

Illegal Working Group - twelfth meeting, 3 November 2004

Date: 3 November 2004; Time: 1530 - 1730

Location

Ministerial Conference Room,
Home Office, Queen Anne's Gate

Present

Ministers

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

Members

Officials Ian Barr (CRE); Mark Boleat (ALP); Kay Carberry (STUC); Jason Cole (HSE); Martin Couchman (BHA); Paul Deemer (NHS); Tom Hadley (REC); Shaun Leavey (NFU); Colin Moffat (Sainsbury's).

Lorraine Rogerson; Tim Woodhouse; Matthew Capper; Alex Martin; Nicola Mortlock; Jane Whewell; Peter Whittington; Tony Smith; Steve Park; Penny Woodhams

Apologies

George Brumwell (CSCS); Justin McCracken (HSE); Mary Senior (TUC); Anthony Thompson (CBI); Tony Davies (Provista Recruitment); Lewis Sidnick (BCC)

1. Welcome

The Chair welcomed members and gave apologies for those unable to attend.

2. Matters arising

Members agreed that the minutes of the eleventh meeting of the Illegal Working Stakeholder Group were an accurate record and were content for them to be published on the IND website.

The Chair updated the group on progress against the action points of the last meeting:

- The anti-discrimination code when applying section 8 has been revised and has been forwarded to the Commission for Racial Equality for comment. Once agreed the draft code will go out for public consultation as required by section

22 of the Immigration and Asylum Act 1999. The Chair informed the group that this item would remain on the agenda to update the group with the code's progress.

- Officials have received clarification on whether employment agencies giving advice to current/potential employees on the Worker Registration Scheme are required to register with the Office of the Immigration Services Commissioner (OISC). Alex Martin explained to the group that where employment agencies assist employees in the WRS application process this is not a "relevant matter" under section 82 (1) of the Immigration and Asylum Act 1999 obviating the need for OISC registration. However, any connected advice regarding the consequences of a WRS application in terms of residency or rights relating to an employee's family is a "relevant matter" and would require OISC registration.
- Lost passports: General Group in IND issued 469 letters for passports/travel documents lost or mislaid from April 2003 to March 2004. New initiatives are in place to reduce this number [Addition: UKPS confirmed that prior to new anti-fraud measures approximately 3,000 passports were going missing each year]. The Chair stated that the numbers of passports recorded as missing by UKPS were now greatly reduced. One member asked for numbers to include passports lost by DVLA as intercepting passports sent through the post clearly represented a means for criminal elements to obtain passports for nefarious purposes.

Action: The Chair undertook to provide the group with the number of passports recorded as missing by DVLA.

- A paper was circulated considering the achievements of the group and outlining a forward work programme. The Chair recommended that members forward comments and additions to the secretariat in preparation for a discussion of the paper at the first meeting of the group in 2005.

Action: Group members to forward comments/additions forward work programme to the secretariat.

- The British Hospitality Association (BHA) code of practice had been agreed in principle. The wording is being finalised. The Chair stated that he had offered to endorse the code.
- Officials from the DTI and the Home Office met with representatives from the construction industry on 18 October. Issues under discussion included the production of simple guidance or a checklist covering the prevention of illegal working, potentially drawing in health and safety information, for use on-site rather than a code of practice. The group was content for this to be pursued bilaterally between the Home Office and the construction industry and report back as appropriate.
- Officials are in the process of establishing contact with representatives of the contract cleaning and textile industries.
- Work has been done to raise awareness among jobseekers including establishing links with Connexions, Jobcentre Plus, and the Refugee Council. The Chair undertook to continue to report as appropriate on this.

- The Home Office was invited to a future meeting of the CBI Sectoral Employment Issues Committee to discuss illegal working issues.

3. Worker Registration Scheme update

The Chair thanked the group for their feedback on the administration of the WRS. Alex Martin informed the group that action had been taken to ease the problems identified with the application system, including:

- Staff numbers have been increased;
- Passports are now checked at the beginning of the process and returned to their holders in some cases on the same day and at most within two days;
- The Home Office is now advising that the application process would take three weeks end to end - up-to-date information on service levels is published weekly on the 'Working in the UK' website (www.workingintheuk.gov.uk);
- A process for dealing with multiple applications is being considered, including proposals to set up a dedicated team for high volume users.

65 per cent of applications are now being turned around within seven days. The volume of calls to the helpline has reduced since these changes were introduced.

One member of the group commented that the holding of passports for long periods had been the key problem expressed through his members. He was content that the process was back on track believing it to have been a management issue within the Home Office. Another member of the group commented that he had received reports that the application process was taking five to six weeks typically and up to 12 weeks exceptionally. He expressed his hope that the scheme could be abolished.

The Chair accepted there had been difficulties and apologised to those affected. However, he believed the Home Office had addressed the issues promptly. Processes had been improved, particularly in relation to handling of passports, and the Department was now working hard to clear the backlog.

