

CIH evidence to the review of 'Windrush: lessons learned'

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

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Summary of our key points

CIH has been concerned about the effects of the so-called “hostile environment” as it applies to housing, ever since “right to rent” checks were first proposed five years ago. We warned that they might hit particularly groups of people who are longstanding UK residents but may lack the necessary paperwork to prove their entitlements, such as the right to rent. The Windrush scandal is simply the most obvious example of this. We focus on the right to rent scheme in our submission.

Our key points are:

- CIH warned the government as long as five years ago that right to rent checks would affect “the housing options of legal migrants and existing UK citizens who might be mistaken for migrants”.
- Throughout the preparations for right to rent, the pilot scheme and its roll-out across England, we have repeated our arguments and pointed to evidence to back them up.
- The government decided to roll out the right to rent scheme nationally as soon as its evaluation of the West Midlands pilot was complete, giving no time for consultation or consideration of other evidence that would have revealed the potential problems.
- Government has rejected evidence of discrimination taking place by landlords.
- The government has never properly monitored the effectiveness of the right to rent either in terms of whether checks are being correctly made, or whether it has any significant impact on tackling “illegal” immigration in relation to the economic and social costs of the scheme.

For ease of reference, the review’s specific questions are used as headings in the text.

1. What, in your view, were the main legislative, policy and operational decisions which led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants?

The overall policy decision or set of decisions which led to the Windrush scandal are those which the government itself branded as the “hostile environment”, aimed at deterring “illegal” immigration. In the government’s own words, the hostile environment “spreads the responsibility for checking very widely”, meaning a huge range of employers, landlords, hospital administrators, etc. are involved in making multiple checks, creating a system which it is almost impossible to supervise or monitor despite the risks it introduces of unfair treatment.

In the case of the private rented sector, about 1.5 million landlords, of whom all but a small proportion are individuals not businesses, are required to make an estimated three million right to rent checks annually. The scale of the operation, the fact that most landlords own only one or two properties, and the problem that many already fail to comply with other legal requirements have made the monitoring of compliance almost impossible.

In devising the scheme the Home Office used experience from employer checks on immigration status that were simply not applicable to a different sector with a large number of one-person, informal businesses where there were already problems of non-compliance with legal requirements. For example, at the time the scheme began, six out of ten private tenancies were reported as not complying with gas safety rules. Many landlords let properties by word of mouth and do not provide (legally required) tenancy agreements. Into a sector which had a very patchy history of compliance, the government introduced yet another regulatory requirement which, unlike the others, was not intended to protect tenants.

From the outset, a range of organisations including CIH pointed out that right to rent checks would both increase the likelihood of discrimination and affect adversely British nationals or longstanding residents who lacked the necessary documents. The Windrush generation suffered from both of these problems, because they often not only lacked paperwork but were more likely to be questioned for not having it because they are black.

Within the overall hostile environment, it is clear that right to rent checks by private landlords have in many cases resulted in Windrush Britons losing tenancies and having nowhere to live. Similarly, they may have wrongly been turned down by local authorities (possibly as a consequence of seeking help on

the basis of their right to rent being rejected, i.e. their reason for approaching the council drew attention to their lack of immigration paperwork, and access to social housing is also governed by the applicant's immigration status).

2. What other factors played a part?

Clearly the age of the people involved was a factor in many cases, and the fact that many had found no need to leave the UK and so did not have passports. In these senses, their position was similar to that of many older, white UK nationals. What very possibly made a difference was their being black, i.e. they were more likely to be challenged about their immigration status or (possibly) their failure to produce paperwork was less likely to be overlooked. Having in many cases suffered discrimination in housing before, they may have been less likely to challenge it when it occurred again.

However, it needs to be underlined that the fact that Windrush Britons were adversely affected by the right to rent was made more likely by the government underestimating the combined effects of discrimination and vulnerability, and then going ahead with a scheme that had insufficient protection built into it. From the outset, it was obvious that the non-discrimination code (first promised in October 2013) would have little impact on landlords, as enforcing discrimination law is notoriously difficult for those affected. Similarly, promises that "prospective tenants will be assisted and guided in creating their own evidence pack" when applying for tenancies never went beyond online guidance, and only covered limited cases. Many vulnerable or older applicants would in any event be unaware of or unable to use it.

