



House of Commons

House of Lords

Joint Committee on
Human Rights

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

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

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Committee reports are published on the Committee's website at www.parliament.uk/jchr by Order of the two Houses.

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

Committee staff

The current staff of the Committee are Eve Samson (Commons Clerk), Simon Cran-McGreehin (Lords Clerk), Eleanor Hourigan (Counsel), Samantha Godec (Deputy Counsel), Katherine Hill (Committee Specialist), Shabana Gulma (Specialist Assistant), Miguel Boo Fraga (Senior Committee Assistant) and Heather Fuller (Lords Committee Assistant).

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Fourth Special Report

The Joint Committee on Human Rights published its Sixth Report of Session 2017–19, *Windrush generation detention* (HC 1034 / HL Paper 160) on 29 June 2018. The Government's response was received on 21 September 2018 and is appended to this Report.

Appendix: Government Response

1. The Government warmly welcomes this report. The men and women of the Windrush generation have been seriously let down by the immigration system. We deeply regret what has happened to them, and we are determined to put it right. When he gave evidence before the Committee, the Home Secretary made clear that he was appalled to hear of the experiences of Ms Paulette Wilson and Mr Anthony Bryan. He has issued a personal apology to those who suffered the most detriment following their detention or removal from the United Kingdom, including Ms Wilson and Mr Bryan, and is committed to providing them with the support and compensation they deserve. We thank the Committee for its thorough investigation and the role it has played in bringing these issues to light.
2. The Government has given a firm commitment that we will learn lessons from the wrongs experienced by the Windrush generation and ensure these mistakes never happen again. We are pleased to see the Committee has acknowledged our determination to put things right, and to ensure fundamental change takes place. To this end, the Home Office has published the terms of reference for the Windrush lessons learned review, which will have independent oversight by Wendy Williams and will aim to publish its report by 31 March 2019.

The cases of Mr Anthony Bryan and Ms Paulette Wilson

3. Mr Bryan and Ms Wilson did not get the help they needed from the Home Office to resolve their problems. It took much too long to recognise that mistakes had been made, and to rectify them, and for that we apologise. The Immigration Minister conveyed these apologies personally to Ms Wilson when they met in Parliament, and the Home Secretary to Mr Bryan. The Home Secretary has recently reiterated these apologies formally in writing.
4. Both Mr Bryan and Ms Wilson had the right to remain in the United Kingdom indefinitely, but neither had a document to demonstrate that right. They did not require a document to prove their right to remain here but, like all residents of the UK, did require evidence of their status to access the employment and benefits to which they were entitled. They faced enforcement action, including detention, because their lack of documentation led the Home Office to believe that they were not here legally and that they should be returned to their country of origin. When evidence of their long residence in the UK was finally established, they were released and given documents to confirm their status.

Immediate measures taken in relation to the Windrush generation

5. A key priority for the Home Office is to ensure that it is as easy as possible for the Windrush generation to evidence their status, and that the necessary support is in place as soon as possible.

6. We have set out in detail elsewhere the steps that have been taken to achieve this, notably in the Home Secretary's correspondence with the Home Affairs Select Committee. In summary, these have been to establish a helpline and dedicated Taskforce to reach out to this group, to take a flexible approach to the evidence required to demonstrate residence in the UK and to proactively seek supporting evidence from other government departments and agencies where needed. The Windrush Taskforce has issued over 2,300 documents confirming status and enabled over 2,100 individuals to become British Citizens.

7. On 30 May, we introduced the Windrush Scheme, which offers those here before 1 January 1973 a free citizenship application rather than simply a confirmation of their statutory indefinite leave to remain status. As part of this free citizenship application, we will deem them to have met the Knowledge of Language and Life in the UK requirement, and we will waive the need to attend a citizenship ceremony. Where members of the Windrush generation have spent their life in the UK and then retired to their country of origin, and are having difficulty returning either for a visit or to reside, we are facilitating their return and resumption of residence, or the grant of a visit visa, and waiving any associated fees.

