Passport Please:

The impact of the Right to Rent checks on migrants and ethnic minorities in England

February 2017

JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS

The Joint Council for the Welfare of Immigrants (JCWI) is an independent national charity established in 1967. We work to ensure justice and fairness in immigration and asylum law and policy and we provide direct legal advice and assistance to those affected by UK immigration control.

Our thanks to all those who advised on and assisted us with this research, and whose work on the Right to Rent scheme has informed our own. We would also like to thank all those who responded to our research, as well as the organisations and individuals who shared and distributed our surveys.

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If you have been affected by any of the issues outlined in this report, please contact JCWI's policy team by phone on 0207 553 7457 or email policy@jcwi.org.uk

JCWI also runs an advice line for undocumented/irregular migrants in the UK. If you do not have any immigration status and require legal advice, you can contact JCWI's Irregular Migrants Helpline on **0207 553 7470**.

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Background to the Provisions

The Right to Rent scheme is part of a package of legislative measures adopted in recent years to create a 'hostile environment' for irregular migrants. The combined aim of these measures is to deny irregular migrants access to a range of services, with the expectation that this will lead them to voluntarily leave the UK. The scheme has turned the private rental market in England into a new border. In theory, everyone now has to prove to private landlords and their agents that they have the right to live in the UK. This includes British citizens. Through the requirement to conduct immigration checks, landlords and agents have been press-ganged into becoming border guards, or face a fine and, since 1st December 2016, imprisonment.

The Immigration Act 2014 ('the 2014 Act') and the Immigration Act 2016 ('the 2016 Act') contain the provisions that make up the Right to Rent scheme. The scheme is currently only in operation in England and not in other parts of the UK, although the intention remains to implement the scheme in Scotland, Wales and Northern Ireland.

The main aim of the Right to Rent scheme is to deny irregular migrants access to the private rental market and thereby encourage them to leave the UK voluntarily. Under the 2014 Act, individuals who do not have a legal right to remain in the UK are disqualified from occupying residences under a residential tenancy agreement.[1] In addition, landlords[2] and their agents have a duty to carry out immigration checks on all adults who will occupy a property before entering into a residential tenancy agreement. This involves seeing original versions of prescribed documents contained in the Code of Practice.[3] If a migrant cannot provide the required documents, landlords can confirm that the individual has a Right to Rent through the Landlords Checking Service.[4] Documents must be checked in the presence of the holder (in person or via video link) and copies must be retained. Landlords or agents who fail to adequately conduct the checks and who enter into a tenancy agreement with a person who does not have a Right to Rent face a civil

[1] Guidance and notes accompanying the 2014 and 2016 Acts refers to preventing "illegal" immigrants. This term is dehumanising and unjust. This report refers to "irregular" migrants. Another term for this group is "undocumented", however, given that this report also addresses other issues of documentation or lack of documentation involving legal migrants and British citizens for simplicity's sake we refer to irregular migrants in this report.

[2] This includes tenants who are sub-letting parts of a property and those taking in lodgers.

[3] Home Office (2016) "Code of Practice for Landlords on Illegal Immigrants and Private Rented Accommodation", https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016 (accessed 29.01.17)

[4] The Landlords Checking Service is an online tool that landlords can use to confirm a person's Right to Rent if they have an outstanding case or appeal with the Home Office, or if they have been granted permission to rent.

penalty of up to £3,000.[5] The scheme was first rolled out in the West Midlands from December 2014 (the 'pilot').[6] It came into force nationwide in England from February 2016.

The 2016 Act introduced a possible prison sentence of up to five years where landlords or their agents knowingly allow a person who does not have the Right to Rent to occupy a property under a residential tenancy agreement and do not take steps to remove them from the property once they become aware of this. It also granted landlords new powers to terminate tenancies and in some circumstances to evict tenants without a court order. The 2016 Act received Royal Assent in May 2016 and the provisions came into force from 1st December 2016 in England. The impact of the 2016 Act provisions is largely beyond the remit of this report, which evaluates the roll-out of the civil penalty regime across England. These additional sanctions and powers granted to landlords are likely to amplify the discrimination that has been found to have already occurred.

Issues and Concerns Arising from the Right to Rent Scheme

Since the Right to Rent provisions were first announced, JCWI and others have raised concerns that the scheme will not effectively target irregular migrants, but will instead create a hostile and discriminatory environment for all migrants, as well as for British citizens who lack documentation and Black and Minority Ethnic ('BME') groups who may be subject to racial profiling. To assess these concerns, JCWI undertook an independent evaluation of the Right to Rent pilot, which was published in September 2015. The independent evaluation found that landlords were less likely to rent to those without British passports, those with complicated immigration status, and people with 'foreign accents or names' as a result of the scheme. In addition, tenants had been wrongly refused tenancies owing to confusion among landlords and there were a number of worrying reports of harassment by landlords.[7]

Following widespread concern about discrimination amongst parliamentarians during the passage of the 2014 Act, assurances were made that the Home Office would evaluate the pilot before any further roll-out. In spite of this, the Government made the decision to roll out the provisions nationwide and announced new criminal penalties and powers of eviction before the publication of the Home Office evaluation. This raises the question whether these concerns were ever effectively assessed before the decision was made to

[5] For further information about how the scheme operates and how tenants can prepare for a Right to Rent check, see JCWI's " Right to Rent Guides for Tenants & Advisors", available to download at https://www.jcwi.org.uk/policy/reports/jcwi-right-rent-guides-tenants-advisors

[6] The scheme was first implemented in the five West Midlands local authorities of Birmingham, Sandwell, Walsall, Wolverhampton and Dudley from 1 December 2014. There was disagreement within the Coalition Government as to whether the West Midlands scheme was a 'pilot' of the scheme or the first stage of a planned 'staged rollout'. For the sake of simplicity, we refer to it as the 'pilot' in this report.

[7] JCWI (2015) "'No Passport Equals No Home': an independent evaluation of the Right to Rent scheme", available at: https://www.jcwi.org.uk/sites/jcwi/files/No%20Passport%20Equals%20No%20Home.pdf (visited 05.02.17)

roll out and expand the scheme. The Home Office evaluation (not published until October 2015 after the new measures had been tabled) also found concerning evidence of discrimination in their mystery shopping exercise, as well as landlords indicating that they would be less likely to rent to certain groups.[8]

Methodology

This report is based on research undertaken since the civil penalty scheme came into force nationwide in England from February 2016. The research sought to address the following questions:

1. Are landlords discriminating against different people depending on their nationality, their ethnicity, or the kinds of documents that they possess, and to what extent is any discrimination the result of the Right to Rent scheme?
2. Do landlords and agents understand the Right to Rent scheme and are they implementing it correctly?
3. Does the scheme meet its stated aims: is there evidence that the scheme is deterring irregular migrants from remaining in the UK, or effective in targeting rogue landlords?

Findings are based on surveys of landlords (108 responses), letting agents (208 responses) and organisations working with or on behalf of affected groups (17 responses). In addition, a mystery shopping exercise was conducted at the initial point of contact with landlords. The mystery shopping consisted of email enquiries sent to landlords and agents from online accounts belonging to six scenarios that differed in their ethnicity, nationality, the documents they had to evidence their Right to Rent, or their migration status. Response rates and types of responses were compared between scenarios based on their relevant characteristics. An additional mystery shopping exercise was conducted with a further persona whose documents were with the Home Office. In total, 1,708 mystery shopping enquiries and 867 responses from landlords were analysed.[9]

The extent to which the Government was monitoring the effectiveness and the impact of the Right to Rent scheme was assessed through examining responses to Freedom of Information Act ('FOI') requests and Parliamentary Questions. FOI requests were also sent to local authorities in England, in order to assess what steps they are taking with respect to the scheme. 278 responses were received.[10]

[8] Home Office (2015) "Evaluation of the Right to Rent scheme: Full evaluation report of phase one", Research Report 83, October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf

[9] For a full discussion of the methodology, see Appendix 1.

[10] 16 further responses received after the 7th January 2017 (the cut off for analysis) were not included.

Key Findings

Evidence of Discrimination on Multiple Fronts

- Foreign nationals are being discriminated against. Over half of landlord's surveyed (51%) stated that they are now less likely to consider letting to foreign nationals from outside the EU. Almost a fifth (18%) were less likely to rent to EU nationals as well. The mystery shopping scenario in which the prospective tenant was not British, but had indefinite leave to remain in the UK, was also 20% more likely to receive a negative response or no response compared to a British citizen.

- Landlords are also less willing to accept tenants who do not hold a British passport as a result of the scheme. 42% of landlords who responded to our survey stated that they were less likely to rent to anyone who does not have a British passport. This rose to almost half (48%) of landlords when they were explicitly asked to consider the new criminal sanction. In addition, eight agents surveyed stated that landlords had expressed an unwillingness to rent to tenants who do not hold a British passport as a direct result of the scheme. [11]

- The 'white British' tenant without a passport was 11% more likely to receive a negative response or no response than the 'white British' tenant with a passport.

- The discrimination is greater for British BME individuals who cannot show a passport. The BME British tenant without a passport was 26% more likely to receive a negative response or no response than the BME tenant who could provide a British passport.

- Overall, the British BME tenant who did not have a passport received a negative response or no response to his enquiries 58% of the time.

- Where both 'white' and BME British citizens do not have passports, the BME tenant faces clear racial discrimination. The BME tenant was 14% more likely to receive a negative response from a landlord, or not to receive a response at all. The BME tenant without a passport was also 25% less likely to be offered a viewing and 20% less likely to be told the property is available. Interestingly, we found no evidence of racial discrimination between the BME and 'white British' scenarios where both had a British passport. This strongly suggests that the discrimination found is as a result of the Right to Rent scheme, rather than latent discrimination by racist landlords. Five agents also stated that landlords had

[11] While this is a small proportion of the number of agents surveyed in total, we consider it highly significant that eight agents were prepared to admit this. The majority of these responses came from agents managing over a hundred properties, but responses did also come from small agencies managing under 50 properties and less than five properties.

indicated that they were less willing to rent property to people who 'look or sound foreign' as a result of the Right to Rent scheme.[12]

- The most vulnerable individuals, such as asylum seekers, stateless persons, and victims of modern day slavery, who require landlords to do an online check with the Home Office to confirm they have been granted permission to rent, face the greatest barrier of all. Out of 150 mystery shopping enquiries from prospective tenants who asked landlords to conduct an online check, 85% received no response. Only 12% of enquiries received a response that might invite a follow up, such as a phone call or a viewing. Only three responses explicitly stated that the landlord was willing to conduct an online check. If landlords are not willing to conduct an online check for these prospective tenants this can amount to indirect racial discrimination. In addition, 82% of organisations surveyed stated that people who lacked clear identity documents had been adversely affected by the scheme and 71% stated that asylum seekers had been adversely affected. This form of discrimination would also affect people whose documents are with the Home Office, or who have ongoing legal cases.

- The Home Office's permission to rent process is fatally flawed. The Home Office does not inform those granted permission to rent that they have it unless they make direct enquiries. It also refuses to provide them with any documentary proof that would satisfy a Right to Rent check. These individuals must rely on the willingness of landlords to navigate the Home Office's online checking service. However, landlords are only told to use the online service when they are requested to do so by a prospective tenant who states they have permission to rent, even though they may not know if permission has been granted to them.

- Migrants who are legally residing in the UK with 'leave to remain' for a time-limited period may be treated less favourably as a consequence of the Right to Rent scheme. 65% of organisations surveyed stated that migrants with a time-limited right to remain in the UK had been adversely affected by the Right to Rent scheme. In addition, 45% of landlords stated that they were less likely to rent to anyone with 'permission to stay in the UK for a limited time-period'. 16 agents also stated that landlords had indicated an unwillingness to rent to 'people with a time-limited permission to remain in the UK' or 'people with a time-limited Right to Rent' as a result of the scheme.[13]

[12] Again, we consider it highly significant that five agents were prepared to admit that landlords were asking them to discriminate unlawfully. The majority of responses came from large scale agents managing over 100 properties, though those with smaller portfolios were also affected.

[13] 11 of these responses were from agents with over a 100 properties, the remainder varied in size between managing less than five properties to managing 51 – 100 properties.

Stated Aims Not Met

- 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.

- Enforcement under the scheme is low and there is no evidence to suggest that the scheme is encouraging irregular migrants to leave the UK. Only 31 of the 654 individuals who are purported to have come to the Home Office's attentions since the scheme began have been removed from the UK (less than 5%). Additionally, there is no evidence to suggest that the remaining 623 individuals do not currently have a right to remain in the UK.

Awareness and Understanding Low Among Landlords

- Over a quarter of landlords surveyed (27%) felt that they hadn't understood their obligations or remained unaware of the Right to Rent scheme. In addition, almost half of landlords (49%) had not read the Codes of Practice. This is extremely concerning as the Codes explain how to undertake the checks in a fair and consistent manner, as well as how to avoid unlawful discrimination.

Local Authorities Inadequately Prepared

- Local authorities are not approaching the scheme in a manner that would mitigate its adverse impacts. 81% of local authorities in England who responded to FOI requests stated that they have not put systems in place to monitor homelessness or discrimination occurring as a result of the Right to Rent scheme. Just 56% of local authorities stated that they are providing training or outreach in respect to the scheme. 34% had not provided any training or outreach, while 10% of respondents stated that this was outside their remit. The level of information and support provided is also highly variable across England.

Conclusions

The Right to Rent scheme is being implemented in a discriminatory way. This is occurring in the way that JCWI and others predicted that it would, including many parliamentarians during the passage of the legislation. The scheme forces landlords to carry out immigration checks, with a potentially severe punishment for failure. Concerns were raised during the passage of the legislation that it would cause ordinary landlords to prefer prospective tenants who feel to them like a safer bet, or who are easier to check. Landlords themselves asserted during and after the pilot that they would prefer prospective tenants who could show a British passport, or who appeared to be British, and they continue to say so now.

Our research shows that some landlords are putting those words into practice, with both foreign nationals and British citizens without passports being disadvantaged in the private rental market. Moreover, the scheme is causing racial discrimination, with BME British nationals who cannot provide a passport put at an even greater disadvantage compared to 'white-British' individuals. We did not find the same discrimination occurring where both BME British and 'white-British' individuals possess British passports, which strongly suggests that this discrimination is a direct result of the scheme rather than latent racism.

The most vulnerable individuals, such as asylum seekers, stateless persons and victims of modern day slavery, are put at the greatest risk of all. These are people who do not have a right to rent, but may be entitled to permission to rent. The permission to rent process, which is designed to protect them and allow them to live in the UK while their situation is being resolved, does not work at all. Our research has found that landlords are unwilling to go through the online checking process and that the Home Office has issued confusing guidance to landlords. In sum, the entire procedure is Kafkaesque: landlords are told to check only when the tenant tells them they have permission to rent, but the Home Office is only required to inform tenants of their permission to rent status if they make their own enquiries, and many tenants won't know whether they have it. Most tenants could not be expected even to know what permission to rent is, considering that no specific outreach about the scheme has targeted tenants.

Worst of all, for all the harm that this scheme engenders, the Government cannot provide evidence as to its supposed benefits. The primary purpose of the scheme is to prevent irregular migrants from accessing the private rental market so that they are encouraged to leave the UK voluntarily. However, the Government has not put in place any monitoring to assess whether or not this is happening. Nor can they say whether the scheme is in fact making people homeless or driving them into the hands of rogue landlords who profit from exploiting them. Furthermore, the Government can identify just 31 individuals who have been removed from the UK purportedly as a result of the scheme.

For the most part private landlords are ordinary citizens, not big business owners, and the majority of the rental market consists of landlords with a single property. The Right to Rent scheme conscripts ordinary members of civil society into the immigration enforcement arm of the Government, and does so in such a crude and ham-fisted fashion that it creates structural incentives for them to discriminate unlawfully against foreigners and ethnic minorities. It has no place in British life or in British law. In light of these findings this failed experiment should be abandoned and the Right to Rent scheme must be abolished.

Recommendations

As a result of our findings we strongly advocate that:

1. The Right to Rent scheme must be halted and abandoned. Requiring document checks by landlords and agents as a form of immigration control is disproportionate and is being implemented in a discriminatory manner. It is not justified as there is no clear evidence that the scheme is working to encourage irregular migrants to leave the UK, or effectively targeting rogue landlords who exploit migrants. The issues identified in this report cannot be sufficiently mitigated by other measures.

However, whilst the scheme remains in operation, it is vital that the Government implements the following measures to mitigate the discriminatory application of the scheme:

2. The Government must put robust and transparent systems in place to monitor the Right to Rent scheme for instances of racial discrimination. This should include providing funding to the Equality and Human Rights Commission in order to actively seek out and investigate cases of discrimination under the scheme. The Commission should also provide detailed information and a place to register complaints about discrimination.

3. The Government must improve systems of information dissemination to educate landlords, including small-scale landlords and those who are not members of professional bodies, on race discrimination. This should include providing simple guidance clarifying that:
    - A failure to accept tenants on the basis that they have time-limited status in the UK may amount to indirect racial discrimination;
    - A failure to accept documents that are allowable under the Right to Rent scheme may amount to direct or indirect racial discrimination depending on the circumstances;
    - Refusal to use the Landlord Checking service may amount to indirect racial discrimination.

4. The Government should provide all landlords with a clear form that they can provide to any prospective tenants without documentation. The form must explain the permission to rent process and encourage landlords to carry out an online check.

5. A simple document should be made available to all those making an immigration or asylum application and to landlords to provide to prospective tenants that explains:
    - What documents they must provide to show a right to rent;
    - Their right not to be discriminated against;
    - The permission to rent process and their rights in relation to this process;

- Where they can seek further advice and information in relation to the scheme or discrimination under the scheme.

We strongly believe there should be no further roll-out of the Right to Rent scheme. However, if the Government is proceeding with this, any plans for extending the scheme to other areas of the United Kingdom must be halted until an evaluation such as that described below is both complete and has been fully taken into account:

6. The Government must commission an independent evaluation of the Right to Rent scheme across England which should:
    - Include robust mystery shopper exercises at every stage of the rental process, from initial contact and phone calls through to viewings and final checks.
    - Look at all areas of the private rental market and assess different kinds of discrimination, whether on the basis of ethnicity, colour, nationality, the documents they possess, or migration status.
    - Examine whether or not the scheme is achieving its intended aims against clear metrics of success or failure.
    - Assess whether or not irregular migrants or others are being driven into the hands of rogue landlords, or unsafe and exploitative living situations, as a result of the scheme.
    - Assess the impact of the scheme on the most vulnerable, including those who require permission to rent, children, victims of domestic violence and trafficking, and those fleeing persecution.
    - There should also be an assessment of the scheme's impact in light of the need to promote integration amongst different communities in the UK.

Finally:

7. Local authorities across England must fulfil their statutory duties and take the Right to Rent scheme into account with respect to promoting equality, addressing homelessness and protecting the best interests of children.

> *"The impact of all this is to contribute to a society that is divided into a country within a country, where those within the scope of civic entitlement are divided from those who are excluded from it, with social exclusion institutionalised in law. The Bill appears not just to police a border around our country but to erect many new boundaries within our society."*[14]
>
> Lord Bishop of Leicester

[14] Immigration Bill (Second Reading) 10 Feb 2014, Col 429

Introduction

The 'Hostile Environment' and the Right to Rent scheme

The Right to Rent scheme is part of a package of legislative measures adopted in recent years to create a 'hostile environment' for irregular migrants, with the stated aim of making their lives increasingly unbearable, purportedly to assist in their voluntary or forced removal from the UK.[15] The Immigration Act 2014 (the '2014 Act') introduced a number of measures designed to make the 'hostile environment' a reality, many of which focused on denying irregular migrants access to a range of services such as healthcare, bank accounts and driving licenses. The cornerstone of these measures was the Right to Rent scheme, which was designed to "*make it more difficult for illegal migrants to rent property and thus encourage illegal migrants to regularise their stay or leave the UK.*"[16]

As with all hostile environment measures, the scheme's impacts extend far beyond the narrow category of irregular migrants. The Right to Rent scheme affects ethnic minorities, legal migrants and British citizens who don't have a passport. This report builds on the existing evidence base demonstrating the adverse impacts of the scheme, including discrimination, the failure to monitor and assess the scheme, and looks to see whether it is meeting its stated aims.

Under the 2014 Act, individuals who do not have a legal right to remain in the UK are disqualified from occupying property under a residential tenancy agreement.[17] In addition, landlords[18] and their agents have a duty to carry out immigration checks on all adults who will occupy a property before entering into a residential tenancy agreement. This involves seeing original versions of prescribed documents in the presence of the holder (in person or via video link) and making and retaining copies. Landlords or agents who fail to conduct the checks and enter into a tenancy agreement with a person who does not have a Right to Rent may face a civil penalty of up to £3,000. Currently the scheme is only in operation in England, but the intention remains to extend the scheme to the devolved nations of the UK.

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[15] Kirkup, J. & Winnett, R. (2012) "Theresa May interview: 'We're going to give illegal migrants a really hostile reception'", from The Telegraph 25.05.2012, http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html (visited 30.01.17)

[16] Immigration Bill Explanatory Notes, 10 October 2013, http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.htm (visited 24.01.2017)

[17] The guidance and notes accompanying the 2014 and 2016 Acts refer to preventing "illegal" migrants (as exampled above). This term is dehumanising and unjust. This report refers to "irregular" migrants. Another term for this group is "undocumented", however, given that this report also addresses other issues of documentation or lack of documentation involving legal migrants and British citizens, for simplicity's sake we refer to irregular migrants where relevant.

[18] This includes tenants who are sub-letting parts of a property and those taking in lodgers.

Throughout the passage of the legislation, there have been widespread concerns raised about the adverse consequences of the scheme, its efficacy and the effect it will have not just on irregular migrants, but also on migrants with status and on Black and Minority Ethnic (BME) groups.[19] Serious concerns were raised by MPs and peers: that the scheme will not achieve its aims to reduce or disincentivise irregular migration or tackle rogue landlords; that the complexity of checks make the scheme unworkable for landlords in practice; and that the scheme would have unintended consequences, including discrimination and worsening housing and living standards for those (rightly or wrongly) refused a tenancy on this basis.[20]

As a result of these concerns, the Coalition Government made a commitment to implement the scheme gradually in stages, following a full initial evaluation to test for discrimination. It was announced on 3rd September 2014 that the proposals would initially be 'piloted' in the West Midlands areas of Birmingham, Sandwell, Wolverhampton, Dudley and Walsall for a period of six months from 1st December 2014.[21][22] An expert advisory panel was set up to assist the Home Office in monitoring the scheme. Assurances were given in Parliament that the scheme would be fully evaluated before any decision to roll out further. Speaking as part of the Coalition Government during the Public Bill Committee stage of the 2014 Act, Norman Baker MP stated:

> *"…it is sensible to proceed step by step and to look at the scheme after the first pilot. If it has worked properly, without encountering the concerns that Members on both sides*

[19] See, for example: "Eighth Report – Legislative Scrutiny: Immigration Bill, Joint Select Committee on Human Rights", http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/immigration-bill-report-substantive/;
JCWI (2013) "Briefing for the Second reading of the Immigration Bill, 22 October 2013" https://www.jcwi.org.uk/sites/jcwi/files/Briefing%20Imm%20Bill%202nd%20Read_0.pdf;
ILPA (2015) "Briefing for House of Commons' Second Reading of the Immigration Bill, 22 October 2013", http://www.ilpa.org.uk/pages/immigration-bill-2013.html;
Shelter (2014) "Briefings on the immigration bill", website, accessed online 27.01.2017, available at: https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/briefings_immigration_bill;
https://www.liberty-human-rights.org.uk/immigration-bill-2013-14;
The Immigration Bill: Creating a 'hostile environment' for migrants in the UK, 18 October 2013, http://www.migrantsrights.org.uk/files/publications/MRN-Immigration-Bill-briefing-Oct-2013.pdf (visited 24.01.2017).

[20] JCWI (2015) "No Passport Equals No Home: Independent evaluation of the 'Right to Rent scheme', Appendix B
https://www.jcwi.org.uk/sites/jcwi/files/Briefing%20Imm%20Bill%202nd%20Read_0.pdf

[21] Home Office (3 September 2014), "West Midlands to be first landlord Right to Rent check area", available at: https://www.gov.uk/government/news/west-midlands-to-be-first-landlord-right-to-rent-check-area (visited 24.01.2017)

[22] There was disagreement within the Coalition Government as to this was a 'pilot' or the first stage of a planned 'staged rollout'. For the sake of simplicity, we refer to it as the 'pilot' in this report.

of the Committee have rightly expressed, I have no doubt that it will be taken further. If serious problems have arisen, nobody… will want to take the scheme further."[23]

Norman Baker MP

JCWI and partners undertook an independent evaluation over the same period.[24]

Despite the assurances made to Parliament, the Government moved quickly to roll out and expand the scheme. In May 2015, before any findings had been announced from the official evaluation of the pilot, Prime Minister David Cameron announced a plan for a nationwide roll-out of the scheme in England and the intention to introduce further legislation.[25] In August 2015, again before the results of the official evaluation had been made public, the Government announced its intent to expand the scheme by creating a criminal penalty for landlords who fail to comply and by making it easier for landlords to evict tenants who are found not to have a right to rent. These provisions were included in the Immigration Bill 2016 (the '2016 Bill'), laid before Parliament in September 2015.

JCWI's independent evaluation, published earlier that month, was cited heavily in the parliamentary debate on the proposed new measures in the 2016 Bill. Many parliamentarians from different parties expressed grave reservations about the provisions on criminality and eviction; the increased discriminatory impact these measures would have; and were concerned with the haste with which they were being pursued without a proper evaluation of the pilot.

