

Reforming the Windrush Compensation Scheme

A Report by JUSTICE

Chair of the Committee
Professor Robert Thomas



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The views expressed in this report are those of the Working Group members alone, and do not reflect the views of the organisations or institutions to which they belong.

CONTENTS

I.	Executive Summary	1
II.	Terms of Reference	4
III.	Introduction	5
IV.	Home Office Decision-Making and Evidence Gathering - Sub-group 1	18
V.	Communications – Sub-group 2	47
VI.	Appeals – Sub-group 3	61
VII.	Recommendations	73
VIII.	Acknowledgements	80
IX.	Schedules	82

I. EXECUTIVE SUMMARY

Executive Summary

- 1.1 The Windrush Compensation Scheme (the “**Scheme**”) was launched in April 2019 and at that time the Home Office estimated that around 15,000 people would be eligible for compensation. As at the end of August 2021 a total of 2,761 claims have been made and 837 people have received compensation payments. The Working Group is concerned about both the low take up of the Scheme (less than 20% of those eligible) and the difficulties and delays experienced by those who have made a claim.

Lack of independence

- 1.2 In summer 2020 the Home Office commissioned research into the barriers that might discourage people from approaching the Scheme. That research identified one of the main barriers to Scheme applications was trust, including a fear that engagement with the Department may lead to immigration enforcement action and a perception that the benefits of applying do not outweigh the effort and likelihood of success. These findings were confirmed by the Working Group which found that the problems with the Scheme are compounding the Home Office failings which led to the Windrush scandal in the first place.
- 1.3 The Windrush Compensation Scheme is intended to compensate victims of Home Office failings. There is therefore an inherent lack of independence in the Home Office having responsibility for administering the Scheme and for determining whether they themselves should pay compensation. In circumstances where fear and mistrust of the Home Office continues to run deep among victims and spans multiple generations, the inherent lack of independence in this approach has seriously undermined the aims of the Scheme and is a major factor in the lower-than-expected number of applications. The Working Group recommends that the Scheme is moved from the Home Office.
- 1.4 Routes to challenge Home Office offers are unsatisfactory due to a lack of independence and narrow remit. Claimants can seek a Home Office internal Tier 1 review and then a Tier 2 review by the Independent Adjudicator, a civil servant whose remit is constrained and does not permit her to substitute her

own findings for those of the Home Office. Although in theory Claimants who are dissatisfied with their Tier 2 reviews can ask their MP to refer their complaints to the Parliamentary and Health Service Ombudsman (PHSO), none of them have done so. We recommend that an independent tribunal hear appeals and that access to the PHSO is simplified by the removal of the MP filter and the grant of own initiative powers to investigate complaints.

Compensation Payments

- 1.5** We support the recent removal of the end date for the scheme. We also welcome the changes made in December 2020 to substantially increase the impact on life payments (with the minimum payment increased from £250 to £10,000) and the provision to make an interim payment of £10,000 to Claimants as soon as an impact on life is established. We endorse the October 2020 change so the whole scheme now considers evidence on “the balance of probabilities” rather than “satisfied so as to be sure.” We welcome the new approach to employment losses in December 2020 which removed the 12 month cap on awards so that compensation for the actual period of loss of employment can be recovered. The new impact on life tariffs have fewer tiers and we recommend introducing a new tier to avoid the disparity this has created. In order to ensure Claimants are properly compensated we recommend that independent psychiatric reports are funded by the Home Office. We have made further recommendations in relation to the calculation of general awards. In particular, employment and pension losses are calculated in a simplistic way which does not reflect actual losses and is at odds with the process that is normally adopted to calculate such losses in personal injury or employment cases.

Claimants need legal support

- 1.6** We heard that most Claimants find the application process difficult. The application form now runs to 38 pages and the requirements for evidence dating back over long periods are difficult to meet. We welcome the changes the Home Office has made to reduce the evidential requirements and redraft Scheme documents in Plain English. The Home Office funded support for Claimants through We Are Digital (who provide up to 3 hours support to Claimants in completing the form) is inadequate. We conducted a survey of lawyers providing support to Claimants which found that most cases required more than 20 hours work. The Working Group heard from a number of groups

providing pro bono support for Claimants. These groups are limited in their work by lack of funding and do not have the resources to meet the national demand for support. Some Claimants have sought paid legal advice from law firms through conditional fee agreements and damages based agreements. These agreements avoid the need for up-front fees but commit Claimants to making considerable payments to their lawyers if successful. Typically, these payments are 20 to 30% of the value of the award but have been up to 67%. The Home Office estimated that caseworkers would take 30 hours to assess cases at the outset of the Scheme although in practice the average is 154 hours, reflecting the complexity of the Scheme. If lawyers assisted Claimants with their applications, there would be a saving to the Home Office in reduced caseworker time and a reduction in the number of unmeritorious applications. We recommend that free legal advice is made available to Claimants through Legal Aid or that the Scheme is amended to provide a sliding scale of fixed legal fees.

Quality of decision-making

- 1.7** There has been a failure to deal with claims in a timely manner. This reflects the way the Scheme was set up with only 6 full time caseworkers in post when it was launched (the Home Office had estimated that 200 claims handlers would be required). The failure to properly staff the Scheme and deal with claims promptly has caused great hardship to many Claimants. We heard complaints from Claimants about delays, repeated requests for evidence that had already been supplied, lack of empathy and respect from caseworkers and multiple caseworkers involved in cases so that Claimants had to repeat details of their personal experience multiple times. Advisors have commented on a lack of consistency in the way that claims are dealt with, and compensation is awarded. The handling of cases has been sub-standard with analysis by the National Audit Office showing that more than half of the cases subjected to quality assurance checks needed to return to a caseworker for further work. The new Home Office commitment to monthly updates has not been delivered in practice. Claimants should receive regular informative updates on their compensation claims written in plain English. We have made a number of recommendations to improve caseworker training, guidance and supervision.