3. Why were these issues not identified sooner?

CIH and other organisations warned the government about the possible unwanted effects of right to rent from the outset, during the pilot scheme and before and during the national roll-out:

- CIH wrote to the then housing minister, Mark Prisk MP, on 15 July 2013 in response to a letter from him advising CIH of the proposed scheme. We said that right to rent checks would affect "the housing options of legal migrants and existing UK citizens who might be mistaken for migrants". We then said:

"It seems likely that if a prospective tenant is not obviously British landlords may simply reject them, given the pressures in the sector at

the moment, the competition for tenancies and the potential delay if further checks are needed.

“Such discrimination will be very difficult to uncover given that landlords will be making simultaneous enquiries about bank accounts, references etc., which will give them other grounds for rejecting an application.”

- At a meeting with the Home Office on 22 August 2013, we reiterated these points. Our note of the meeting shows that we raised with officials the issue of people legally in the UK who lack paperwork and we noted that we were “not sure they were particularly engaged with this”. We also noted that “Government is definitely doing this [scheme] regardless of the number of dissenting voices...”
- The government response to its consultation on the scheme (October 2013) confirmed that it was going ahead, assuring respondents that “this policy is intended to impact only those who have disregarded our laws”. It acknowledged that there was a risk for older, vulnerable or learning-impaired applicants and said that “the advice service will give priority to providing pre-documentation where it is urgently needed”. We are not aware that this ever happened. Applicants were allowed to produce expired passports to demonstrate their residence in the UK but these may have been rejected by landlords and in any case many Windrush victims did not have passports at all.
- We again expressed our concerns at a meeting with the Home Office on 6 October 2014, as the right to rent pilot was being planned. We were assured that discrimination was “the most fundamental question” to be addressed in the evaluation, that the study would include “peer review” of the draft findings, that there would be a control area alongside the pilot area, and that officials would “engage” with us during the evaluation. They said that the research would focus on the “informal” end of the market. They would look for evidence of the checks “pushing people” to less scrupulous/worse landlords (though acknowledged that this would be difficult).
- Many of these assurances were not met. Once the pilot was underway, the promised engagement with the Home Office did not take place nor was there a “control” area. We 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 we

(and other national bodies) wrote to the minister on 11 June 2015, pointing this out and seeking a range of assurances on the points above.

- However, the evaluation of the pilot was not made available until 20 October 2015 and there was little opportunity to discuss 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 Immigration Bill 2015, thus increasing pressure on landlords and the likelihood of their discriminating against applicants without an obvious rent to rent.
- Subsequent research confirmed CIH fears. A wide-ranging survey of right to rent by the JCWI in the 12 months following full implementation of the scheme found significant evidence of discrimination against foreign nationals, those who did not have a passport and other applicants. Landlords were unwilling to make online document checks in non-straightforward cases. Most local authorities had taken no special action to assist those affected by discrimination. A report by the Residential Landlords Association in November 2017 showed that 42% of landlords were “less likely” to let to people without UK passports. Yet during 2017 the Home Office was actively discussing the extension of the scheme to the rest of the UK.
- The Home Office has published only limited information on the utility of the scheme in tackling “illegal” immigration, and the number of removals from the UK that have apparently resulted from it is vanishingly small. A report by the Independent Chief Inspector of Borders and Immigration in March 2018, to which CIH submitted evidence, concluded that the scheme “is yet to demonstrate its worth as a tool to encourage immigration compliance”.
- While the Home Office claims that the main aim of the scheme is to have a deterrent effect, this must be weighed against evidence of the hardship created for Windrush Britons and many others who suffer its effects while being perfectly legitimate residents of the UK.

4. What lessons can the Home Office learn to make sure it does things differently in future?

Right to rent is a massive scheme, affecting around five million tenancies and potentially being extended to the rest of the UK. Around three million household checks have to be made each year, often by non-professional

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landlords. Even now, there is little monitoring of the scheme and there has been no evaluation since the roll-out across England, nor is one promised before it is extended to the rest of the UK. Clearly one lesson is that more rigorous preparation and monitoring is required, since no one knows what proportion of tenancies are subject to correct checking let alone what the effects are in terms of discrimination, unfair decisions or homelessness, or indeed in terms of the intended outcome of reducing “illegal” immigration. It was only well after the first Windrush cases began to be reported that the Home Office instituted corrective measures and these are fairly narrowly based on helping Windrush and similar cases.