"I beg to move,
That this House, whilst affirming its belief that there should be firm and fair controls on illegal immigration including new immigration enforcement powers and immigration status checks on current account holders, and particularly welcoming proposals for a Director of Labour Market Enforcement and to strengthen sanctions to be applied to employers of illegal workers, declines to give a Second Reading to the Immigration Bill because the measures overall in the Bill will not decrease illegal immigration, will reduce social cohesion and will punish the children of illegal immigrants for their parents' illegal immigration, because the Government has failed to publish the report on the pilot Right to Rent scheme in the West Midlands which could cause widespread indirect discrimination.[26]

Andy Burnham MP, then Shadow Home Secretary

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[23] HC 7 November 2013, Immigration Public Bill Committee, Col 242

[24] For a full analysis of the passage of the Immigration Act 2014 through Parliament and the evidence of discrimination found during the pilot, see JCWI (2015) No Passport Equals No Home: Independent evaluation of the ' Right to Rent scheme', https://www.jcwi.org.uk/sites/jcwi/files/Briefing%20Imm%20Bill%202nd%20Read_0.pdf

[25] PM speech on immigration, 21 May 2015, https://www.gov.uk/government/speeches/pm-speech-on-immigration

[26] HC 13 October 2015, Vol 600 Col 204

There was a move to decline the 2016 Bill but it passed the second reading by a small majority of 49 MPs who voted in favour of it and thereby proceeded to become the Immigration Act 2016 (the '2016 Act').

A Note on the 2016 Act

The Right to Rent provisions contained in the 2016 Act came into force in England from 1st December 2016. As such, the impact of these new provisions since coming into force is beyond the scope of this research. The report focuses on the impact of the 2014 provisions that have been in force across England since February 2016. Nonetheless, landlords have stated that they are more likely to act in a discriminatory way in light of the criinal sanctions and we have already encountered a number of issues raised by the 2016 Act that cause serious concern:

- The criminal offence is broadly drawn and creates issues for legitimate schemes that provide safe housing for vulnerable individuals such as victims of abuse, as well as for those with friends and family living with them. The Government response to this issue has been to suggest that such people, even though they fall within the terms of the offence, are not likely to face prosecution as the scheme is designed to target 'rogue landlords' who exploit migrants. It is not acceptable for the Government to create an overly broad offence and then to suggest it may be mitigated by selective prosecution.
- The evictions provisions, allowing landlords in some cases to evict without a court order, leave individuals, including children, entirely at the whim of the Home Office and the accuracy of the information it holds.

> *"As time goes by, it is legislation that governs actions, not the intentions behind the legislation. The good intentions to which the Minister referred may have been long forgotten and therefore may not prevent the overzealous pursuing the small reputable landlord, against whom the legislation is not intended to be directed."*[27]
>
> Lord Howard of Rising

Issues for this Report

The research for this report sought to address the following questions:

1. Are landlords discriminating against different people depending on their nationality, their ethnicity and the kinds of documents that they possess and to what extent is any discrimination the result of the Right to Rent scheme?
2. Do landlords and agents understand the scheme and are they implementing it correctly?

[27] HL 15 March 2016 Immigration Bill Report (Second Day), Col 1741

3. Does the scheme meet its stated aim: is there evidence that the scheme is deterring irregular migrants from remaining in the UK, or effective in targeting rogue landlords?

The report examines these issues now that the scheme has been in operation nationwide in England for over 12 months. The focus of the research is to expand the evidence base and, if there are findings of discrimination, to understand how discrimination operates in this sphere. Indications from the previous findings suggest that discrimination as a result of the scheme is not straightforward and is likely to have multiple causes.

> *"I have real concerns about the negative impact and effects on some of the checks… and I want to highlight housing… I have been told that many landlords who will be asked to do the job of immigration officials may well bypass taking part in the bureaucratic checks—they might be too expensive or time-consuming, or the landlords may not want to risk fines. If someone looks or sounds like a person from an ethnic minority or a migrant of dubious background we could well end up with a situation of ethnic profiling that our long-standing equalities legislation was designed to end. This would be extremely damaging to race relations and community cohesion. We could have a situation where we go back to the days I mentioned earlier. When my parents came to this country they were confronted by signs saying, "No Blacks, no dogs, no Irish, no foreigners"—that sort of thing. It was legal then. We could start rolling back hard-fought-for equalities legislation if we go down that road and I am very worried about that."*[28]
>
> Baroness Hussein-Ece

[28] HL,10 February 2014, Vol 752, Col 494

Background

Requirements of the Right to Rent Scheme

Under sections 20 to 37 of the 2014 Act, individuals who are subject to immigration control and require permission to enter or remain in the UK but do not have it are disqualified from occupying residences under a residential tenancy agreement. A residential tenancy agreement is any tenancy which grants a right of occupation for residential use, provides for the payment of rent (whether or not market rent) and is not an excluded agreement.[29]

Prospective tenants may have an unlimited right to rent, a time-limited right to rent or no right to rent. Those with an unlimited right include British, EEA and Swiss citizens and settled migrants with indefinite leave to remain in the UK. All other migrants with a time-limited right to remain in the UK have a time-limited right to rent. Those who have no right to rent may be granted discretionary permission to rent by the Secretary of State. This group may include (but is not limited to):

- Those with an outstanding asylum claim or international protection claim, or appeal against refusal of such a claim, including fresh claims;
- Those with an outstanding appeal or judicial review, where this cannot be pursued from abroad;
- Individuals on immigration bail;
- Families cooperating with the Home Office family returns processes;
- Individuals complying with the Home Office's voluntary departures process and those with barriers to removal;
- Victims of trafficking or slavery.[30]

Permission to rent may also be granted where it is considered that: the Home Office will better progress a migrant's case if they were allowed permission to rent; a migrant is a vulnerable person or unable to make their own decisions; or in order to avoid a breach of human rights.[31] Permission to rent is to be treated as a time-limited right to rent for the purposes of the scheme.

In addition, the 2014 Act puts a duty on landlords and their agents to carry out immigration checks on all adults who will occupy a property as their only or main home before entering into a residential tenancy agreement, in order to assess whether they have the right to rent. The definition of landlord includes tenants who are sub-letting parts of a property and those taking in lodgers. The check involves seeing original

[29] Certain properties are excluded from the scheme and these are outlined in the Home Office's Code of Practice for Landlords, available at: https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016#excluded-agreements

[30] Home Office (2016) Right to Rent: landlord's penalties Version 5.0, Home Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/573996/Right-to-rent-landlords-v5.pdf (visited 25.01.17)

[31] Ibid.

versions of prescribed documents contained in the Code of Practice and making and retaining copies.[32] Documents must be checked in the presence of the holder (in person or via video link) and copies must be retained. Where a prospective tenant has an unlimited right to rent, checks must be conducted once, within 28 days of the start of a tenancy. Where a prospective tenant has a time-limited right to rent, the initial check must be conducted, followed by another check at the point their permission to remain in the UK expires, or after 12 months, whichever period is longer. The additional check must confirm that the individual has retained their right to rent. Evidence of the checks provide a landlord or agent with a statutory excuse against a civil penalty. If the landlord cannot confirm that they continue to have a right to rent, they must notify the Secretary of State within a reasonable period of time in order to retain a statutory excuse.

If a migrant cannot provide the required documents, for example if they have an outstanding application or appeal or if they have been granted permission to rent, landlords can confirm that they can rent to them through submitting a check to the Home Office's Landlords Checking Service online. The service will provide a clear 'yes' or 'no' response within 48 hours. This response, if positive, must be retained in order to provide the landlord with a statutory excuse against a penalty.

Landlords or agents who fail to adequately conduct the checks and who enter into a tenancy agreement with a person who does not have a Right to Rent, or fail to notify the Secretary of State if a tenant subsequently becomes disqualified, are liable for a civil penalty of up to £3,000.

The 2016 Act introduced new sections 33A to 33E to the 2014 Act. These sections introduce a criminal sanction for landlords and agents of up to five years in prison. Landlords and agents commit an offence where they know or have reasonable cause to believe that their premises are occupied by an adult who does not have the right to occupy a property under a residential tenancy agreement. This is regardless of whether a right to rent check has been conducted or whether the individual is paying rent. It is a defence if a landlord or agent can prove that they have taken reasonable steps to terminate the residential tenancy agreement within a reasonable period of time. How courts should consider this defence is outlined in official guidance.[33]

The 2016 Act also granted landlords new powers to terminate tenancies where the property is occupied by a person or persons who are disqualified from renting as a result of their immigration status. This includes a power to end a tenancy where some of the occupants are disqualified from renting under the 2014 Act, as well as the power to end a

[32] Home Office (2016) "Code of Practice for Landlords on Illegal Immigrants and Private Rented Accommodation", https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016 (visited 25.01.17)

[33] Home Office (2016) "Immigration Act 2014: Guidance on taking reasonable steps to end a residential tenancy agreement within a reasonable time" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/572477/Statutory_Guidance_-_Defence_to_Offence_Against_Landlords_v1_0.pdf (visited 25.01.17)

tenancy *without a court order* where *all* occupants are disqualified and named on a notice from the Secretary of State. Children can also be named on such a notice. In addition, the 2016 Act amended various pieces of housing legislation to bring them in line with the provisions.

These provisions came into force from 1st December 2016 in England. Section 42 of the 2016 Act grants the Secretary of State the power to extend these measures to Scotland, Wales and Northern Ireland and this remains the Government's intention. The impact of the 2016 Act is largely beyond the scope of this report, which evaluates the roll-out of the civil penalty regime across England from 1st February 2016. However, these additional sanctions and powers granted to landlords are likely to amplify the discrimination that has been found to have already occurred.

Concerns About Discrimination

> *"My Lords, racial discrimination is a funny thing, I have found. It takes many varied and sometimes surprising forms."*[34]
>
> Baroness Sheehan, speaking during debate on the Immigration Bill 2015/16

JCWI's independent evaluation was conducted during the pilot of the scheme from 1st December 2014 and uncovered worrying evidence of discrimination. It was published in September 2015. The evaluation found that 42% of landlords and agents surveyed were less likely to consider entering into a tenancy agreement with someone who did not have a British passport and over a quarter (27%) were be less likely to engage with those with foreign accents or names.[35] These findings have been mirrored elsewhere. In a YouGov survey of 830 landlords conducted on behalf of Shelter in July 2015, 44% stated the scheme would make them less likely to let to people and families who 'appear to be immigrants'. 43% stated that they were less likely to let to people without British passports.[36] In a survey of Residential Landlords Association (RLA) members, again 43% stated that they were less likely to rent to 'those who do not have a British passport', in this case because of the fear of criminal sanctions for getting it wrong under the legislation.[37]

[34] HC 15 March 2016, Vol 769, Col 1746

[35] JCWI (2015) "'No Passport Equals No Home': an independent evaluation of the Right to Rent scheme", https://www.jcwi.org.uk/sites/jcwi/files/No%20Passport%20Equals%20No%20Home.pdf

[36] Shelter (2016) "Research report: Survey of Private Landlords" https://england.shelter.org.uk/__data/assets/pdf_file/0004/1236820/Landlord_survey_18_Feb_publish.pdf (visited 25.01.17)

[37] Walmsley, S. (2016) "Britons without passports are victims of Right to Rent", Residential Landlords Association, 15 November 2016, https://news.rla.org.uk/britons-without-passports-victims-right-rent/

JCWI's independent research also found these attitudes reflected in how landlords were undertaking checks. Only one British citizen surveyed in the pilot area stated that they had been asked by their landlord whether they had permission to be in the UK, compared to 73% of non-British citizen respondents. The research also indicated a number of ways in which the scheme encouraged indirect discrimination. 65% of landlords and agents who responded to the survey said they would be less likely to rent to someone who required a little time to provide documentation. Additionally, evidence from organisations in the West Midlands indicated that some landlords were treating people with time-limited leave differently to those with permanent leave. This included asking for additional payments and rent in advance on the basis that this would mitigate any future penalty. This is despite the fact that landlords are protected from a civil penalty for a minimum period of 12 months after conducting a valid check.[38]

The Home Office's own evaluation of the Right to Rent scheme was published on 20th October 2015, during the parliamentary debates on the new provisions contained in the Immigration Bill 2015/16. However, this evaluation did not allay the concerns of MPs and peers:

> "*The Home Office itself said that it was not sure about the statistical significance of part of the evaluation and that the sample sizes were too small to draw any robust conclusions. We say that the assurance in relation to the civil penalty scheme has not been fulfilled and there is no warrant for extending the scheme to include a criminal sanction*."[39]
>
> Keir Starmer MP

In addition to concerns about its inadequacy, the official evaluation disclosed evidence of discrimination as a result of the scheme.[40] The mystery shopping research conducted by the Home Office found that the BME mystery shoppers were less likely to receive a 'prompt response' from a landlord or agent and were asked to provide more information

[38] NB. Under the 2016 Act a Landlord who has conducted a valid check, but whose tenant's immigration status has changed may find themselves in receipt of a notice from the Home Office informing they are letting to a disqualified person. At this point they will need to take steps within a reasonable time period to terminate the tenancy in order to have a defence to the new criminal offence. This is an additional risk when letting to someone with limited leave, or who does not have a Right to Rent, but has been granted permission to rent by the Home Secretary.

[39] HC Debate 1 December 2015, Vol 603 Col 185

[40] Given the indications of discrimination in the Home Office's mystery shopping data, JCWI has submitted a Freedom of Information (FOI) request to the Home Office in order to obtain a detailed breakdown of the responses received by mystery shopping participants based not just on their race/ethnicity (BME/white) but on the specific characteristics each was assigned (including type of migration status, ethnicity and document availability). While this was a purpose of the Home Office's research, it was not included in the final analysis. The request has been refused on the grounds that these results pertain to private information that cannot be released without consent of the mystery shoppers, despite being produced pursuant to official government research. JCWI is challenging this refusal. For the detailed exchange, see: https://www.whatdotheyknow.com/request/documents_relating_to_the_home_o#outgoing-574786

than the 'white British' mystery shoppers. BME mystery shoppers also reported discriminatory comments by landlords and agents: [41]

> *"The landlord said that if I was under that scheme he was not going to bother because he had a local person who wanted the property and it was much easier to rent to them"*[42]

Evidence of discriminatory behaviour was also reported to Home Office researchers by landlords, agents and tenants involved in the wider research, including a tenant who was refused a tenancy because they had time-limited leave to remain in the UK; preference expressed by landlords and agents for tenants where their 'Right to Rent' was easy to check; and preference for tenants with local accents or who do not 'appear foreign'. The official report also includes evidence that British citizens without documentation had been adversely affected by the scheme. Evidence was reported by charities and voluntary organisations of increased homelessness (six organisations); difficulties findings accommodation among those with the Right to Rent but complicated documentation (seven organisations); and discrimination on the basis of nationality (seven organisations).[43] This evidence of adverse impacts and discrimination was downplayed by the Government, with the official line that their evaluation found "no **hard evidence** of discrimination or of people without passports being placed at a disadvantage" [emphasis added].[44] However, parliamentarians remained concerned about the risk of discrimination as a result of the scheme:

> *"There is a real danger that families who have every Right to Rent will be passed over by landlords because they lack passports or other obvious documentation of their immigration status."* [45]
>
> Lord Rosser

Concerns About Knowledge and Understanding of the Scheme

Additionally, both evaluations found that landlords and tenants lacked knowledge about the Right to Rent scheme and their obligations under it. 59% of landlords involved in the Home Office research who let one property felt poorly informed or uninformed about the scheme. JCWI's independent evaluation also found that 65% of landlords had not read or felt they had not fully understood the Government's published guidance on the

[41] Home Office (2015) "Evaluation of the Right to Rent scheme: Full evaluation report of phase one", Research Report 83, October 2015, p.24, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf

[42] Ibid., p. 24

[43] Ibid.

[44] Letter from Immigration Minister James Brokenshire MP to Alan Ward, 16 November 2015, available at: https://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/memo/ib51.pdf

[45] HL Deb 15 March 2016, Vol 769 Col 1740

scheme, and 44% found the anti-discrimination code hard to understand. Almost a third (30%) of landlord respondents in the pilot who responded to our survey had not read the guidance documents. This was also reflected in the Home Office evaluation report, where only 42% of landlords surveyed had read the code of practice on illegal immigrants and the private rental sector and less than a third (29%) had read the code on avoiding discrimination. The codes outline a landlord's obligations under the scheme, how to undertake the checks correctly and fairly and how to comply with anti-discrimination legislation. The low level of engagement with the Codes among landlords was therefore highly concerning.

Understanding and awareness was even lower among tenants. JCWI's independent evaluation found that over half (56%) of tenant respondents in the pilot area were unaware of the scheme. 81% had received no advice or information on preparing for the checks. The official Home Office evaluation also found that less than a third of tenants felt informed and many were unaware of the scheme. Although the official report claims that there is "arguably less need" for tenants to be informed about the scheme,[46] this is extremely important so that tenants can prepare themselves for the checks and understand how to seek redress if they feel that they have been discriminated against.

Concerns About the Effectiveness of the Scheme

Finally, the Home Office failed to produce evidence that the scheme was even working on its own terms. The stated aims of the scheme are to:

1. Reduce the availability of accommodation for those residing illegally in the UK;
2. Discourage those who stay illegally and encourage those who are resident in the UK illegally to leave by making it more difficult to establish a settled lifestyle through stable housing; and
3. Reinforce action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation.[47]

No conclusive evidence was produced in the Home Office evaluation that demonstrated the scheme was achieving these aims. While a small number of landlords and agents in focus groups said they had turned down tenants under the scheme, this was purely anecdotal and it is impossible to say whether or not the tenants in question actually had a right to rent or not.

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[46] Home Office (2015) "Evaluation of the Right to Rent scheme: Full evaluation report of phase one", Research Report 83, October 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf

[47] Home Office (2013) "Impact Assessment; tackling illegal immigration in privately rented accommodation", 14.10.2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251968/Landlords_Impact_Assessment.pdf (viewed 25.01.17)

Nor was there any conclusive evidence that irregular migrants have been encouraged to leave the UK as a result of the pilot. The Home Office report states that just 26 referrals of irregular migrants were specifically related to the scheme and that 15 irregular migrants came to their attention as a result of the Right to Rent online referral system. Of the cases of irregular migrants where enforcement activity was instigated, only nine had left the UK at the time of publication, the same amount as had been granted legal status in the UK. 46% (47 out of 103) of those identified by the Home Office had outstanding legal cases (four judicial review, 15 family cases, 28 asylum claims) – meaning that these individuals had every right to remain in the UK from this point.[48]

Additionally, there was no evidence that the scheme was effective against rogue landlords. Only five civil penalty notices were issued to landlords during the 'pilot'. This undermines the Government's aim to tackle rogue landlords, a key purpose of the scheme. On the other hand, eight voluntary and charity sector organisations stated in the official evaluation that they had encountered exploitation by rogue landlords of people without the Right to Rent *as a result of the scheme*.

Despite this, the Right to Rent scheme was rolled out across England and expanded.

What is Racial Discrimination?

Racial discrimination is the differential treatment of an individual or group based on their race or perceived race. Race is a protected characteristic under the Equality Act 2010 (the '2010 Act'), which makes such discrimination unlawful in most instances.[49] Under the 2010 Act, landlords must not discriminate against a potential tenant because of their race. Race includes nationality, citizenship, national or ethnic origins and colour. Racial discrimination can be direct or indirect and includes harassment or victimisation based on race.

Direct discrimination means treating somebody less favourably because of their race. For example, refusing all tenants who are not British, or refusing to consider a person whom a landlord does not believe is British based on their appearance, name or accent. Indirect discrimination is when a practice, although applied equally, would put persons of a particular racial group at a disadvantage to others who do not share that characteristic. For example, while requiring tenants to hold a British passport would also discriminate against British citizens who do not own a passport (an estimated 17% of British citizens),[50] it would indirectly discriminate against non-British citizens, all of whom do not hold a British passport. Furthermore, refusing to ever undertake a check through the Home

[48] It is possible that some of these cases, if they arose presently, may fall under the new 'Remove First, Appeal Later' provisions in the Immigration Act 2016, which can require some individuals with human rights appeals to leave the country before appealing.

[49] There are certain instances where racial discrimination is permitted. However, none of these exceptions apply to the letting of private accommodation by ordinary citizens.

[50] ONS (2012) "Statistical Bulletin: 2011 Census: Key Statistics for England and Wales, March 2011" http://www.ons.gov.uk/ons/dcp171778_290685.pdf (accessed 25.01.17)

Office Landlord's Checking Service for any tenant would indirectly discriminate against non-British citizens, as they are the only group to which this check applies.[51]

Under the 2010 Act, landlords must additionally not subject tenants or prospective tenants to harassment. This is "unwanted conduct related to a protected characteristic that violates someone's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them".[52] Discrimination committed by someone acting on behalf of a landlord (such as an agent) may also be seen as discrimination committed by the landlord, unless they can show that they took all reasonable steps to prevent such discrimination. Instructing or inciting another person to discriminate is also unlawful.

> *"Let me go back to the period when my father arrived in this country, the 1950s… a period during which it was typical and usual to have on landlords' doors in this country, "No Irish, no blacks, no dogs." We forget that at our peril. That is why I will absolutely not vote for a Bill that encourages landlords to go down that road again and that does not have the necessary understanding, restrictions and knowledge of our history."*
>
> David Lammy MP

Discrimination in the Housing Market

Many landlords in the UK can afford to be discriminating in choosing their tenants. Especially in areas with high rental demand, landlords will often be approached by a number of applicants for any room or property on the market and various factors will play into a landlord's decision to rent a property. The decisions landlords make about who they let their property to are always to some extent based on arbitrary and subjective criteria. Preconceptions about what makes a "good tenant" invariably play a part in the process. This could include a landlord's views about certain occupations, children, pets, or even the brand of car someone drives. These preconceptions will inform a landlord's economic considerations, such as whether a contract is likely to be honoured. At the same time, the choice of tenant will be constrained by who applies for the property, when they can move in and how long they can stay. While most of these decisions may not amount to illegal discrimination, where these decisions are based on a person's race, or assumptions about their race, this is illegal, as outlined above.

[51] The Landlords Checking Service is an online tool that landlords can use to confirm a person's Right to Rent if they have an outstanding case or appeal with the Home Office, or if they have been granted permission to rent.

[52] Home Office (2014) "Code of Practice for Landlords: Avoiding unlawful discrimination when conducting ' Right to Rent' checks in the private rented residential sector https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376789/Code_of_Practice_for_Landlords__web_.pdf

> *"I do not accept tenants on benefits, pets, or self employed or people previously in debt."*
>
> Mystery shopping response from a landlord

> *"I was never likely to let to anyone who could easily be short term. BUT my requirements would be influenced by the fact that one tenant will be more difficult to check out than another. In this area I can afford to be very fussy about who I let to and going for an easy life is a factor."*
>
> Survey respondent: Landlord

Despite being illegal, racial discrimination in the UK housing market is neither new nor, unfortunately, uncommon. A survey by Runnymede found that 29% of Black Caribbean, 28% of Black African and 27% of Pakistani respondents felt that they had been discriminated against when applying for private housing because of their ethnic background, nationality or religion, compared to just 1% of white British people surveyed.[53] These results were published alongside a BBC Panorama report in 2013 that found shocking examples of letting agents who were willing to racially discriminate against African-Caribbean prospective tenants at the behest of a landlord.[54]

BME groups are also disadvantaged in the housing sector more generally. A 2016 report by the Human City Institute found that despite concerted effort and campaigning over the past 40 years, the legislation and statutory and regulatory codes in place have failed to adequately confront racial disadvantage and discrimination in housing.[55] BME households are more likely to live in older, fuel poor and overcrowded housing. They are over-concentrated in the most deprived neighbourhoods and worst living environments. They are also overrepresented in homelessness applications and acceptances.[56] This makes any policy that increases the likelihood of discrimination in this sphere and decreases the availability of housing among this group particularly damaging.

In recent years the private rental sector has grown dramatically. In 2012/13 it overtook the social rented sector and has continued to grow since then. In 2014/15, 19% of all

[53] Runnymede (2013) "'No Dogs, No Blacks' new findings show that minority ethnic groups are still discriminated against when trying to rent private housing", http://www.runnymedetrust.org/news/525/272/No-Dogs-No-Blacks-new-findings-show-that-minority-ethnic-groups-are-still-discriminated-against-when-trying-to-rent-private-housing.html (viewed 25.01.17)

[54] Lynn, G. & Davey, E. (2013) "London letting agents 'refuse black tenants'" http://www.bbc.co.uk/news/uk-england-london-24372509, (viewed 31.01.2017)

[55] Gulliver, K. (2016) "Forty Years of Struggle: A Window on Race and Housing, Disadvantage and Exclusion", Human City Institute, https://bmenational.files.wordpress.com/2016/10/forty-years-of-struggle-a-window-on-race-and-housing-disadvantage-and-exclusion1.pdf (viewed 25.01.17)

[56] Ibid.

households were private renters, equating to 4.3 million households. This is an increase of 82% since 2004/5.[57] The growth in private renting is also more pronounced among BME groups than those who are white-British.[58] Any policy that affects the private rental sector is therefore likely to have a disproportionate impact on BME communities.

The increase in tenants in the private rental sector has corresponded with a growth in the number of people renting out property for profit.[59] There are over a million private landlords in the UK.[60] Most landlords are not commercial or social enterprises, but rather private individuals letting out a single property as an additional source of income. A survey by Shelter shows that 92% of landlords are letting out fewer than 5 properties, with 59% letting out only one.[61] There is no national mandatory landlord registration scheme which applies across the private rented sector in England and the vast majority of landlords are not members of an association or regulatory body. As housing is a devolved matter, there are some additional regulatory frameworks that have been put in place in Scotland, Wales and Northern Ireland.[62]

This a complex sector that contains individuals, whether landlords or tenants, who have highly variable needs and preferences. Individual landlords have almost unlimited discretion in choosing their tenants, particularly in the many areas of high housing demand across England. However, this is also a sector that provides an essential human need, and in which BME groups are already disadvantaged. The introduction of the Right to Rent scheme into this chaotic and messy system is something that should have entailed careful and scrupulous analysis of the evidence of any adverse impacts. Unfortunately, this did not happen, and what evidence has emerged since its implementation has been dismissed.