II. TERMS OF REFERENCE

Purpose

- 2.1** The purpose of the Working Group is to produce a number of recommendations aimed at improving the process for those seeking compensation as a result of the Windrush Scandal. It aims to ensure that people claiming compensation have their claims adjudicated fairly, accurately and in a timely manner; and that the complaints process is efficient, accessible and fair.

Objectives

- 2.2** The Working Group has the following objectives:
- to improve evidence-gathering, assessment and decision-making by the Home Office;
 - to improve Home Office guidance on tariffs, criteria and evidence required;
 - to reduce wait times for Claimants seeking compensation;
 - to improve Home Office communication with Claimants on the progress of their claim;
 - to streamline the complaints process and increase accessibility and remit of complaint handlers;
 - to ensure compensation appeals mechanisms are adequate, accessible and effective; and
 - to help build trust in Claimants to ensure they apply for the compensation they are entitled to.

Audience

- 2.3** Upon completion the report will be presented to the Home Office, relevant government departments, the Home Affairs Select Committee, parliamentarians, relevant stakeholders and the media.

III. INTRODUCTION

Background

- 3.1 When HMT Empire Windrush arrived at the Tilbury Docks, Essex on 22 June 1948, it marked the start of a post-war immigration boom across British society.
- 3.2 In the aftermath of World War II and faced with a shortage of labour, the UK government encouraged immigration from across the Commonwealth as part of its efforts to help rebuild the country. As a part of the British Commonwealth, the Caribbean migrants who arrived from British colonies as British Subjects and Citizens of the United Kingdom and Colonies ('CUKC') had an automatic right to work and reside in the UK without the need for immigration permission or additional documentation. There was no legal requirement for a Commonwealth Citizen¹ to be examined on entry to the UK until the early 1960s, and where a Commonwealth Citizen was allowed entry to the UK, their spouse and children were also entitled to enter without condition. Many citizens who arrived took up jobs reconstructing the public roads and supporting the public transport services and emerging National Health Service ("NHS").
- 3.3 A person holding CUKC status through their connection to a British colony would generally lose their citizenship when the colony became independent. This happened automatically by operation of law and affected citizens across the former colonies during the independence movements of the 1960s. However, they retained their status as British Subjects and Commonwealth Citizens even thereafter. It was not until 2002 that the UK extended British Citizenship to the British Nationals in its overseas territories.
- 3.4 The Empire Windrush carried 492 passengers from Jamaica, Trinidad and Tobago, and other Caribbean countries, who constituted one of the first large groups of Caribbean migrants to arrive in the UK, later giving its name to an entire generation of migrants who arrived in the UK from the Caribbean between 1948 and 1973. The influx ended in the early 1970s with the coming into force of the Immigration Act 1971 (the "Act"), which confirmed that individuals who were already present and settled in the UK without any

¹ Under the British Nationality Act 1948, [available here](#) (accessed 05 November 2021), the terms 'British Subject' and 'Commonwealth Citizen' were synonymous.

restriction on their leave when the Act came into force on 1 January 1973 were entitled to remain indefinitely in the UK. For these individuals, there was no requirement to register with the Home Office or to obtain specific paperwork evidencing their status. However, the Act imposed further restrictions on future migration to the UK by aligning the position of Commonwealth Citizens with that of other migrants, despite the fact that Commonwealth Citizens have never been, and still are not, regarded in law as foreign nationals. The Act introduced the concept of the right of abode, which was in general only acquired through a connection to the UK itself, not to one of its colonies. Under the British Nationality Act 1981, which now governs matters of nationality, the right of abode is held only by British Citizens (and not by British Nationals without citizenship),² as well as by a small category of Commonwealth Citizens with the right of abode.

- 3.5 Over time, and particularly from 2012 onwards, the Home Office introduced wide ranging administrative and legislative measures often referred to as the “hostile environment,” aimed at making the lives of those residing in the UK as challenging as possible for individuals without leave to remain, with the intention that those challenges would cause them to leave voluntarily. This involved introducing policy measures that amongst other things prevented undocumented migrants from using fundamental public services including the NHS, enrolling at academic institutions, taking up opportunities of employment, accessing banking facilities, or renting private property.
- 3.6 These policies adversely affected many British and Commonwealth citizens, whose lack of clear documentation confirming their right to reside arose from historic freedoms to travel without additional documentation and was exacerbated by the destruction of landing cards and other travel records by the Home Office. Many had arrived as children on their parents' passports, and evidence demonstrating their arrival was lost or destroyed in the intervening decades.
- 3.7 In enacting these policies, the Home Office placed the onus on individuals to present documentation to prove their right to remain in the UK. In many instances, individuals were required to prove their residency prior to the 1 January 1973 implementation date of the Act and present at least one official

