



House of Commons  
Home Affairs Committee

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**The Windrush  
generation:  
Government Response  
to the Committee's  
Sixth Report of Session  
2017–19**

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**Seventh Special Report of Session  
2017–19**

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## Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

Committee reports are published on the Committee's website at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Elizabeth Hunt (Clerk), Harriet Deane (Second Clerk), Simon Armitage (Committee Specialist), Penny McLean (Committee Specialist), David Gardner (Senior Committee Assistant), Mandy Sullivan (Committee Assistant) and George Perry (Senior Media and Communications Officer).

### Contacts

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## Seventh Special Report

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On 3 July 2018 the Home Affairs Committee published its Sixth Report of Session 2017–19, [The Windrush generation](#) (HC 990). The Government's response was received in the form of a letter from the Home Secretary on 24 July 2018, and is appended to this report.

In the Government Response the Committee's recommendations are shown in **bold** type; the Government's response is shown in plain type.

## Appendix: Government Response

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I have considered carefully the Committee's conclusions and taken note of the recommendations that you have provided. I would like to thank the Committee for its thorough and comprehensive investigation of the issues facing the Windrush generation and my department's response. As I have said in appearances before the committee previously, all Select Committees play an important role in our democracy. I very much welcome the scrutiny that you provide and take the advice offered seriously.

I have sought to respond to the specific recommendations made in your report through the detailed answers provided below. I have grouped these recommendations to avoid duplication where recommendations overlap. In addition to the responses provided below, I will continue to provide monthly updates to the Committee to ensure that you are kept abreast of our progress in righting the wrongs faced by the Windrush generation, who have contributed so much to this country.

### Historical reviews

**It is vital that the country understands how many members of the Windrush generation and their children and grandchildren have been, or continue to be, wrongfully subject to immigration enforcement action. The Home Office must tell us how many people have been unlawfully subject to deportation, detention and reporting requirements. Given concerns that incorrect decisions may have been made due to incomplete information, the Home Office should provide more details of what evidence is being searched for in the files and more information on the independent audit promised by the Permanent Secretary. The Home Office should not limit its checks only to those who may have arrived in the UK before 1973. It should include those who arrived later or who were born here and may also be similarly protected.** (Paragraph 18)

I would like to reiterate the information I provided to you on 10 July in the monthly update of the work of my Department in relation to removals and detentions of people who might have been part of the Windrush generation.

The Department carried out an initial examination of all removals and deportations, dating back to 2002 when electronic record-keeping began, of Caribbean Commonwealth nationals now aged over 45, those old enough to have been settled here before 1973 and therefore protected by the 1971 Act.

This has not been a straightforward exercise, principally because there is no simple way to search our systems to identify individuals who may have been settled here before 1973. Each case has required manual examination by skilled caseworkers of the electronic record, and where necessary the associated paper file.

In this initial examination of around 8000 removals, we found 63 cases of individuals where there was an indication in the record that that the individual could have been in the UK before 1973. Of these, 32 related to deportations of foreign national offenders and 31 were administrative removals, most of which were voluntary returns.

I have instructed officials in the Taskforce to try and make contact, where possible, with the 31 people who had been administratively removed. As of the end of June, 14 of these are in discussion with the Taskforce. We continue to work with relevant Caribbean governments to obtain contact details where we do not have them and I am grateful for the assistance they have been providing.

This initial work however was done at pace to scale the issue. We therefore set up a new unit and over 150 staff have been redeployed to historical review and associated work to do the removals work again and to also examine historical detentions. We are also looking at cases of people who have been held at the border for further examination and were then either subsequently admitted or who were denied entry.

For any new pre-73 cases identified, we will also seek to put them in touch with the Taskforce, if they have not already made contact.

We are currently finalising the arrangements for the independent audit of the historical reviews and will provide further detail to the Committee through future monthly updates.

**Those wrongly affected must receive the apology and compensation they deserve. No-one with a legal right to be in the UK should still be subject to enforcement procedures and have to endure the anxiety of having to report regularly to the Home Office under threat of removal. We ask the Home Office again to guarantee immediately that no-one from the Windrush generation or their children or grandchildren are currently subject to reporting requirements.** (Paragraph 19)

I have been very clear that the Government deeply regrets what has happened to the Windrush generation and that we are determined to put it right. Where a member of the Windrush generation has suffered loss because of difficulties proving their status, appropriate compensation will be provided.

Instructions have been issued to all staff in Immigration Enforcement, including those in reporting centres, not to take any enforcement action against anyone who may fall within the Windrush scheme. Such cases will be investigated and escalated to senior managers, and referred to the Taskforce where appropriate.

**The Home Office should set out whether the 32 individuals removed as foreign national offenders whom it has identified as potential Windrush cases were legally deported. We need to know whether any were in fact British—and so illegally deported—and the grounds for the decision to deport. Whilst the Home Office rightly has provisions in**

**place to deport foreign national offenders, we do not believe that the Home Office can dismiss those Windrush cases where people have a criminal record without further investigation into the circumstances of their removal.** (Paragraph 20)

Of the 63 cases of individuals where there was an indication in the record that that the individual could have been in the UK before 1973, 32 related to deportations of foreign national offenders and 31 were administrative removals, most of which were voluntary returns.

As Home Secretary, it is my duty to protect the public, which includes the deportation of foreign national offenders. All those who have gone through a deportation process would have had an opportunity to appeal. It is my view that if there are individuals who believe that they have been wrongfully deported, then it is up to them to determine whether they think they are protected under the 1971 Act.