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[57] DCLG (2016) "English Housing Survey Private Rented Sector Report, 2014-15" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570848/Private_Rented_Sector_Full_Report.pdf (viewed 15.01.17)

[58] ESRC Centre on Dynamics of Ethnicity (CoDE) (2013) "How has the rise in private renting disproportionately affected some ethnic groups?" http://www.ethnicity.ac.uk/medialibrary/briefingsupdated/how-has-the-rise-in-private-renting-disproportionately-affected-some-ethnic-groups.pdf (viewed 15.01.17)

[59] Shelter (2016) "Research Report: Survey of Private Landlords: February 2016" https://england.shelter.org.uk/__data/assets/pdf_file/0004/1236820/Landlord_survey_18_Feb_publish.pdf (viewed 15.01.17)

[60] Osborne, H. (2016) "Number of UK landlords rises to 1.75 million", published online 30 May 2016, accessed online 02.12.2016 https://www.theguardian.com/money/2016/may/30/number-of-uk-landlords-rises-to-175-million (viewed 15.01.17)

[61] Shelter (2016) "Research Report: Survey of Private Landlords: February 2016" https://england.shelter.org.uk/__data/assets/pdf_file/0004/1236820/Landlord_survey_18_Feb_publish.pdf (viewed 15.01.17)

[62] Wilson, W., Baxter, J., Berry, K. & Murphy, E. (2016) "Comparing private rented sector policies in England, Scotland, Wales and Northern Ireland, BRIEFING PAPER Number 07624, 27 June 2016", House of Commons Library, http://researchbriefings.files.parliament.uk/documents/CBP-7624/CBP-7624.pdf (viewed 25.01.17)

Methodology

The research sought to address the following questions:

1. Are landlords discriminating against different people depending on their nationality, their ethnicity, or the kinds of documents that they possess, and to what extent is any discrimination the result of the Right to Rent scheme?
2. Do landlords and agents understand the Right to Rent scheme and are they implementing it correctly?
3. Does the scheme meet its stated aims: is there evidence that the scheme is deterring irregular migrants from remaining in the UK, or effective in targeting rogue landlords?

A detailed explanation of the methodology can be found in Appendix 1. In brief, answers to these questions were approached using a number of different research methods. The first and second questions were examined through mystery shopping exercises and surveys. The third question was examined through analysing responses to parliamentary questions and Freedom of Information Act (FOI) requests.

Mystery Shopping

Discrimination occurring as a result of the scheme was tested through an email mystery shopping exercise. Six email mystery shopper scenarios were created for tenants enquiring about accommodation. The mystery shoppers were constructed to be as similar as possible, save for differences in key characteristics of citizenship, ethnic/national origins, migration status, and the types of documentation they were able to produce. National/ethnic origin was inferred through the name given to the scenario.

Scenarios

1. Peter: British citizen, ethnically British name, British passport;
2. Harinder: British citizen, non-ethnically British name, British passport;
3. Ramesh: Non-British citizen, non-ethnically British name, indefinite leave to remain (settled status) and an unlimited ‘ Right to Rent’ demonstrated through one document;
4. Colin: British citizen, ethnically British name, no passport but unlimited ‘ Right to Rent’ that could be demonstrated through two documents;
5. Parimal: British citizen, non-ethnically British name, unlimited ‘ Right to Rent’ that could be demonstrated through two documents;
6. Mukesh: Non-British citizen, non-ethnically British name, Limited Leave to remain in the UK (2 years), demonstrated through one document.

Each email gave the same relevant information about the mystery shopper, including their nationality and the documents they had (or did not have), and expressed interest in a

property. These enquiries were sent to a total of six hundred online advertisements for rental properties. Each property listing was sent messages from a combination of three of the mystery shoppers.[63] This combination was changed in rotation so that all possible combinations of scenarios were sent out in roughly equal numbers. Responses from landlords were then recorded and analysed.

An additional set of 150 emails were sent out in respect of a seventh scenario:

7. Priyesh: Non-British citizen, non-ethnically British name, requesting the landlord conduct an online check as documents with the Home Office for visa renewal.

These were sent out individually, with each advertisement receiving one email.

This exercise was limited to the initial contact with a prospective landlord or agent. Owing to resource restrictions, we did not send any follow up emails, nor did we follow up with phone calls, in-person meetings, or house viewings. This means that we can only analyse levels of discrimination at first contact, i.e. whether or not a response is received and whether responses invite further contact. We would expect further discrimination to occur at later stages and we invite the Government to carry out further investigation to measure this.

Surveys

Online surveys were created for the following groups:

1. Landlords and agents;
2. Letting agents
3. Organisations working in fields related to migration, housing, and discrimination.
4. Tenants and lodgers.

The survey for landlords and agents was placed on the JCWI website and shared on social media and with other organisations. A total of 124 responses were received. Of these, only 16 responses were from agents. As a result, these responses were removed from the final analysis and a separate survey was created for letting agents, resulting in 108 responses from landlords.

The survey for letting agents was shared with a list of 200 agents in England via email. A link to the survey was also shared through the Association of Residential Letting Agents (ARLA) and through the National Approved Letting Scheme **(**NALS) subscribers mailing list. The survey received 208 responses.

The survey for organisations was sent directly to relevant organisations in the later stages of the research. The survey received 17 responses.

[63] There were occasions when properties could not be sent all three messages, if for example an advert was withdrawn before all three were sent. This has been taken into account in our results. For more information see our section on methodology in the main report below.

The survey for tenants was circulated through tenants' organisations and promoted through JCWI's networks and online. The survey received 45 responses. Many of the responses were not directly relevant to the research as the respondents had not searched for a tenancy under the scheme, or answered the survey in order to express more general complaints about the rental market (such as the cost of renting). As such, a statistical analysis of these results is not relied upon.

Other

Public records, such as Government responses to Freedom of Information Act (FOI) requests, parliamentary questions and written answers, and parliamentary debates, were also analysed. In addition, FOIs were sent to every local authority in England. 278 local authorities responded within the timeframe necessary for responses to be analysed.[64]

[64] 16 further responses received after the 7th January 2017 (the cut off for analysis) were not included in the analysis.

Our Findings

Evidence of Discrimination on Multiple Fronts

Our research found that that the Right to Rent scheme has resulted in racial discrimination by landlords based on a tenant's nationality and ethnicity and that this is directly related to the type of documents tenants have that evidence their identity and/or Right to Rent.

Treating a person less favourably on the basis of nationality or citizenship (or perceived nationality/citizenship) or on the basis of their national or ethnic origins is racial discrimination and is illegal in the provision of rented accommodation under the Equality Act 2010.

> *"The panic that these measures is causing among landlords in my constituency, and the fears that they have because of the uncertainties of this Bill, will mean widespread discrimination for incoming students and other people who landlords fear may get them into trouble. They simply will not rent these properties. That is a major problem for this Bill and for good community relations in this country."*[65]
>
> Barry Gardiner MP

Discrimination Against Non-British Citizens

Key Findings

- Foreign nationals are being discriminated against. Over half of landlord's surveyed (51%) stated that they are now less likely to consider letting to foreign nationals from outside the EU. Almost a fifth (18%) were less likely to rent to EU nationals as well.

- The mystery shopping scenario in which the prospective tenant was not British, but had indefinite leave to remain in the UK, was also 20% more likely to receive a negative response or no response compared to a British citizen.

- Landlords are also less willing to accept tenants who do not hold a British passport as a result of the scheme. 42% of landlords who responded to our survey stated that they were less likely to rent to anyone who does not have a British passport. This rose to almost half (48%) of landlords when they were explicitly asked to consider the new criminal sanction. In addition, eight agents surveyed stated that landlords had expressed an unwillingness to rent to tenants who do not hold a British passport as a direct result of the scheme. While this would also affect British citizens who do not have a passport, it would indirectly discriminate against non-British citizens, none of whom hold a British passport.

[65] HC Deb 13 October 2015, Vol 600, Col. 210

> *"It was quite apparent that the letting agent was put off by our nationalities (I'm Romanian; husband is French)."*
>
> Survey response, tenant

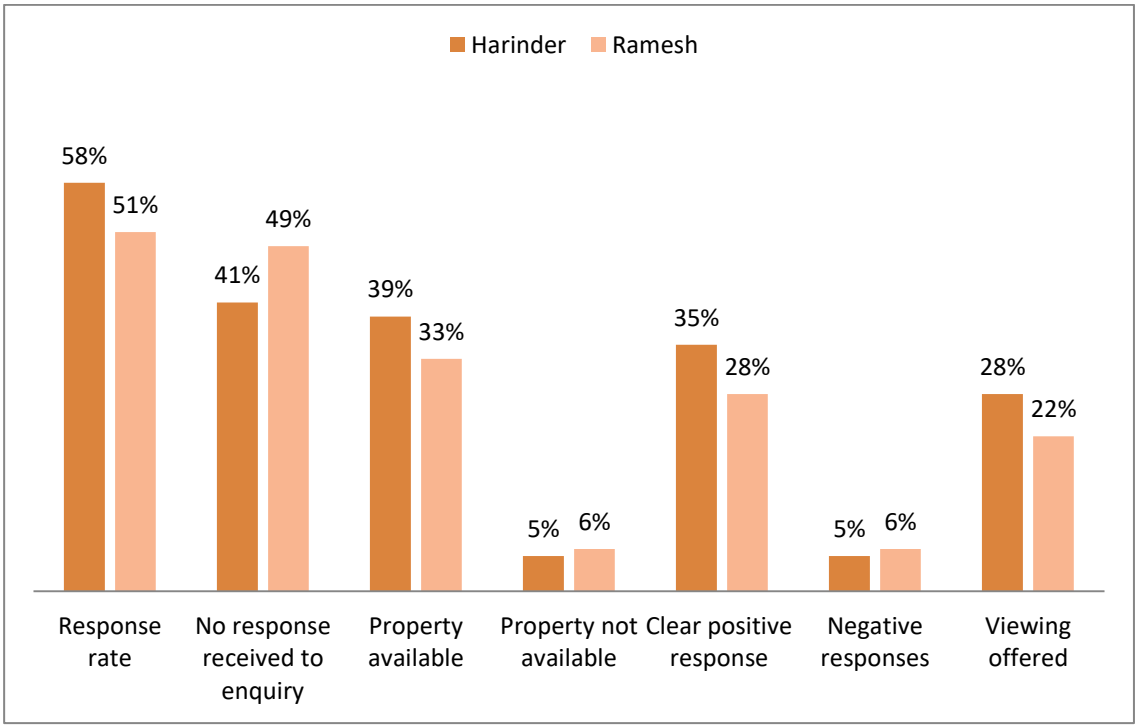
Results from the mystery shopping exercise and surveys indicate that landlords are treating non-British prospective tenants less favourably than those who state that they are British.

Discrimination against non-British citizens was tested by comparing the response rates and types of responses received to enquiries about properties sent by mystery shoppers who differed in their nationality but were similar in all other relevant characteristics (ethnicity, right to rent and number of documents to evidence their right to rent).

Harinder stated that he was a British citizen and that he had a British passport, while Ramesh stated that he was a non-British citizen who had settled status/indefinite leave to remain in the UK demonstrated through his Home Office document. Both scenarios had an unlimited/permanent right to rent in the UK.

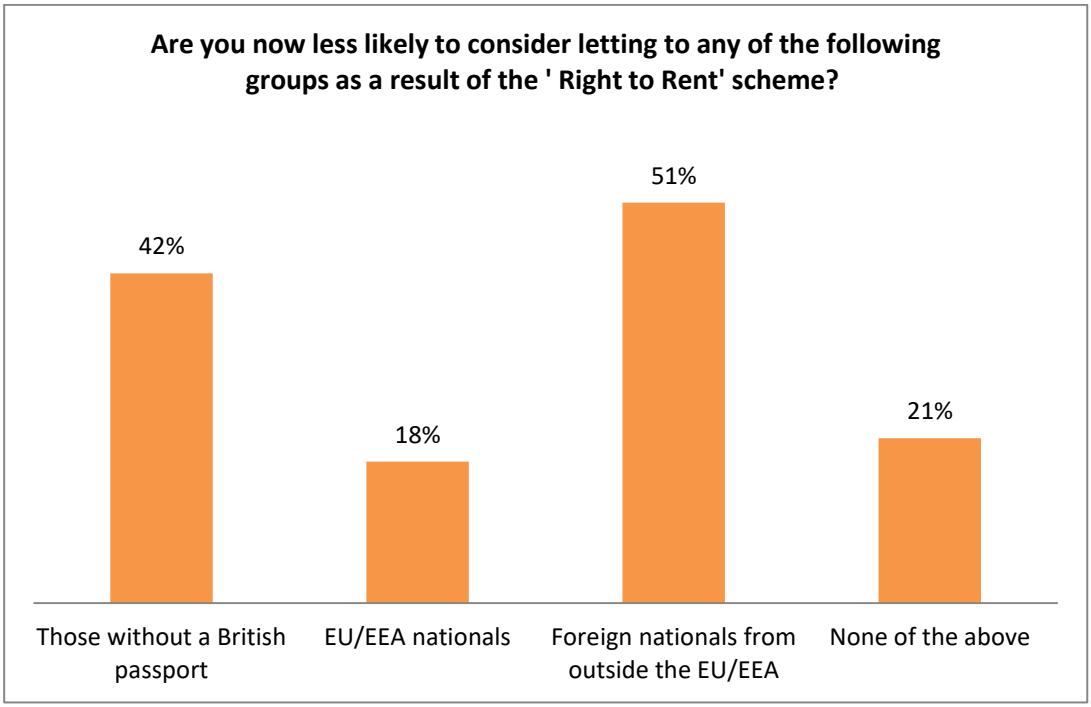
Ramesh received 12% fewer responses to his enquiries (51% compared to 58% of enquiries). He was also 15% less likely to be told by a landlord that the property was available (33% compared to 39% of enquiries). Overall, Ramesh received a negative response or no response to his enquiry more than half the time (55%), and was 20% more likely not to receive a response or to receive a negative response than Harinder (46%).

These results indicate that discrimination on the basis of nationality has occurred. It is not possible to definitively state, purely from the above results, whether this form of discrimination is as a direct result of the Right to Rent scheme. However, this is confirmed from the survey responses from landlords, as discussed below, which show that this form of discrimination is occurring and that this is as a direct result of this policy.



> *"The landlord has some criteria for tenants I want to make you aware of: the tenants must be British Nationals and have guarantors who are British Nationals with adequate income, if aren't British national she may still consider if tenant has a guarantor who meets these requirements. No pets and no children. I hope this is OK and the property still suits you!"*
>
> Mystery shopping response

> *"Landlords [are] turning people away who have a Right to Rent because they are unsure and a culture of fear has been created around renting to people who are not Full Brits. The end result tends to be racist with lots of individuals being rejected just when landlords sense them to be a bit too foreign for them to be comfortable and it seems strongly to be enabling and giving landlords an excuse to turn people down on essentially racist grounds."*
>
> Survey response: organisation



51% of landlords surveyed stated that they were less likely to consider letting to foreign nationals from outside the EU as a result of the Right to Rent scheme, while 18% were also less likely to rent to EU nationals.

In addition, 42% of landlords stated that they were less likely to rent to *anyone who does not have a British passport*. This rose to almost half (48%) of landlords when they were explicitly asked to consider the new criminal sanction. Eight agents surveyed stated that landlords had expressed an unwillingness to rent to tenants who do not hold a British passport as a direct result of the scheme. While this would also disadvantage British citizens who do not possess a passport (explored below), it would indirectly discriminate against non-British citizens, none of whom would be able to meet this requirement.

It is difficult to assess purely from these results the extent to which such discrimination is the direct result of the Right to Rent scheme. There is substantial evidence of wider racial discrimination in the housing market and it is by no means a new phenomenon.[66] In order to examine this further, we looked at whether the availability of different types of documents affected how mystery shoppers were treated, as the scheme has for the first time introduced a requirement for landlords to check that tenants hold specific documents to prove their Right to Rent. This is explored in more detail below.

[66] Gulliver, K. (2016) "Forty Years of Struggle: A Window on Race and Housing, Disadvantage and Exclusion", Human City Institute, https://bmenational.files.wordpress.com/2016/10/forty-years-of-struggle-a-window-on-race-and-housing-disadvantage-and-exclusion1.pdf (viewed 25.01.17)

Discrimination Against British Citizens who do not have a Passport

Key Findings

- Prospective tenants who do not hold a British passport are at a disadvantage, even where they are British citizens.

- The 'white British' tenant without a passport was 11% more likely to receive a negative response or no response than the 'white British' tenant with a passport.

- This discrimination is greater for British BME individuals who cannot show a passport. The BME British tenant without a passport was 26% more likely to receive a negative response or no response than the BME tenant who could provide a British passport. Overall, the British BME tenant who did not have a passport received a negative response or no response to his enquiries 58% of the time.

> *"…the consequences of this measure will be that people who do not have a British passport, even those who are British – we should remember that some 12 million people in Britain do not carry a passport – will find themselves discriminated against because the landlord thinks that the situation is difficult."*[67]
>
> Fiona McTaggart MP

Our mystery shopping research shows that tenants who do not hold a British passport are treated less favourably than those who do and that this discrimination is worse where the tenant is not ethnically British. Landlords surveyed also indicated that they are more likely to discriminate against anyone without a British passport as a result of the scheme. An estimated 17% of British citizens do not hold a passport, and such treatment would therefore potentially restrict a large number of people from accessing the private residential sector.[68]

> *"People we work with sometimes have lost documents, or had them stolen. Homelessness amplifies this issue. Without clearly having ID, landlords or housing projects can be unwilling to accept referrals. For example, today, I have had a referral to a voluntary sector housing broker put on hold until ID documents can be sourced. A copy of ID and two items from list B on the Right to Rent list have not been considered adequate."*
>
> Survey response: organisation

[67] HC 13 October 2015, Vol 600, Col 237

[68] ONS (2012) Statistical Bulletin: 2011 Census: Key Statistics for England and Wales, March 2011 http://www.ons.gov.uk/ons/dcp171778_290685.pdf

While this may indicate a misunderstanding amongst landlords of the operation of the scheme, it could also indicate an unwillingness to accept less recognisable documents, or to 'play it safe'. The risk that landlords, when faced with a severe financial penalty for failure to adequately conduct checks and, since 1st December 2016, a possible prison sentence, would fail to consider a prospective tenant who had more complicated documents was acknowledged and debated during the passage of the legislation.[69]

To mitigate the risk to British citizens (among others) who lack identity documents, the Home Office added additional documents to the list of acceptable documents that can evidence an unlimited Right to Rent, contained in the Code of Practice for landlords.[70] These must be shown in combination with another document from the same list.[71] However, many of the new documents are unintuitive, including documents that do not explicitly mention a person's nationality or immigration status. Examples include a letter from a professional photographer, a licensee of a public house, a travel agent, or a chiropodist.[72]

> *"Our biggest concern is what we have chosen to call document discrimination. Of the UK indigenous populace…17% do not have passports. If a landlord has two people walk through his door who want to rent the same property, and one says, "I have a passport and can do the Right to Rent check now," and the other says, "I do not have a passport but will come back tomorrow with two forms of identification off the secondary list," the landlord is technically not breaking the law by taking the first person, and in practice I am sure that he will take the first person."*[73]
>
> David Smith, Policy Director, Residential Landlords Association

In the mystery shopping exercise, Peter and Colin both stated in email enquiries to landlords that they are British citizens. However, Peter said that he had a passport and Colin said that he did not, but that he can show other documents. Peter was both more likely than Colin to receive a response and less likely to receive a negative response to his enquiries. Overall, 51% of Colin's enquiries received a negative response or no response,

[69] HC Deb 13 October 2015, Vol. 600, Col. 241 & Col. 245

[70] Home Office (2016) "Code of Practice for Landlords on Illegal Immigrants and Private Rented Accommodation", https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016

[71] Prospective tenants who are British citizens, European Economic Area (EEA) nationals or who have indefinite leave/settled status in the UK can show one of eight documents to evidence an unlimited Right to Rent. They can also show two documents from a further list of 13, many of which bear no relation to immigration status or nationality.

[72] Home Office (2016) "Right to Rent Document Checks: a User Guide", Home Office, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/573057/6_1193_HO_NH_Right-to-Rent-Guidance.pdf (visited 26.01.2017)

[73] HC 20 October 2015 Public Bill Committee, Col 59

compared to 46% of Peter's. This makes Colin 11% more likely not to receive a response or to receive a negative response than Peter.

Colin also received a number of responses where landlords stated that they would need to see a passport in order to rent to him, even though this is not required under the Right to Rent scheme itself:

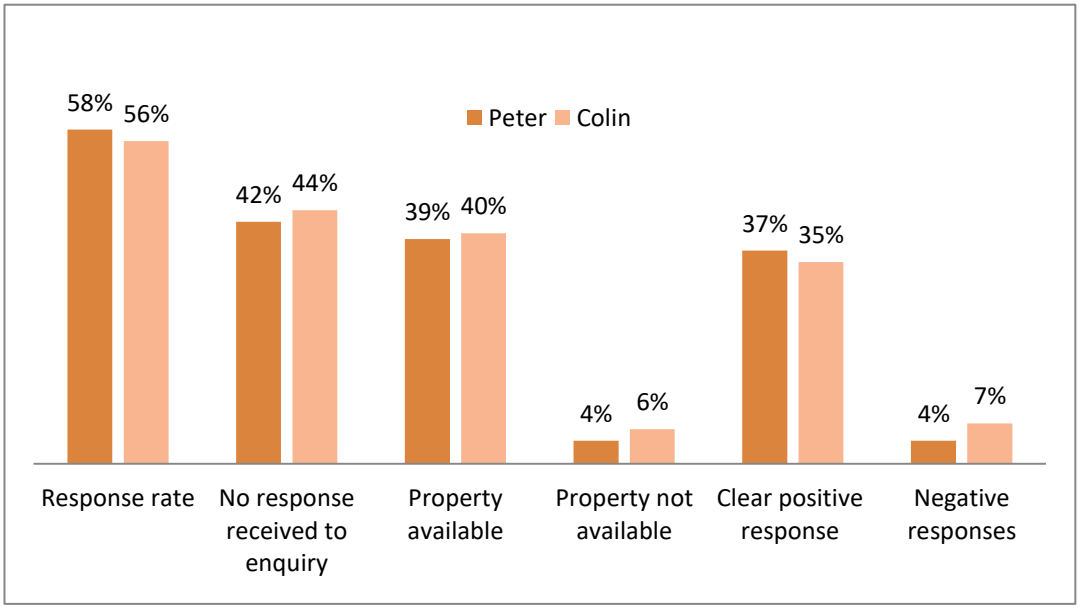
> *"Sorry Colin need passport"*

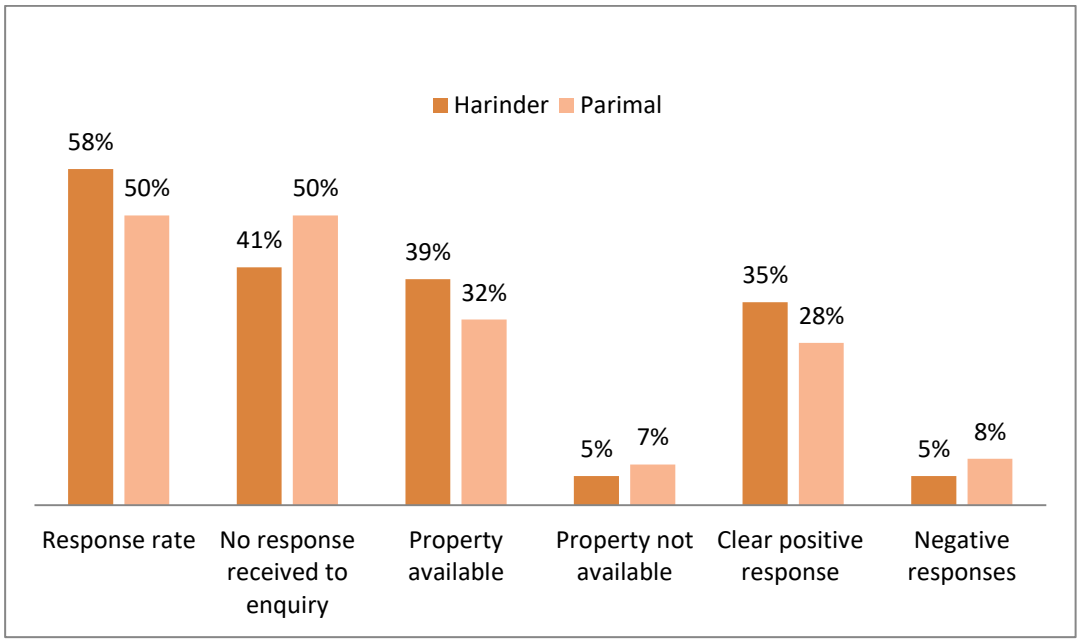
> *"Thank you for your enquiry but sorry I could not do a rental agreement without seeing your passport"*

> *"I am afraid legally we require a valid passport to offer rentals. I will not be able to assist you. Hope you get your passport back promptly."*

The differential treatment was even greater when comparing the scenarios that were not ethnically British. In email enquiries to landlords, Harinder and Parimal both stated that they were British citizens. However, Harinder stated that he had a British passport, while Parimal said he did not, but could show other documents as identification.

Parimal did not receive a response or received a negative response to more than half of his enquiries (58%), whereas Harinder received no response or a negative response to 46% of enquiries, the same as Peter. This makes Parimal 26% more likely not to receive a response from a landlord that invited further interaction (such as a viewing) than a British tenant with a passport.





The preference for British passports was also reflected through survey responses. When asked what documents they would accept to evidence an unlimited Right to Rent, 100% of landlords surveyed stated that they would accept a British passport. However, only 67% would accept a certificate of naturalisation or registration as a British citizen, which is an acceptable document listed in the Code of Practice.