8. We have made it easy to access information about these measures by putting a Windrush-specific landing page on Gov.uk, and ensuring that Google searches for Windrush applications are directed to the Windrush Scheme. We have also reached out to communities both in the UK and overseas to provide information and assistance and to signpost to the Taskforce. Home Office staff in the UK and overseas have been asked to flag up applications that might be from members of the Windrush generation and refer them to the Taskforce.

9. We have put in place immediate safeguards to protect the Windrush generation from being wrongly and erroneously impacted by compliant environment measures. We have paused pro-active data sharing with other government departments and delivery partners on data for all nationalities over 30 years old whilst we undertake a thorough assurance review to assess, and where necessary strengthen, the safeguards already in place. We will also incorporate the lessons learnt from the historical review of compliant environment measures before we resume this work.

10. We have gone even further with access to financial services measures and significantly restricted pro-active data sharing with banks and building societies via Cifas (the specified anti-fraud authority) on persons subject to deportation action due to criminal activity. We have also detailed the course of action banks and building societies must now take in relation to fulfilling legal obligations under the Immigration Act 2014 banking measures.

11. On 19 July, the Home Secretary laid a written statement in the House announcing the publication of a consultation paper on the Windrush Compensation Scheme. This outlined proposals on the scope of the scheme and asked for views on a range of issues. This includes questions about who should be entitled to compensation, the categories of

loss that should be covered by the Compensation Scheme and how the scheme should operate. We are undertaking significant outreach work to generate awareness of the consultation, which runs until 11 October.

12. We have carefully considered calls for a hardship fund to be established in advance of the Compensation Scheme. We believe that making interim compensation payments now would undermine the process of setting up a fair and robust Compensation Scheme. However, we want to do all we can to support anyone affected and in immediate need. Our priority has been to help people to establish their immigration status and thereby get access to key services. In particular, a dedicated team in the Windrush Taskforce is supporting those with an immediate need to access housing and benefits, and to remove any immigration obstacles to finding work. In addition to this support, the Home Office has contracted Citizens Advice to provide bespoke professional advice, including debt advice, to those experiencing immediate financial problems.

13. Finally, the Home Office has taken steps to improve awareness of the status of every person who settled in the country before 1973, by issuing guidance to UK Visas and Immigration and Immigration Enforcement staff asking them to refer such cases to the Taskforce.

Wider lessons for the immigration system

14. The Government acknowledges that we should have more quickly recognised and responded to the unintended consequences of evolving immigration policy on those who already had the right to be here, given the significant, life-changing impacts on those whom the system fails. In advance of the lessons learned review, we have taken a number of steps to ensure that no other group is disadvantaged in the way the Windrush generation has been.

15. The Home Office makes over three million decisions every year and over 250 million people cross the UK border. The vast majority of people who come into contact with the immigration system do so without any problems. Nevertheless, the Government acknowledges that the immigration system is complex, and that some individuals may find it difficult to navigate, including those seeking to regularise their status on the basis of their length of residence and ties to the UK. That has been the experience of many members of the Windrush generation. The Home Office will therefore review relevant application forms and guidance to ensure that customers can easily obtain clear and accurate information about the immigration routes available to them, and the evidence needed to make a successful application.

16. We also acknowledge that we did not do enough to proactively engage with Mr Bryan and Ms Wilson at an early stage, and support them to obtain the evidence they needed. In future, we will ensure that people with vulnerabilities, and those who may be confused or marginalised by the immigration system, can be identified and supported. Where a person makes an application under the Windrush Scheme or for other leave to remain but does not include all the evidence needed, the Home Office will contact them to tell them which documents are missing and give them an opportunity to provide them, before making a decision on the application.

17. The Home Office is also considering what improvements can be made to correspondence to make it easier for the applicant to understand. We will engage with key partners such as the judiciary, legal practitioners, grassroot organisations who support migrants and interested organisations such as Justice and the Law Commission to gain more insight into user experience of correspondence and to scope and agree principles on the content of letters in future.