### **Taskforce and UKVI caseworking**

**It would be unacceptable if members of the Windrush generation found that they were subject to further bureaucratic obstacles after being promised an expedited resolution to applications for documentation. As part of its monthly update to this Committee, the Government must set out how many Windrush cases have not received decisions on their cases within the two weeks promised by the Home Secretary and the reasons for any delays.** (Paragraph 23)

Data on the numbers of Windrush people who received a documentation decision within two weeks of biometric enrolment was included in the first monthly update to the Committee (covering decisions made in April, May and June). Biometric enrolment is a key part of the evidence gathering process, which normally occurs at the individual's first appointment at the Premium Service Centre. The Taskforce aims to complete the decision-making process within two weeks of all the evidence being gathered. Usually this will be from the point that biometrics are taken, although in some cases further evidence is supplied by the applicant or other sources after this point. Some decisions will fall outside these timescales due to their complexity. More than 90% of these initial decisions (nearly 2,000 decided cases) were made within 2 weeks, with the remaining 10% comprising particularly complex cases. For those completed within two weeks the vast majority had been completed on the same day.

We will continue to report data on the timeliness of decision making for Windrush cases in future monthly updates to the Committee.

**The burden of proof demanded by the Home Office for people wishing to evidence their right to be in the UK has become too high over a number of years. We welcome the change to a more common-sense and proactive approach for the Windrush generation, who are long-term residents with a deep commitment and connection to the UK, who have done nothing wrong and who the state has a moral obligation to help. We also agree that the Windrush taskforce should exercise greater sensitivity and give proper credence to people's primary evidence. It is disappointing that the Home Office has only adopted such an approach, which we called for in our report 'Home Office delivery of Brexit: immigration', after the Windrush scandal and only for those specific cases. We call for the Home Office to change their approach to include routine gathering of**

**supporting evidence from HM Revenue and Customs and the Department for Work and Pensions, across the full range of UKVI caseworking. The balance of probabilities should also be reaffirmed as the standard of proof across UKVI.** (Paragraph 28)

Where an individual makes an application, or claim to UK Visas and Immigration or Immigration Enforcement which is based on the length of residence, the prevailing practice has been to place the burden of proof on the individual.

The Home Office has data sharing agreements and memoranda of understanding with other government departments in order to share information. There are three main reasons that the Home Office makes checks with other government departments:

- For the purpose of verifying information an applicant has provided to the Home Office as part of their application;
- For ensuring applicants have complied with the conditions attached to their leave to remain here; and
- For establishing residency as part of a Human Rights claim.

However, it has not been policy to routinely ask other government departments for data to build a picture of a person's residency here in the absence of evidence provided by the applicant themselves and there is no specific guidance relating to making checks to establishing residency. The Windrush Taskforce is now undertaking a different approach to this and I have asked the department to consider this position for other immigration routes.

One of the reasons we do not routinely make requests of other government departments is related to the technology available. Checks relating to individual applications rely on manual processes but, as we set out in our Statement of Intent, when we roll out the settled status scheme for European citizens we will have an automated checking process. We will look at this process as we roll-out to see what lessons there are for the wider system.

**We welcome the Government's statement that no information provided to the Windrush taskforce will be used for immigration enforcement purposes. However, the Government should clearly and urgently set out what will happen to the data, for example, if it will be retained or destroyed.** (Paragraph 29)

The Windrush Taskforce continues to ensure that no information provided to it will be used for immigration enforcement purposes.

Immigration Enforcement officials do not have access to information provided to the Windrush Taskforce helpline and Windrush cases subsequently entered onto the Casework Information Database in order to issue documentation and Citizenship are clearly flagged.

Personal data is typically retained by the Borders, Immigration and Citizenship System for 25 years after a decision to grant settlement or naturalisation and for 15 years after the last action in other cases.

**The unredacted version of the guidance provides a useful summary of those who will and will not be covered by the taskforce. At the time of producing this report we have not yet had a chance to review the approach proposed for each category of case, and**

**we believe the guidance should be made public so that we and others can scrutinise it further. We recognise that government should be allowed space to advise its staff in confidence but we see no reason why the unredacted Windrush Scheme Guidance that we have seen should fall into that category. In fact, we argue its publication would be actively helpful both to members of the Windrush generation and their advisers and as an aid to transparency and accountability. We recommend the Government publish the Windrush Scheme Guidance in full, as soon as possible. (Paragraph 31)**

The Government is committed to a transparent, fair and robust immigration system. We agree that it would be helpful to members of the Windrush generation and their advisers to have the full unredacted Windrush Scheme Guidance, and I will write to you separately on that matter.

**We recognise that immigration caseworkers have a challenging job and face making difficult decisions on a daily basis. There is no doubt, however, that a change in culture in the Home Office over recent years, as a consequence of political decisions and political leadership, has led to an environment in which applicants are automatically treated with suspicion and scepticism and have been forced to follow processes that appear designed to set them up to fail. (Paragraph 52)**

**We have repeatedly raised concerns over the loss of experienced staff from and staff shortages within the Immigration Directorates of the Home Office. We welcome the steps the Department has set out in response to our most recent immigration report to address these concerns. Nonetheless, the lessons learned review should consider whether a loss of experienced staff and institutional knowledge contributed to the Windrush crisis. The presence of senior caseworkers in the Windrush taskforce is welcome, and that level of experience should be the norm for case-working teams, reflecting the fact that caseworkers are making life-changing decisions. (Paragraph 104)**

The Home Office has committed to carrying out a lessons learned review. The review will consider what the key policy and operational decisions were that led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants; what other factors played a part; why these issues were not identified sooner; what lessons the organisation can learn to ensure it does things differently in future; whether corrective measures are now in place; and if so, an assessment of their initial impact.

I have been clear that the review requires independent oversight and scrutiny and have appointed Wendy Williams as Independent Adviser to the review. The full terms of reference for this review were published as part of the Written Ministerial Statement on the consultation for the compensation scheme on 19th July and are available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727184/WLLR\\_Terms\\_of\\_Reference\\_vn\\_5.0\\_\\_003\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727184/WLLR_Terms_of_Reference_vn_5.0__003_.pdf)

**We welcome the pledges made by the Minister for Immigration and the previous and current Home Secretaries that Home Office culture will change. Whether the Home Office achieves this aim will be the crucial demonstration that lessons have been learned from the Windrush scandal. We support a policy which will give the Home Office a more human face, a return to face-to-face interviews which allow for the use of discretion and judgement, and a system in which processes, requirements and**

**decisions are more clearly explained. These changes are overdue and they should be implemented as a priority. We expect to focus on progress in this area as part of our regular work scrutinising the effectiveness of UKVI.** (Paragraph 53)

Staff across UKVI are already trained to a high standard and take pride in their work. There are assurance processes in place to check the decisions being made and regular quality checks are undertaken. UKVI is responsible for making millions of decisions every year, with a firm emphasis on national security and a culture of customer satisfaction for people who come here legally.