The Chair addressed the question of why the Government had implemented the Worker Registration Scheme. The monitoring arrangements were essential in producing a comprehensive picture of the impact of enlargement on the UK labour market; this was vital in order to present the public with the facts. The opening of labour markets to the new EU members states had not led to a "flood" of immigrants, fewer jobs, or lower wages. He further stated that the Government had a duty to collect data to inform its managed migration programmes and enable more evidence-based policy. The Chair also noted that the Government had worked closely with the new member states - he himself had recently visited Prague and Budapest - and that the data from the Worker Registration Scheme was useful for those states to encourage other EU countries to open their labour markets. He called on IWSG members to make a positive contribution to public debate in Britain on the accession worker issue.

Action: Members asked for advance notice of the date the Worker Registration Scheme figures were due to be released.

4. Presentation and discussion: Enforcement and illegal working

The Chair introduced Tony Smith, Deputy Director of Enforcement and Removals Operations in London and the South East, invited to the IWSG to give a presentation on how the Immigration Service is tackling illegal working.

Context of Immigration Service illegal working operations

As background Tony Smith outlined Immigration Service resources and priorities. There are approximately 1200 operational staff (excludes back office staff), of which approximately 400 are arrest trained. In the past the Immigration Service was wholly reliant on the police, but has become more independent by increasing its arrest trained capacity. However, the Immigration Service continues to work closely with the police, and conducts many joint operations. The Immigration Service's main priority is to ensure the removal of immigration offenders from the UK.

Scope of illegal working

Illegal migrant working incorporates a broad range of activity from a student working more hours than permitted to a trafficked individual working in forced labour conditions, from an honest employer caught out by fake documentation to a serious criminal involved in facilitation, tax evasion, and breaches of health and safety regulations.

Immigration Service response to illegal working

The Immigration Service has increased its prosecution levels under section 8, with seven successful prosecutions since April 2004 and 18 cases currently ongoing. The Magistrate's courts have taken a firmer line issuing higher fines in recent cases. The Immigration Service also prosecutes for other offences related to illegal working such as facilitation and acts of forgery. Operations aimed at disrupting illegal working are also a large part of the Immigration Service's activities. Illegal working operations have increased over the past few years from 301 in 2002/03, to 697 in 2003/04. Provisional figures for the first 6 months of 2004/05 also indicate that the Immigration Service has already surpassed last year's figure. In addition, the Immigration Service carries out education and compliance work to help employers to conduct the appropriate document checks.

Operational approach

The Immigration Service has adopted an intelligence-led approach to enforcement operations and uses the national intelligence model. Information is analysed, checked and verified against databases and risk assessments completed. Careful decisions are taken as to which operations represent the best use of resources. There are also occasions when an employer, wishing to comply with the law, contacts the Immigration Service with suspicions about staff who may have used forged documents to gain employment. In such instances, it is often inappropriate for the Immigration Service to pursue action against the employer, although each case is assessed on its merits.

Future activity

There is considerable work in progress to improve working and intelligence sharing with other enforcement agencies, such as the Security Industry Authority, and the Employment Agency Inspectorate, and with the Gangmaster Licensing Authority when it is formed. The work of Operation Reflex looks specifically at organised immigration crime, bringing together intelligence from especially the police and the Immigration Service to target larger criminal gangs and traffickers. The new Serious Organised Crime Agency will have an important role to play in this area.

Discussion

Employers' concerns revolved around the unfair competition resulting from tax evasion and non-payment of the national minimum wage, and intimidation by individuals encouraging employers to take on migrant workers. It was suggested that Inland Revenue should target pack-houses. Greater joined-up working was encouraged.

It was also reported that there was a feeling amongst some employers that the Immigration Service targeted companies with offices and filing cabinets, rather than focussing on those working out of the back of vans. There was frustration that action was not taken in some cases or did not result in the illegal workers being removed.

Tony Smith responded that any piece of information received by the Immigration Service would be analysed and taken on board. Action would depend on a number of factors including the potential to mount a robust operation at a specific time and an assessment of outcomes. With regard to more organised criminal elements more detailed intelligence may need to be gathered to ensure the greatest chance of conviction.

The Chair stated that there was a need to look at the enforcement of illegal working in a broad context. Enforcement practice had been radically improved and would be assisted by the 750 new detention places for immigration offenders. The bulk of these places would be used for immigration offenders with a view to removal. The problem posed was for nationals who were difficult to return. The Government has taken action to legislate against those who deliberately destroy their passports to frustrate the removal process. The Chair also stated that he had recently undertaken a visit to China to discuss issues of return.

The Chair believed that there was a need to strike a balance between concentrating on removals to disincentivise new illegal migrants, tackling criminal gangs to attack supply, and prosecuting employers who use illegal migrants to reduce demand.

Action: The Chair undertook to inform Inland Revenue of the concerns raised regarding tax evasion, particularly in relation to packhouses.

