 of the Immigration and Asylum Act 1999, and so was subject to OISC regulation. However, employers who provided free advice to employees or prospective employees were exempted by Ministerial Order from OISC registration. This also applied to employment agencies acting as employers, (i.e. to facilitate employment and not for gain). Tim Woodhouse had spoken with colleagues at the OISC to clear this misunderstanding up. The Chair expressed the view that the distinction between employers and employment agencies who simply helped their workers to register on the scheme to ensure that they were working legally, and those businesses that charged their clients for immigration advice on the WRS, would be very clear. The latter group would need to register with the OISC, but the former would not.

Action point: The Chair confirmed that officials would ensure that the OISC was given clear guidance on employers' exemption from the requirement to register with the OISC.

The Chair then invited group members to raise any further issues of concern.

One group member informed the group that although the Gangmaster Licensing Scheme would not be fully operational for two years, DEFRA minister Lord Whitty had written to the supermarkets and other bodies involved in the agricultural supply chain to urge them to sign up to and adhere to the Ethical Trading Initiative code of practice on gangmasters. The code, among other things, requires those who adopt it to ensure that they use legal sources of labour, and that any labour providers they use do the same. He was hopeful that this code would help drive up standards in the agricultural sector.

Gerry Sutcliffe was due to meet with the supermarkets shortly and would reiterate to them the importance of complying with the ETI code of practice, and ensuring that all their sub-contractors did so too.

Turning to the figures from the Worker Registration Scheme, one group member had received feedback from labour providers that the number of agricultural workers from accession states who had registered on the WRS (3,000) was estimated by them to be only 10% of the number who were actually working in the sector. He felt the scheme itself disincentivised workers from applying due to the fee and the fact that the application form sought information which could be interpreted as incriminating the applicant as an illegal worker prior to 1 May.

He wondered whether contacting local authorities and asking them to estimate likely numbers of accession state workers in different sectors in their areas, and then contrasting this with information gathered through the WRS, might give a better picture of what proportion of agricultural workers from accession states were registering.

The Chair pointed out that approximately 60% of accession nationals who had registered in May and June had been in the country prior to 1 May, but had not been put off registering on the scheme and formalising their position in the UK, despite the questions on the form that they may have believed to be self-incriminatory. These figures indicated that neither the scheme nor the form was acting as a disincentive to accession nationals to register.

Another member reminded the group that large numbers of agricultural workers from accession countries could still be working in the UK under the Seasonal Agricultural Workers Scheme, and would therefore be exempt from the requirement to register. This would be distorting the picture emerging from the WRS management information. Once accession nationals were no longer working in the UK on SAWS, it was likely that there would be an increase in agricultural workers from accession countries applying to the WRS.

Jane Whewell added that accession nationals only planning to work in the UK, in agriculture or in other sectors, for very short periods (less than a month) would not have to register on the WRS.

One member made the point that monitoring was an ongoing process and that although it was right to release early information, the picture would continue to develop throughout the year. He felt, though, that unscrupulous gangmasters might have an incentive to stop their workers from registering to perpetuate exploitative employment practices, and that this should be addressed.

The Chair stated that enforcement action against employers who were flouting the law on illegal working would help to address this. Information submitted to him by enforcement colleagues indicated that there was successful activity going on to tackle illegal working and exploitation. The Chair undertook to arrange a presentation on enforcement at the next IWSG meeting.

Action point: Immigration Service to give a presentation on recent enforcement activity at next IWSG meeting.

Gerry Sutcliffe added that the work the DTI had done, together with the TUC and the embassies of accession countries, to raise accession state nationals' awareness of their employment rights in Britain would also help prevent exploitation of this kind.

The Chair made the point that the figures from the WRS showed very clearly that the borders had not been swamped by accession nationals wishing to take advantage of new employment or benefits rights in the UK. This was reinforced by the passenger arrivals data from the Office of National Statistics. There could be an interesting comparison between the management information from the WRS and data on arrivals and likely levels of illegal working by accession nationals in EU countries that had closed their labour markets to the newest EU citizens.

One group member who had received positive feedback from employers about the service standards and turnaround times of the WRS, and shared these at the last meeting of the IWSG, asked if they were being maintained. Alex Martin confirmed that most WRS applications were processed within two to three days of the payment clearing and the application arriving in the caseworking teams.