In 2016/17 UKVI made over 3.6 million decisions and it took each of those decisions seriously, striving to deliver consistent, high quality decisions, within service standard. In April, the Home Office announced the creation of a new UKVI Chief Casework Unit, led by a new Chief Caseworker. The purpose of the unit is to establish a UKVI casework profession with a culture which puts the customer at the heart of everything. The Chief Casework Unit is supported by a network of senior caseworkers throughout the business who can exercise discretion in casework decisions and assist colleagues in making those decisions.

We are working with the Civil Service Operational Delivery Profession to examine ways in which casework can evolve into a profession with externally validated accreditation and continuous development. We are working more closely with partners and casework areas to ensure that training, development, delivery and materials include overarching principles of the work of government, the Home Office, the Borders, Immigration and Citizenship System, UKVI and align with expected culture and behaviours.

**We support the previous Home Secretary's proposal for a new 'minded to refuse' category in UKVI decision-making, which will prompt a discussion with the applicant before a final decision is made, but only if it is in addition to, and not an alternative to, existing appeal rights. We call on the Home Secretary to implement it as soon as possible as part of his broader changes to the approach of UKVI. Its introduction is also not a replacement for the restoration of broader appeal rights which we discuss later in this report.** (Paragraph 100)

The Minded to Refuse category will not replace any existing appeal rights. We have commenced a 'minded to refuse' pilot scheme in asylum cases. We will learn lessons from this pilot and scale it up to include other immigration decisions where we believe this additional step will allow us to improve the quality of decision making (by having all the relevant evidence to inform the decision), whilst enabling UKVI to make timely decisions.

**The concept that people who are applying to UKVI should be guided through the process is one which we welcome and which, if instilled earlier, may have seen some of the current problems avoided.** (Paragraph 121)

In support of this, we are putting particular focus on ensuring that customers with particularly complicated circumstances can access our services. We have provided additional guidance to our commercial partners who provide information services to applicants, both in the UK and overseas. We have also instructed them to make contact with the Taskforce where they are approached by an individual seeking more information/



help. In addition, we are upgrading our helpline for members of the Windrush generation by putting in place specialised training on call handling and an upgraded contact management system.

## Passport fees

**We welcome the steps the Government has taken to make it easier for people to apply for the documentation they need to evidence their lawful status in the UK. However, it is not acceptable that members of the Windrush generation—some of whom have been made destitute—are still expected to pay fees for passports which may be crucial to them being able to access services to which they are entitled. The Windrush generation often do not have documents which might otherwise prove their right to work, rent or hold bank accounts in this country; therefore they have an even greater need for a passport to prove their rights. Waiving fees for passports for members of the Windrush generation and their children is also an obvious gesture of goodwill which the Government should make immediately. (Paragraph 35)**

The Government recognises the importance of members of the Windrush generation having a document which confirms their status and demonstrates their rights to work and access public services. Applications made under the Windrush scheme are therefore free, and this will provide people with the appropriate documentation, whether a biometric residence permit, certificate of entitlement, or naturalisation certificate.

Our view is that members of the Windrush generation who are eligible for a British passport should be treated on the same basis as every other British citizen and pay the fee in the normal way.

However, where an application for a passport by a member of the Windrush generation was wrongly rejected by Her Majesty's Passport Office then the applicant will be entitled to a new application to be considered free of charge.

## Compensation scheme

**The full compensation scheme, which must recognise both financial loss and emotional distress, should be established as soon as possible and payments made by the end of the year. Where UKVI has charged fees wrongly these should be refunded. In the meantime we urge the Government to act on our previous report and immediately establish a hardship fund for those in acute financial difficulty. (Paragraph 39)**

**The Government should immediately clarify the scope of the compensation scheme, particularly with regard to Commonwealth citizens who arrived in the UK between 1973 and 1988; and children and grandchildren of the Windrush generation born in the UK. As a minimum the scheme should be open to Windrush children and grandchildren who, on the balance of probabilities, were admitted for settlement before the 1988 Immigration Act came into force, and who have had to reapply for it. (Paragraph 41)**

I laid a written statement to the House on 19 July announcing the publication of a consultation document on the Windrush compensation scheme, <https://www.gov.uk/government/consultations/windrush-compensation-scheme>.

The consultation paper outlines proposals, and asks for views, on the scope of the scheme. This includes questions on those who would be entitled to compensation and the categories of loss that should be covered by the compensation scheme.

This consultation will run until 11 October and I have committed to putting the compensation scheme in place quickly and carefully after that. I believe it is particularly important to listen and understand people's views in finalising the design of the scheme. When I am satisfied that we have properly considered the results of the consultation, I want the scheme to be in place and operating as soon as possible.

The question of support for those in acute financial difficulty was discussed again with the committee during the oral evidence session on 10 July, and I wrote to you with further information on 13 July. My immediate priority is to help those affected to establish their immigration status, through the Windrush taskforce. This is key, as it will enable people to access established support systems, such as housing, benefits and employment. This is the best targeted support to alleviate the immediate difficulties that some are facing. Furthermore, following the committee's report, I would like to reassure you that Home Office officials are working at pace with third sector organisations that have experience and expertise in supporting and helping those in financial difficulties, with a view to providing further tailored advice to those experiencing hardship. I believe this is the right action, and the right approach, to help those concerned.