It has been clear since early in the scheme that while the West Midlands pilot was seen as helping to implement a full roll-out, the government intended to go ahead with this and that the evidence from the pilot (both the Home Office and other evidence) was not properly considered before it happened. Calls for proper monitoring have been ignored, and in particular there have been few steps to deal with the discrimination that has been evident in the Windrush and other cases.

All of these are lessons which the government should learn from right to rent. They should also fully review its effectiveness and impacts, and be willing to change or abandon the scheme. The extension to the rest of the UK should certainly not take place until such a review has been done and made available for discussion.

5. Are corrective measures now in place? If so, please give an assessment of their initial impact.

Limited corrective measures are in place, and are described on the CIH/BMENational housing rights website (www.housing-rights.info), as follows:

In April 2018 in response to concern about the ‘Windrush generation’ the government issued new guidance about ‘undocumented Commonwealth citizens’ or ‘Commonwealth citizens (known as “Windrush” cases) who are long-term residents of the UK but do not have documents to demonstrate their status.’ It says:

‘If a prospective tenant has lived in the UK permanently since before 1973 and has not been away for long periods in the last 30 years, they have the right to be here and to rent property.’

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'If a prospective tenant came to the UK after 1 January 1973 then they might not have the automatic right to be here, but they may be allowed to stay here permanently and will have the right to rent property.'

It recommends landlords use the checking service if they are not sure about how this guidance may apply to prospective tenants. This new guidance is vague but should mean that longer-term residents from Commonwealth countries should find landlords more ready to accept them without the documents others may need to provide. However, it is still too soon to judge its impact.

A point to be made about the corrective action is that [it is framed as only applying to the Windrush cases](#) from specific Caribbean countries, whereas of course these are a subset of a wider set of cases covered by the 1971 Immigration Act, now potentially caught by the hostile environment. Government needs to act to cover all such cases, not only those under the 'Windrush' label.

Other government departments (MHCLG/DWP) are not experts on immigration (nor can they expected to be) so this inevitably results in referrals of cases (for example, those awaiting a decision on eligibility for benefits) to the Home Office. They then have to wait. Universal credit will make this even worse as its payment is not approved until all its elements are approved. There ought to be a presumption in favour of anyone who satisfies the contribution conditions for benefits (whether ESA/JSA or retirement pension) that they would meet the conditions for other benefits - unless there is direct evidence to the contrary. If it later transpires they are not (which is unlikely), then that is just an overpayment matter and part of enforcement. People end up destitute because most housing charities, including many hostels, only accept people on the basis that they get benefit because that is how they are funded.

6. What (if any) further recommendations do you have for the future?

CIH is principally concerned with housing, homelessness and benefits issues, rather than wider issues affecting migrants or UK residents who have difficulty proving their right to reside. While it is right that there should be rules regulating access to social housing according to immigration status, these are administered by social landlords (principally local authorities, through their lettings or nominations schemes) where staff can be trained in the requirements and in avoiding racial discrimination. Even in these cases mistakes can occur. However, there is an intrinsic and much wider difficulty in applying the right to rent scheme via a huge number of private landlords, as

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has been amply demonstrated by Windrush and other cases now providing plentiful evidence of discrimination and unnecessary homelessness.

CIH therefore recommends that any review of the “hostile” (or “compliant”) environment should include reviewing the future of right to rent, and that the scheme be terminated because of the strong evidence of its unintended consequences and the very limited evidence of its utility in reducing “illegal” immigration.

Another, wider issue is that Home Office administration overall is highly inaccessible. It may be the only department that is allowed to provide the public with no named contacts, direct emails (elsewhere in most of government, national or local, this is simply unacceptable and would be cause for complaint). No doubt this plays a large part in problems escalating. Nothing gets done at all by anyone else until the Home Office makes a decision on a case and delays are intrinsic to their operations.

A final issue is that, for the Home Office in particular, there is a general presumption that people may be lying about their immigration status - even where there is no corroborating evidence to suggest that is the case. Indeed the Windrush Britons often had compelling anecdotal and other evidence demonstrating their lengthy residence in the UK, it simply was not in the form required by the Home Office. If there were a presumption in favour of accepting the status of anyone who has been resident in the UK for a significant period of time, working, paying tax and NI, etc., this would go a long way towards avoiding future 'Windrush' cases. It would not, however, resolve the majority of the problems which the hostile environment is causing.

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