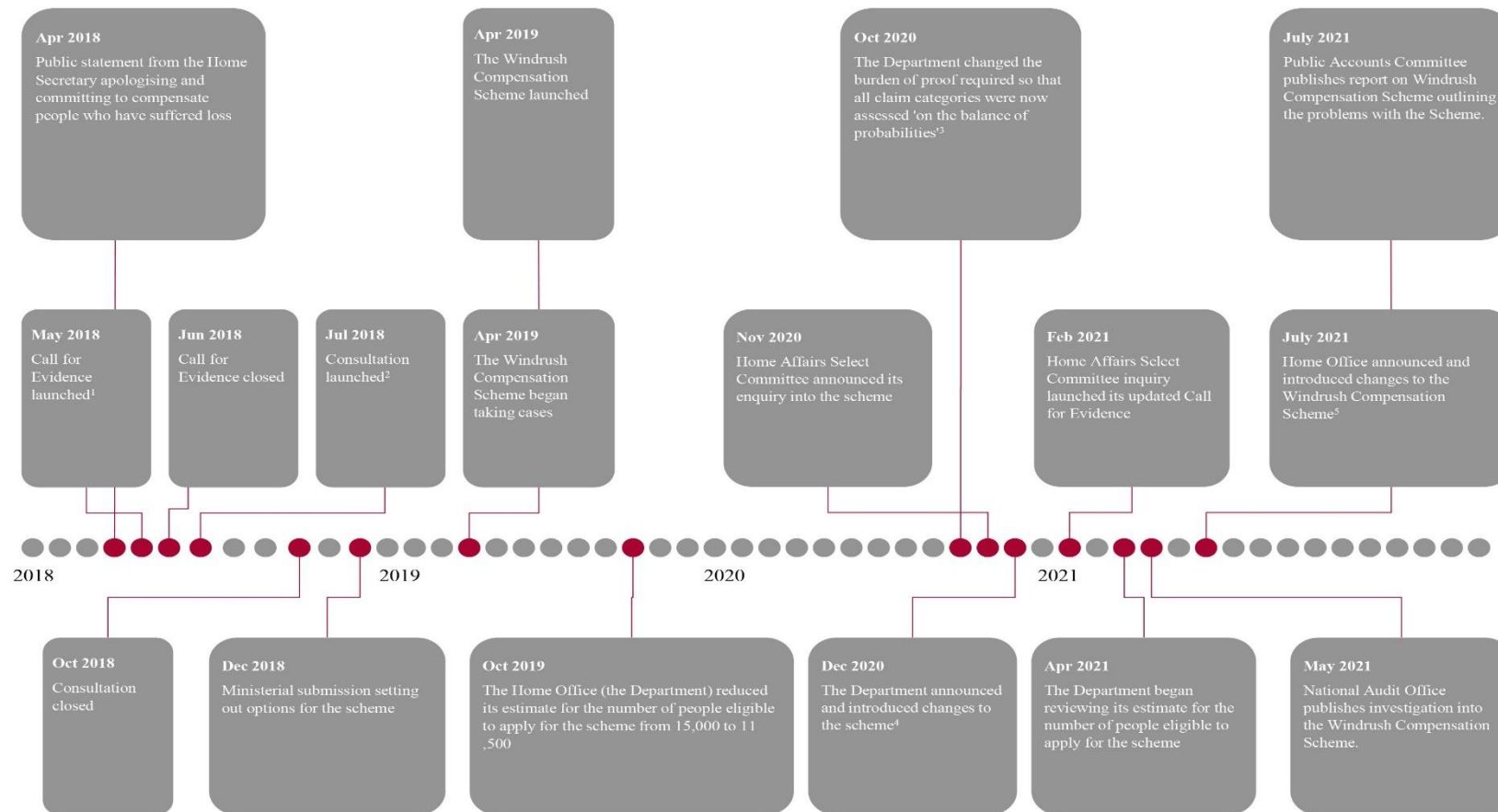
² I.e., British Overseas Territories Citizens (although these generally now hold British citizenship as well), British Overseas Citizens, British Nationals (Overseas), British Subjects, and British Protected Persons.

document for every subsequent year, so as to establish their continued residence in the country.

- 3.8 In 2018, the “Windrush Scandal” reached the public domain when it emerged that thousands of British and Commonwealth citizens had been detained, and/or deported and/or denied legal rights after wrongly being classified as illegal undocumented immigrants.
- 3.9 In response to widespread international criticism of the government's handling of the scandal and calls for UK immigration reform, the Home Office commissioned an independent Windrush Lessons Learned Review in May 2018. This independent review by Wendy Williams³ was published in March 2020 and made thirty recommendations for change and improvement to the Home Office. The Home Secretary accepted the findings in the Windrush Lessons Learned Review on 23 June 2020 and outlined the Home Office’s Comprehensive Improvement Plan as part of its response to the review on 30 September 2020.

³ Windrush Lessons Learned Review: Independent Review by Wendy Williams, published 19 July 2018, [available here](#) (accessed 05 November 2021).

Windrush Compensation Scheme timeline



Notes

1. The purpose of the Department's Call for Evidence was to listen to those affected before engaging on the details of the scheme.
2. The purpose of the Department's consultation was to hear from those who have been affected by this situation, and their families, on the design of the scheme.
3. The change Introduced in October 2020 was to lower the burden of proof for some claim categories under the scheme from 'satisfied as to be sure' and 'beyond reasonable doubt' to 'on the balance of probabilities'. This was to align those categories with the rest of the scheme.
4. Changes Introduced in December 2020 Included an increase in payments within the 'Impact on life' claim category and a commitment to make a preliminary payment as soon as Impact on life had been established.
5. Changes introduced in July 2021 included no end date to the scheme, costs of legal assistance with probate, new guidance to case handlers, new application forms and reduced estimate for the number of people eligible to apply for the scheme of between 4000 and 6000.