### Lessons learned review

**The lessons learned review announced by the Home Secretary is crucial. In order to rebuild trust, it must be substantially independent; we are therefore concerned that the review began several weeks before the person tasked with bringing independent oversight and challenge was identified. This damages the credibility of the exercise. (Paragraph 43)**

**The review must consider the responsibility the government has to public accountability and transparency by publishing its findings and proactively engaging with people who have been affected. We are very concerned that the terms of reference and methodology have not yet been published by the Home Office. If the contents of the HMIC letter are indeed the terms of reference then that should be clarified immediately. Nor is it clear whether Ms Williams is to lead the review or whether she is simply expected to provide oversight for an internal Home Office led review in the way that David Anderson, the former Independent Reviewer of Terrorism Legislation, did for a lessons learned process following the terrorist attacks in 2017. We believe it should be the former rather than the latter and that it should lead to a published report. Whilst the David Anderson oversight model made sense for a review involving secret intelligence work, we believe that the Windrush review needs the credibility of being externally driven from the start. Whatever is produced from the Windrush lessons learned review should be made public, without redactions, and available for all to see. (Paragraph 44)**

**At a senior level, oversight of the policies and problems facing the Windrush generation would have rested with the heads of UKVI and Immigration Enforcement, with the Second Permanent Secretary and Permanent Secretary and with the Minister for Immigration and ultimately the Home Secretary. Either people at a senior level in the Home Office were aware of the problems being caused but chose to ignore them or**

**oversight mechanisms emphatically failed. Most likely there was an expectation that any problems expected to be caused by the hostile environment to groups identified by impact assessments and elsewhere would be caught and resolved by caseworkers. Given the spirit of scepticism and inflexibility that had been instilled into those teams in the pursuit of the net migration target, such an expectation would have been extremely naive. (Paragraph 95)**

**We note that since we launched this inquiry, three of the most senior positions in the Home Office, Home Secretary, Second Permanent Secretary and Director General for Immigration Enforcement have, or are soon to have, new incumbents. However, we cannot be satisfied that responsibility for the scandal has been identified until a transparent review is completed. (Paragraph 96)**

**We are further concerned that the problems which affected the Windrush generation and their children will happen again, for another group of people. The lessons learned review being carried out by the Home Office must get to the bottom of why warnings, both internal and external, were disregarded and how processes can be improved to surface systemic problems—which the Windrush case certainly was—so that another crisis can be more quickly spotted and averted. (Paragraph 97)**

I commissioned the Windrush lessons learned review on 2 May. I have been clear that the review requires independent oversight and scrutiny and I have appointed Wendy Williams as Independent Adviser to the review. The terms of reference were published on 19th July as part of the Written Ministerial Statement on the consultation for the compensation scheme. The terms of reference set out the role of the independent adviser, the methodology for the review, and our intentions concerning publication.

The Windrush lessons learned review will consider what the key policy and operational decisions were that led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants; what other factors played a part; and why these issues were not identified sooner. It will also consider what lessons the organisation can learn to ensure that it does things differently in future and whether corrective measures are now in place.

Given the urgency of the issues, the Home Office put in place a dedicated review team at the end of April so that it would be in place to support the independent adviser on her appointment. Until that point, the review team focused solely on gathering evidence and information.

## **Supporting ministers**

**We are concerned that the previous Home Secretary and her officials could not give us straightforward answers to questions about enforcement targets. It is clear that in the past there were targets for removals. Given that this subject was raised during the panel of witnesses immediately preceding the then Home Secretary, it is regrettable that neither she nor her officials were better prepared to answer our questions. We are disappointed that one Director General was unable to answer with confidence questions about key operational issues in another directorate; this calls into question**

**information sharing at the top of the Home Office. The Home Office also took far too long to correct the record once it became clear that we had not been given an accurate account. (Paragraph 59)**

**We welcome the decision to commission a review into the advice provided to Ministers. We have been provided, in confidence, with the Executive Summary of that review and have been advised that the Home Office does not intend to publish the executive summary or provide us with the full report. We do not believe this to be acceptable. The previous Home Secretary resigned as a result of these series of events and there remains serious concerns about advice given at the top of the Home Office. Having seen the executive summary we recommend it be published swiftly in the interests of transparency and accountability. Our expectation is that the full report should be published and, as a first step, we call on the Home Office to provide us with a copy without further delay. (Paragraph 60)**

**It is welcome that the Home Office has committed to reviewing its practices as a result of the Windrush scandal, in the form of the lessons learned review and the factual review carried out by Sir Alex Allan, although we continue to have questions and concerns about the extent and nature of those reviews. In addition to recognising what went wrong and making internal recommendations for future action, it is vital that the Home Office engages externally in a spirit of transparency after the reviews are completed. The process of rebuilding trust in the Home Office after Windrush requires an ongoing commitment on the part of the Home Office to submit itself to public scrutiny for errors that have been made. (Paragraph 66)**

The review carried out by Sir Alex Allan was an internal review commissioned by the Permanent Secretary. An executive summary was shared with the Home Affairs Select Committee in confidence. I will be considering whether a redacted version of the report can be published.

## **Targets**

**We are concerned that a target-led approach may have led immigration enforcement officers to focus on people like the Windrush generation, who may have been easier to detain and remove than those less vulnerable, for example by detaining individuals such as Paulette Wilson and Anthony Bryan who clearly presented no risk of absconding. We have not been able to get clarity about how targets were cascaded to individual teams or enforcement officers or their impact on operational decision-making. We remain concerned about the interaction between targets, bonuses and decision making, and about the potential for bonuses to create a disincentive for staff to refer back cases they come across which raise concerns or where mistakes may have been made. We welcome the decision to end the use of targets for removals. (Paragraph 63)**

**We reiterate our previous recommendation for the net migration target to be replaced. It includes immigration and emigration, lawful and unlawful migration. The risk that the target may therefore encourage the Home Office to increase departures, and without adequate checks on whether a person is here lawfully, is an additional reason to seek its replacement—both to avoid any perverse incentives and to rebuild credibility (Paragraph 65)**

The Government is committed to an immigration system which controls immigration in the national interest. The ambition to reduce net migration to sustainable levels has been included in three successive general election manifestos.

