

Census 2001 Review and Evaluation

Non-Compliance: Executive Summary

ONS is carrying out a review and evaluation of the 2001 Census in England and Wales which will culminate in a Data Quality report and a General Report being published.

Plans for individual reports on specific aspects of the Census operation and a timetable for release have been published.

Each report is written in isolation and is subject to amendments as processing progresses and further information comes to light.

Reports will be released on the ONS website in the form of a high level Executive Summary and a more detailed Evaluation Report.

September 2002

Content	Page
Introduction	2
Non-Compliance Project Objectives	2
Legislative Requirements	2
Underlying Policy	2
Field Procedures.....	2
HQ Procedures	2
Cases Reported to the Solicitors Office.....	3
Non-Compliance in Wales	3
Human Rights Issue	4
Lessons Learnt	4
Liaison with Solicitor's Office	5
Conclusion	5

Census 2001 Review and Evaluation

The Non-Compliance Evaluation Executive Summary was updated on the 14th April 2003 to include the outcome of the one outstanding case.

- give exactly the opposite message to that which ONS is trying to promote.

Introduction

This report, which relates to England and Wales, describes the background to the requirement for ONS to adopt a non-compliance policy of enforcing legal proceedings against persons who persistently refused to fulfil their statutory obligation to return a completed census form, and the procedures that were followed.

Therefore ONS follows a policy of only prosecuting in cases where it has obtained clear and sufficient evidence of a refusal that more or less guarantees success in the courts. Measured by this yardstick, the 2001 Census non-compliance exercise may be deemed to be a success since only 1 out of the 38 cases heard to date has been dismissed.

Non-Compliance Project Objective

The administration of the 2001 Census non-compliance policy fell under the wider Legislation Project, the main evaluation of which has been reported separately. The aim of adopting such a policy is not necessarily to achieve significantly higher levels of response in the current census itself. Rather it is to discourage non-participation in subsequent censuses and to provide sufficiently authoritative support and protection for field staff in seeking responses from householders, in the knowledge that the Registrar General is prepared to take legal action against offenders.

Field Procedures

Any refusal to complete a form, encountered by field officers was reported to Census HQ and, if there was clear and sufficient documentary evidence of a refusal, and the refusal persisted, consideration was given to a prosecution. The Registrar General gave particular attention to those reported cases where refusals were accompanied by acts of intimidation towards field staff.

Field staff were given specific instructions on the necessary procedures for attempting to conduct Interviews Under Caution under the provisions of the Police and Criminal Evidence Act.

Legislative Requirements

Under the provisions of section 8(1) of the Census Act 1920 it is an offence for someone to fail to comply with the Act or any Order or regulations made under the Act by refusing to make a census return.

Participation in the 2001 Census was thus compulsory with the exception of the question on religion.

Details of 6 per cent of the 1,500 or so fully reported incidents of refusal were passed on to the Department of Work and Pensions (DWP) Solicitors for consideration of legal action. A further 4,600 or so incidences of alleged refusal were reported but documentary evidence was insufficient to support prosecution.

HQ Procedures

All reported cases of refusal were scrutinised to assess whether or not legal action should be pursued.

Underlying Policy

It is particularly important, in pursuing a non-compliance policy, that prosecutions brought to court are not lost as this would:

- attract adverse publicity;
- let the field staff down; and

A dedicated unit, under the control of the Head of Legislation Branch, was set up to deal with Non-Compliance issues. A customised data base was created to log refusal reports received from the field, to assist in the assessment of cases and to monitor actions.

Prosecutions were sought on a case-by-case basis, where there was clear evidence of a refusal to return a completed Census form. The criteria for Non-

Census 2001 Review and Evaluation

Compliance Unit dropping potential cases were decided by the Legislation Project Manager, following the practise in previous censuses and taking account of more recent legal advice. The main reasons for dropping cases included:

- insufficient confirmation of householder's name (in cases, for example, where no contact had been made and evidence from other sources of information – such as the Electoral Register – was lacking);
- responsibility for making a return had not been established;
- possible irregularities in field procedures;
- evidence of mitigating personal circumstances, such as age or infirmity of the householder or in cases of bereavement;
- claims that forms had been posted back which could not be readily verified because of postal difficulties; and
- cases relating to a second home or holiday accommodation.

either as a result of the Solicitor's final warning letter or a court summons, or even, in one or two instances, on the day of the court hearing. In these cases the prosecutions were dropped as compliance was ultimately achieved. Ten cases where summonses were issued were subsequently dropped on technicalities.