Source: adapted from the National Audit Office Investigation into the Windrush Compensation Scheme published 21 May 2021)

Windrush Compensation Scheme

3.10 The Scheme was launched in April 2019 to compensate victims of the Windrush Generation and their families for the losses and impacts they have suffered as a result of not being able to demonstrate their lawful immigration status.⁴ An applicant for the scheme may be one of the following: a primary Claimant; the estate of a Claimant (if the Claimant is deceased); or a close relative of the Claimant. The applicant must prove his/her identity and pass the test of eligibility (described below) before the caseworker assesses entitlement. The caseworker then assesses where the applicant's losses fall into the 13 categories provided for under the Scheme.

3.11 The Scheme was updated on 14 December 2020, when the Home Office made a number of changes⁵ including;

- introducing preliminary payments of £10,000 once impact on life has been demonstrated;
- significantly increasing awards for impact on life so the range moved from £250 to £10,000, to a starting point of £10,000 to £100,000 with no cap in exceptional cases;
- The 12 month cap on loss of employment was removed together with the requirement to show mitigating action.

3.12 Further changes were announced on 21 July 2021⁶ which included:

- The removal of the end date to the compensation scheme;
- Reimbursement of up to £1,500 in legal costs associated with probate for estate claims;
- A new application form and guidance notes for Claimants and case workers;
- A reduction in the number of eligible claims the Home Office estimates it is likely to receive to a range of 4,000 to 6,000.

⁴ Windrush Compensation Scheme Fact Sheet – December 2020, [available here](#) (accessed 05 November 2021).

⁵ Windrush Compensation Scheme Fact Sheet - December 2020, [available here](#) (accessed 05 November 2021).

⁶ Home Office statement, 21 July 2021, [available here](#) (accessed 05 November 2021).

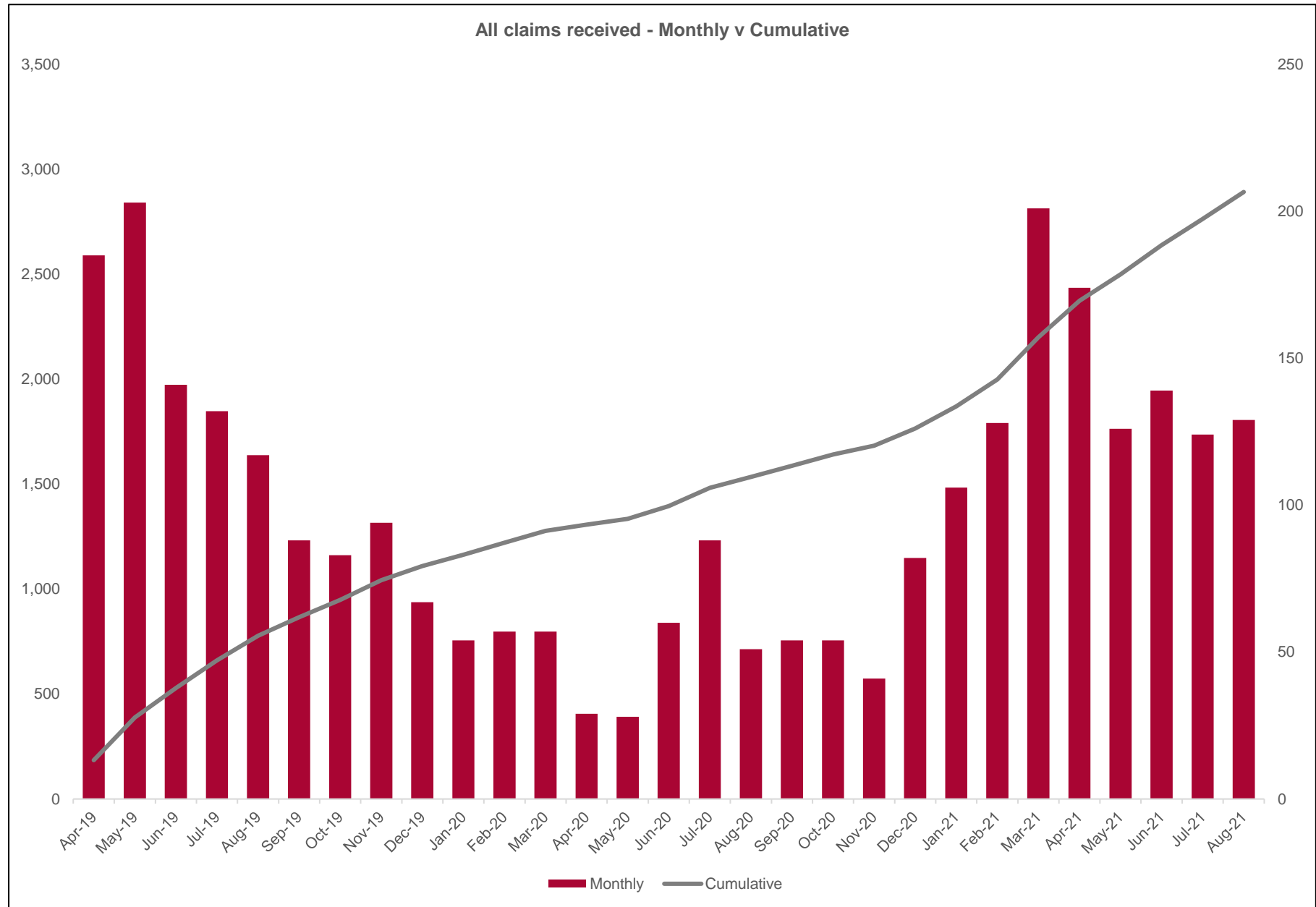
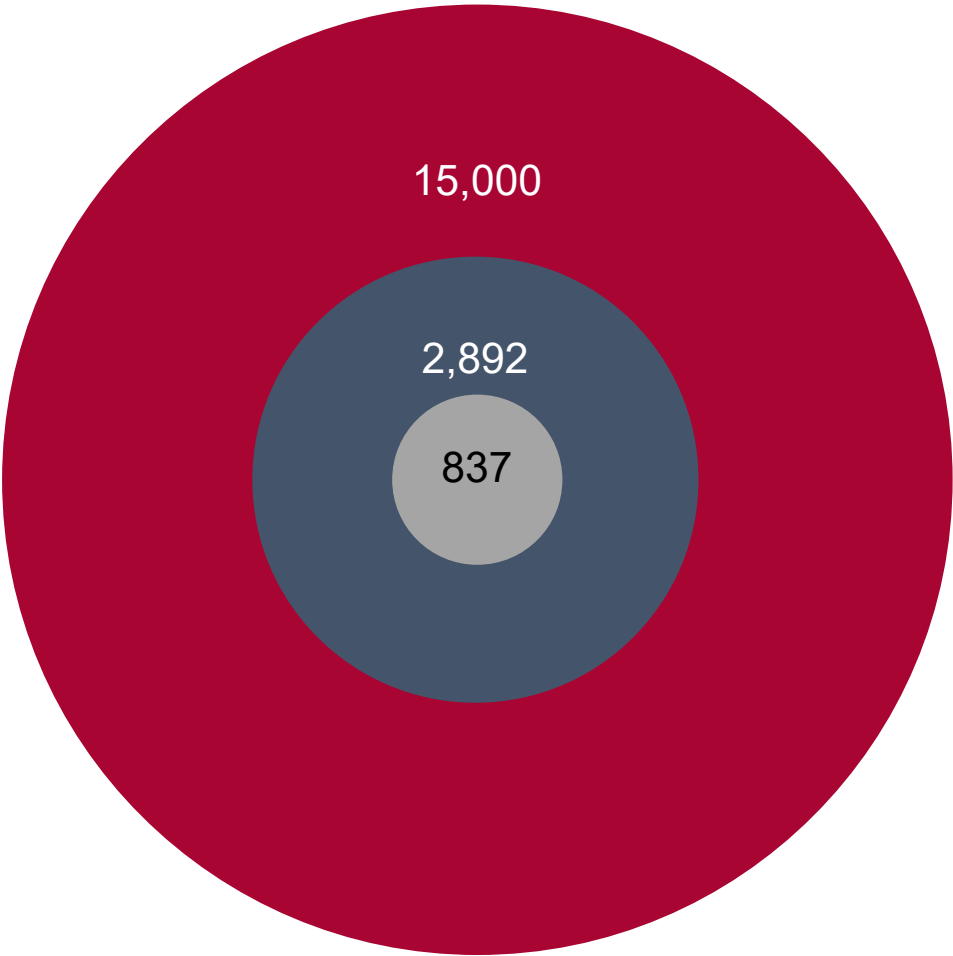


