

JUSTICE publishes report on the Windrush Compensation Scheme for victims of the Windrush Scandal



- The report makes 27 recommendations to improve the administrative and procedural aspects of the Compensation Scheme to ensure the Scheme is accessible, fair, and efficient for those who need it.
- A lack of trust was identified as the underlying factor in the low number of claims.

This JUSTICE Working Group will publish its report '**Reforming the Windrush Compensation Scheme**' on 15 November 2021. It makes 27 recommendations to improve the process for those seeking compensation from the Home Office for the losses and hardships they suffered as a result of not being able to demonstrate their lawful immigration status.

Hundreds of individuals were placed in immigration detention, lost their jobs and homes, and were threatened with removal, with many others deported to countries they hadn't resided in since childhood. Despite the initial estimate of around 15,000 people being eligible for compensation, as of the end of September 2021 only 864 people have received compensation payments.

The Report finds that the Scheme suffers from a lack of independence (it is administered by the department responsible for Claimants' considerable losses); there are delays and inconsistencies in decision-making; awards do not accurately reflect claimants' losses; and caseworkers lack experience and cultural understanding. The claim process is complex and many claimants require legal assistance to complete their claim; however there is no provision of free legal representation. Claimants who instruct solicitors are typically paying between 20% and 30% of their award in legal fees. It was further found that the Scheme does not have an effective appeals process.

Key recommendations of the Report, which has been prepared by an independent JUSTICE working group led by **Professor Robert Thomas**, Professor of Public Law at the University of Manchester, include:

1. **The need for independence and accountability:** including the Scheme being moved from the Home Office, preferably to an organisation independent of the government; and greater accountability and transparency of the publication of findings from independent reviewers.
2. **Funded legal representation for Claimants:** funding should be made available for legal representation for all successful Claimants via (a) Legal Aid and/or (b) funding provided under the Scheme.

3. **Training and quality assurance for caseworkers:** further training and guidance to be provided to caseworkers on decision-making, communication with vulnerable people, mental health, and cultural understanding of people from different communities. In addition, better quality assurance is required to prevent errors.
4. **Improved communication with Claimants:** including use of video guides, correspondence which is easier to understand, regular progress reports on the progress of a claim, and Claimants to be treated with humanity, dignity and respect.
5. **Calculation of losses:** rules to be amended to ensure that the compensation received by claimants reflects *all* the losses they have suffered; pension losses to be included in the loss of earnings category; an increase in compensation for homelessness; and a further level to be considered for the impact on life tariff.
6. **Raising awareness of the scheme:** a targeted publicity campaign to reach out to affected communities and grass roots organisations should be commissioned to raise awareness of the Scheme and help build trust with claimants.
7. **A more coherent and efficient appeals and complaints system:** including the right of appeal against compensation decisions to a Tribunal; a complaints mechanism to the Independent Case Examiner; and powers to enable the Ombudsman to investigate maladministration by the Home Office.

Having sat since March 2021, the Working Group made 27 recommendations designed to improve the administrative and procedural aspects of the Compensation Scheme to ensure the scheme is accessible, fair, and efficient for those who need it.

A lack of trust was identified as the underlying factor in the low number of claims and this report examines how the Scheme can be improved to build trust in potential Claimants to ensure they receive the compensation they are entitled to.

Chair of the JUSTICE Working Group, Professor Robert Thomas (Professor of Public Law at the University of Manchester) said:

“This report provides an informed and critical analysis of the way the Windrush Compensation Scheme is operating. We have real concerns about its operation that can mean people who have suffered real harm because of the Windrush scandal are not able to get compensation. With an expert team of stakeholders - including members of the Windrush generation harmed by the scandal - we have produced a set of informed recommendations designed to resolve many of the problems with the Compensation Scheme.”

JUSTICE's Acting Legal Director, Stephanie Needleman said,

"The Windrush Compensation Scheme should provide a valuable lifeline for those who have suffered losses and hardships, however, there are concerning weaknesses in the Scheme's current administrative and procedural processes. Through these recommendations, we hope to see structural changes to improve processes, ensuring that who have suffered are treated with dignity and receive the compensation they are due.

Partner at Global law firm Dechert and member of the JUSTICE Working Group, Tim Bowden said,

"Through this Working Group and Dechert's own pro bono casework supporting Windrush claimants, in collaboration with the Joint Council for the Welfare of Immigrants and six other law firms, we have seen first-hand the challenges faced by individuals seeking redress. This report makes practical proposals which are readily implementable, and we hope it will lead to significant changes in the scheme to ensure that claimants are fully and fairly compensated."

News of the Windrush scandal reached the public domain in 2018, when it emerged that hundreds of British and Commonwealth citizens had been detained, deported, and denied legal rights after wrongly being classified as illegal and/or undocumented immigrants.

The Windrush Compensation Scheme was launched by the Home Office in April 2019 to compensate people for these losses and hardships. Despite the initial estimate of around 15,000 people being eligible for compensation, as at the end of September 2021, only 864 people have received compensation payments. The Working Group is concerned about both the low take up of the Scheme and the difficulties and delays experienced by those who have made a claim.

Notes to Editors

1. JUSTICE has a long history of using Working Parties of its membership to effect systemic changes within the legal system. For example, the Ombudsman system and Criminal Injuries Compensation Board were set up on the recommendation of previous JUSTICE Working Parties.
2. The Working Group was supported by Dechert LLP.
3. The Working Group was chaired by Professor Thomas and its members were Professor Robert Thomas, Professor of Public Law at the University of Manchester (Chair); Heidi Bancroft (Rapporteur), JUSTICE; Rob Behrens, Parliamentary and Health Services Ombudsman; Tim Bowden, Partner, Dechert LLP; Nicola Burgess, Legal Director, Joint Council for the Welfare of Immigrants; Glenda Caesar, Claimant and member of Windrush Lives; Professor Naomi Creutzfeldt, Professor in Socio-Legal Studies, Westminster University; Marion Edge, Pro Bono Counsel, Dechert LLP; Martin Forde QC, the former Independent Advisor to the Scheme; Christian Hayibor, Claimant and member of Windrush Lives; Bishop Desmond Jadoo, Windrush National Organisation; Franck Kiangala, Director, North Kensington Law Centre; Caroline Lawless, Windrush Policy, Home Office (Observer); Jacqueline McKenzie, Partner, Leigh Day; Helen Megarry, the Independent Adjudicator to the Scheme; Ravi Nayer, Partner, Quinn Emanuel Urquhart & Sullivan, LLP; Sibon Phiri, United Legal Access;

and Anna Steiner, Solicitor and Senior Lecturer, Westminster University and Windrush Justice Clinic).

4. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system in the United Kingdom. For more information, please visit www.justice.org.uk
5. Please direct queries to Stephanie Needleman, Acting Legal Director at sneedleman@justice.org.uk