The question was asked whether large numbers of forged passports had been detected by the WRS team from applicants who were not really from the new EU member states. Alex Martin assured the group that numbers were very low - only twenty-four passports had been referred on to forgery experts as suspicious by WRS caseworkers. The Chair pointed out that scanning increasing numbers of passports on entry to the UK, and the improving levels of forgery detection at ports meant that there were fewer forged passports in circulation.

A final issue that was raised by a group member was that of lost and stolen passports. An annual figure of 7,000 lost and stolen passports from the DVLA and the UK Passport Service was quoted, and it was felt that this could be of concern in relation to illegal workers using fraudulently obtained documents.

The Chair confirmed that in the past far too many documents had been going missing in the post. That was why the Passport Service now used a private courier to deliver passports. Since the introduction of the secure delivery system and anti-fraud strategy, the numbers of passports going missing between the Passport Service and people's homes was much lower. (There were, however, still many passports registered as lost or stolen, but the vast majority of these were misplaced by people in their homes and relatively few were now lost in transit).

The Chair undertook to give the IWSG figures for numbers of passports lost in transit from the UK Passport Service at the next meeting of the IWSG.

3. Title and objective of the group

The Chair had mentioned at the previous meeting of the group that he felt the title of the group did not accurately capture its role. Group members had seemed amenable to this suggestion. Those present confirmed this. The Chair then proposed some alternative titles for consideration:

- The Illegal Working Consultative Group
- The Illegal Working Stakeholder Group
- The Illegal Working Forum

The Chair asked if any other proposals were forthcoming - none were. The Chair's preferred option was "Stakeholder Group". This was unanimously endorsed by those present. The group would therefore be renamed the Illegal Working Stakeholder Group.

Officials had distributed to members at the start of the meeting copies of the aims and working parameters of the group agreed at the first IWSG meeting in November 2002, and the forward work programme that had last been revised at the IWSG meeting on 25 February 2004. The Chair did not feel it was appropriate to revise the aims and terms of the group at this meeting, but suggested that the group re-consider its objectives, and its progress against them to date, at a future meeting.

IWSG to consider its achievements and future objectives/work programme at forthcoming meeting of the group.

4. Industry codes of practice and further communication activity on section 8

The anti-discrimination code had already been covered in matters arising. Therefore the Chair merely added that, once re-drafted, the code would be put to the group for discussion.

The Chair then invited Martin Couchman to speak briefly about the Courtesy in Recruitment code of practice in the hospitality sector.

Martin Couchman explained that during the consultation on possible changes to section 8, when codes of practice were under consideration, the British Hospitality Association had expressed the view that such codes could be helpful in tackling

illegal working. The BHA already sponsored a code of practice which aimed to spread best practice in recruitment procedures across employers, employment agencies and workers in the hospitality sector. Together with IND officials, the BHA had revised the code to include reference to section 8 compliance in the charters for employers, agencies and workers. The courtesy in recruitment scheme had a new website, and the BHA was now ready to relaunch the code. They wanted to gain ministerial endorsement of the code before doing so.

The Chair asked for clarification of how the scheme operated and was policed. Martin Couchman explained that recruitment agencies enforced compliance with the code among themselves (as there were only fifteen agencies signed up to it). But employers were another matter - there were 125,000 of them throughout the country. However, the increase in enforcement activity against illegal working in the hospitality sector by the Immigration Service had considerably raised awareness of the issue, and there was much more will to comply at present. Adherence to the Courtesy in Recruitment code of practice was also a pre-requisite to accreditation on the Excellence Through People scheme (similar to Investors in People, but specific to the hospitality sector, to which blue-chip companies such as Whitbread and Hilton had signed up). The ETP accreditation scheme was enforced through bi-annual audits.

Gerry Sutcliffe, having read the BHA code, expressed his approval of the document and the revisions to include references to illegal working. Further thought would be given to how the code could be promoted.

The suggestion was made that the CRE could also take a look at the BHA code of practice before it was re-launched, given that it would already have close involvement in the anti-discrimination code of practice on illegal working.

Action point: BHA to pass revised code to CRE for consideration.