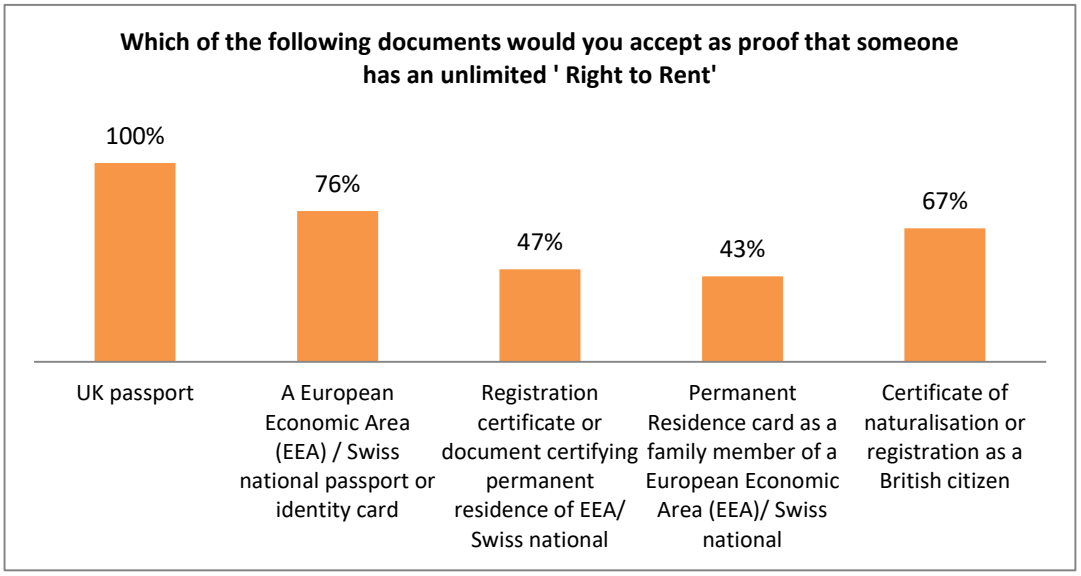
When asked about the list of documents that are acceptable in combination, less than half of landlords surveyed said they would accept a UK driving license (48%). Just 29% said they would accept benefits paperwork and 23% said they would accept a letter from the National Offender Management service or a letter from a police force confirming that documents had been reported stolen.

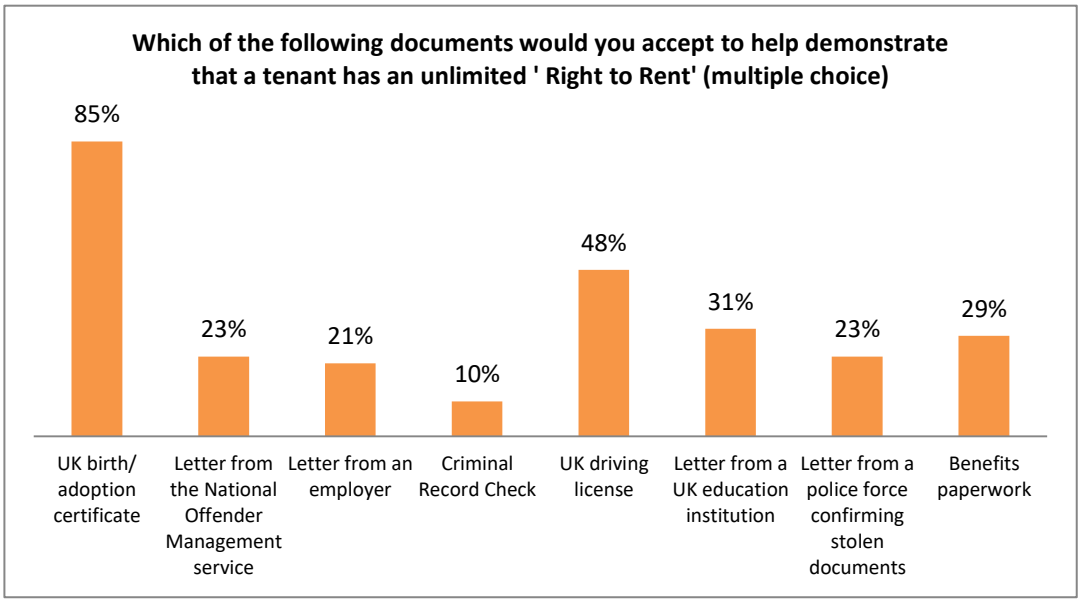
As one landlord respondent stated regarding the documents listed, all of which can be shown in combination to prove an unlimited Right to Rent:

> *"None of the above really reflect any immigration status so technically none of them have anything to do with the new regulations"*

14 organisations surveyed stated that people who lacked clear identity documents had been affected by the Right to Rent scheme. Four had received reports to them of landlords refusing to accept certain types of documents or asking for additional documents since the scheme came into force.As explained above, it is not a legal requirement for a landlord or agent to see a passport. British citizens who do not have a passport should be able to show other documents to evidence a Right to Rent. However, prospective tenants who do not have a passport have been treated less favourably than those who do, which indicates that landlords are discriminating on this basis.

This indicates that landlords are not willing to accept documents other than a British passport, either due to misunderstanding how the scheme operates, or due to a preference for familiar and easily recognised documents. This is extremely concerning, considering that 17% of British citizens do not hold a British passport.[74] Because the clearest, simplest and most familiar document is a British passport, the question of whether the complexity of conducting a check is a deterrent to landlords is also intrinsically linked to racial discrimination on the basis of citizenship or ethnic/national origins.





[74] ONS (2012) Statistical Bulletin: 2011 Census: Key Statistics for England and Wales, March 2011 http://www.ons.gov.uk/ons/dcp171778_290685.pdf

Discrimination Against Ethnic Minorities

Key Findings

- Where neither 'white' or BME British citizens had a British passport, the BME tenant was 14% more likely to receive a negative response or to not receive a response from a landlord. Additionally, the BME tenant was 25% less likely to be offered a viewing and 20% less likely to be told the property is available than the non-BME tenant in the same position.

- Interestingly, no evidence of racial discrimination was found where both the BME and 'white British' scenarios had a British passport, strongly suggesting that the discrimination that occurred is a result of the Right to Rent scheme, rather than latent discrimination by racist landlords.

- Evidence of racial discrimination on grounds of ethnic/national origins was also found through the surveys. 36% of landlords stated that the introduction of the new criminal sanction would make them less likely to rent to someone who did not "seem to be British". Five agents also stated that landlords had indicated that they were less willing to rent property to people who "look or sound foreign" as a result of the Right to Rent scheme.[75]

> *"It's kind of like really racist in a way. Because if you're called Smith or Jackson, one assumes that you're British."*
>
> Landlord, personal communication with JCWI

> "*It had not been an issue of any discrimination in London in the past. Since the new requirements come into force, it has made ethnic minority prospective tenants like me feel uncomfortable when inquire to view rental properties.*"
>
> Survey respondent: tenant

As above, our mystery shopping results show that prospective tenants who are British citizens but do not hold a British passport are treated less favourably by landlords if they are not ethnically British. This indicates that the Right to Rent scheme encourages landlords to racially discriminate against certain groups of tenants who they do not 'perceive' to be British based on their ethnic/national origins if prospective tenants cannot

[75] While this is a small proportion of the number of agents surveyed in total, we consider it highly significant that five were prepared to admit that landlords were asking them to discriminate unlawfully. The majority of these responses came from agents managing over a hundred properties, but responses did also come from small agencies managing under 50 properties and less than 5 properties.

easily show their citizenship through a passport. These findings are backed up through the results of surveys with landlords and agents and are explored in more detail in this section.

To test for discrimination on the basis of ethnic/national origins, mystery shoppers were compared who differed in their national/ethnic origin, but shared the same nationality, immigration status and the type of documents they possessed.[76] National/ethnic origin was inferred through the name which was either ethnically British (Peter or Colin) or non-ethnically British (Harinder or Parimal).[77]

Peter and Harinder both stated in their enquiries to landlords that they were British citizens and could show a passport on request. Colin and Parimal stated that they were British citizens; however, neither had a British passport and instead stated that they could show alternative documentation. To satisfy the Right to Rent checks, a British citizen in this situation can show two alternative documents from a list in the Code of Practice for Landlords.[78]

Where both scenarios held British passports no ethnicity discrimination was apparent. Peter and Harinder received the same rate of responses (58%) and were just as likely to receive responses that stated that the property was available (39%). Parimal and Colin, who did not hold British passports, both fared worse than Peter and Harinder. However, Parimal was also treated less favourably than Colin. Parimal was 10% less likely to receive a response than Colin (50% of enquiries, compared to 56%), 20% less likely to receive a response stating that the property is available (32% compared to 40% of enquiries) and also 25% less likely to be offered a viewing (21% of enquiries compared to 28%). Overall, Parimal was 14% more likely to receive a negative response or no response to his enquiries than Colin (58% of enquiries compared to 51%).

The results indicate that in cases where individuals are not able to produce a British passport (but can provide other documentation) landlords are discriminating on the basis of perceived ethnic/national origins. This suggests that where landlords do not have a clear, easy to understand, single document that allows them to categorise a person in relation to the checks, they are more likely to use racially discriminatory assumptions in their decision and are more likely to believe that someone with an ethnically British name is a British citizen and therefore has a right to rent.

[76] Ethnicity was inferred through name, with scenarios assigned either an ethnically British or ethnically Indian sounding name.

[77] For a full discussion of the methodology of the mystery shopping exercise see Appendix 1

[78] *Right to Rent Code of Practice: Scheme for landlords and their agents (applicable as of 1st February 2016)*

"*Since the referendum result, there seems to be confusion among some landlords about the status of EU nationals. British people of visible minority have had to apply for passports urgently (and thus, even more expensively), as proof of identity*."

Survey response: organisation

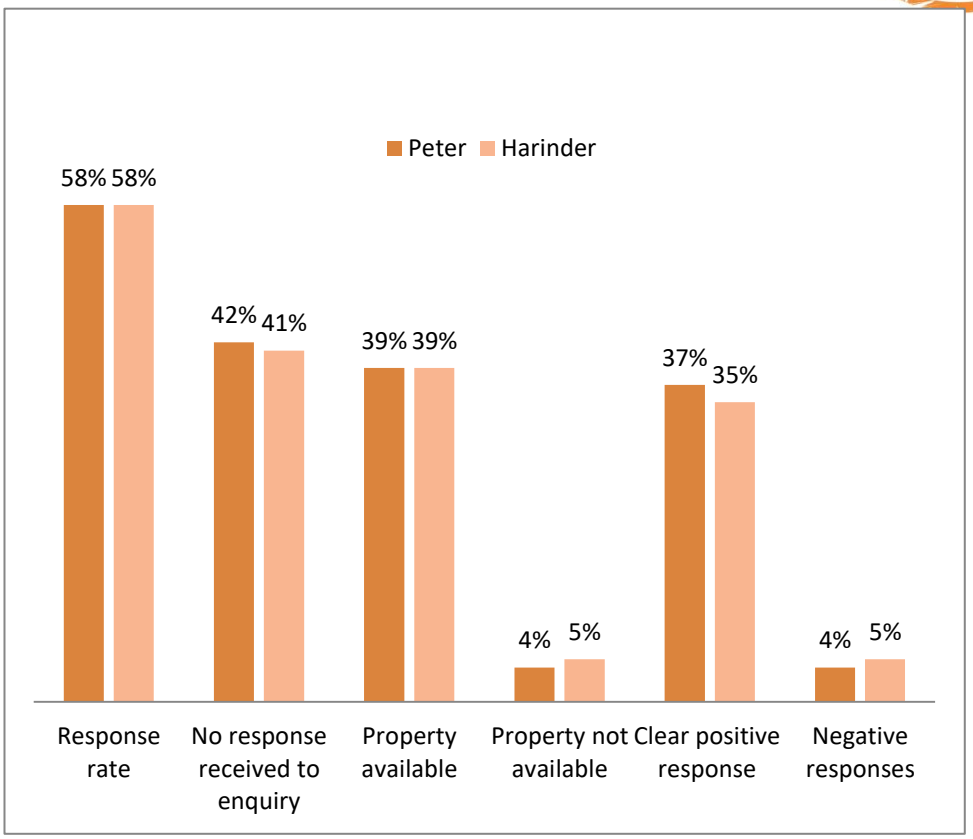
Survey responses also indicated that discrimination on the basis of ethnicity or ethnic/national origins is likely to occur as a result of the scheme. Surveys asked landlords whether they had discriminated, or were likely to discriminate, against tenants on the basis of their ethnicity. 36% of landlord survey respondents stated that the introduction of the new criminal sanction would make them less likely to rent to someone who did not "seem to be British".

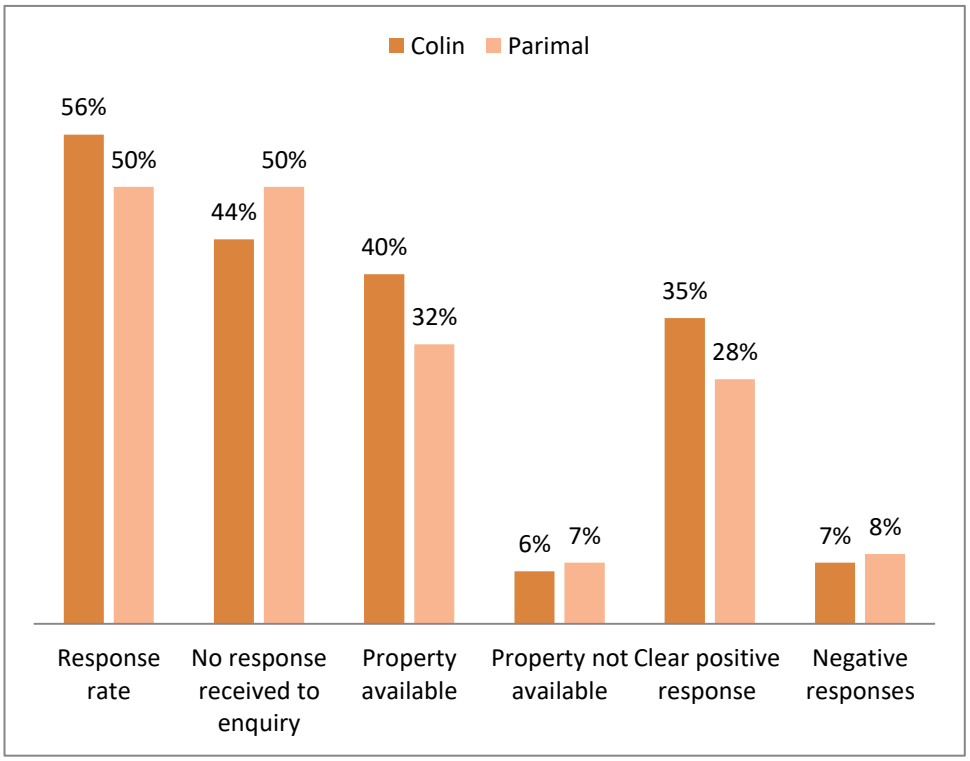
Five agents who responded to our survey also stated that landlords had indicated that they were less willing to rent property to people who "look or sound foreign" as a result of the Right to Rent scheme. The surveys only provide a snapshot of the rental market but do reveal that landlords may use racially discriminatory practices in choosing tenants in order to avoid the risk of a fine or prison sentence for letting to someone who does not have the Right to Rent.

"Landlords may not set out to discriminate – most will not – but I would not fancy your chances of easily finding accommodation if your name is "Afshar", "Ahmed", "Janke" or "Hamwee"".[79]

Baroness Hamwee

[79] HL 22 December 2015 Immigration Bill Second Reading, Col 2461


Peter
Harinder
58%
58%
42%
41%
39%
39%
4%
5%
37%
35%
4%
5%
Response rate
No response received to enquiry
Property available
Property not available
Clear positive response
Negative responses


Colin
Parimal
56%
50%
44%
50%
40%
32%
6%
7%
35%
28%
7%
8%
Response rate
No response received to enquiry
Property available
Property not available
Clear positive response
Negative responses

Discrimination Against Migrants who Lack Documents

Key Findings

- The most vulnerable individuals, such as asylum seekers, stateless persons, and victims of modern day slavery, who would require landlords to do an online check to confirm they have been granted permission to rent, face the greatest barrier of all. This could amount to indirect racial discrimination if landlords are not willing to conduct an online check for any prospective tenant who requires this.

- The Home Office's permission to rent process is fatally flawed. The Home Office does not inform those granted permission to rent that they have it unless they make direct enquiries. It also refuses to provide them with any documentary proof that would satisfy a Right to Rent check. These individuals must rely on the willingness of landlords to navigate the Home Office's online checking service. However, landlords are only told to use the online service when they are requested to do so by a prospective tenant who states they have permission to rent, even though they may not know if permission has been granted to them.

- Out of 150 mystery shopping enquiries from a prospective tenant who asked landlords to conduct an online check, 85% received no response. Only 12% of enquiries received a response that might invite a follow up, such as a phonecall or a viewing. Only three responses explicitly stated that the landlord was willing to conduct a check through the Landlord's Checking Service. This form of discrimination would also affect people whose documents are with the Home Office, or who have ongoing legal cases.

- Furthermore, 82% of organisations surveyed stated that people who lack clear identity documents had been affected by the Right to Rent scheme and 71% stated that asylum seekers had been affected.

Migrants who lack documents but do have a right or permission to rent face a significant barrier in the private rental sector. In some instances, this could amount to indirect racial discrimination if landlords are not willing to conduct an online check for any prospective tenant.

Migrants who cannot show one of the four prescribed documents from the specified list in the Code of Practice that evidence a time-limited Right to Rent must ask a landlord or

agent to confirm their right to rent through the Home Office's Online Checking Service.[80] This service can be used in two instances:

1. Where the relevant documents are with the Home Office, for example as part of a visa renewal application; or

2. Where the person does not have a right to rent, but has or may have been granted 'permission to rent' by the Home Office.

The Government has recognised that some people who do not have a right to rent may have strong and compelling reasons why they should be allowed access to private residential accommodation. In these instances, they can be granted a discretionary 'permission to rent' by the Home Office, which is to be treated as having a time-limited right to rent. This group may include (but is not limited to):

- Those with an outstanding asylum claim or international protection claim, or appeal against refusal of such a claim, including fresh claims;
- Those with an outstanding appeal or judicial review, where this cannot be pursued from abroad or is not suspensive of removal;
- Individuals on immigration bail;
- Families cooperating with the Home Office family returns processes;
- Individuals complying with the Home Office's voluntary departures process and those with barriers to removal;
- Victims of trafficking or slavery.[81]

Permission to rent must also be granted by the Home Office if a failure to do so would result in a breach of an individual's human rights, where a migrant is considered a vulnerable person unable to make their own decisions, or where granting permission to rent will better allow the Home Office to progress a migrant's case.[82] Individuals who do not have a right to rent can request permission to rent through their "established contact channels with the Home Office", either in person or in writing. The decision must be communicated in writing, by post or email, although this may change.[83]

[80] Home Office Landlords Checking Service: https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml

[81] Home Office (2016) " Right to Rent: landlords' penalties: version 5.0", published 1 December 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/573996/Right-to-rent-landlords-v5.pdf (viewed 15.01.17)

[82] Ibid.

[83] Ibid., page 16

In order to establish a statutory excuse against a civil penalty,[84] landlords must conduct an online check in the above circumstances.[85] Any response from the Landlords Checking Service must be retained in order for a landlord to establish a statutory excuse against a penalty.[86]

A major problem with this process is that it relies on landlords conducting a check at the behest of a prospective tenant. In addition, tenants who have, or may be eligible to be granted, permission to rent may not know whether this is the case unless they inquire directly with the Home Office.

In addition, landlords are likely to be further discouraged from undertaking a check by the highly misleading wording on the online form:

> *"**Only** use this service if you have tried to check the person's Right to Rent by looking at their documents but need verification from the Home Office because: the person has an application or appeal outstanding with the Home Office or, the Home Office is currently holding the person's documents"* (emphasis added) [87]

This is incorrect. Permission to rent is a discretionary status that may be granted to anyone who does not have a right to rent. A landlord who reads this may find themselves turning away someone who has or would be granted permission to rent because they have not explicitly mentioned that they have an outstanding appeal, or that the Home Office is holding their documents, which may not apply in all instances.

The advice available on the Government website appears to require something different:

> *"You must use the landlord's checking service to check whether the tenant's* [sic] *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*

[84] A statutory excuse exempts a landlord from being liable for a civil penalty. In order to establish a statutory excuse, the landlord/agent must demonstrate that they have complied with the Right to Rent policy as outlined in the Code of Practice for Landlords on Illegal Immigrants and Private Rented Accommodation

[85] Home Office (2016) "Code of Practice for Landlords on Illegal Immigrants and Private Rented Accommodation", https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016

[86] Landlords who submit a request can expect to receive a clear 'yes' or 'no' response within two working days. A 'yes' response means a landlord can rent to the individual. If a follow-up check is required, the response will outline when this must be undertaken. A 'no' response means that the individual does not have a Right to Rent or permission to rent and therefore if the landlord rents to them they will be in breach of the scheme and may face a civil or criminal penalty. If a response is not received within the timeframe the landlord will receive an automatic positive response.

[87] https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml (visited 25.01.2017)

- ***the Home Office told them they have 'permission to rent'"*** [emphasis added] [88]

A landlord reading this guidance will not necessarily use the service unless they are told by a prospective tenant check that s/he has been granted permission to rent. The Home Office does not inform people that they have permission to rent as a matter of course, only on request. There is no formal process by which a person can apply for permission to rent. Whether or not someone should have permission to rent may only be decided once a landlord submits a check.[89] Furthermore, this status can change over the course of as little as a day, depending on a Home Office assessment of a person's circumstances. For example, the Home Office may receive notice that an appeal has been refused, or conversely new evidence that someone is in fact a victim of trafficking. Therefore, many people who might be eligible would not be able to inform a landlord they have permission.

Concerns were raised by MPs and peers during the passage of the Immigration Act 2016 through Parliament that this could cause difficulty for certain groups of tenants, such as asylum seekers, as landlords may be unwilling to conduct such a check.[90] However, the Government has defended the position, stating that the checks are simple and straightforward.[91]

We tested whether prospective tenants who must rely on landlords conducting an online check are at a disadvantage through a mystery shopping enquiry sent to 150 landlords. The enquiry, from Priyesh, stated that he was renewing his visa and therefore did not have documents available, and requested that the landlord conduct an online check to confirm his Right to Rent. 85% of emails did not receive any response. Of the 23 responses, only five invited further interaction, such as a phone call or a viewing.

In addition, four responses clearly demonstrated that the landlord did not understand how the scheme operates or were unwilling to conduct an online check:

> *"I can't process any application without your documents up front as I need them all quickly as this flat is very popular due to its location it will be gone by the time I receive your documents and I would not want to waste your time if someone else gets in there before you sorry."*

> *"Sorry I cannot do anything without seeing your passport and visa"*

[88] Gov.uk "Check your tenant's right to rent": https://www.gov.uk/check-tenant-right-to-rent-documents/how-to-check (visited 25.01.2017)

[89] Right to Rent: landlord's penalties Version 5.0, Home Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/573996/Right-to-rent-landlords-v5.pdf (viewed 15.01.17)

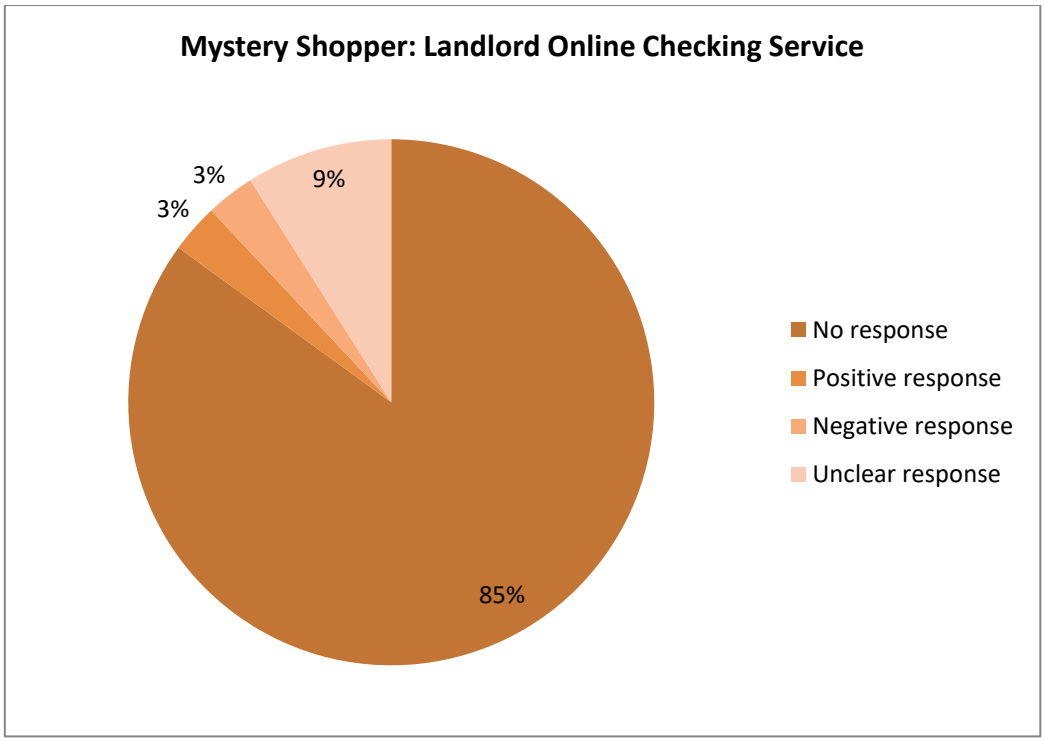
[90] HL, 15 March 2016, Vol 769, Col 1743; HL, 12 April 2016, Vol 771, Col 126

[91] HL, 12 April 2016, Vol 771, Col129

"We can confirm we would need to carry out a full check of your documents once they are returned to you"

"So sorry but I only accept UK residents"

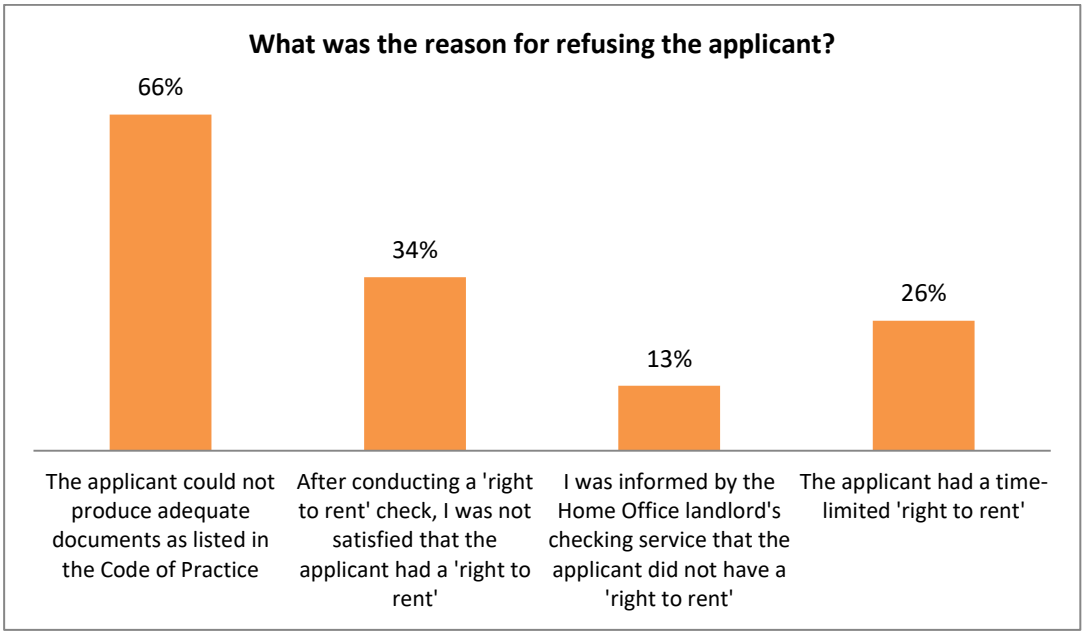
The first quote above also demonstrates that the turnaround time of 48 hours is too long for some landlords.