The focus should always be on getting the right decision, enforcing rules on illegal migration and protecting those here legally.

The ambition to reduce net migration to sustainable levels does not influence individual decisions or encourage Home Office staff to seek to increase departures. A full range of checks is always carried out before any enforced departure takes place.

## Supporting individuals overseas

**Some of the most appalling stories from the Windrush scandal are those where people with a lawful right to live in the UK have been trapped overseas, away from their homes and families. The Home Office needs to determine the number of people affected, and explain why individuals—such as those we highlight in our report—endured such delays, were provided with so little assistance and incurred such cost in simply trying to return home.** (Paragraph 68)

We have ensured that individuals who are located overseas and may have had problems returning to the UK due to documentation or other issues can contact the Department via a range of channels. We have liaised with governments across the Caribbean as part of this process.

We are encouraging members of the Windrush generation located overseas to contact the Department's Windrush Taskforce and we are assisting them to lodge applications, free of charge, to assess whether they are eligible for confirmation of a right of abode, a returning resident visa or a ten-year visit visa.

Where individuals outside of the UK have contacted our Windrush Taskforce we have provided extensive assistance and advice and ensured that documentation has been issued as quickly as possible to any individual who has been unable to evidence their status in the UK but qualifies under the provisions of our Windrush guidance.

When an application is lodged caseworkers will contact the individuals for further information if required. An application from any individual identified as being vulnerable or requiring support will be assessed immediately and the Windrush Vulnerable Persons Team will be informed in advance of their arrival in the UK in order that liaison with councils and the DWP can be established.

We are currently undertaking a public consultation on the scope of the compensation scheme. This includes questions about who should be eligible to claim compensation, which could include those overseas, and the types of losses that should be covered by the scheme.

## Border Force guidance

**People who have been granted a British passport reasonably expect that it allows them entry to the UK. It is right that the border is robustly protected but that should not mean those with a right to be in the UK are prevented from crossing it. We are**

**therefore concerned by reports that officers at the border are questioning people's right to a British passport and, in some cases, preventing people who have been granted one by HM Passport Office from entering the UK. The Home Office should set out publicly and in guidance the circumstances under which Border Force officers can prevent a British passport holder from entering the UK. (Paragraph 70)**

The powers that a Border Force Officer can exercise are set out in legislation – in the Immigration Act 1971 – and in guidance; specifically, the Border Force Operating Mandate which describes in detail the mandatory checks to be conducted by Border Force Officers on all passengers and those to be conducted on specific cohorts of passengers and goods. To maintain the effectiveness of our border security arrangements, the Operating Mandate is non-disclosable.

All passengers, including British Citizens, arriving on scheduled services from outside of the Common Travel Area must satisfactorily establish their identity and nationality to allow a decision to be taken on their eligibility for entry to the UK. Travel documents and ID cards are currently the internationally accepted means for doing this. Border Force officers appointed as 'immigration officers' can exercise powers in Schedule 2 to the Immigration Act 1971 to examine any person arriving in the UK to determine:

- if he/she is British, and if not,
- if he/she needs leave to enter, and if so
- whether and on what terms leave should be given

In conducting an examination, an officer can require any person to provide a passport or other document to satisfactorily establish identity and nationality.

British overseas citizens, British subjects and British protected persons do not automatically have the right of abode in the UK. While some may hold documents that look very similar to full British passports, those who have not successfully registered as British citizens remain subject to immigration control and any restriction endorsed in their passport.

## **Compliant environment**

**We welcome the changes outlined by the Government, particularly with regard to the reduction in data-sharing between the NHS and immigration enforcement. However, we are unconvinced that the Government's actions are sufficient to address the problems we have identified. That the Government has been unable to say how many members of the Windrush generation have been affected adversely by employment checks, loss of rental accommodation, checks on NHS treatment, driving licences or bank accounts, demonstrates a serious weakness in the policy. The Home Office has no way to assess the accuracy of the policy, the scale of errors being made or the number of people each year who may be losing their home, job or access to services unlawfully. It is irresponsible for the Government to rely on a policy when it lacks information on whether that policy is leading to injustice or abuse or even achieving its aims. (Paragraph 82)**

**The hostile environment policy places a huge administrative burden and cost on many parts of society, without any clear evidence of its effectiveness but with numerous**

**examples of mistakes made and significant distress caused. We question whether the hostile environment should in fact continue in anything like its current form. Simply rebranding it as the 'compliant' environment is a meaningless response to genuine concerns. The Home Secretary's review of data relating to bank accounts should be broadened to include the accuracy of decision-making within the whole suite of hostile environment measures. As part of that review the Home Secretary must determine whether the policies are achieving their intended outcomes, whether the impact (both intended and unintended) can be justified and whether the policies represent value for money for the taxpayer. (Paragraph 85)**

We are committed to a fair and humane immigration policy which welcomes people here legally, but which tackles illegal immigration and prevents abuse of benefits and services.

Our aim is to deter immigration offending and it is right that we do have a compliant environment to support that and to protect public services. But it is important that we make a clear distinction between those here legally and those here illegally. It is a policy that was begun under previous successive governments. For example, right to work checks were introduced in 1997, controls on benefits in 1999 and social care in 2002, civil penalties for employers of illegal workers in 2008, and more recent measures on the private rented sector, bank accounts and driving licences were introduced in the 2014 and 2016 Acts.

Many of the compliant environment checks are conducted by other agencies and bodies, for example landlords and agencies will conduct right to rent checks and employers or employment agencies will conduct right to work checks. Beyond individual cases which are drawn to our attention, it is therefore not possible to say how many of the Windrush generation may have been inadvertently affected by these aspects of the compliant environment.

We have already strengthened safeguards to ensure that those who are lawfully here are not disadvantaged by measures put in place to tackle illegal migration and are considering whether further action is necessary. We are also reviewing historical proactive sanctions, where the Home Office has instigated the action taken by a partner of a third party to deny or revoke a service to an individual, or it has taken action to penalise a third party for employing or housing an unlawful migrant; a final figure of those affected will not be available until this review is complete.