The 38 successful prosecutions resulted in fines ranging from £35-£500 plus costs in most cases. In two instances a particular Magistrate granted a conditional discharge with no costs. In one case in which a defence based on infringement of human rights was cited, the costs awarded against the defendant amounted to £2,500. In another case, widely reported in the press, the defendant refused to pay his fine and costs and was subsequently imprisoned for contempt of court. In a further case, after prosecution, the defendant successfully appealed against the decision of the court on the grounds that he had been prosecuted under an incorrect name (though it had been the name given at the time of the Census). The second prosecution was dropped when an acceptable return was subsequently made.

Cases Reported to the Solicitor's Office

Where the documentation and circumstances in a refusal case were assessed by the Non-Compliance Unit to have met a number of key criteria, the evidence was passed to the Department of Work and Pensions (DWP) Solicitors' Office in Birmingham for the preparation of a prosecution file. While liaison with those field staff who might be called to attend court as witnesses was undertaken by the Non-Compliance Unit, the Solicitors' Office was responsible for appointing local solicitors and making the necessary arrangements for fixing trial dates and issuing summonses.

There were separate regional DWP Solicitor's Offices which handled cases in the North East, the North West, the Midlands, Wales and the South West, London North and London South.

In total some 92 cases were reported to the Solicitor's Office and summonses subsequently issued in 80 of them. In 32 of these the offending householder subsequently complied by making an acceptable return

Non-Compliance in Wales

In Wales, there were concerns surrounding the lack of a 'Welsh' tick box in response to the question on ethnicity, resulting in calls to boycott the Census in Wales.

Despite this issue there was no evidence to indicate that there were higher levels of refusal in Wales than throughout the rest of the country.

The Registrar General stated that he would not expect to prosecute anyone who had genuinely completed the substance of the Census form and returned it to ONS. In no case was a prosecution for non-compliance considered where a census form carrying the Plaid Cymru sticker (bearing an unofficial version of the ethnic group question with a 'Welsh' tick box) had been submitted.

As was the case in England, the Registrar General considered prosecution in Wales only in cases where there was clear and acceptable evidence of a refusal to make a return, although following formal non-compliance procedures in these circumstances was often more difficult. Two prosecutions were in Wales.

Census 2001 Review and Evaluation

The commitment of the ONS to involve the National Assembly for Wales more formally in deciding the form and content of any future census form in Wales should help resolve such concerns about expressing Welsh identity or other issues particular to the conduct of future censuses in Wales.

Human Rights Issue

Many people were under a general misunderstanding about their human rights as far as the Census is concerned and in several prosecution cases the defendant had cited infringement of human rights as a defence. For this reason the Registrar General had taken particular legal advice on this matter. ONS lawyers' view was that the legal requirement to complete a census form is fully compatible with the provisions of the European Convention on Human Rights (ECHR) as set out in the Human Rights Act 1998.

Article 8(2) of the ECHR makes provision for a public authority to interfere with a person's rights to privacy and respect for family life if such an interference is authorised by law and is for one of the permitted aims of the Article. The Census was thus deemed to be compliant with the ECHR in that the lawful authority is the Census Act 1920 and that each of the questions included in the census can be justified under one or more of the permitted aims: being necessary for the economic well-being of the country, for the prevention of crime or disorder, and for the protection of the health and the rights and freedoms of others.

The purpose of each question and the uses to which the information is put were set out in the Government's White Paper *The 2001 Census of Population* (Cm 4253) which was published in March 1999. As the Census is used as the statistical basis to allocate annual resources amounting to around £45 billion from central to local government, on this basis alone it is argued that the census is necessary for the economic well being of the country.

Despite this legal opinion, the human rights group Liberty offered to defend any person who was to be prosecuted for refusing to complete a census form. The basis of the defence was to be the argument that there had been no precedent which had established in law that the statutory requirement for a person to provide information about his ethnic group was

compatible with Article 8(2) of the ECHR as set out in the Human Rights Act, and that also, the criminal penalty for refusing to comply with the Census Act was in contravention to the Human Rights Act in that it was disproportionate to the offence.

However, in the only case in which this defence was tested, the court rejected both of Liberty's arguments and ruled that the provisions of the Census Act were fully compatible with both national and European human rights legislation.