In only three responses did the landlord explicitly state that they were willing to conduct an online check.

The unwillingness to conduct online checks was also demonstrated through the survey responses from landlords. Of the 11 landlords surveyed who stated that they had refused a person because of the Right to Rent scheme, just one based this decision on a negative response from the Home Office checking service. In addition, four stated that they had refused someone because they *did not want to do a check*.

Over a fifth of agents had refused an applicant since the scheme came into force (22%). Of those, 80% based the refusal either on the prospective tenant not being able to produce adequate documents, or not being satisfied that they had a Right to Rent following a check of their documents. However, only 13% had received a negative response from the Landlord's Checking Service, indicating that in most cases an online check is not being conducted.



Furthermore, of the 17 organisations who responded to our survey, 82% said people who lack clear identity documents had been affected by the Right to Rent scheme, and 71% said that asylum seekers had been affected.

This is stark evidence that the Landlord Checking Service is fatally flawed. The Home Office refuses to provide those who have a right to rent but no documents, or those who have been granted permission to rent, with any documentary proof that would satisfy a Right to Rent check. These individuals must rely on the willingness of landlords to navigate the Home Office online checking system. Our research has found that most landlords are not prepared to do this and simply won't consider people who lack clear documents.

Documentation & European Family Members

A particular issue has arisen for non-EEA family members (such as children and spouses) of EEA nationals, a group that has a legal right to live and work in the UK but may not have documents that would satisfy a Right to Rent check. A UK immigration application or evidence of their right is not required by European law. This has caused significant problems, and we at JCWI have received a number of complaints from people in this situation who have had serious difficulties securing privately rented accommodation. In one situation an EEA family member with a valid right to rent was told by a letting agent that her family would be made homeless as she did not have permission to rent in the UK. With the referendum vote on 23rd June 2016 to leave the European Union and the continuing refusal of the Government to assure the status of EU nationals and other EU rights holders in the UK, this sort of confusion is only likely to increase. In a recent survey conducted by the Residential Landlord's Association (RLA), 48% of landlords answered 'yes' to the question "*In light of Brexit and the government's confirmation that the*

UK will leave the single market, are you now more concerned about renting property to EU nationals under the right to rent scheme?".[92]

> *"Two days before we were supposed to move in, we get an email from the rental agency saying 'we're not going to release the keys to you, you've lost your deposit with us, because you're not legal in this country.' And I was like 'Woah, hold on a minute, like, what are we talking about here?' and they were like, 'Oh, well these new laws just came in in February and you don't pass the test, sorry, bye.' It was a really horrible experience actually… It was awful. I was crying for that entire 24 hour period. I mean, I have a 6 year old. My child was going to be on the street. It was awful, it was absolutely awful. It was a demeaning horrible experience. I was treated like a criminal. I was so let down by this country I call home."*
>
> Tenant: personal communication with JCWI

Discrimination Against Tenants Based on their Migration Status

Key Findings

- Our research found that migrants who are legally residing in the UK with 'leave to remain' for a time-limited period may be treated less favourably as a consequence of the Right to Rent scheme. 65% of organisations surveyed stated that migrants with a time-limited right to remain in the UK had been adversely affected by the ' Right to Rent' scheme.

- In addition, 45% of landlords stated that they were less likely to rent to anyone with 'permission to stay in the UK for a limited time-period' as a result of the Right to Rent scheme. 16 agents also stated that landlords had indicated an unwillingness to rent to 'people with a time-limited permission to remain in the UK' or 'people with a time-limited Right to Rent' as a result of the scheme.[93]

> *"Because we are immigrants, we don't have family that we can just, you know, go and stay with at a minutes notice. There really is nothing happening right now to prevent these rental agencies from taking advantage of people. I mean, I knew my rights, but what if you have someone who doesn't speak English very well, who's new to the country, they're not comfortable, they don't know their rights fully... What about those people? Like, they're going to be, they're going to have a really hard time."*
>
> Tenant: personal communication with JCWI

[92] The results of this survey have not been published at the time of publication of this report. The survey was conducted on the RLA website and the question received 917 responses.

[93] 11 of these responses were from agents with over a 100 properties, the remainder varied in size between managing less than 5 properties to managing 51 – 100 properties.

Survey results indicate that migrants who are legally residing in the UK with 'leave to remain' for a time-limited period may be treated less favourably as a consequence of the Right to Rent scheme. While discrimination on the basis of migration status is not a form of racial discrimination and migration status is not a protected characteristic under the Equality Act 2010, in many cases this form of discrimination may be inextricably linked to other forms of racial discrimination, such as discrimination on the basis on nationality or ethnic/national origins, explored in more detail above.

The very aim of the Right to Rent scheme is to force landlords to discriminate between those who have the legal right to remain in the UK (those with valid migration status or a right to abode) and those who do not (irregular migrants). However, the scheme sorts legal migrants into two separate categories: those with an unlimited right to rent (British citizens, EEA nationals and settled migrants) and those with a time-limited right to rent (those with permission to remain in the UK for a time-limited period). Additional follow-up checks are required for those with a time-limited right, in order to check that they have not 'lost' their right to remain in the UK, and therefore their right to rent. At the time of an initial check, landlords must record the date of expiry of any visa and arrange to conduct a check at the point the visa expires, or after one year, whichever period is longer. This puts time-limited migrants at a disadvantage.

> *"While my landlord was very understanding throughout the process, it did add stress to a period where I was in the process of renewing my visa, itself a stressful affair, and resulted in an additional procedure halfway into the tenancy (as my previous BRP was due to expire) that my flatmate (who is an EU citizen) did not need to go through as her Right to Rent check was still valid."*
>
> Survey response: Tenant

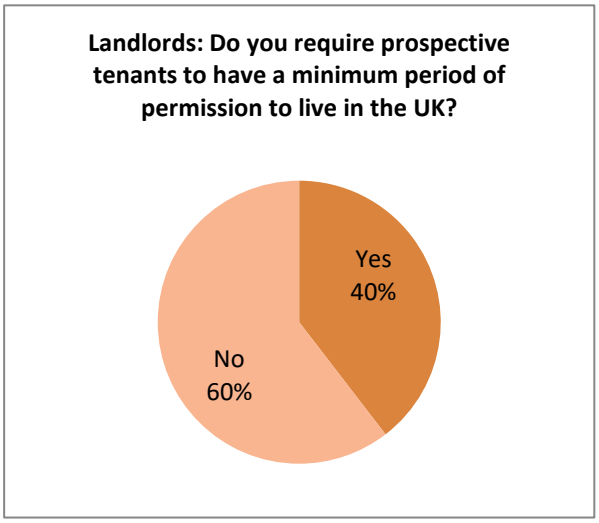
Of the 17 organisations that responded to our survey, 65% stated that migrants with a time-limited right to remain in the UK had been affected by the ' Right to Rent' scheme.

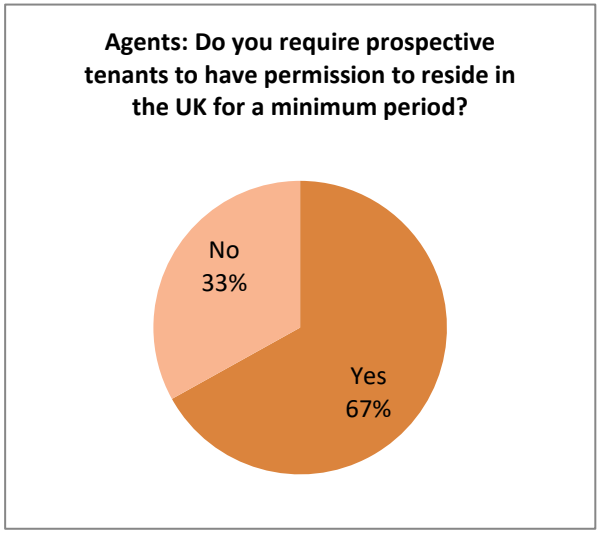
> *"[The ' Right to Rent' scheme] has made landlords less likely to take on refugee clients. Landlords fear getting fined."*
>
> Survey response: Organisation offering advice and support to refugees and migrants

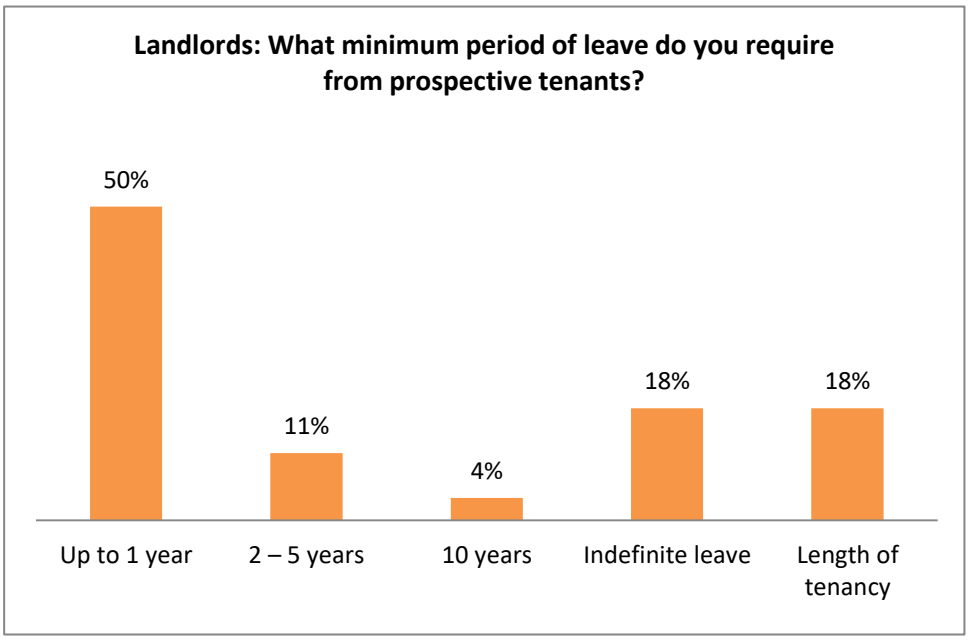
In addition, 16 agents stated that landlords had indicated their unwillingness to rent property to "people with a time-limited permission to remain in the UK" or "people with a time-limited Right to Rent" as a result of the scheme. Seven agents stated that landlords had indicated an unwillingness to rent to refugees and eight an unwillingness to rent to migrants. 12 agents also answered that they had refused applicants because they had a time-limited Right to Rent since the scheme came into force.

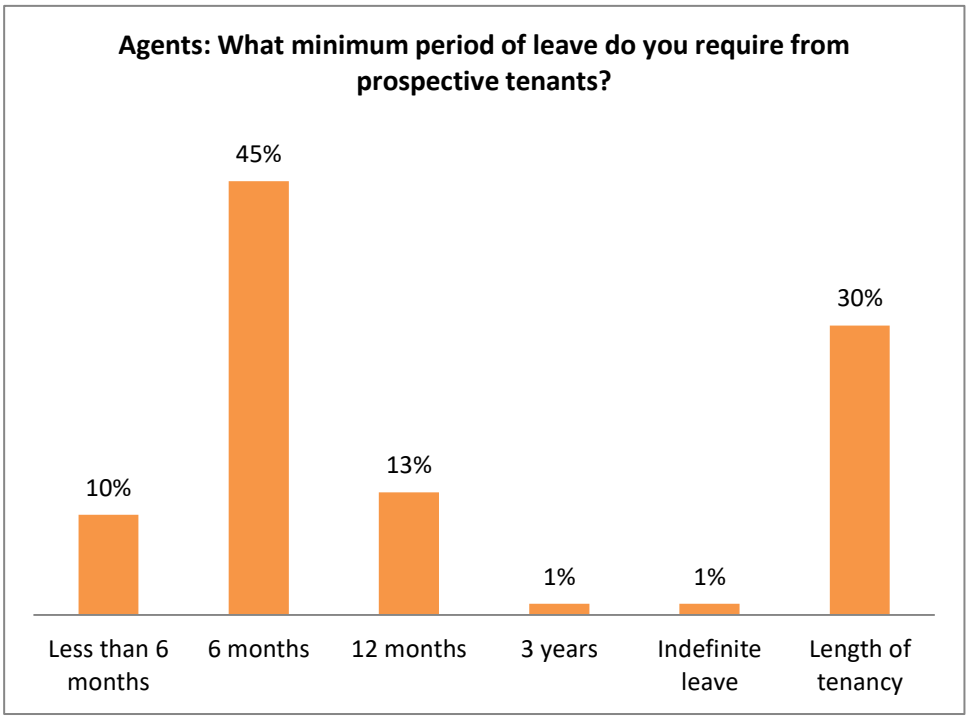
In the survey of landlords, 45% of respondents (30 out of 67) stated that they were less likely to rent to anyone with "permission to stay in the UK for a limited time-period" as a result of the Right to Rent scheme. 40% of landlords (36 out of 91) stated that they require tenants to have a minimum period of permission to remain in the UK. Of the 36 respondents who stated the minimum period they require, half required leave of up to one year, while 18% stated that they required tenants to have permanent leave to remain. 67% of agents (87 out of 130) also stated that they required tenants to have a minimum period of leave in the UK, although the required period was less on average.

While it is not possible to say whether these requirements for a minimum period of leave are a direct consequence of the Right to Rent scheme, there is evidence to suggest that migrants with time-limited leave, who are already disadvantaged in the housing market, could find it more difficult to rent property as a result of the requirements of the scheme. This would benefit from further research that was beyond the scope of this report.






Landlords: What minimum period of leave do you require from prospective tenants?
50%
11%
4%
18%
18%
Up to 1 year
2 – 5 years
10 years
Indefinite leave
Length of tenancy


Agents: What minimum period of leave do you require from prospective tenants?
10%
45%
13%
1%
1%
30%
Less than 6 months
6 months
12 months
3 years
Indefinite leave
Length of tenancy

Interestingly, we did not find discrimination between the mystery shopping scenario that stated he had a valid work visa with two years remaining (scenario 6), compared with the scenario that had settled status in the UK (scenario 5). In fact, he received more responses and more responses that were positive. However, he received fewer responses and fewer positive responses than the scenario that was British and had a British passport, but who shared characteristics of a non-British ethnic origin (scenario 2). He also received a small number of individual responses from landlords that indicated the landlord would not accept someone with time-limited leave:

"I am looking for a long term tenant… So I must decline your application."

It is possible to think of reasons for these confusing results. The majority of landlords surveyed who reported that they required tenants to have a certain period of leave did not require periods of over two years. It is also possible that some landlords may have a preference for migrants who are in the UK on a work visa. This could imply a steady job and income, for example. We cannot be certain of what this tells us, especially when compared against the evidence from the surveys listed above. It would require further investigation through more focused mystery shopping exercises.

Stated Aims Not Met

Key Findings

- 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 or other side effects. The Government is not monitoring the scheme in a manner that would allow it to 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.

- Enforcement under the scheme is low and there is no evidence to suggest that the scheme is encouraging irregular migrants to leave the UK. Only 31 of the 654 individuals (less than 5%) who are purported to have come to the Home Office's attentions since the scheme began have been removed from the UK. Additionally, there is no evidence to suggest that the remaining 623 individuals do not currently have a right to remain in the UK.

The Right to Rent scheme is a highly controversial policy with a clear potential to cause unlawful discrimination. One would expect that such an intrusive and burdensome scheme would be carefully monitored to see whether it is achieving its aims and to ensure that it is not creating disproportionate social or economic costs, such as unlawful discrimination or increased homelessness.

The risk of discrimination was acknowledged from the outset.[94] In addition, research conducted so far has highlighted worrying indications that the scheme is encouraging landlords to discriminate unlawfully against tenants on grounds of race, particularly with regard to nationality and ethnicity. Further evidence of such impacts is included in this report. It is therefore incumbent on the Government to monitor the scheme for adverse impacts, including evidence of unlawful discrimination. The Government must be able to show the scheme is a proportionate means of meeting its legitimate aim. This means that the Government must show that:

a. The scheme is effective in meeting its aims; and
b. That the side-effects of the scheme are not disproportionate to the benefits incurred by the scheme.

The Government's objectives in setting up the Right to Rent scheme were to:

1. Reduce the availability of accommodation for those residing illegally in the UK;

[94] Home Office (14.10.2013) "Impact Assessment; tackling illegal immigration in privately rented accommodation", https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251968/Landlords_Impact_Assessment.pdf (viewed 26.01.17)

2. Discourage those who stay illegally and encourage those who are resident in the UK illegally to leave by making it more difficult to establish a settled lifestyle through stable housing; and
3. Reinforce action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation.[95]

There is very little evidence that the scheme is meeting these aims, or that the Government is monitoring the scheme adequately in respect of either its effectiveness, or side-effects like discrimination.

In addition, we have found that landlords and agents are not necessarily putting the scheme into practice in accordance with the guidance and many have a poor understanding of what the scheme requires. Meanwhile, local authorities are not putting in place their own monitoring systems and are not always doing their part to train and inform people in their areas about the scheme.

Monitoring of the Scheme

In the Impact Assessment to the Immigration Act 2014 on the Right to Rent scheme, the Home Office claimed that the scheme would achieve its aims and that the benefits would outweigh the monetary and non-monetary costs of the scheme. However, a year on from the rollout across England and over two years since the launch of the pilot in the West Midlands, the Government is unable to provide any robust evidence of this. Nor is it able to assess those benefits against any of the economic, social or moral costs of the scheme. The reason for this is that it is simply not monitoring the scheme adequately and so is unable to say how it is functioning, or whether it is functioning at all.

> *"…justification for extending the 'hostile environment' measures is based on the conviction that they are 'right' in principle, and enjoy broad public support, rather than on any evidence that the measures already introduced are working or needed to be strengthened, since no targets were set for the original measures and little had been done to evaluate them."*
>
> David Bolt, Chief Inspector of Borders and Immigration[96]

We have analysed the Government's monitoring of the scheme through responses to Freedom of Information Act (FOI) requests and also through answers to Parliamentary Questions. These responses reveal that the Home Office is not monitoring the Right to Rent scheme in a way that would allow it to provide information about:

[95] Ibid.

[96] ICIBI (2016) "An inspection of the 'hostile environment' measures relating to driving licences and bank accounts: January to July 2016", available at: http://icinspector.independent.gov.uk/wp-content/uploads/2016/10/Hostile-environment-driving-licences-and-bank-accounts-January-to-July-2016.pdf

1. Discrimination resulting from the scheme;
2. The cost effectiveness of the scheme;
3. Enforcement action against irregular migrants undertaken as a result of the scheme; or
4. The impact of the scheme on agents and landlords.[97]

When questioned on any measures used to assess the impact of the scheme, a common explanation given is encapsulated here:

> *"The Right to Rent scheme is predicated on checks being carried out by third parties (landlords and lettings agents). This means that the majority of illegal migrant prospective tenants will be denied access to the private rented sector as a result of these checks with no intervention by enforcement officers and no reference to the Home Office.*
>
> *However, information about a range of factors is collected to measure the performance of the scheme itself. The Right to Rent scheme is a single measure among others which restrict access to services and benefits and encourage illegal migrants to return home."*[98]

First of all, we do not know what "information about a range of factors" is collected to measure the scheme. The Home Office has stated that it is not monitoring the scheme in a way that measures cost-effectiveness, discrimination, the effect it has on enforcement action, or the impact on agents and landlords.[99] It is unable to measure its internal administrative cost, as the scheme is not separately budgeted for within the Home Office.[100] Nor can it say whether or not '*the majority of illegal migrant prospective tenants*' are being denied access to the private rented sector *'with no intervention by enforcement officers and no reference to the Home Office*'. This is because it is not measuring this.

> *"In the absence of even any 'soft' indicators of impact on, for example, voluntary returns, the Home Office lays itself open to criticism about the breadth of new legislation and the costs versus benefits. It is also harder for it to answer concerns about the potential damage to communities and to individuals."*

[97] Freedom of Information request from JCWI to the Home Office, response received from Immigration Enforcement Information Rights Team 12 September 2016, Freedom of Information reference 40755

[98] Written Answer from Robert Goodwill MP to Parliamentary Question UIN 59523 asked by Stuart McDonald MP, received 13.01.2017, http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-11/59523/

[99] Freedom of Information request from JCWI to the Home Office, response received from Immigration Enforcement Information Rights Team 12 September 2016, Freedom of Information reference 40755

[100] Ibid.

> David Bolt, Chief Inspector of Borders and Immigration[101]

The Government claims that the scheme is designed to make irregular migrants homeless and subsequently to seek to leave the UK because they are unable to access the private rental sector and other services. There are two questionable assumptions here:

1. That the Right to Rent scheme will stop irregular migrants from renting rather than driving them into the hands of rogue landlords, or other accommodation;
2. That irregular migrants who are made homeless will leave the country.

Unfortunately, the Home Office is completely unable to say whether these assumptions are borne out in practice. No data is being collected in order to measure the number of irregular migrants who:

1. have left the UK voluntarily as a result of the scheme;[102]
2. have been made homeless as a result of the scheme;[103]
3. have been forced into unsuitable or dangerous accommodation as a result of the scheme; [104]
4. had to be housed by local authorities or local housing schemes because of the Right to Rent scheme;[105]
5. are children or families with children and have subsequently had to be supported by a local authority.[106]

Another reason the Home Office does not know whether or not the measures described in the scheme were proportionate is because it does not hold data on how many irregular migrants, the target of the scheme, rent privately. As the Impact Assessment on the Right to Rent provisions under the Immigration Act 2014 states:

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[101] ICIBI (2016) "An inspection of the 'hostile environment' measures relating to driving licences and bank accounts: January to July 2016", http://icinspector.independent.gov.uk/wp-content/uploads/2016/10/Hostile-environment-driving-licences-and-bank-accounts-January-to-July-2016.pdf (accessed 17.01.17)

[102] Written Answer from Robert Goodwill MP to Parliamentary Question asked by Stuart McDonald MP, UIN 60411, received 24.01.2017, http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-17/60411/

[103] Ibid.

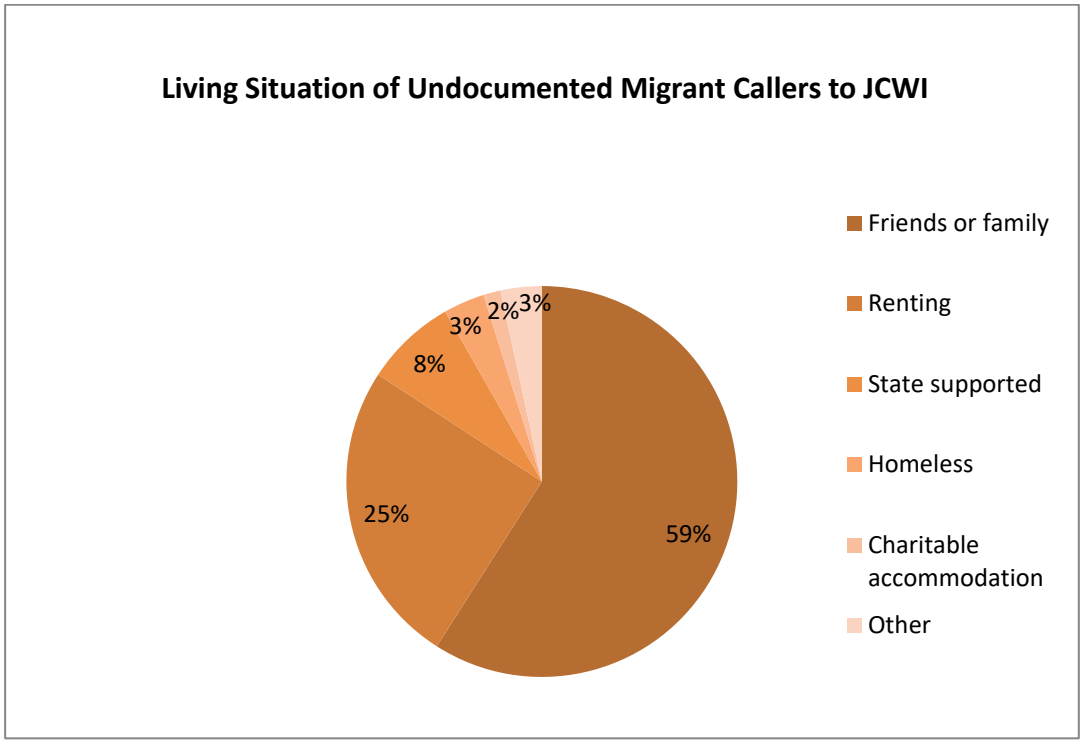
[104] Ibid.