Diagram: Comparison of numbers of eligible applicants, claims submitted and claims paid

15,000	Total number of eligible applicants as estimated by the Home Office in April 2019
2,892	Number of applicants as at 31 August 2021
837	Number of claimants to receive compensation as at 31 August 2021



Eligibility

- 3.13** The rules regarding eligibility are complex, but they touch on two points: the applicant’s nationality; and/or date of arrival into the United Kingdom⁷. The requirement of proof of lawful status is key in proving eligibility to the Scheme. Lawful status means a right of abode⁸ or settled status⁹ in the United Kingdom.
- 3.14** Applicants who do not have evidence of lawful status, but are eligible for the Scheme, can seek support from the Windrush Taskforce to obtain confirmation of lawful status.¹⁰
- 3.15** Caseworkers may reduce or decline an award where an applicant has consciously failed to take “reasonable steps” to mitigate their loss or has taken conscious steps to increase/exacerbate their loss.

⁷ Windrush Compensation Scheme Caseworker Guidance, 27 October 2021, p 14, [available here](#) (accessed 05 November 2021).

⁸ British citizens automatically have a right of abode in the United Kingdom under s.1(1) Immigration Act 1971, [available here](#) (accessed 05 November 2021).

⁹ An example of this would be an applicant having indefinite leave to remain in the United Kingdom.

¹⁰ Windrush Compensation Scheme Caseworker Guidance, see above n 7, p 20.

Categories of financial compensation available to claimants under the Scheme

Immigration and legal fees	Full cost of any Home Office fees for unsuccessful immigration applications.
	Legal costs: the amount paid or £500, whichever is the lesser.
Detention, ¹ deportation or removal ²	<30 mins: £0.00
	0.5–3.5 hours: £500/hour
	3.5–9.5 hours: £300/hour
	9.5–24 hours: £100/hour
	Each subsequent 24-hour period (up to 30 days): £500
	Each subsequent 24-hour period (up to 60 days): £300
	Each subsequent 24-hour period (no limit): £100
	(Payments are cumulative. Part-hours and part-days rounded up.)
	Deportation: £10,000
	Removal: £1,000–£7,500 depending on detention/reporting requirements.
Access to employment ³	Actual earnings (annual salary minus tax and National Insurance contributions) over the period of loss.
	General award: £1,147 per month over the period of loss.
Access to benefits and tax credits: Access to Child Benefit, Child Tax Credit or Working Tax Credit ⁴	Child Benefit: £1,264
	Child Tax Credits: £2,500
	Working Tax Credit: £1,100
Access to benefits administered by other government departments (for example Department for Work & Pensions (DWP))	The Department will not make any payment to claimants in relation to DWP administered benefits.
Access to services: housing	£1,000
Access to services: healthcare	£500 for denial of access to NHS care.
	Reimbursement of private medical fees. ⁵
Access to services: education	£500
	Reimbursement of international student fees. ⁶
Access to services: banking Services	£200 and any direct financial losses.