We recognise the need to fully understand the impact of the compliant environment; that it is meeting our aim to deter immigration offending, and vitally, that safeguards are effective in ensuring it is not capturing those who are entitled to access work, benefits and services in the UK. I have asked my officials to look at the best ways of evaluating the compliant environment, to ensure this policy is right.

The former Home Secretary announced to Parliament on 23 April 2018 that where a member of the Windrush generation has suffered loss as a result of difficulties proving their status, appropriate compensation will be provided. The Home Office is setting up a new scheme to deliver this, which is being overseen by Martin Forde QC. We are currently undertaking a consultation on the scope of this compensation scheme.

**We are particularly concerned that the Government has not addressed our concerns in relation to data-sharing between the police and immigration enforcement. Victims of crime should not fear reporting that crime to the police. The obligation on police**

**to share data of victims of crime with immigration enforcement should be removed immediately. We also remain unconvinced that improving guidance to landlords and employers will be enough to remove bias from the system in which migrants lawfully resident in the UK are clearly discriminated against. We note that the 'right to rent' policy is currently subject to legal review and will follow the case with interest. (Paragraph 83)**

There is no legal obligation on the police to share data on victims of crime with Immigration Enforcement. However, it is clearly appropriate in some cases to do so, for example where an individual needs support to regularise their immigration status.

Our immediate priority is to ensure that all vulnerable migrants, including those in the UK illegally, receive the support and assistance they need regardless of their immigration status.

We are clear that victims of crime must be treated first and foremost as victims.

When individuals are found to have no legal status in the UK, we carefully consider the details of the case. It is important that their status is resolved to minimise the risk of further exploitation or victimisation and Immigration Enforcement will work with UK Visas and Immigration to achieve this. Individuals who do not qualify for leave to remain in the UK can seek support to return to their country of origin.

The sharing of information between the police and immigration system helps us to protect vulnerable people in a range of circumstances including ensuring that we provide accommodation for asylum seekers and keeping unaccompanied migrant children safe.

The Right to Rent checks themselves are modelled on due diligence checks which were already carried out by landlords as part of the process of establishing a tenancy agreement. We found no evidence that Right to Rent led to landlords exploiting those with no right to rent in the evaluation we undertook. The Government is determined to tackle rogue landlords who exploit their tenants, irrespective of the status of those occupying the accommodation. A Code of Practice was provided with the Right to Rent scheme that sets out landlords' legal obligations in relation to discrimination. It provides practical guidance for landlords on how to avoid unlawful discrimination when complying with their obligations under the Right to Rent scheme. We have committed to re-establish the landlords consultation panel, which will have an important role to play in disseminating information to landlords about compliance with their legal obligations.

We are committed to working with landlords and their agents to drive up standards and stamp out any discrimination.

**The Home Office also needs to take a more robust approach to the accuracy of data that underpins the hostile/compliant environment. We welcome the Home Secretary suspending the freezing of bank accounts. He must fully satisfy himself that the data on which such orders are based are accurate. Given the high success rates of immigration appeals and ongoing concerns over the accuracy of Home Office decision-making, bank accounts should only be completely frozen once individuals have exhausted their limited appeal rights. (Paragraph 84)**



The Home Office recognises the importance of good data quality to support its decision making. We are continuing to work to improve and assure both our historical and present data quality. We are addressing these issues not least through significant programmes of change on a range of IT systems. We are also in the process of deploying a new immigration data platform and digital casework applications to each area of the immigration system, which will aid staff in keeping data up to date and accurate. Additionally, through user training and rigorous quality assurance, we are improving the accuracy and completeness of records held on immigration database.

We have restricted the operation of the banking measures. No freezing orders have been applied for, granted or have been revoked following an appeal under the provisions introduced by section 45 of the Immigration Act 2016.

We have repeatedly made clear that data will not be shared with banks and building societies – via Cifas – regarding individuals who still have outstanding applications or appeals, including for residency, leave to remain, or asylum. Details will also not be shared regarding those who have been granted leave to be in the UK, including refugees.

**We are concerned that despite many warnings over a number of years, the Home Office failed to acknowledge and address the risks the hostile environment policy posed to particular groups. In fact, the policies were extended. The Home Office must do much better to engage constructively and collaboratively with stakeholder organisations.** (Paragraph 89)

The compliant environment is not a new concept. It is simply a renewed effort to develop an immigration system which supports compliance with our laws and immigration rules. Successive governments, of all parties, have introduced measures in this area.

We take careful account of the need to protect vulnerable persons, through public consultations, policy equality statements and by building in appropriate safeguards and offering the right to redress, including the ability to exercise discretion where there are genuine barriers to persons leaving the UK, or measures would be deemed unduly harsh. Compliant environment measures have all received parliamentary approval and the Government conducted and published impact assessments for both the 2014 and 2016 Immigration Acts – which contained compliant environment measures – to fully consider policy objectives and intended effects.

## Whistleblowing

**The Home Secretary should ensure that the Department's whistleblowing policy is working effectively, so that caseworkers can easily raise ethical concerns outside of their immediate line management structure.** (Paragraph 101)

The Home Office has an established 'Whistleblowing and Raising a Concern' policy and procedure in place to address concerns about past, present or imminent wrongdoing that conflict with the Civil Service (CS) Code. The policy and procedure sets out how to raise such issues, the disclosures that qualify under the procedure to be treated as 'relevant concerns' and the legal protection that applies in those cases. The routes through which a concern can be raised are also set out in the procedure. These vary from contacting

nominated officers direct, the confidential whistleblowing hotline or e-mail address and the online reporting system, which leads to all concerns reaching the Central Referrals function within the Professional Standards Unit (PSU) in Home Office Security.

The aim is to encourage staff to report any concerns they have about wrongdoing as soon as possible in the knowledge that it will be dealt with correctly and that, when properly raising the concern under the whistleblowing procedure, they will be protected from any unfair treatment. This covers scenarios within the Department. The whistleblowing arrangements are regularly communicated across the Home Office. Of note, we have seen an increase in reporting since the introduction of the hotline to levels comparable to other Departments of size and scope.