The group asked whether changes to section 8 had helped to increase prosecutions. It was also pointed out that at the time of the changes to section 8 the low prosecution level was explained by the fact that employers co-operated with the Immigration Service. The Chair stated that the section 8 changes had made it easier

for employers to comply and consequently easier to demonstrate that an employer was non-compliant. The Chair also stated that he believed that section 8 prosecutions would have a salutary effect in some sectors. There was interest expressed in the role the Immigration Service plays in education and compliance, particularly in educating employers in their responsibilities even when they employ temporary staff.

5. Update on progress: section 8 compliance

The group took stock of recent communication activity on section 8. Main points included:

- Short guidance explaining the changes to section 8 was sent to the 1.4 million PAYE registered employers
- 20,000 copies of the comprehensive guidance have been issued
- IND have delivered 19 presentations, and have a further 90 arranged
- 10,889 calls were received by the Employers' Helpline in the last 6 weeks
- The DTI businesslink website received 8,369 hits in a single month

Links had been established with the Citizens' Advice Bureaux and other organisations to educate jobseekers about the documentation employers will expect them to present.

6. Presentation and discussion: Illegal working and the Employer Campaign

The Chair introduced Steve Park (Deputy Head of Justice, Police, Community, Immigration and Publishing) and Penny Woodhams from the Home Office Communications Directorate, who delivered a presentation on a proposed Employer and Selective Admission campaign, designed to improve employers' understanding of their legal obligations and the benefits of using legal migrant labour.

This initiative included an online toolkit, delivered over the internet. The website, due to be running before the end of the year, will be available through two URLs: www.employingmigrantworkers.org and www.selectiveadmission.org.uk. The text will be written in co-ordination with The Work Foundation and will focus on compliance. It will also promote the benefits of migrant labour through case studies, facts and figures. There will be an interactive element to the toolkit, which will guide employers through the processes they need to complete, and links will be provided to relevant websites such as www.workingintheuk.gov.uk.

Action: the group was invited to test the new website and provide feedback once it was up and running. The Chair asked the secretariat to inform members of the date it goes live.

The campaign would be evaluated through tracking public perception, and particularly through tracking employer awareness of their responsibilities, of the penalties, and of the toolkit. The number of hits the on-line toolkit received as well as the number of off-line requests would be recorded.

Discussion

It was noted that any reference to a £5,000 maximum fine would need to be changed in line with the offence of employing an illegal worker now being triable in the Crown Courts where no maximum applied. This change was legislated through the recent Asylum and Immigration (Treatment of Claimants) Act.

The section 8 legislation is accompanied by an anti-discrimination code. The group expressed concern that this campaign was not balanced by a clear anti-discrimination message. As it stood it was felt that the message might need to be tempered so as not to provoke discrimination. Steve Park assured the group that the toolkit would incorporate an anti-discrimination message and that this was an area that would need to be built upon.

The Chair noted that the campaign was seeking to present a very important positive image of migration and its benefits while also carrying a warning to employers about the penalties for using illegal migrant labour. He saw a clear need to address public misconceptions of migration.

The Chair asked the group to consider the extent to which they wanted to continue to feed into the campaign as it developed. There was agreement that it would be useful to establish a sub-group to inform the campaign with a particular focus on sectoral issues.

Action: The secretariat to set up a meeting early in 2005 to focus on the Employer Toolkit and the Selective Admissions campaign and feed in to their development.

7. Any other business

- One member noted how when trawling through websites it was quite easy to identify suspect organisations using migrant labour and enquired whether the Immigration Service used this approach to feed into their intelligence model.

Action: The Chair asked officials to find out whether the internet was used as a tool to gather intelligence and report back at the next meeting.

- Another member updated the group with concerns a number of his members had expressed regarding checking UK nationals' entitlement to work. There have been a number of instances where potential employees do not own passports or long birth certificates. Unfortunately, agencies were getting a bad name for sticking to the letter of the law. The possibility of introducing document checks after the point of employment was raised as a means of giving time for potential employees to get hold of the appropriate documents.

The Chair stated that long birth certificates were available at the cost of approximately £11 and that to introduce a second step check after appointing an employee could lead to discrimination as an employer may only ask for proof of eligibility to work from certain individuals. Government advice recommends that all potential employees be treated in the same way to avoid discrimination. The Chair

reminded the group that employers were not obliged to undertake checks, but rather the proper completion of checks ensured that the employer had a statutory defence against prosecution. However, it was accepted that more work needed to be carried out with Connexions and Jobcentre Plus to ensure potential employees were aware that they may be required to provide certain documents.

Action: Officials to continue to forge links to ensure jobseekers are aware that employers may request certain documents before employment can commence.

It was reported that some nationals from the new EU member states were experiencing difficulties as many of the states do not have an equivalent to criminal record checks and individuals were therefore being denied work in certain sectors.

Action: Officials to explore the issue of CRB checks for A8 nationals and report back to the group at the next meeting.

8. Date and time of next meeting

The next meeting of the Illegal Working Stakeholder group would take place in February or March 2005.