Access to services: driving licence ⁷	Claimants who were refused access to a driver's license must apply for compensation through the Driver and Vehicle Licensing Agency (DVLA).
Homelessness	£250 per month (up to a maximum of £25,000).
Impact on life ⁸	From £10,000 (Level 1: inconvenience, annoyance, frustration and worry). to £100,000* (Level 5: profound impacts which are likely to be irreversible).
	*Can be exceeded if circumstances are "so compelling or severe it would be appropriate to do so".
Discretionary award	Any amount of loss/impact that <ul style="list-style-type: none"> • Are financial in nature; • Arose solely as a direct consequence of the inability to demonstrate lawful status; and • Are not covered by other claim types.

Notes

1. Detention refers to cases where a claimant was held in a removal centre, short-term holding facility or prison or detained at the end of a prison sentence in the United Kingdom (UK) – for any length of time.
2. Deportation refers to cases where a claimant was deported to another country and believes that, had they been able to demonstrate lawful status in the UK at the time of deportation, they would have been exempt from deportation. Removal refers to where a claimant was removed from the UK by the Department. This includes those who have since returned to the UK and those who have remained in another country because they have been unable, or do not wish, to return.
3. The Department pays an 'actual award' where a claimant can demonstrate their exact salary. It pays a general award where exactly salary is unknown or cannot be evidenced.
4. DWP and HM Revenue & Customs (HMRC) will process claims in line with their own procedures to reinstate benefits and decide whether to make reimbursement for lost benefits. In the case of benefits payable by a local authority, DWP will pass those claims on to the relevant local authority to determine. In the case of HMRC benefits (Child Benefit, Child Tax Credit and Working Tax Credit), the Windrush Compensation Scheme will make a payment in lieu of compensation for these benefits to eligible claimants.
5. For reimbursing private medical fees the Department will pay the lower amount out of the cost the NHS would have charged a person to receive the equivalent treatment if ineligible for free treatment, and the actual amount of private medical fees incurred.
6. For international student fees, the Department pays the difference between the international student fee rate and the home student fee rate for the relevant period.
7. DVLA will process claims relating to loss or refusal of driving licences in line with their existing procedures, following a referral and authorisation from the Department. The DVLA will then invoice the Department for any payments made. Any wider loss that the claimant has experienced as a result of losing their driving license, for example loss of employment, is compensated for by the Department.
8. The 'impact on life' awards presented are for award levels from 15 December 2020 onwards, when the Department introduced changes to the scheme.
9. The Department has a 13th category for non-financial losses, in which claimants receive an apology alongside any financial compensation awarded.

Source: National Audit Office analysis of Home Office documents

Entitlement¹¹

- 3.16 Impact on Life:** This category allows for the applicant's inability to live a normal life as a direct consequence of being unable to demonstrate lawful status. There are a broad range of detrimental impacts outlined in the Scheme. There are 5 levels of compensation ranging from level 1 for "marked detriment...where the effect on the Claimant was fairly short-lived" with an entitlement of £10,000 (initially the maximum amount) to level 5 for "profound impacts on a Claimant's life which are likely to be irreversible" attracting compensation of £100,000 with the scope to award more where an individual's circumstances are so compelling or severe it would be appropriate.
- 3.17** As mentioned above, an applicant becomes entitled to a preliminary payment of £10,000 where a preliminary assessment of the application identifies an impact on life of at least level 1 under the Scheme.
- 3.18 Immigration fees and legal costs in respect of immigration applications:** The successful applicant can be reimbursed for paid fees/incurred legal costs for certain unsuccessful immigration applications. The applicant must demonstrate evidence of the fee; that the purpose of their (unsuccessful) application was to resolve uncertainty about their lawful status; and that before the application, the applicant did have lawful status. If the applicant is successful, they are entitled to reimbursement of the fees (without interest) and in respect of associated legal fees, the lesser of: (i) the actual amount paid in respect of legal costs and (ii) £500.
- 3.19 Costs incurred or losses arising from detention, deportation, removal or return:** The applicant can receive compensation if they were detained, deported, removed or returned under 4 relevant pieces of legislation.¹² The applicant needs to show that a material reason for enforcement action was due to the inability to demonstrate lawful status, and enforcement action would not take place if the applicant was able to demonstrate this. The applicant is entitled to payments of £1,000-£10,000 depending on the type of enforcement action.

¹¹ Windrush Compensation Scheme Caseworker Guidance, see above n 7, p 35.

¹² Immigration Act 1971, [available here](#) (accessed 05 November 2021); Immigration and Asylum Act 1999, [available here](#) (accessed 05 November 2021); Nationality, Immigration and Asylum Act 2002, [available here](#) (accessed 05 November 2021); UK Borders Act 2007, [available here](#) (accessed 05 November 2021).

In addition, the applicant is entitled to payments of up to £500 per hour depending on the length of detention.