Coverage externally is provided twofold. In terms of the public, they may raise concerns via the complaints procedures published on line. In general terms, there are three complaint categories, i.e. service complaints about delays, minor misconduct and serious misconduct complaints. These categories are designed to deal with significant complaints about individual behaviour that mirror the definition of misconduct in our HR Policies covering criminal behaviour and other concerns. These are also routed to the Professional Standards Unit where referrals are assessed, triaged and if appropriate, investigated by the Unit. This can include complaints about contractors. The expectation, however, is that our contractors and Arm's Length Bodies operate their own corresponding whistleblowing arrangements.

Service providers e.g. contractors working within a government department, are not subject to the Civil Service Code. However, service providers will normally fall under the procedures of their host department and so the principles of the whistleblowing procedure for employees will still apply and should be followed to raise a concern. As non-civil servants, service providers will not be able to raise a concern with the Civil Service Commission.

## Resourcing

**We welcome the speed with which the Windrush taskforce was set up and its more personal approach, however, bringing in staff from other parts of the Home Office is unsustainable and risks diverting energies from 'Business as usual' immigration work such as processing applications for citizenship. The Home Office should set out how it will prevent the redeployment of staff from impacting on other activities.** (Paragraph 108)

The Home Office has experience, and strategies in place, that enable operational areas to react quickly to emerging situations and pressures. UK Visas & Immigration was able to initiate a wide range of actions to establish the Taskforce without significant impact to business as usual in the immediate term. The actions taken were to:

- Temporarily redistribute operational resource, taking into account any potential impact to customer service standards
- Reschedule planned appointments in the Premium Customer Service Centres to accommodate urgent same-day decision making

- Postpone any non-urgent back office administrative support and divert the resources to the taskforce
- Reprioritise management responsibilities and bolster numbers with temporary promotions
- Backfill business as usual operations with assistance from other areas, including HMRC rapid response surge apprentices
- Use both weekday and weekend overtime

By implementing these initial response measures, the Home Office is then able to assess the longer-term resourcing implications and develop plans to fulfil these accordingly.

**It is clear that UKVI has been struggling with problems of under-resourcing for some time. We agree with the Immigration Minister that the Home Office requires more resources. The Home Secretary should take our concerns and those of his Immigration Minister seriously and seek additional funding from the Treasury to address this problem. The Home Office will be unable to implement the stated objective of becoming more focused on the individual until he does so. It takes time for caseworkers to acquire the experience necessary for their role. We therefore urge the Home Secretary to act now so that recruitment campaigns can begin at the earliest opportunity.** (Paragraph 109)

Each year UK Visas & Immigration undertakes a rigorous assessment of the resourcing requirements for the following year. This process is supported by Home Office Analysis and Insight who provide an independent assessment of anticipated customer demand for each operational area. For 2018/19 UK Visas and Immigration is making a significant investment to ensure effective case consideration and customer service, with almost 20% additional staff resources year on year.

Over the past 12 months large-scale recruitment has been undertaken in Liverpool, with recruitment plans in place increasing from approximately 720 to approximately 1,500 staff to support the new European registration scheme that launches later this year, in addition to resources for citizenship casework. A further 300 staff are being recruited to deliver a new contact centre. Rolling recruitment is in place in Sheffield and we are currently expanding our processing capacity in Croydon. This level of additional funding and investment ensures that the priorities and objectives of the Home Office continue to be achieved.

## Legal aid and appeals

**The lessons learned review should look closely at the impact of the removal of legal aid and the right of appeal on the Windrush generation.** (Paragraph 113)

The Windrush Lessons Learned Review will consider what the key policy and operational decisions were that led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants; what other factors played a part; and why these issues were not identified sooner.

The Ministry of Justice is currently undertaking a Post-Implementation Review of the 2012 Legal Aid, Sentencing and Punishment of Offenders Act, specifically the legal aid scope changes, reductions to the fees paid to legal aid lawyers, and the tightening of financial and other eligibility criteria. The evidence gathering phase of the review has begun and the first round of consultative group meetings took place in April. They are keen to hear from as many interested parties to establish the impact of the changes.

**We have previously noted that around half of immigration appeals are successful. This provides us with little confidence in the accuracy of current Home Office decision-making. It is therefore unacceptable that decisions on Windrush cases do not attract a right of appeal. We recommend that the right of appeal be reintroduced to all immigration routes. The reintroduction of appeal rights should be accompanied by the restoration of legal aid arrangements for immigration matters in order to allow those with complex cases the access to legal advice they need.** (Paragraph 114)

A person eligible to apply under the Windrush Scheme who is not issued with a document will be able to request a free administrative review which will be undertaken by a team independent of the initial decision-making team.

Rights of appeal are set out in primary legislation. Applications under the Windrush scheme include citizenship, No Time Limit and settlement. There is no provision for an appeal for any of these routes.

There will continue to be a right of appeal whenever a human rights claim is refused, but an application under the Windrush Scheme is not a human rights claim. A person who does not qualify for documentation under the Windrush Scheme can also apply under any existing immigration route. If they make a human rights claim and that is refused they will have a right of appeal against the decision on the human rights claim.

## Nationality law

**Given how complex British nationality law has become, we recommend the Home Secretary establish a review and options for reform. It should pay particular attention to the impact of the British Nationality Act 1981 on descendants of the Windrush generation.** (Paragraph 120)

We keep all legislation under review. I do recognise that nationality law is very complex. But that is largely the product of the need to include savings and transitional provisions every time there is a change to ensure no one is disadvantaged. That is likely to remain the position even if we were to undertake a review and enact new legislation. Nevertheless, we will of course consider the Committee's suggestion.