Lessons Learnt

Field operations

The level of quality of fieldwork for the 2001 Census was generally very high. Nevertheless, notwithstanding the availability of a comprehensive guide to non-compliance procedures as part of the field manual, it was clear that Enumerators and other senior field staff did not always have a full appreciation of the importance of collecting appropriate evidence in the cases of encountered refusals.

The requirement, at the end of the follow-up phase, to attempt to conduct formal Interviews under Caution was, however, clearly onerous, especially in areas where there were particular difficulties in contacting households and where response was significantly lower than average. These issues should, in future, be addressed by more focused training.

There were, however, additional factors that affected follow-up procedures generally and which may have had an effect on the reporting of refusals in 2001.

In rural areas, field staff were sensitive to the public concerns about the possible risk of the conduct of the Census to the spread of the Foot and Mouth disease.

In some areas, the rate of postal return of forms was seriously affected by local postal difficulties, resulting in increased difficulties in assessing both genuine and bogus claims that forms had been posted back. In particular, the form and content of the final warning note issued by field staff in cases of persistent non-

Census 2001 Review and Evaluation

response caused some public consternation. These were issued in some instances where a form had, in fact, been posted back but had not been received by field staff. The function of issuing such warnings for the purposes of following necessary non-compliance procedures will be reviewed.

Liaison with Solicitors' Office

In all stages of planning the non-compliance operation, very helpful guidance on procedures, both in the field and internally within the Non-Compliance Unit was provided by the DWP Solicitors' Office in Birmingham. In particular, advice was given on the content and layout of the several forms to be used by both field and HQ staff.

A senior DWP solicitor attended the Census Area Managers training course to cover legal issues relating to compliance and to emphasise the importance of following procedures correctly. This provided a very useful session in the training programme.

Communication with the local offices, however, proved at times to be less than efficient, and there were a number of instances when progress was not regularly reported and where more notification of trial dates and the requirement for witnesses to attend court and give statements would have been helpful. Advice from, and procedures followed by, the different DWP regional offices were not always consistent, and would have benefited by the preparation of agreed standard prosecution guidelines to be followed by both local offices and Census HQ.

Documentation

The balance between providing non-compliance documentation that is necessary and fit for purpose (in that it meets the formal requirements to satisfy the courts as evidence) and yet which is non-provocative towards the public needs to be considered.

Legislative framework

Non-compliance procedures are governed by the provisions set out in the Census Act and secondary legislation. In the light, however, of increasing difficulties in enumerating the population in the traditional way, consideration should be given to providing a future legislative framework within which non-compliance procedures may be more easily conducted and better appreciated by the public.

Conclusion

A non-compliance policy is necessary to encourage public participation in subsequent censuses as well as to encourage field staff to press for proper responses from householders.

To reduce the risk of failure in the courts, the ONS followed a policy of only prosecuting in cases where there was clear and unambiguous evidence of a refusal to complete a form. The requirement for field staff to attempt to conduct formal Interviews under Caution was clearly onerous, especially in areas where there were particular difficulties in contacting households and where initial response was significantly lower than average.

Despite the concerns expressed, at time of the Census, about the lack of a 'Welsh' tick box and the calls for a boycott of the Census in Wales, there was no evidence to indicate that there were higher levels of refusal in Wales than throughout the rest of the country.

Census 2001 Review and Evaluation

Census Topics	Target Dates for Release
Legislation	Published
Non-Compliance (Executive Summary Only)	Published
Data Needs	Published
Geography	Published (Executive Summary)
Publicity	Published
Data Collection Development	Published
Data Collection Support	Published
Census Coverage Survey	Published
Processing	Published
Annex: Quality of Data Capture and Coding	Published
Downstream Processing	Published (Executive Summary)
Data Quality	
- Question non-response rates	Published
- Disclosure Control (Executive Summary only)	Published
- Data Validation (Executive Summary only)	Published
Edit & Imputation	Published
One Number Census	
- Quality Assurance	Published
- Lessons learnt (Executive Summary only)	Published
Output Policy	Published (Executive Summary)
Output Production	
- Part 1:Review of Output Released to date	Published (Executive Summary)
- Part 2:including Sample of Anonymised Records (SARs)/Origin Destination Matrices	Published
Census Access	Published
Programme Management	Published (Executive Summary)
Quality Report	Published
General Report	Published

Please note that the dates for release of individual evaluation reports noted above are target dates, and therefore subject to change. For the latest information please visit www.statistics.gov.uk/census2001/reviewevaluation.asp