- 3.20 Employment-related losses or lost employment benefits:** Where the applicant has suffered employment related losses due to the inability of the primary applicant to demonstrate lawful status. The applicant can be entitled to two types of awards, the Actual Earnings award (calculated by multiplying the net monthly earnings by the period of loss¹³) or a General Earnings award (calculated by multiplying the months of the period of loss by £1,147).
- 3.21 Loss of Access to Benefits (Including Child Tax Credit or Working Tax Credit):** This category provides for payment of benefits¹⁴ where they were stopped or refused due to an inability to demonstrate lawful status. These benefits include child benefit; child tax benefit; and working tax credit. The applicant is entitled to varying amounts of compensation depending on the type of denial of access.
- 3.22 Inability to access public services (Housing, Health, Education, Banking, and Driving):** In these categories, the applicant would need to prove that their inability to access services resulted from their inability to prove lawful status. The “relevant period” where the amount of compensation is calculated, is from the date the primary applicant was made aware they could not demonstrate their lawful status to them receiving a document proving their lawful status. The award for an applicant in this category can be a lump sum payment, as well as reimbursement for any costs incurred in respect of the services.
- 3.23 Homelessness:** This category provides compensation for the applicant if they were forced into homelessness¹⁵ because of an inability to demonstrate their lawful status in the United Kingdom. The applicant is entitled to £250 per month of homelessness with a maximum award of £25,000.
- 3.24 Discretionary Payments and Non-Financial Remedies:** Compensation is awarded to the applicant for a significant impact, loss or detriment of a financial nature as a direct consequence of being unable to establish lawful status, not covered by the above categories.

¹³ “Period of loss” starts from either the date of termination; where the termination was rescinded; where the applicant could not access employment; or unable to progress their application for employment.

¹⁴ A full list is provided here (accessed 05 November 2021).

¹⁵ Windrush Compensation Scheme Caseworker Guidance, see above n 7, p 59-62.

- 3.25 Where an award of compensation is made, this must be accompanied with a letter of apology from the Home Office.

Complaints Mechanisms

- 3.26 The detail of the complaints mechanisms is discussed in detail in section 11. At Tier 1 a determination is reviewed by an independent case worker who did not issue the initial decision. At Tier 2 the Independent Adjudicator can review how the Home Office made their decision and recommend a further review. If a Claimant is dissatisfied with the outcome of the Tier 2 review then they can seek a further review, on grounds of maladministration, by the Parliamentary and Health Service Ombudsman (PHSO). Claimants cannot refer their cases directly to the PHSO but must do so through their MP.

IV. HOME OFFICE DECISION-MAKING AND EVIDENCE GATHERING (SUB-GROUP 1)

- 4.1** This Chapter examines the process of applying under the Scheme, the assessment of applications for compensation, and the quality of decision-making. The Working Group found that there were a number of issues with the administration and structure of the Scheme. These not only undermine the operation of the Scheme and its ability to effectively deliver compensation to those affected but significantly undermine trust in the Scheme.
- 4.2** A number of concerns identified by the Working Group were addressed by changes made to the operation of the Scheme in December 2020 and July 2021, in particular the increase of compensation awarded under the impact on life tariffs, the preliminary payments and the removal of the end date of the Scheme.
- 4.3** We welcome these changes, however, the Working Group is concerned that although the issues have been remedied they continue to impact on how the Scheme is perceived by potential claimants. There also remain a number of issues which must be addressed to ensure the Scheme fulfils its mandate and for trust in the Scheme to be restored.
- 4.4** The remaining issues with the decision-making and evidence gathering fall into the following five categories:
- Lack of independence of the Scheme;
 - Poor quality decision-making;
 - Lack of empathy, care and understanding;
 - Unfairness in assessment of the heads of loss allowable under the Scheme;
 - Lack of funded legal assistance for Claimants.

Lack of Independence

- 4.5** The Scheme is intended to compensate victims of Home Office failings. There is therefore an inherent lack of independence in the Home Office having responsibility for administering the Scheme and for determining whether they themselves should pay compensation. In circumstances where fear and mistrust of the Home Office continues to run deep among victims and spans

multiple generations,¹⁶ the inherent lack of independence in this approach has seriously undermined the aims of the Scheme and is a major factor in the lower-than-expected number of applications.¹⁷ One victim, who was detained in an immigration removal centre in 2017 and booked on a flight back to Jamaica after living in Britain for 52 years, described the dilemma as follows.¹⁸

“The Home Office shouldn’t be policing itself. They are still picking out things they don’t believe. Even if you don’t want to be bitter, you still end up feeling bitter. At least if it was moved to another department we would feel satisfied that the people who are dealing with us are treating us fairly”

“The idea of the transgressor in this case being the Home Office and also being the administer of justice to right its own wrongs puts the victims at risk of being open to more harm. It is difficult enough for a victim to have to face their abuser, much less to rely on said abuser for redress.”¹⁹

4.6 Some fear that an application could lead to a further attempt to detain and deport them by the Home Office:²⁰

“for someone like my Mum, she is very worried about, even though whatever has been said in statements and press releases, she is worried about applying on this Scheme. She’s seen what’s happened to the Jamaican 50 etc. etc. And

¹⁶ Dominic Akers-Paul, WCS0025 – Transcript of Group Discussion on the Windrush Compensation Scheme with the Home Affairs Select Committee on Tuesday 1 December 2020 (Written evidence submitted by Dominic Akers-Paul, Glenda Caesar, Christian Hayibor, Gertrude Ngozi Chinegwundoh, Carl Nwazota, Grace Nwobodo, Holly Stow, Anthony Williams), 1 December 2020, p 16, [available here](#) (accessed 05 November 2021).