## Supporting undocumented children and fees

**144,000 undocumented children is a problem the Government must solve. A failure to do so will leave many in a precarious position, unable to study, work or seek the support of social security as they transition into adulthood. There is no benefit to society in people being in this position, many of whom are likely to be British citizens or else entitled to be in the UK. A failure to act will also only serve to increase costs in the future. The Government needs to reduce the barriers to them regularising their status.**

**The fees for children to establish their status are simply too high and the routes for doing so too long and too complex. The Home Office should reduce fees for children to cost-level, introduce waivers for those who are particularly vulnerable and reduce the number of regular applications that are required. The case for reintroducing legal aid for children is most pressing.** (Paragraph 128)

The Government shares concerns around those children who are genuinely undocumented and who are in that position through no fault of their own.

Children may be in this position because the circumstances of their parents at their birth mean that they are not automatically British Citizens; or because their parents are subject to immigration control and have not regularised their stay.

However, it must be noted that the 144,000 figure is an estimate and therefore we must be mindful that it may not be accurate.

Regarding British citizenship applications for children. There are two distinct categories – those who have an entitlement to nationality under the law, and those who can apply for consideration at the discretion of the Home Secretary. At the moment, no fee waiver is available for these groups. The Home Office is including this option in work on identifying and removing unnecessary barriers to a child's right to become a British citizen and the ability to enjoy the benefits that come with that.

The Government is aware of the concern expressed at recent Home Affairs Select Committee meetings and at the recent Lords debate on child citizenship fees. In due course, the Government intends to consider the findings of the imminent review by the Independent Chief Inspector of Border and Immigration.

Furthermore, there are routes available to undocumented children whose parents are subject to immigration control and have lived here for most of their lives and have made the UK their home amongst the specified Human Rights routes, and there are fee waivers available for those who are unable to pay if they are destitute, if paying the fee would lead to them becoming destitute or if there are exceptional financial circumstances.

A grant of Limited Leave to Remain based on a child's Private Life or other human rights grounds confers legal residence status and allows access to health, higher and further education, training and employment opportunities. Also, the Home Office has worked with the Department for Education to ensure that time spent in the UK can be counted towards qualifying for student finance.

We understand that the application process itself may be daunting for groups such as undocumented children. The Home Office is currently considering how best to assist this group in regularising their status.

**We welcome statements in the Windrush Scheme Guidance that some of the children about which we raise concern, specifically those with links to the Windrush generation will be able seek assistance from the Taskforce and be issued with a certificate of registration as a British citizen. We also note that the Independent Chief Inspector of Borders and Immigration has launched a call for evidence on the Home Office's approach to charging for its services. Fees for immigration services have increased**

**considerably over recent years. The Home Office should not seek to recover the costs of the Windrush taskforce or compensation payments by further increases to fees.** (Paragraph 129)

There are no plans to recover the cost of the Windrush Taskforce or Compensation Scheme by increasing fees for nationality, settlement or registration applications. Furthermore, any proposal to increase fees charged for visa, immigration and nationality services requires the approval of Parliament, in line with the 2014 Immigration Act.

We keep all Home Office fees under regular review. I am considering the points made at the recent Lords debate on child citizenship fees and, in due course, will take account of the findings of the imminent review by the Independent Chief Inspector of Border and Immigration.

It is important that we have a fair charging policy which takes into account the circumstances and requirements of a customers and which supports the effective operation of our immigration system.

### **Other groups – Chagos and EU nationals**

**Chagossians are a unique case but there are parallels with the Windrush scandal in that they are yet another cohort of people whose descendants struggle to access British citizenship. The Government should support Henry Smith MP's Private Member's Bill and allow anyone who can prove that they are descended from a person born on the Chagos Islands to register as a British Overseas Territories citizen and thereby have a right to remain in the UK.** (Paragraph 133)

I note the Committee's position on Chagossians. The Government does not believe the Chagossian situation is directly analogous to the Windrush situation – one concerns people in the UK who do not have the documents to confirm their right to be here; the other generally concerns a group of people who do not have the right to be in the UK.

Anybody from the Chagos Islands who came to the UK before 1988 is encompassed by the Windrush scheme that we have put in place.

Nevertheless, the Government accepts that this issue arouses strong feelings among those affected and it is right that we give this issue proper consideration. In 2016 the Government announced a £40m package of support for the Chagossian community. I have met Henry Smith MP to discuss his Private Member's Bill and we are considering carefully the arguments which he – and now the Committee – have put forward.

**In preparing for the registration of EU nationals but especially for the enforcement of that scheme in future years, the Government must be mindful of the fact that there will be some EU nationals who do not register through no fault of their own. This is likely to include children who believe, wrongly, that they are British. The Government will need to ensure that processes are in place to deal with such cases in a positive manner so that they do not find themselves locked out of living a lawful life in the UK as we have seen happen to members of the Windrush generation.** (Paragraph 137)

The EU Settlement Scheme will be a streamlined and straightforward way for EU citizens and their family members to secure their status in the UK. What we have learnt from the

events of Windrush has reinforced the importance of getting the design of the Scheme right in the first place, communicating effectively to EU citizens, ensuring there is good support in place, and effective implementation.

Above all, it is crucial that EU citizens and their family members apply for their status before the deadline of 30 June 2021. Our straightforward Scheme and support for vulnerable applicants will facilitate this. We have a targeted nationwide communications campaign already underway to reassure and inform EU citizens and their families about what they need to do. The Scheme is being designed with input from our monthly meetings with groups representing EU citizens, and volunteers have also been undertaking user testing of the online application form for several months.

Support for vulnerable groups will be provided directly by the Home Office and also indirectly through community groups and employers. Nonetheless, there may be some EU citizens who do not apply by the deadline and we have committed to taking a proportionate approach to those who miss the deadline for a good reason. This is a fair and comprehensive approach which will avoid EU citizens and their family members being caught up in measures designed for illegal immigrants.

As the Prime Minister and I have previously stated, we will not repeat the events of Windrush for all those applying for the EU Settlement Scheme. However, EU citizens who wish to remain in the UK legally after the end of the implementation period, must play their part and apply for the Scheme by 30 June 2021.

Rt Hon Sajid Javid MP

Home Secretary