[105] Written Answer from Robert Goodwill MP to Parliamentary Question asked by Stuart McDonald MP, UIN 60158, received 19.01.2017, http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-16/60158/

[106] Written Answer from Robert Goodwill MP to Parliamentary Question asked by Stuart McDonald MP, UIN 60157, received 19.01.2017, http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-16/60157/

"…the Home Office do not have good estimates of the location of [sic] *type of accommodation people who are illegally resident are resident in"* [107]

Information collected through over 1,000 calls to JCWI's Irregular Migrant advice line indicates that a large proportion of irregular migrants live with family or friends or sofa surf (59%). Many are homeless or destitute, with 13% either in state supported accommodation (local authority or Home Office accommodation) or homeless.[108] These individuals are not seeking to access the private rental sector. Just a quarter stated that they were renting privately. The Government instituted these measures without researching the real nature of irregular migrants' living arrangements.



The Home Office's own evaluation of the pilot scheme received evidence from eight voluntary and charity sector organisations that rogue landlords were able to exploit people without the Right to Rent *as a result of the scheme.*

The Government has also said that monitoring of the Right to Rent scheme is ongoing through the 'expert Landlords Consultative Panel'.[109] This is a panel that consists of such

[107] Home Office (2013) "Impact Assessment: tacking illegal immigration in privately rented accommodation", p. 22, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251968/Landlords_Impact_Assessment.pdf

[108] This is based on an analysis of internal data from 1,057 calls to JCWI's Irregular Migrant Advice Line

[109] Written Answer from Robert Goodwill MP to Parliamentary Question asked by Stuart McDonald MP UIN 59523, received 13 January 2017,

members as the Minister, civil servants from many departments, the Equality and Human Rights Commission, representative bodies for landlords and agents, and representatives from Shelter and Crisis.[110] As far as we are aware there is no formal activity that could be described as 'monitoring' of the Right to Rent scheme conducted by these panel members. Instead, the meetings provide a channel for the members to raise any concerns they may have about the operation of the scheme that arise day to day. As such, information received by the panel is likely to be anecdotal and to paint an incomplete picture of what is going on. The last meeting of the panel was in November 2016, and we do not know when the next will be. Our findings show that the discrimination and other effects of the scheme are complex structural issues, that cannot be identified through individual anecdotal experience. The panel is not adequate to compensate for the monitoring failures identified above. The Government has also failed to make public the agendas and minutes of previous meetings of the Panel. We were refused this information in an FOI request made on 12 September 2016 on the grounds that the minutes and agendas "*are due to be published soon*".[111] This has still not happened as of the date of this publication.

Enforcement of the Scheme

Enforcement under the scheme has also been extremely low. Since the start of the scheme, 106 landlords have been issued with a civil penalty. 55 relating to lodgers in a private household and 51 related to occupiers in rented accommodation. The total amount collected from civil penalties up to 13 December 2016 was £29,575.[112]

Internal Home Office records show that between the start of the scheme and 30th September 2016, 654 individuals have been encountered:

- during an enforcement visit to a property
- named on a 'civil penalty referral notice'[113]

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

[110] Home Office, "Response to the Secondary Legislation Committee enquiries on the extension of the Right to Rent scheme across England",
https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/190116_HomeOffice_submission_SLSC_Right_to_Rent.pdf

[111] Freedom of Information request from JCWI to the Home Office, response received from Immigration Enforcement Information Rights Team 12 September 2016, Freedom of Information reference 40755

[112] Written Answer from Robert Goodwill MP to Parliamentary Question 57109 asked by Stuart Mcdonald MP, received 31.01.2016, http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-12-12/57109/

[113] It is unclear what this refers to. A referral notice is issued to landlords by enforcement officers to notify them that they may be liable for a Civil Penalty Notice. A Civil Penalty Notice is issued if the Civil Penalty Compliance Team decides that a landlord is liable for a civil penalty. A Civil Penalty Referral Notice presumably refers to the first category of notices, where no final decision has been reached, however this is unclear from the terminology used.

- as a result of information provided through the Landlord's Checking Service
- as a result of "other intelligence provided about property let to illegal migrants"[114]

This number consists of individuals encountered who may have no right to remain in the UK. This does not mean that all such individuals were subsequently found not to have a right to remain in the UK, nor that they were encountered as a direct result of the Right to Rent scheme. They could have been encountered in the context of other immigration enforcement operations. Of these individuals, less than 5% (31) have subsequently been removed from the UK over the same period.[115]

As the Government has made clear, the Right to Rent scheme is not designed to operate by increasing direct enforcement activity against individuals encountered. It is supposed to work with "*no intervention by enforcement officers and no reference to the Home Office*". However, in the absence of any evidence that it is working on those terms, it is also relevant to note that enforcement outcomes have been negligible. The removal of those 31 individuals makes up just a miniscule fraction of overall removals. For example, in 2015 there were 12,056 enforced removals of individuals from the UK and 5,600 deportations of foreign national offenders.[116] The 31 removals are only 0.28% of that figure.

Of the 654 individuals encountered through the scheme, many may well have ongoing legal cases, or have acquired a Right to Rent in the interim. Even if we assume that every single one of these 654 individuals did not have a Right to Rent and subsequently departed the country, this would make up just 1.6% of the total number of voluntary and enforced removals from the UK, based on the most recent data for 2015 (40,896).

The Government cannot directly link the Right to Rent scheme to any individual voluntary decision to leave the country, nor to specific numbers of enforced removals. Nor can it provide any evidence as to the impact of the Right to Rent scheme on the overall numbers of removals or voluntary departures of irregular migrants from the UK. Even the best possible interpretation of the figures suggest the scheme has a negligible impact.

[114] Written Answer to Parliamentary Question asked by Baroness Lister of Burtersett, UIN HL3408, received 07.01.2017, http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-11-22/HL3408/

[115] Ibid.

[116] We are taking the 2015 figures as representative of the average yearly rate of removals. In fact in 2015 removals were low compared to some previous years. The figures are taken from the Migration Observatory Briefing on Deportations, Removals, and Voluntary Departures from the UK: http://www.migrationobservatory.ox.ac.uk/resources/briefings/deportations-removals-and-voluntary-departures-from-the-uk/

In conclusion, the Government claims to be operating a scheme that is designed to persuade people to voluntarily leave the country, and to target rogue landlords, but has put no system in place to measure whether or not it is achieving those aims. Even worse, it cannot say whether the scheme is causing homelessness, discrimination, or increasing the numbers of people being exploited by rogue landlords. Where it has looked (in its pilot evaluation) it did find evidence that the scheme was causing discrimination and leading to exploitation, but chose not to look further, and instead described indications of discrimination as being no 'hard' evidence of discrimination.[117] This is not an acceptable way to institute any new policy, let alone one with as great a potential to lead to discrimination as the Right to Rent scheme.

[117] Home Office (2016) "Response to Secondary Legislation Scrutiny Committee enquiries on the extension of the Right to Rent scheme across England", 20 January 2016, https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/190116_HomeOffice_submission_SLSC_Right_to_Rent.pdf

Awareness and Understanding Low Among Landlords

Key Findings

- While awareness among landlords is higher than during the 'pilot', over a quarter of landlords surveyed (27%) felt that they hadn't understood their obligations or remained unaware of the Right to Rent scheme.
- Almost half of landlords surveyed (49%) had not read the Codes of Practice. This is extremely concerning as the Codes explain how to undertake the checks in a fair and consistent manner and how to avoid unlawful discrimination.

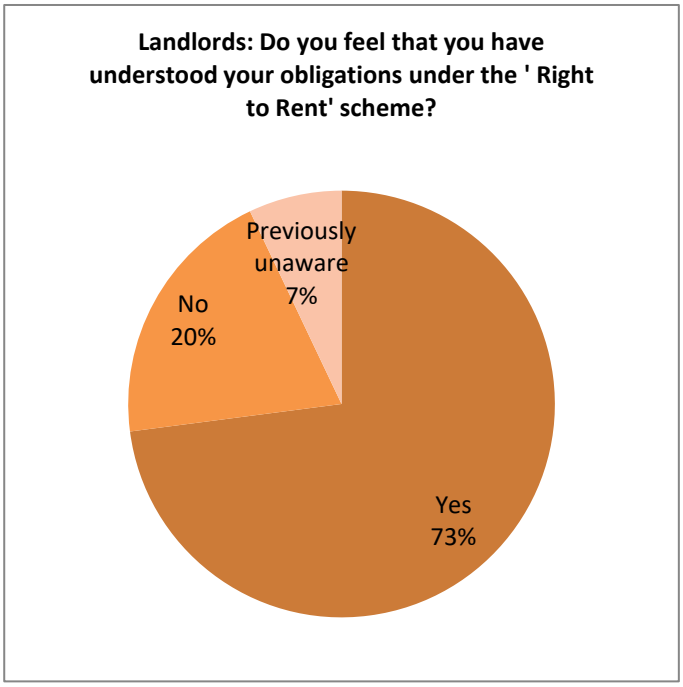
Data from surveys showed varied levels of awareness and understanding of the scheme among landlords and agents. While almost three quarters of landlords surveyed (73%) stated that they felt they had understood their obligations, a fifth (20%) did not, while 7% stated that they were previously unaware of the scheme. In addition, almost a fifth of landlords (19%) stated that they were unaware of the introduction of criminal sanctions.

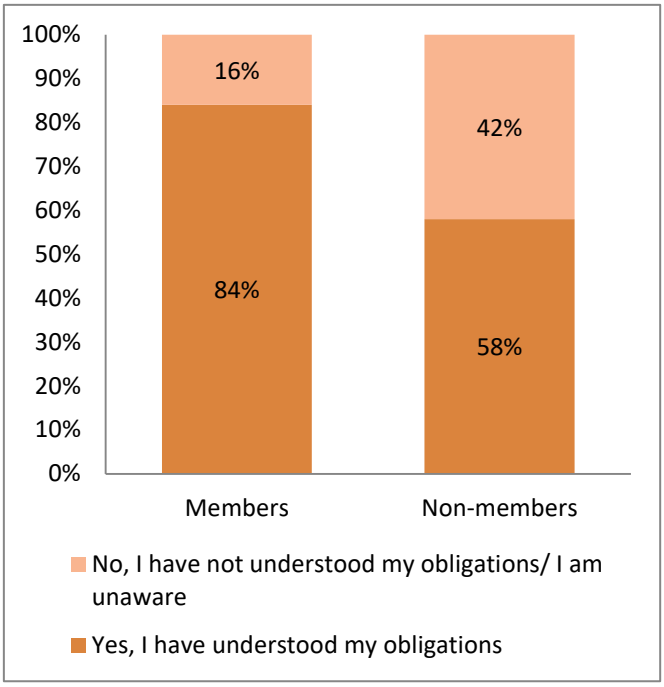
Landlords who said they had not understood their obligations or were unaware of the scheme were more than twice as likely not to be a member of an official membership organisation (42% non-members compared to 16% members). Most landlords are not members of trade bodies. 80% of landlords surveyed by Shelter had never been a member of a trade body, or licensed, registered or accredited in any way as a landlord. Just 12% were current members.[118] As that report states: "Although cause and effect cannot be proven, the survey points to a clear association between being a member of a trade body or registration scheme, and being more likely to follow the law and good practice".[119] As just over half of respondents to our survey stated that they were a member of a trade body or association, our survey results could be expected to overestimate the level of understanding and compliance of the scheme among the general landlord population in the UK. In addition, the majority of agents surveyed (60%) felt that landlords were poorly informed or not informed about the ' Right to Rent' scheme.

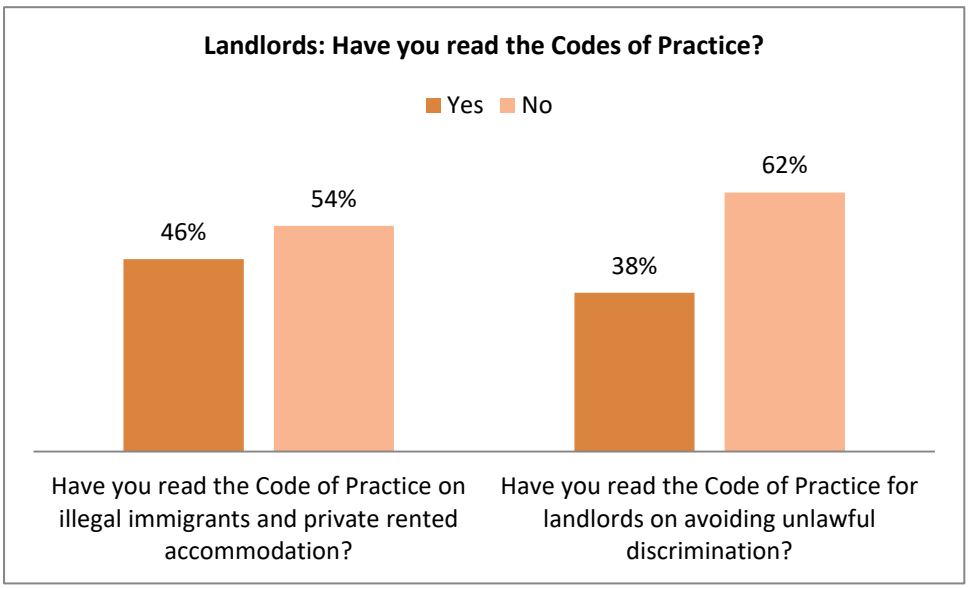
A worrying finding was the low proportion of landlords surveyed who had read the official Codes of Practice about the scheme. 54% of all landlords had not read the Code of Practice on Illegal Migrants and Private Rented Accommodation and almost two thirds (62%) had not read the Code of Practice on avoiding unlawful discrimination. Almost half (49%) had not read either document. The Codes outline a landlord's obligations under the scheme, how to undertake the checks correctly and fairly, and how to comply with anti-discrimination legislation, making this a concerning finding.

[118] Shelter (2016) "Research report: survey of private landlords, February 2016" https://england.shelter.org.uk/__data/assets/pdf_file/0004/1236820/Landlord_survey_18_Feb_publish.pdf (viewed 25.01.17)

[119] Ibid. page 4

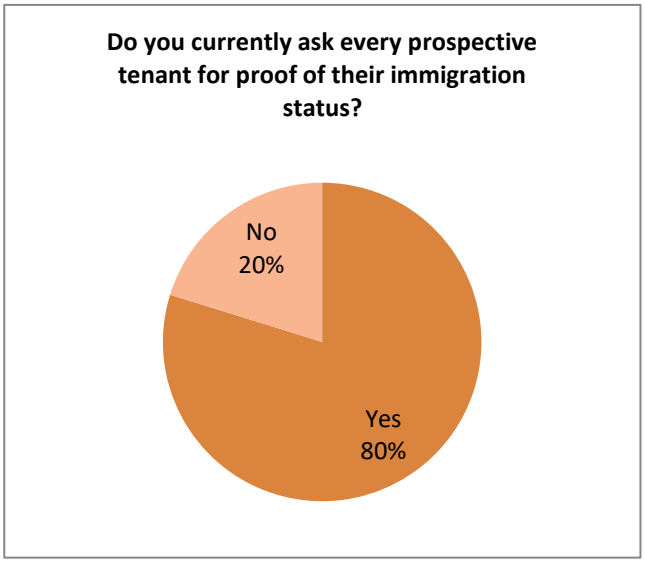

Landlords: Do you feel that you have understood your obligations under the ' Right to Rent' scheme?
Previously unaware 7%
No 20%
Yes 73%

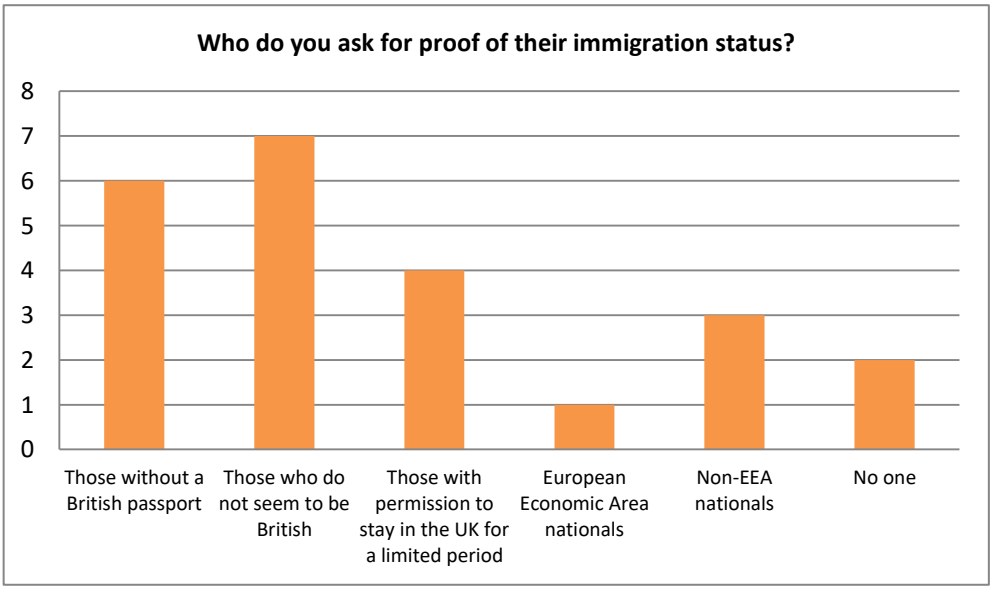

100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
16%
84%
42%
58%
Members
Non-members
No, I have not understood my obligations/ I am unaware
Yes, I have understood my obligations


Landlords: Have you read the Codes of Practice?
Yes
No
46%
54%
38%
62%
Have you read the Code of Practice on illegal immigrants and private rented accommodation?
Have you read the Code of Practice for landlords on avoiding unlawful discrimination?

Operation and application of the scheme

80% of landlords who responded to the survey stated that they, or their agent, required proof of immigration status from all prospective tenants and also took and kept copies of the documents shown by tenants during the application process for a tenancy. This is the basic process for conducting a ' Right to Rent' check and would imply that most landlords surveyed are conducting checks as the legislation requires. However, a fifth of landlords (20%) stated that they did not ask everyone for proof of their migration status. Of those, six answered that they asked those 'without a British passport' and five conducted checks on 'those who do not seem British'. While the official information on the scheme highlights that checks should be conducted on every applicant regardless of race, nationality, or ethnic or national origins, this is not being carried out in practice.





Only 11 landlords surveyed had refused an applicant as a result of the scheme. Given the fact that the majority of applicants will have a right to rent that is easy to evidence, this is not surprising. However, of the landlords who had refused an applicant, four stated that this was because they *did not want to undertake a Right to Rent check*. In addition, while five stated that they refused an applicant because they did not have adequate documents, just one had received a negative response from the Home Office checking service.

22% of agents surveyed had refused an applicant as a result of the checks. 80% had based the refusal on either the tenant not being able to produce adequate documents, or not being satisfied that the tenant had the right to rent following a check. However, only 14% stated that they had received a negative response from the Home Office. As with landlords, this indicates an unwillingness to undertake further checks through the Home Office's online Landlords Checking Service, something that was also revealed through the mystery shopping research and explored in more detail above.

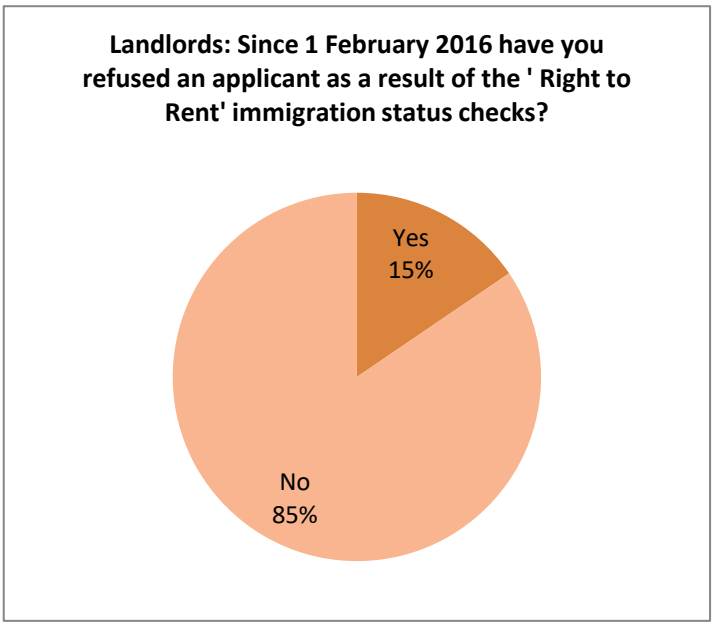
Furthermore, over a quarter (26%) of agents who had refused an applicant based this decision on the fact that the applicant had a time-limited right to rent. This is concerning as it suggests that some applicants may be refused despite being legally in the country and having a right to rent. This could amount to indirect racial discrimination if prospective tenants are refused only on this basis.

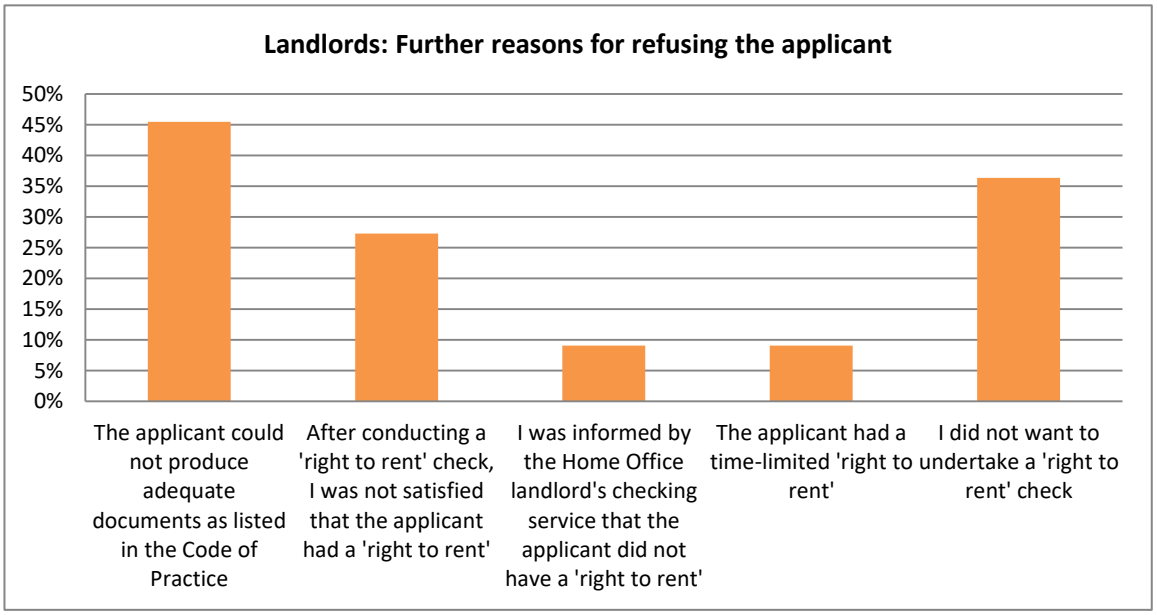
There are also concerning indications that agents are not applying the scheme in line with the legislation. 43% of agents surveyed stated that they undertake right to rent checks through a referencing service. As the check must be carried out by viewing the original documents in the presence of the document holder (either in person or via video-link) it is unclear whether outsourcing this task to an agency would satisfy the statutory excuse under the scheme. Further research would be required in order to understand whether the checks are being conducted in accordance with the legislation.

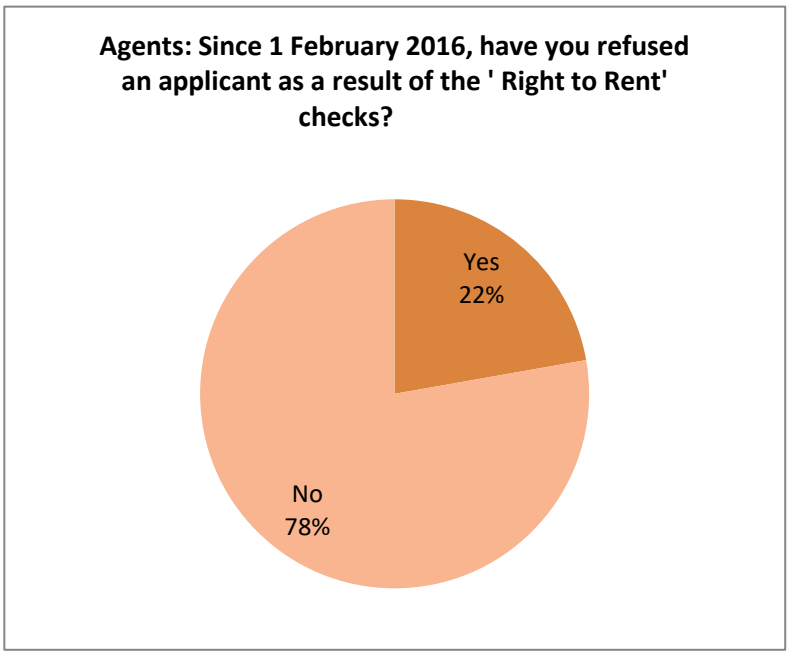
Furthermore, for agents to take over responsibility for the checks from landlords, they must enter into an agreement in writing to that effect. However, only 67% of agents stated that they had such an agreement in place. Of those who did not, 6% answered that they had a written agreement with some but not all landlords (in most cases only relating to new tenancies). Over a quarter (26%) answered that they had no agreement in writing that they were taking responsibility for the checks. If this is the case, the landlord may remain liable for any penalty under the scheme in the event that a tenant is found not to have the Right to Rent. This suggests there is substantial misunderstanding among landlords and agents about their respective roles under the legislation.