The Chair then opened up the discussion to investigate which other sectors group members felt might benefit from the development of codes of practice.

One group member, while supporting the idea of bespoke guidance for different sectors, wished to make the point that if improving standards in the UK (which he supported) were not matched by improving standards in the use of legal labour in other European countries, our EU partners could gain an unfair competitive advantage. He asked whether work could be driven forward on tackling illegal working throughout Europe.

Gerry Sutcliffe felt that it was important to establish the most effective forum for raising this in the European context. One group member highlighted that the European Commission was circulating a paper to EU member states on undeclared work - this might present an opportunity to inform EU partners of the good work in the UK to tackle illegal working and to encourage the adoption of good practice across the union.

The Chair agreed that it was important to press fellow EU member states to address illegal working, but stressed that the UK Government could not turn a blind eye to illegal working activity to prevent other states from gaining a competitive advantage.

Group members were somewhat divided on whether any codes of practice that were developed in relation to section 8 should go wider than preventing illegal working, addressing non-compliance with minimum employment standards in other areas. Where existing codes (like the BHA code) could be amended to contain references to illegal working, it was more likely that codes could also address other employment issues.

Some members felt that a code of practice without effective enforcement and sanctions (i.e. as a compliance tool only) would have very limited merit. The point was made, however, that in industries like agriculture, where industry leaders (such as the supermarkets) applied commercial pressure to smaller organisations to comply with employment law, the risk of losing business acted as an effective disincentive to break the conditions of the code. Another group member made the point that if the codes set a standard that was unrealistically high, only those who were already carrying out best practice would do so, and the majority would simply ignore the code. And examples were given (such as the Motor Retail Industry Association) of codes of practice where high percentages of those signed up to the code (75% in the MRIA case) were not complying with the terms of it.

Nonetheless, one group member felt that many employers wanted to comply, and that sector specific guidance and codes would help them to do so, while enforcement activity against those who flouted the law would tackle non-compliance from the other end.

The Chair and Gerry Sutcliffe were required to leave the meeting in order to vote at that point. The Chair handed over to Tim Woodhouse to lead discussions on which organisations or individuals from the sectors represented around the table could usefully be invited to sub-group meetings on the possible development of industry specific codes.

One group member felt that in the same way that a requirement to prevent illegal working had been incorporated in the Courtesy in Recruitment code of practice, it could be added to Quality Assured Produce codes in the agricultural sector.

Members spoke briefly about whether a code of practice would be of help to the construction industry. It was generally felt that the construction unit in DTI would need to assess whether there was industry support for such a code by speaking to a range of stakeholders in the sector.

DTI and IND officials to bring together a group to consider options for embedding compliance with section 8 in the construction industry.

One member suggested that the Considerate Constructors Scheme might be a suitable vehicle for encouraging compliance with section 8 in the construction industry. Officials requested details of this scheme, and of the Quality Assured Produce scheme in agriculture.

Two IWSG members to provide IND officials with details of the Quality Assured Produce scheme and the Considerate Constructors scheme.

Tim Woodhouse mentioned that IND officials were looking to make links with the contract cleaning sector to try to identify if there was a need for specific guidance on preventing illegal working in the sector. The group would be updated on this in due course. One group member felt that the textile and garment manufacturing industries should be considered as a sector which could benefit from a code of practice, and the security industry was another possible sector of interest.

IND officials to make contact with the Security Industry Authority and to try to establish contact with suitable representatives from the contract cleaning and clothing/textiles industries.

Finally, the Confederation of British Industries hosted a Sectoral Employment Issues Committee, chaired by Martin Couchman, which included representatives from trade associations from across the economy. This meeting would provide an excellent opportunity for officials to either give a presentation on illegal working and codes of practice, or to sound out opinion among different groups about the need and usefulness of codes for different sectors.

CBI to confirm details of next meeting with IND officials, and to consider effective involvement of IND in the meeting.

On returning to the meeting, the Chair wrapped up by indicating that the next meeting of the IWSG should take place in October. This meeting would be a good opportunity to take a retrospective look at the group's achievements, to identify any incomplete work, and wrap up loose ends, and to discuss future work of the group. There would also be a presentation on enforcement.