18. Many immigration cases raise complex issues, requiring caseworkers to use their discretion and interpret a large and complex suite of guidance and rules as well as evidence from multiple different sources. The Home Office has now established a new Chief Casework Unit, the purpose of which is to establish a casework profession with a culture which puts the customer at the heart of decision making. The Chief Casework Unit is supported by a network of senior caseworkers throughout the department who can exercise discretion in casework decisions and assist colleagues in making those decisions. The Home Office is also 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.

19. We are also ensuring we make better use of face-to-face engagement with individuals who attend reporting centres, to resolve any problems with their case at an earlier stage. We will also look at the merits of setting up a dedicated caseworking team to own the cases of vulnerable customers, as we have done to good effect in responding to Windrush and the Grenfell Tower tragedy, and as we are planning for the EU Settlement Scheme.

Use of detention powers

20. As the Home Secretary made clear when he appeared before the Committee, Mr Bryan and Ms Wilson should never have been detained, because they both had deemed leave to remain in the UK. The Government deeply regrets the mistakes made in both their cases and is determined that these should never happen again. In addition to the measures already outlined to support members of the Windrush generation to evidence their status, we have taken a number of immediate steps to strengthen our safeguards on the use of detention.

21. Turning to how we use detention for illegal migrants, it is important to make clear that detention is used sparingly. The Home Office operates a strong presumption in favour of not detaining and at any one time, of those people with no lawful basis of stay in the UK and who are liable to removal, 95 per cent are managed in the community and not in detention. The number of individuals we detain has decreased. In the year ending March 2018, there was an eight per cent reduction in the number of people entering detention compared with the previous year.

22. Where individuals do not have a right to stay in the UK, the Home Office puts significant effort into encouraging them to leave the UK voluntarily. Unfortunately, a minority refuse to comply, or are subject to deportation as foreign national offenders, and reporting and detention can be a necessary and proportionate tool for enforcing their return. For every individual who is detained, the law states that there must be a realistic prospect of removal within a reasonable timescale. Alternatives to detention to secure compliance with immigration laws which Parliament has approved will have been considered, or will have failed, in each case. In addition, there should, as part of the

decision to detain, be an assessment as to the likely duration of detention. The majority of people are held for short periods of time. 91 per cent of those leaving detention in the year ending March 2018 were detained for less than 4 months and 64 per cent for 28 days or less.

23. The Home Secretary has welcomed the second independent review by Stephen Shaw into immigration detention, commissioned by the Government. In his report, Stephen Shaw commends the “energetic way” in which his 2016 recommendations have been taken forward and the strengthened the checks and balances in the system. We are pleased that he reports that that conditions across detention centres have improved since his last review three years ago.

24. In July, we announced a package of reforms developed from, but going further than, the recommendations in the Stephen Shaw report. We will be exploring alternatives to detention with faith groups, NGOs and communities. As a first step, we intend to pilot a scheme to manage in the community individuals who would otherwise be detained at Yarl’s Wood Immigration Removal Centre. Home Office officials have been working with the UNHCR to develop this pilot, which will mean that rather than receiving support and care in an immigration removal centre the individuals will get a programme of support and care in the community instead.

25. To ensure that Home Office staff make the right decisions about whether to detain an individual, we will increase the size and scope of the detention gatekeeper function, which provides a ‘second pair of eyes’ for all detention decisions. We are also putting in place measures to make better use of face-to-face engagement with individuals in both reporting centres and immigration removal centres, to identify any vulnerabilities and resolve possible problems with their cases through a more human approach. We will also pilot an additional bail referral where an individual has been detained for two months.

26. To ensure that vulnerabilities are identified and responded to appropriately, we will review the adults at risk policy, ensuring that the most vulnerable and complex cases get the attention they need. We will look again at how the consideration of Rule 35 reports on possible cases of torture can be improved, while avoiding abuse of these processes. We also intend to commission the Independent Chief Inspector of Borders and Immigration to report each year on whether and how the adults at risk policy is making a difference. We will also pilot the use of Skype so that detainees can contact their families overseas and in the UK.

27. The Government believes that the improvements we have already made and the package of measures referenced above will go some way to demonstrating that the Home Office are committed to learning the lessons of Windrush and to immediately responding to the concerns of the Committee.