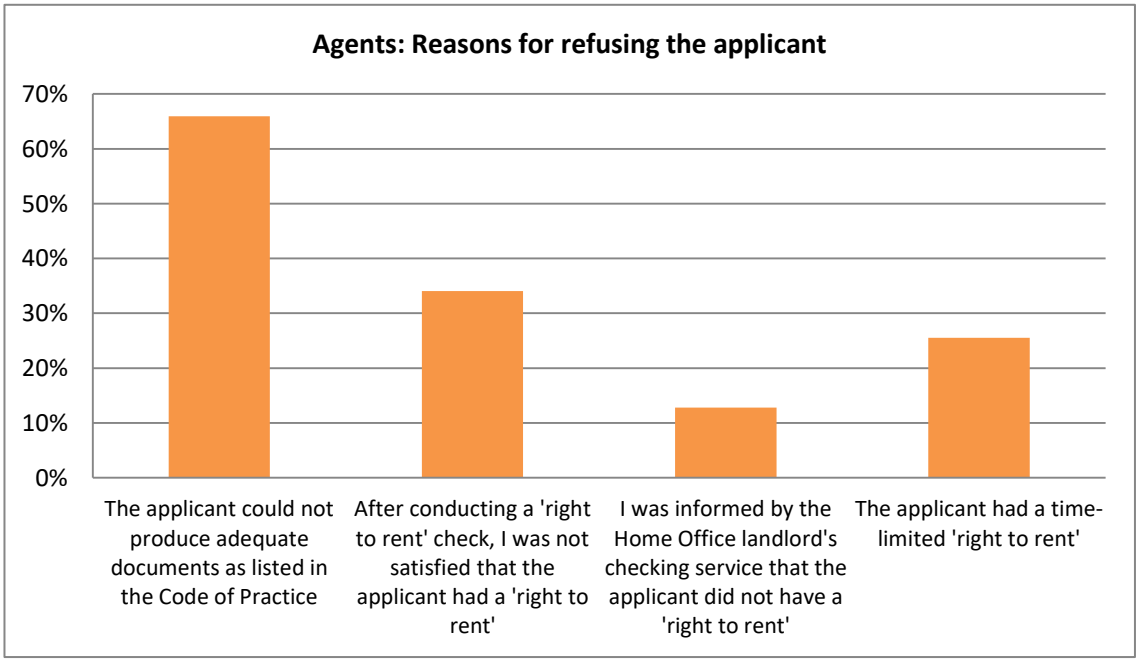
Over a quarter (27%) of agents stated that there was a charge to either the landlord or the tenant for conducting a right to rent check. 20% charged the tenant while 8% charged landlords to conduct a check. Most agents who responded with the amount charged stated that the fee was included in the general tenant referencing fees. Where there was a separate charge, one agent charged £4.50, five charged between £10 and £20 and one agent charged tenants £40. Four agents stated that while they do not currently charge,

they would revise their policy if they were no longer able to charge referencing costs to tenants. This is concerning, as where specific fees for the Right to Rent check are charged separately to the general referencing fees, these could be targeted at particular groups, for example, those that have documents that require more scrutiny, or time-limited migrants who require follow-up checks. More research would be necessary in order to examine whether this is in fact the case.









"I hope that a new wave of discrimination isn't inadvertently created in our industry. Sadly, I have genuine concerns that there could be."

Survey respondent: Agent

Local Authorities Inadequately Prepared

Key Findings

- Local authorities are not approaching the scheme in a manner that would mitigate its adverse impacts. 81% of local authorities in England who responded to FOI requests stated that they have not put systems in place to monitor homelessness or discrimination occurring as a result of the Right to Rent scheme. In addition, just 56% of local authorities stated that they are providing training or outreach in respect to the scheme, while 34% had provided not provided any training or outreach. 10% stated that this was outside their remit. The level of information and support provided is also highly variable across England.

The Role and Responsibility of Local Authorities in Relation to the Scheme

In light of the Government failure to monitor the scheme and the variable levels of understanding of the scheme amongst those who are supposed to implement it, it is important to consider what role local authorities must play. Housing in every area in the UK is the responsibility of the relevant local housing authority. This may be a borough, a district council or a unitary authority. The housing authority is responsible for allocating social housing, providing homelessness services and creating and implementing local homelessness strategies.[120]

The explicit purpose of the Right to Rent scheme is to deny irregular migrants access to the housing market. It is therefore highly relevant to local authority homelessness strategies. However, we have found that most local authorities responsible for housing do not have any systems in place to mitigate local impacts.

Freedom of Information Act (FOI) requests asked local authorities in England whether they were monitoring the impact of the Right to Rent scheme in relation to homelessness or discrimination in their area. Only 7% (19) of the 278 who answered stated that they were, while 81% said that they were not. The question was not applicable to the remaining 12%.

Local authorities would be wrong to ignore the scheme for these reasons: first, even though someone without the right to rent is likely to be ineligible for housing assistance, the local authority may still be under a duty to provide assistance, for example because of its obligations under the Children Act 1989 in cases involving families with children. In fact, based on a recent legal case, where such families do not have a right to rent the local authority may have to accommodate them even where they could afford private accommodation, because the family would have no legal entitlement to rent privately.[121] Second, as we have described above, individuals with a right to rent, or with permission to rent but without documentation, may find it practically impossible to find

[120] Homelessness Act 2002 Ss 1 – 4.

[121] *R (N)* v *LB Greenwich* [2016] EWHC 2559 (Admin)

accommodation, which will make them 'vulnerable' and local authorities may have to offer temporary or longer term housing in accordance with their duties under the Housing Act 1996 and the Homelessness Act 2002. Finally, and vitally, local authorities have a statutory duty to "*have due regard to the need to eliminate discrimination*" against equalities target groups in their district. Our current and past research and the Home Office's own evaluation show the risk of unlawful discrimination on grounds of race under the Right to Rent scheme.

Local authorities must therefore factor that risk into their implementation of homelessness strategies. If local authorities fail to take into account the impact of the 2014 and 2016 Acts in creating new homelessness strategies for 2018, or in implementing their current strategies, they may be acting unlawfully. This could include providing training to tenants and landlords to ensure that the scheme is being implemented correctly and that all parties are fully aware of their rights and obligations under equalities legislation.

However, responses to FOI requests reveal that provision of training or outreach on the Right to Rent scheme is very mixed amongst local authorities in England. A third (34%) of the 278 local authorities who responded said they had not provided any training, outreach or other form of engagement in respect of the scheme. A further 10% (29) stated that the scheme was not within their remit, as they are not responsible for housing in their area. Of those who had provided some sort of training, this varied widely from passing Home Office guidance to their casework teams, mentioning the scheme on their website or in a newsletter, to arranging for third party trainers to attend local landlord forum meetings.

Conclusion & Recommendations

> *"We are setting off down a road of amateur immigration control, as if we are to become a nation of immigration officers."*[122]
>
> Stuart McDonald MP

As we and many others predicted, the Right to Rent scheme is causing discrimination against foreign nationals, BME groups and those without clear documentation, including British citizens without passports. This was inevitable when ordinary individuals with no training were asked to carry out immigration checks on pain of a fine or imprisonment. No one wants to make a mistake and immigration law and the documentation that accompanies it is extremely complex. Landlords given a choice between a variety of tenants, however much they may wish to act in a non-discriminatory way, will often give preference to the person with a British passport who would feel to them like a safe bet. When faced with two people with complex documentation, they are likely to make unconscious assumptions based on who 'appears' to be safer, and these will take cues from factors like appearance, accent and whether or not a name 'sounds' foreign. Our research has found these predictions are coming true, and that landlords are discriminating in this manner under the Right to Rent scheme.

Worse, we have found that the elements of the scheme that are designed to protect the most vulnerable individuals simply do not work. Asylum seekers, victims of trafficking and stateless persons, who do not have a Right to Rent but should be granted permission to rent by the Home Office, are left high and dry. The Home Office refuses to allow these individuals to apply for permission to rent, or to give them documentation to show landlords and to reassure them that they have been granted permission. We have found that the vast majority of landlords are not prepared to conduct an online check with the Home Office in order to confirm whether or not a prospective tenant has been granted permission to rent. This is the only way a landlord can satisfy the requirements of the scheme and rent to a person in this position, without the risk of a civil penalty. In a particularly cruel twist, landlords are told in Home Office guidance to **only** perform a check if they are informed by a prospective tenant that they have permission to rent or that they have ongoing legal case. However, the Home Office does not automatically tell people that they have been granted permission to rent. This puts some vulnerable migrants in a Catch-22 situation: in order to get permission to rent they must tell a landlord they have it. In order to know they have it, a landlord must do a check.

Meanwhile, our research has been unable to find any compelling justification for retaining the scheme. Nor does the Government appear to have any interest in finding any. It is not adequately monitoring the scheme for either adverse impacts, nor for evidence that the scheme is working as planned. The Right to Rent scheme is supposed to encourage irregular migrants to leave the UK voluntarily because they cannot access the private

[122] HC Debate 13 October 2015, Hansard Vol 600, Col 218

rental market. Not only is the Government not measuring whether this is happening, they cannot say whether or not individuals are being made homeless or being driven into exploitative or unsafe living conditions rather than leaving the country.

Everything that we know about the Right to Rent scheme so far shows that it is divisive, discriminatory and disproportionate. Landlords in our country are by and large ordinary members of civil society. It requires clear evidence of effectiveness and a careful assessment of the risks to justify forcing them to take on the role of unpaid immigration officials. Absent compelling justification to the contrary, our country's borders belong on the edge of international waters and at our ports, not at our front doors. Evidence that is available reveals a dysfunctional system that encourages racial discrimination and does little or nothing to reduce the irregular migrant population. Our laws cannot and must not incentivise discrimination. The Right to Rent scheme must be abandoned.

Recommendations

As a result of our findings we strongly advocate that:

1. The Right to Rent scheme must be halted and abandoned. Requiring document checks by landlords and agents as a form of immigration control is disproportionate and is being implemented in a discriminatory manner. It is not justified as there is no clear evidence that the scheme is working to encourage irregular migrants to leave the UK, or effectively targeting rogue landlords who exploit migrants. The issues identified in this report cannot be sufficiently mitigated by other measures.

However, whilst the scheme remains in operation, it is vital that the Government implements the following measures to mitigate the discriminatory application of the scheme:

2. The Government must put robust and transparent systems in place to monitor the Right to Rent scheme for instances of racial discrimination. This should include providing funding to the Equality and Human Rights Commission in order to actively seek out and investigate cases of discrimination under the scheme. The Commission should also provide detailed information and a place to register complaints about discrimination

3. The Government must improve systems of information dissemination to educate landlords, including small-scale landlords and those who are not members of professional bodies, on race discrimination. This should include providing simple guidance clarifying that:
    - A failure to accept tenants on the basis that they have time-limited status in the UK may amount to indirect racial discrimination;
    - A failure to accept documents that are allowable under the Right to Rent scheme may amount to direct or indirect racial discrimination depending on the circumstances;

- Refusal to use the Landlord Checking service may amount to indirect racial discrimination.

4. The Government should provide all landlords with a clear form that they can provide to any prospective tenants without documentation. The form must explain the permission to rent process and encourage landlords to carry out an online check.

5. A simple document should be made available to all those making an immigration or asylum application and to landlords to provide to prospective tenants that explains:
    - What documents they must provide to show a Right to Rent;
    - Their right not to be discriminated against;
    - The permission to rent process and their rights in relation to this process;
    - Where they can seek further advice and information in relation to the scheme or discrimination under the scheme.

We strongly believe there should be no further roll-out of the Right to Rent scheme. However, if the Government is proceeding with this, any plans for extending the scheme to other areas of the United Kingdom must be halted until an evaluation such as that described below is both complete and has been fully taken into account:

6. The Government must commission an independent evaluation of the Right to Rent scheme across England which should:
    - Include robust mystery shopper exercises at every stage of the rental process, from initial contact and phone calls through to viewings and final checks.
    - Look at all areas of the private rental market and assess different kinds of discrimination, whether on the basis of ethnicity, colour, nationality, the documents they possess, or migration status.
    - Examine whether or not the scheme is achieving its intended aims against clear metrics of success or failure.
    - Assess whether or not irregular migrants or others are being driven into the hands of rogue landlords, or unsafe and exploitative living situations, as a result of the scheme.
    - Assess the impact of the scheme on the most vulnerable, including those who require permission to rent, children, victims of domestic violence and trafficking, and those fleeing persecution.
    - There should also be an assessment of the scheme's impact in light of the need to promote integration amongst different communities in the UK.

Finally:

7. Local authorities across England must fulfil their statutory duties and take the Right to Rent scheme into account with respect to promoting equality, addressing homelessness and protecting the best interests of children.

- Local authorities must review and plan for:
  - The implementation of current homelessness strategies in the light of the increased risk of homelessness for some people (and those people to some extent defined by "race" as an equalities target group), presenting the evidence with proposals to deal with it;
  - The next iteration of homelessness strategies (due in 2018) which would need to take account of the impact of the 2014 and 2016 Acts and propose action to compensate for it in the strategy;
- Local authorities should increase understanding of the scheme amongst landlords and service users to prevent discriminatory operation by:
  - Checking the practices of landlords they use and take appropriate action if they find discrimination;
  - Assisting service users to understand what documents they require and to get the necessary documentation;
  - Ensuring service users are aware of the potential for discrimination and how they can challenge it;
  - Encouraging service users to report discrimination and ensuring the authority then acts on the reports;
  - Informing tenants who wish to take in lodgers of their responsibilities under the 2014 Act;
  - Ensuring landlords are aware of their responsibilities under the 2014 Act and specifically that the Act does not allow discrimination on the grounds of nationality which remains unlawful;
  - Monitoring the effects of the right to rent scheme in their areas

Appendix 1 - Methodology

Methodology

Research was conducted between February 2016 and January 2017.

Online Surveys

Online surveys were created for 'landlords and agents', 'tenants and lodgers', 'letting agents', and organisations working in relevant fields related to migration, housing and discrimination. The surveys went live in July 2016 and responses received before 15 January 2017 were included in the analysis.

Survey for 'Landlords & Agents'

The survey for landlords and agents was advertised publicly on the JCWI website and shared on social media and with other organisations.

The survey was anonymous and did not require respondents to enter contact details, however IP addresses were recorded to avoid duplicate responses being included in the final results.

Questions included multiple choice questions, 'yes/no' responses and open-ended comments. Most questions did not require an answer. Therefore, there are varying numbers of responses for certain questions.

There were 124 responses to the survey. However, only 13% of respondents were agents. Two respondents answered that they were both a landlord and an agent. Due to the low response rate from agents, the decision was made to remove the agent responses and to create a separate survey for agents. As a result, the responses from agents have been removed from the analysis. The respondents who answered that they were both a landlord and an agent remained in the landlord sample. This left a sample of 108 responses from landlords.

Survey for 'Letting Agents'

Due to the small number of agents who responded to the survey for 'landlords & agents', an additional survey was created that specifically targeted agents. While landlords are primarily responsible for carrying out ' Right to Rent' checks and complying with the Right to Rent legislation, agents can take over this responsibility by entering into an agreement to that effect in writing. A survey carried out by the independent research agency BDRC Continental found that 50% of landlords use an agent.[123]

The survey was shared directly with a list of 200 agents via email. A link to the survey was also shared through the Association of Residential Letting Agents (ARLA) newsletter and with National Approved Letting Scheme **(**NALS) subscribers via their mailing list.

[123] Renshaw, R. (2013) "Half of landlords not using agents, say researchers", Letting Agent Today, published 16 April 2013, available at: https://www.lettingagenttoday.co.uk/news_features/Half-of-landlords-not-using-agents-say-researchers (viewed 15.01.17)

208 agents responded to our survey. Questions included multiple choice questions, 'yes/no' responses and open-ended comments. None of the questions required an answer to be input and therefore questions have differing numbers of responses.

The surveys were anonymous and did not require respondents to enter contact details, however IP addresses were recorded to avoid duplicate responses being included in the final results.

Survey for Tenants

The survey for tenants was circulated publicly, through tenant's associations and on social media. It received 45 responses. However, many of the responses were not directly relevant to the research. For example, just 16 respondents were looking for a tenancy or had looked for a tenancy since the scheme came into force, resulting in a low response rate to a number of questions and a high number of "non-applicable" responses. A high number of responses also expressed frustration with the rental market more generally, such as the high costs associated with renting and problems with landlords or agents not associated with the scheme. As a result, a full breakdown of survey responses is not included, and these results do not form the basis of our findings or conclusions.

A number of factors may have contributed to this low response rate. While the beginning of the survey outlined its purpose and scope, "Right to Rent" is a broad and generic title and does not denote anything specific to landlord immigration checks. Therefore, it appears that many respondents interpreted the survey as relating to generic problems with renting or accessing the rental sector.

A small number of open-ended responses submitted did provide illustrative individual examples, and these have been drawn upon where relevant.

Survey for Organisations

A short online survey was created for organisations working directly with or on behalf of people experiencing issues with housing, discrimination, or immigration problems. This survey was sent directly to relevant organisations. The survey was created during the last stage of the research and received 17 responses.

Mystery Shopping

A mystery shopping exercise was undertaken to examine whether private landlords responded or engaged differently to enquiries by prospective tenants on the basis of their nationality/citizenship, ethnic/national origins (or perceived ethnic/national origins), immigration status or the identity documents they possessed.

The research sought to answer the following questions:

1. Are landlords/ agents less likely to rent to those who do not have a British passport?
2. If the first hypothesis is correct, does this treatment differ on the basis of the ethnicity, or perceived ethnicity, of the prospective tenant?

3. Are private landlords less likely to rent to people on the basis of their immigration status?
4. Are private landlords less likely to rent to people who lack clear documentation as a result of the ' Right to Rent' scheme?
5. Are private landlords willing to conduct online checks through the "Home Office Checking Service" where a migrant tenant states that their documents are currently with the Home Office?

To test for the above, seven tenant scenarios were created in consultation with discrimination lawyers. As far as possible, differences between scenarios were restricted to the relevant characteristics being tested for the purposes of identifying discrimination (citizenship/nationality, documents to evidence Right to Rent, type of Right to Rent, national/ethnic origins) (see below).

Each scenario was assigned an email address and email text, which was sent in response to advertised properties either in randomised groups of three (scenarios 1 to 6) or individually (scenario 7). Each email text gave the same relevant background details and attempted as far as possible not to provide further information that may make them more or less attractive to a prospective landlord (such as age, occupation, income etc.).

National/ethnic origin was inferred through the name given to the scenario. Three scenarios were given British (English) sounding names (Peter, Colin and Dave), whereas the other scenarios were given names from the Indian subcontinent. The same national/ethnic origin was chosen for all so that they could be compared with each other without the risk of any different treatment being based on further discrimination between people from different non-white backgrounds.

Scenarios

1. Peter: British citizen, ethnically British name, British passport
2. Harinder: British citizen, non-ethnically British name, British passport
3. Ramesh: non-British citizen, non-ethnically British name, indefinite leave to remain (settled status) and an unlimited ' Right to Rent' demonstrated through one document
4. Colin: British citizen, ethnically British name, no passport but unlimited ' Right to Rent' that could be demonstrated through two documents
5. Parimal: British citizen, non-ethnically British name, unlimited ' Right to Rent' that could be demonstrated through two documents
6. Mukesh: non-British citizen, non-ethnically British name, Limited Leave to remain in the UK (2 years), demonstrated through one document

Groupings

The scenarios were sent in groups of three (scenarios one to six) or on their own (seven). This was for two reasons. Firstly, it was considered that suspicion might be aroused if all emails, similarly worded, were received by one landlord in a short time-period. We also considered the ethics of the situation. Because the researchers would not follow up with responses and there was no intention of entering into a contract for the tenancy, expecting a landlord to read and respond to all seven scenarios was considered disproportionate. This is particularly so if the attractiveness of any one of the emails we sent caused them to delay on accepting another prospective tenant. For any one email, however, the impact on the landlord is minimal. The landlord would simply have to read the short email, write a short initial response, or decide not to respond.

The emails were sent through the online messaging system of the website hosting the advert. Any response to emails were received by the sending email account.

We originally considered dividing the scenarios into two groups of three and sending half of the adverts Group A and the other half Group B. However, this would have reduced our ability to cross-compare all of the different scenarios. Landlords would never have to make a decision about whether to respond to scenario 3 as against scenario 5 for example.

Instead, we decided to send the first six scenario emails in every possible combination. So the first advert would receive scenarios 1, 2 and 3; the second 1, 2 and 4 and so on until every combination was explored. This happened every twenty emails that were sent out as three emails can be chosen from a group of six in twenty different ways.

Every twenty emails the order in which individual emails were sent was reversed. This was to avoid the same emails always being received first or last and to ensure that the order in which the emails were sent did not affect the results.

This methodology was chosen to allow for stronger cross-comparison of data than sending the emails in fixed groups.

Emails were sent in two sets, each comprising of 300 adverts, resulting in 150 emails sent for each scenario in total. With both sets combined, we responded to 600 online adverts, and sent out 300 emails for each scenario.

In some instances, an advert was taken down or the advertiser's account was found to be inactive after the email was sent, in which case it was marked as 'void' and not included in the final analysis. Some responses, identically sent to all scenarios, also indicated that the property was only available for women or students. In this case the message was also marked as void and not included in the final analysis. As a result, there are slightly different numbers of enquiries analysed for each scenario. In the analysis, we have therefore compared the percentages of the total emails received/not received or of responses received for each scenario with other scenarios. We cannot directly compare absolute numbers of responses between different scenarios.

After sending out messages to the first 300 adverts we reviewed our methodology. We considered that our initial concerns that landlords would identify similarities between the different emails and become suspicious were unfounded. As a result we made some minor changes to the wording of the emails to make them more similar (though not identical of course) for the second 300 adverts. In general across both sets the wording of emails was designed to only reveal the relevant information about the scenario characteristics, without containing any extraneous information that might skew the results.

The online email account used to send out the first 150 emails for scenario 1 ran into technical problems, which meant that the results were unreliable as it was not apparent which messages had been sent or when responses had been received. Therefore, for scenario 1 the analysis relies on the second set of 150 emails sent out, as they were sent from a new account that did not encounter the same problems. Therefore, the sample size for scenario 1 is smaller than the other scenarios.

An additional set of 150 emails were sent out in respect of a seventh scenario:

7. Priyesh: Non-British citizen, non-ethnically British name, requesting the landlord conduct an online check as documents with the Home Office for visa renewal.

These were sent out individually, with each advertisement receiving only one email.

Analysis

The enquiries sent by each scenario were then analysed and coded based on:

- Whether or not a response was received;
- Whether the response indicated that the property was available. This was marked as either 'available', 'not available' or 'unclear'. Available properties were marked as such if the response explicitly stated availability, or offered a viewing. Responses were marked 'unavailable' if this was made explicit, for example because the property was already taken. Responses were marked as 'unclear' where it was not possible to determine from the response whether or not the property was available (for example, responses that just asked for a phone number);
- Whether the response was positive (e.g. invited further interaction, such as offering a viewing or indicating that the scenario would be considered for the property);
- Whether the response was negative (e.g. stating that the property was taken, no longer available, or that the scenario was not suitable for the property);
- Whether it was unclear from the response if it was positive or negative (e.g. only asked for further information or a phone number to call, without providing information that indicated further interaction with a view to securing the property);
- Whether a viewing was offered.

The rates of response and types of responses were then worked out separately for each scenario. The responses were also analysed on an individual level as to whether the Right to Rent scheme was mentioned, whether there was an apparent misunderstanding of the scheme, or clear evidence of discrimination in the wording of the email.

Testing for discrimination

In order to test whether treatment is discriminatory we had to try and ensure that the scenarios compared differed only with respect to the relevant characteristic tested. This could mean comparing two scenarios for example that only differ in whether the person in question possess a British passport, to see if landlords are discriminating against those without British passports. In some instances we draw out more complex evidence of discrimination by comparing across multiple scenarios with different variables. We addressed the following questions:

Are landlords/ agents less likely to rent to those who do not have a British passport? If so, does this treatment differ on the basis of ethnicity, or perceived ethnicity, of the prospective tenant?

This was examined by comparing the response rates and type of responses received by scenarios 1 & 4 and scenarios 2 & 5. These scenarios shared all characteristics with the other (citizenship, ethnicity, type of Right to Rent) except one stated that they held a British passport, and the other did not. Scenarios 1 and 4 had ethnically British sounding names and scenarios 2 and 5 had non-ethnically British sounding names, allowing testing for whether any discrimination differs on the basis of ethnicity, or perceived ethnicity.

Are private landlords less likely to rent to people on the basis of their immigration status?

This was tested by comparing the response rates for scenario 3 and scenario 6. These scenarios shared all relevant characteristics (ethnicity, citizenship, number of documents to evidence their Right to Rent) but had a different migration status (settled/limited leave).

Are private landlords less likely to rent to people who lack clear documentation as a result of the ' Right to Rent' scheme?

This was analysed in a number of ways. First, we compared the rate and type of responses received by scenario 2 against scenario 3. These scenarios shared characteristics of ethnicity and both have a permanent Right to Rent. Both also had one document showing their status in the UK. However, scenario 2 held a British passport, while scenario 3 held a potentially less familiar document showing indefinite leave to remain. The scenarios also varied as regards citizenship, and so nationality discrimination may also have had a role to play.

We also compared scenarios 1 and 4. These both had British ethnic characteristics, but scenario 1 had a British passport, while scenario 4 did not.

Finally, we looked at how the scenarios with British passports (1 & 2) fared against those that could not provide passports, but would have to rely on other documents (4 & 5).

Are private landlords willing to conduct online checks through the Home Office 'Landlords Checking Service' where a migrant tenant states that their documents are currently with the Home Office?

This was tested through scenario 7 alone, which was sent to 150 landlords. This also has relevance to any other situation in which a migrant might need to rely on a landlord's willingness to conduct an online check.

Limitations with the research

The methodology only allowed the early stage of the rental enquiry process to be tested. The researchers did not follow up on the responses received from landlords after the initial email was sent. It was decided to only analyse the initial response and not to follow up on responses received in order to avoid wasting the advertiser's time. Sending up to three short, initial emails was considered proportionate. Only a small proportion of enquiries received more than one email from a landlord, which appears to back up this theory. It was therefore not possible to examine how prospective tenants are likely to be treated later on the process, for example when they view a property or when any ' Right to Rent' check is conducted, or whether this differs in relation to nationality, ethnicity, migration status, or document type/availability.

Another limitation was in how national/ethnic origin was inferred. The email format meant that perceived ethnicity could only be tested in writing, rather than through accent or appearance. It was decided that stating the ethnic/national origins explicitly (for example, "I am of Indian origin") in an email would appear strange to landlords and may have biased the research if landlords received multiple emails stating their ethnic/national origin explicitly. Name was therefore chosen as the clearest indicator of ethnicity.

Local Authority Freedom of Information Requests

Freedom of Information requests were sent to every local authority in the UK. For the purposes of this analysis responses were only analysed from local authorities in England. The timeframe for a response to an FOI request is 20 working days. Responses received prior to 7th January 2017 – more than 20 days after the requests were sent - were included in the analysis. 16 responses were received after this date and were not included. We analysed the responses to two questions:

Are you providing training, outreach, or other engagement in respect of the Right to Rent scheme, for example to landlords, service users, or your staff?

Responses were marked either 'yes', 'no', or 'not applicable'. The majority of responses marked 'no' were clear responses stating that they had not done any of the above. We also classed as 'no' local authorities who stated that they were giving advice either internally or externally on a case by case basis, or whose response did not disclose any indication of the activities listed above.

The ‘not applicable’ category consisted of responses from authorities who said that this was not within their remit, as the responsibility for housing lay with another local authority within their area.

Have you put in place any systems to monitor the impact of the Right to Rent scheme on: i) Homelessness or ii) Discrimination?

If a local authority responded to either i) or ii) positively, the response was categorised as a ‘yes’.

The ‘not applicable’ category consisted of responses from authorities who said that this was not within their remit, as the responsibility for housing lay with another local authority within their area. The number is different to that in the question above, because in some instances local authorities answered ‘not applicable’ to one question but not to another. Where we were unable to determine the reason for this, we marked the result as ‘not applicable’ in order to avoid over counting ‘no’ responses.

Appendix 2 - Results

Survey results

Survey for Landlords

Background

The majority of respondents to the survey were landlords (83%), while 13% were agents. Two respondents answered that they were both a landlord and an agent, while three respondents answered that they were subletting a room within their property. Due to the low response rate from agents, a decision was made to remove the agent respondents from the analysis and create a separate survey for agents. The respondents who answered that they were both a landlord and an agent remained in the landlord sample. This left a sample of 108 responses from landlords.

Landlord	103	83%
Agent	16	13%
Both	2	2%
Subletting a room	3	2%
Total respondents	124	

How many properties do you let or manage for private residential use? (Multiple choice)

Room(s) sublet within a single property	3	4%
Room(s) let within own home	7	6%
1-5 properties	53	49%
More than 5 properties	45	42%
Total respondents	108	

There was a greater proportion of 'small-scale' landlords who rented out up to five properties (58%) than larger-scale landlords who rented out more than five properties (42%). The majority of private landlords in the UK are estimated to be small-scale landlords who only rent out a single property. Therefore, while the survey results are not representative of the landlord population as a whole, we would expect responses to give an indication of how tenants can expect to be treated in the private rental market.

Are you a member of a professional body?

Yes	55	51%
No	53	49%
Total respondents:	108	

Slightly more than half of respondents (51%) stated that they were a member of a professional body. A survey by Shelter found that eight out of ten landlords had never

been a member of a trade body or registration scheme. Therefore our survey would appear to under-represent this group. One reason for this is that landlords who are members of professional bodies are likely to receive information about housing legislation and changes, and therefore to fill out a survey of this nature. Also, the surveys were circulated with local landlord membership organisations, thereby increasing the likelihood of responses from this group.

This could potentially affect the kind of responses received. Shelter's research into landlords states: "Although cause and effect cannot be proven, the survey points to a clear association between being a member of a trade body or registration scheme, and being more likely to follow the law and good practice on things such as tenant safety and protecting deposits." Therefore, it could be expected that our survey results overestimate the level of understanding and compliance of the ' Right to Rent' scheme among the general landlord population.

Where are the properties you own/manage located? (Multiple choice)

England - London & South East	34	31%
England - South West	13	12%
England - West Midlands	5	5%
England - East Midlands	43	40%
England - North East	7	6%
England - North West	20	19%
Scotland, Wales, or Northern Ireland	4	4%
Total respondents:	108	

There was a good distribution of landlords with properties across the UK, although there were large concentrations in the East Midlands and London and the South-East.

Process of the Checks

The majority of landlords (85%) stated that they, or their agent, kept copies of the documents shown by tenants during the process of applying for a tenancy.

Yes	79	85%
No	14	15%
Total respondents:	93	

Do you require prospective tenants to have a minimum period of permission to live in the UK?

40% of landlords stated that they required prospective tenants to have a minimum period of permission to live in the UK in order to be considered for a tenancy.

Yes	36	40%
No	55	60%
Total respondents:	91	

Of the 28 landlords who stated how long they required a period of leave to be, over half stated up to one year, while 18% required leave to equal the length of the tenancy and 18% required tenants to have permanent/ settled status in the UK.

Up to 1 year	15	54%
2 – 5 years	3	11%
10 years	1	4%
Permanent/settled status	5	18%
Length of tenancy	5	18%
Total respondents:	28	

Do you currently ask every prospective tenant for proof of their immigration status?

The majority of landlords (80%) stated that they do require proof of immigration status from all prospective tenants.

Yes	75	80%
No	19	20%
Total respondents:	94	

Who do you ask for proof of their immigration status? (multiple choice)

Of those who did not require proof from all prospective tenants, half asked those without a British passport. Two landlords stated that they did not ask anyone for proof of their immigration status.

Those without a British passport	6	50%
Those who do not seem to be British	5	58%
Those who say that they have permission to stay in the UK for a limited period	4	33%
European Economic Area (Includes EU and Swiss) nationals	1	8%
Non-EEA nationals	3	25%
No one	2	17%
Total respondents:	12	

Which of the following documents would you accept as proof that someone has an unlimited ' Right to Rent' (multiple choice)

While 100% of landlords said that they would accept a UK passport as proof that someone has an unlimited Right to Rent, just 76% said they would accept an EEA passport

or identity card, and only 67% said that they would accept a certificate of naturalisation as a British citizen. All of the documents listed are acceptable as proof that someone has an unlimited Right to Rent.

UK passport	58	100%
A European Economic Area (EEA) / Swiss national passport or identity card	44	76%
Registration certificate or document certifying permanent residence of EEA/ Swiss national	27	47%
Permanent Residence card as a family member of a European Economic Area (EEA)/ Swiss national	25	43%
Certificate of naturalisation or registration as a British citizen	39	67%
Total	58	

Which of the following documents would you accept to help demonstrate that a tenant has an unlimited ' Right to Rent' (multiple choice)

Despite all of the documents listed below being acceptable when shown together as part of a pair, many landlords would not accept them.

UK birth or adoption certificate	41	85%
Letter from the National Offender Management service	11	23%
Letter from an employer	10	21%
Criminal Record Check	5	10%
UK driving license	23	48%
Letter from a UK further or higher education institution	15	31%
Letter from a police force confirming that certain documents have been reported stolen	11	23%
Benefits paperwork	14	29%
Total	48	

Which of the following documents would you accept to demonstrate that a tenant has a time-limited ' Right to Rent'? (Multiple choice)

The documents listed are all acceptable proof of a limited Right to Rent. However, not all landlords stated that they would accept them.

A valid passport endorsed with a time-limited period	47	96%
Biometric Residence Permit with permission to stay for a time-limited period	33	67%
Non-European Economic Area (EEA) national residence card	10	20%
UK immigration status document with a time-limited endorsement from the Home Office	37	76%
Total	49	

Understanding of the scheme

Do you feel that you have understood your obligations under the ' Right to Rent' scheme?

Almost three quarters of landlords stated that they felt that they had understood their obligations. However, a fifth did not and 7% stated that they were previously unaware of the scheme.

Yes	62	73%
No	17	20%
I was previously unaware	6	7%
Total respondents:	85	

Landlords who were not members of any relevant membership body were far more likely to state that they had not understood or were unaware of the scheme (42% of non-members compared to 16% of members).

	Yes, I have understood my obligations	%	No, I have not understood my obligations/ I am unaware	%	Total
Non-members	21	58%	15	42%	36
members	41	84%	8	16%	49

Do you feel that you have received sufficient advice about how to comply with the ' Right to Rent' scheme?

Yes	44	52%
No	41	48%
Total	85	

Have you read the Code of Practice on illegal immigrants and private rented accommodation?

Yes	39	46%
No	46	54%
Total respondents:	85	

Have you read the Code of Practice for landlords on avoiding unlawful discrimination when conducting ' Right to Rent' checks in the private rented residential sector?

Yes	32	38%
No	52	62%
Total respondents:	84	

The overall proportion of landlords surveyed who had not read either code is worryingly high, at 49%.

Do you feel that you have received sufficient advice about how to comply with the ' Right to Rent' scheme?

When asked whether they had received sufficient advice about how to comply with the scheme, just under half of landlords answered 'no'.

Yes	44	52%
No	41	48%
Total respondents:	85	

Are you aware of the Home Office's intention to introduce a criminal sanction for landlords/agents who are found to have knowingly rented a property to someone who does not have a ' Right to Rent'?

Most landlords stated that they were aware of the criminal penalty, prior to its introduction on 1 December 2016. However, almost a fifth (13) were not aware.

Yes	54	81%
No	13	19%
Total respondents:	67	

Impact of the Scheme

Various questions were asked to examine the impact of the scheme on landlords.

Are you now less likely to consider letting to any of the following groups as a result of the ' Right to Rent' scheme? (Multiple choice)

79% of landlords surveyed stated that they had become less likely to rent to a certain group or groups as a result of the ' Right to Rent' scheme. Almost two thirds (64%) were less likely to rent to those without permission to reside in the UK, the target of the scheme. However, over half (51%) said they were less likely to rent to foreign nationals from outside the EU, while 42% were less likely to rent to anyone without a British passport.

Those without a British passport	28	42%
Those with permission to stay in the UK for a limited time-period	30	45%
EU/EEA nationals	12	18%
People who are currently outside of the UK	23	34%
Foreign nationals from outside the EU/EEA	34	51%
Those without permission to reside in the UK (undocumented or irregular migrants)	43	64%
None of the above	14	21%
Total respondents:	67	

Since 1 February 2016 have you refused an applicant as a result of the ' Right to Rent' immigration status checks?

Most landlords surveyed had not refused someone for a property as a result of the scheme since 1 February 2016 (the date the scheme came into force nationwide in England).

Yes	11	15%
No	60	85%
Total respondents:	71	

Of the 11 landlords who had refused an applicant, just one based their decision on a negative response from the Home Office stating that the applicant did not have the ' Right to Rent'. Four landlords stated that they had refused an applicant because they did not want to undertake a ' Right to Rent' check and one refused an applicant because they had a time-limited Right to Rent.

The applicant could not produce adequate documents as listed in the Code of Practice	5
After conducting a ' Right to Rent' check, I was not satisfied that the applicant had a ' Right to Rent'	3
I was informed by the Home Office landlord's checking service that the applicant did not have a ' Right to Rent'	1
The applicant had a time-limited ' Right to Rent'	1

I did not want to undertake a ' Right to Rent' check	4
Total respondents:	11

Since 1 February 2016 in England, have you rented to a property to someone who has permission to stay in the UK for a limited period of time (e.g. someone with a time-limited visa or temporary leave to remain in the UK)?

Just nine landlords who answered the above question stated that they had rented a property to someone with time-limited leave to remain in the UK since the scheme came into force.

Yes	9	13%
No	58	87%
Total respondents:	67	

Have the new regulations impacted your ability to rent to/seek out tenants?

Yes	15	22%
No	52	78%
Total respondents:	67	

Most landlords stated that the ' Right to Rent' scheme had not impacted their ability to rent to or seek out new tenants.

Opinion

In your view, should landlords be required to undertake immigration checks on prospective tenants?

The majority of landlords stated that they do not believe that landlords should be required to undertake immigration checks on prospective tenants.

Yes	8	12%
No	52	80%
I don't know	5	8%
Total respondents:	65	

Would the introduction of criminal sanctions make you less likely to consider any of the following groups for a tenancy? (Multiple choice)

Two thirds of landlords stated that the introduction of a criminal sanction would make them less likely to rent to certain groups of tenants based on their nationality, perceived nationality, or immigration status.

Those who do not have a British passport	31	48%
Those who do not seem to be British	23	36%
Those who only have permission to stay in	31	48%

the UK for a limited period of time		
Non-EU/EEA nationals	31	48%
No, it would not affect who I would consider for a tenancy	21	33%
Total respondents:	64	

Survey for Agents

How many properties do you manage?

Over three quarters of respondents came from large letting agents with over 100 properties. 9% managed less than 50 properties.

100+	160	77%
51 to 100	30	14%
6 to 50	17	8%
Less than 5	1	0%
Total respondents	208	

In what areas are the properties you manage located?

Agents who responded to the survey managed properties across England, with the largest proportion managing properties in London and the South East (41%). Only 2 respondents managed properties in other areas of the UK (Scotland, Wales and Norther Ireland), however, the scheme has not yet been rolled out to these areas.

England - London & South East	85	41%
England - South West	33	16%
England - West Midlands	14	7%
England - North East	20	10%
England - North West	30	14%
England - East Midlands	19	9%
England - East	26	13%
Scotland, Wales or Northern Ireland	2	1%
Total respondents:	**208**	

Are you a member of a professional body (e.g. NALS or ARLA)?

Only one agent stated that they were not a member of a professional body. This is not surprising, considering that they survey was primarily promoted through membership bodies. However, across the UK market there is no legal requirement for an agent to be a member of such a body and many agents will not be. In 2009 the Department for Communities and Local Government estimated that of the approximately 8,000 managing

and letting agents operating in the UK only about half belonged to a relevant industry organisation.[124]

Yes	206
No	1
Total:	**207**

Are you aware of the ' Right to Rent' scheme, which requires landlords or agents to check that prospective tenants are not disqualified from renting privately in the UK?

Only 2 agent respondents answered that they were not aware of the ' Right to Rent' scheme. However, both stated in a later question that they did conduct ' Right to Rent' checks on all applicants. Therefore, it could be assumed that this question was answered incorrectly.

Yes	204
No	2
Total:	206

Do you currently have an agreement in writing to take responsibility for conducting ' Right to Rent' checks on prospective tenants on behalf of the landlords you represent?

For agents to take over responsibility for the checks from landlords, they must enter into an agreement in writing to that effect. Interestingly, only 67% of agents stated that they had such an agreement. 6% answered that they had a written agreement with some but not all landlords (in most cases only relating to new tenancies). Over a quarter (26%) answered they had no agreement in writing. In this case, while they may undertake the check on behalf of landlords, the landlord may remain liable to any penalty under the scheme. This suggests there is some misunderstanding about the role of agents and landlords under the legislation, as the quotes from agent respondents below illustrate.

Yes	136	67%
No	53	26%
Some, not all (e.g. new agreements)	13	6%
Total respondents	202	

"We do not have a written agreement as it's something we do because it's a legal requirement." (Agent managing 100+ properties)

"New landlords only at this stage. Currently updating." (Agent managing 100+ properties)

[124] Department for Communities and Local Government, "The private rented sector: professionalism and quality The Government response to the Rugg Review Consultation", May 2009

How checks are being conducted

Various questions were asked to find out how agents conducted the checks.

How does your agency carry out ' Right to Rent' checks?

The majority of agents stated that Right to Rent checks were conducted in-house.

In-house:	117	57%
Through a referencing service:	89	43%
Total respondents:	206	

Do you currently conduct a ' Right to Rent' check on all applicants for a property, where you are responsible for the check?

Only three agents stated that they did not conduct a ' Right to Rent' check on all applicants. One only checked non-EEA nationals, while another only checked applicants who did not have a British passport.

Yes	204
No	3
Total respondents:	207

Is there a charge to the landlord or tenant for undertaking a ' Right to Rent' check?

Over a quarter of agents stated that there was a charge to landlords or tenants to undertake a ' Right to Rent' check.

Yes, there is a charge to the landlord	16	8%
Yes, there is a charge to the prospective tenant	42	20%
No, there is no charge	150	73%
Total respondents:	205	

Most agents who responded with the amount of the charge stated that the fee was included in the general tenant referencing fees. 1 charged £4.50 for a check, 5 charged between £10 and £20 and one agent charged tenants £40 for a ' Right to Rent' check. Four agents stated that while they do not currently charge, they would revise their charges if they were no longer able to charge referencing costs to tenants (see quotes below).

Included in referencing costs/fees	20
Less than £10	1
£10-20	5
Over £20	1
Total respondents:	27

Since 1 February 2016, have you refused an applicant as a result of the ' Right to Rent' checks? (Multiple choice)

While most agent respondents stated that they had not refused an applicant since 1 February 2016 (the date the checks came into force nationwide in England), over one fifth of agents had.

Yes	47	22%
No	160	78%
Total	207	

Among agents who had refused an applicant, 80% based the refusal on either the tenant not being able to produce adequate documents, or not being satisfied that the tenant had a ' Right to Rent' following a check. However, only 13% of those stated that they had received a negative response from the Home Office.

Over a quarter of agents who had refused an applicant based the decision on the fact that the applicant had a time-limited Right to Rent (26%).

The applicant could not produce adequate documents as listed in the Code of Practice	31	66%
After conducting a ' Right to Rent' check, I was not satisfied that the applicant had a ' Right to Rent'	16	34%
I was informed by the Home Office landlord's checking service that the applicant did not have a ' Right to Rent'	6	13%
The applicant had a time-limited ' Right to Rent'	12	26%
Total respondents:	47	

Do you require prospective tenants to have permission to reside in the UK for a minimum period of time in order to consider them for a tenancy?

Two thirds of agents (67%) stated that they required tenants to have permission to reside in the UK for a minimum period in order to consider them for a tenancy.

Yes	87	67%
No	43	33%
Total:	130	

The majority required six months or less (55%), while 30% required tenants to have permission to reside for at least the length of the tenancy. One agent required tenants to have indefinite leave to remain in the UK.

Less than 6 months	9	10%
6 months	39	45%
Length of tenancy	26	30%
12 months	11	13%

3 years	1	1%
Indefinite leave to remain/settled status	1	1%
Total respondents:	87	

In your experience, have any landlords indicated that they are less willing to rent to certain groups as a result of the ' Right to Rent' scheme?

Three quarters of agents respondents stated that landlords had not indicated that they are less willing to rent to certain groups of tenants as a result of the ' Right to Rent' scheme. However, 15% (30) stated that they had.

Yes	30	15%
No	155	76%
I don't know	20	10%
Total	205	

Where landlords had indicated an unwillingness to rent to certain groups as a result of the scheme, over half (53%) had cited people with a time-limited Right to Rent or time-limited permission to remain in the UK. 30% (9) were less willing to rent to either refugees or migrants. Over a quarter were less likely to rent to anyone without a British passport. 5 agents stated that landlords were less willing to rent to people who look or sound foreign as a result of the scheme.

People with a time-limited Right to Rent	13	43%
People with a time-limited permission to remain in the UK (e.g. a time-limited visa)	14	47%
People with no ' Right to Rent'	18	60%
People with 'permission to rent'	3	10%
Refugees	7	23%
Migrants	8	27%
People who look or sound foreign	5	17%
Anyone who does not have a British passport	8	27%
Total respondents:	30	

Complaints from landlords and tenants

Are you aware of any complaints received from landlords about the ' Right to Rent' scheme?

11% had experienced complaints from landlords.

Yes	22	11%
No	186	89%
Total	208	

Of those complaints, most (50%) related to lack of understanding and additional work for landlords, while almost half related to delaying tenancy start dates (45%). Almost a quarter of complaints related to discrimination.

Checks delaying tenancy start dates	10	45%
Lack of understanding of the ' Right to Rent' scheme	11	50%
Additional work for landlords	11	50%
Increased destitution/homelessness	2	9%
Discrimination	5	23%
Total respondents:	22	

Are you aware of complaints from tenants or prospective tenants about the ' Right to Rent' scheme?

A fifth of agents had experienced complaints from tenants related to the scheme.

Yes	40	20%
No	163	80%
Total	203	

The majority of complaints related to lack of understanding (55%), while almost half related to intrusive questioning and 45% related to an inability to enter into a tenancy from abroad.

Discrimination/ Harassment	13	33%
Intrusive questioning	19	48%
Lack of understanding of the ' Right to Rent' scheme	22	55%
Checks delaying the start date	15	38%
Refusal of a landlord/agent to undertake an online ' Right to Rent' check	6	15%
Inability to enter into a tenancy from abroad	18	45%
Total respondents:	40	

Views on the scheme

In your view, how informed are landlords about the ' Right to Rent' scheme?

Most agents felt that landlords were poorly informed or not informed about the ' Right to Rent' scheme (60%), while 40% felt landlords were well-informed or informed.

Well informed	17	8%
Informed	65	32%
Poorly informed	107	53%
Not informed	12	6%
Total:	201	

Survey for Organisations

Background

6 responses were filled out on behalf of an organisation and 11 responses as an individual working for a relevant organisation.

Which areas of work does your organisation undertake? (Multiple choice)

Advice	11	65%
Support	11	65%
Advocacy / Campaigning	6	35%
Policy / Lobbying	5	29%
Accommodation provision	2	12%

Other:

- Food and clothing bank (1)
- Food provision, mentoring (1)
- Homelessness charity (1)
- Litigation (1)
- Accommodation for destitute asylum seekers and other destitute migrants (1)

Total respondents: 17

What issues does your organisation cover?

Migration	11	65%
Housing / Homelessness	13	76%
Welfare	9	53%
Integration	8	47%

Which group(s) does your organisation represent or work on behalf of?

Women	11	65%
Youth / Children	10	59%
Immigrants	14	82%
Homeless people	13	76%
Refugees / asylum seekers	14	82%
Black and Minority Ethnic groups	11	65%

Impact

Do you feel that the ' Right to Rent' scheme has affected your service users?

Yes	13	76%
No	1	6%
I don't know	3	18%

Which, if any, of the following groups have been affected by the ' Right to Rent' scheme?

People who do not have a Right to Rent	13	76%
People who have a time-limited Right to Rent/ time-limited migration status	11	65%
People who lack clear identity documents	14	82%
Families with children	9	53%
Ethnic minorities	12	71%
Asylum seekers	12	71%
Refugees	13	76%
Victims of domestic violence	4	24%

Have your service users expressed any of the following complaints in relation to the operation of ' Right to Rent' checks?

Discrimination by a landlord or agent	7	41%
Charges by agents for completing a ' Right to Rent' check	2	12%
Exploitation by a landlord or agent	2	12%
Refusal of a tenancy on the basis of their immigration status	5	29%

If your service users have not expressed any of the above complaints, what do you think is the reason for this?

People are not aware of the scheme	9	60%
People do not realise that they can seek advice from our organisation	7	47%
People do not realise that their problems are as a result of the ' Right to Rent' scheme	9	60%
Landlords/agents are not undertaking ' Right to Rent' checks	3	20%
People are not being impacted by the ' Right to Rent' scheme	1	7%

Total respondents: 15

Since the ' Right to Rent' scheme came into force nationwide in England from 1 February 2016, have you noticed an increase of any of the following:

People seeking advice about problems with their landlord or agent	7	50%
People having their rental contract terminated by their landlord, or being issued with an eviction notice	5	36%
Homelessness	9	64%
People seeking emergency accommodation	8	57%
Reports of harassment from landlords or agents	4	29%
Reported home visits from landlords or agents	2	14%
Reports of landlords or agents asking for additional documents or not accepting certain types of documents	4	29%
Housing discrimination	5	36%
Exploitation of tenants by landlords/agents	2	14%
Total respondents	14	

Have you noticed any improvements in the following areas since the introduction of the ' Right to Rent' scheme in your area?

Enforcement against rogue landlords	0
Housing availability	1
Housing quality	0
Joint working with public authorities	1
Identification of unsafe or overcrowded housing	1

Mystery Shopping Results

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6	Scenario 7
Usable enquiries	141	279	285	280	286	287	150
Response received to enquiry	82	163	145	157	143	154	23
No response received to enquiry	42%	41%	49%	44%	50%	46%	85%
Response rate	58%	58%	51%	56%	50%	54%	15%
Property available	39%	39%	33%	40%	32%	36%	n/a
Property not available	4%	5%	6%	6%	7%	7%	n/a
Unclear whether property is available	15%	14%	12%	10%	10%	11%	n/a
Clear positive response	37%	35%	28%	35%	28%	33%	3%
Negative response	4%	5%	6%	7%	8%	7%	3%
Unclear whether positive or negative	17%	18%	16%	14%	14%	14%	9%
Asked to call	13%	9%	9%	6%	7%	8%	n/a
Viewing offered	25%	28%	22%	28%	21%	30%	n/a

Local Authority Freedom of Information Act Requests

Are you providing training, outreach, or other engagement in respect of the Right to Rent scheme, for example to landlords, service users, or your staff?

Yes	155	56%
No	94	34%
Not applicable	29	10%
Total respondents	278	

Have you put in place any systems to monitor the impact of the Right to Rent scheme on: i) Homelessness or ii) Discrimination?

Yes	19	7%
No	226	81%
Not applicable	33	12%
Total respondents	278	

If a local authority responded to either i) or ii) positively, the response was categorised as a 'yes'.