¹⁷ In April 2019 it was estimated that between £120 million and £310 million would be paid to 15,000 Claimants. In October 2019 this was revised to between £60 Million and £260 million paid to 11,500 Claimants (National Audit Office Investigation into the Windrush Compensation Scheme, 21 May 2021, p 8, [available here](#) (accessed 05 November 2021)). In July the figure was revised to between 4,000 and 6,000 Claimants (Home Office statement, 21 July 2021), [available here](#) (accessed 05 November 2021).

¹⁸ Anthony Bryan, *Independent body should run Windrush compensation scheme, Labour says*, *The Guardian*, 21 June 2021, [available here](#) (accessed 05 November 2021).

¹⁹ Euen Herbert-Small, *The Independent*, Windrush ‘engagement’ meetings maintain hostile environment, activists say, 14 May 2021, [available here](#) (accessed 05 November 2021).

²⁰ Dominic Akers-Paul, see above n 16, p 16.

she's thinking you put your head above the parapet, who knows, once the Home Office gets you in their sights anything can happen"

- 4.7 Few believe that they will receive a fair hearing, or that the Home Office genuinely wishes to fully compensate them. Evidence we have encountered, including from Claimants, strongly suggests that the Home Office has not been providing the service standards required to win back trust. On the contrary, the problems with the Scheme are compounding the Home Office failings that led to the Windrush scandal in the first place.
- 4.8 We considered whether a transfer of the Scheme to be administered by another government department would resolve these issues, but concluded that the continuing trust issues affect the government as a whole and therefore recommend the transfer of the Scheme to a body independent of government.
- 4.9 Whilst we acknowledge that Home Office input will be required to determine immigration status and eligibility, this does not necessitate that the Scheme itself remain within the Home Office. We have carefully considered the risk that delays could be exacerbated by the transfer of the Scheme to an independent body. We conclude that transitional arrangements could appropriately address that risk, by allowing Claimants to choose whether to await the transfer, or for assessment of their claim to continue pending the transfer. Claimants should also have the option of requesting a re-assessment once the transfer is complete (including where an offer has been made and accepted prior to the transfer).

Recommendation 1:

- 4.10 We recommend that the Scheme be administered by a body or organisation independent of the Home Office and preferably independent of government entirely.

The role of the Independent Person

- 4.11 The Working Group notes the appointment in April 2021 of Professor Martin Levermore as the new Independent Person to advise on the Scheme. This

appointment was long awaited having been advertised in August 2020.²¹ The Independent Person replaced the former role of the Independent Advisor to the Scheme. They have a wider remit which includes advising on the delivery of the Scheme, scrutinising performance and measuring how well it is achieving its objectives. It is envisaged that the Independent Person will report directly to the Home Secretary on at least a six-monthly basis and will be supported by a secretariat function in the Home Office.

4.12 We consider this role, and its robust and effective execution, as being of great significance in increasing confidence in the independence and fairness of the Scheme. In order for this to be achieved, it is essential that the Independent Person be given sufficient resources to properly audit and check the administration of the Scheme, including its ability to provide justice to victims abroad who never re-settled in the UK, and enjoys full autonomy in selecting the methodology and samples of cases to be examined. Most importantly, the findings of the Independent Person must be transparently published. Currently the role description for the Independent Person (see Schedule 3) envisages only internal reporting to the Minister.

4.13 The recruitment exercise for the Independent Person envisaged that the Independent Person, amongst other things, “[review] management information, customer satisfaction data, and dip sampling of anonymised cases to analyse performance.” We understand that the Independent Person is now performing much of this work.

Recommendation 2:

4.14 The Independent Person should focus on holding the Home Office to account in respect of public statements it makes, and ensuring that the commitments made by the Home Office in relation to the Scheme are being delivered in practice, including whether:

- a) accurate and case specific and sufficiently detailed updates are being provided;
- b) cases are being progressed appropriately, and requests for information from other government departments or third parties, are made promptly and appropriately followed up;

²¹ See the recruitment pack for the appointment of the Independent Person included in Schedule 3 to this report, [available here](#).

- c) information provided to the Help Team is accurately recorded, and effectively passed to, and acted upon, by caseworkers.

4.15 The findings of the Independent Person should be available to the public. The credibility of the Scheme would benefit from maximum transparency. Public transparency will assist Claimants and others to hold the Home Office to account for delivering a good standard of service to often vulnerable Claimants.

The Windrush Oversight Board

4.16 The Windrush Oversight Board is meant to provide oversight and monitoring of the development and performance of the Scheme. The Oversight Board is made up of internal and external officials who meet on a quarterly basis and report to the Windrush Lessons Learned Programme Steering Group. The external members are the Independent Person and the Independent Adjudicator. If the role of the Independent Adjudicator is replaced (as discussed below) by the introduction of a complaints referral process directed to the new Independent Case Examiner for immigration and a new appeal route to an independent tribunal, then the Independent Adjudicator should be replaced on the Windrush Oversight Board by the new Independent Case Examiner as well as the Chamber President of the First-tier Asylum and Immigration Tribunal. The Windrush Oversight Board would also benefit from the addition of a person with lived experience of the Scheme or of dealing with Claimants to provide essential feedback from Claimants.

Recommendation 3:

4.17 There should be publicly available information on the role and findings of the Windrush Oversight Board and an agreed proportion of rejected claims should be reviewed by the Board to ensure the grounds being relied upon are fair and reasonable. Certain thresholds or triggers should also be agreed in which the Windrush Oversight Board becomes involved to review evidence, for example instances where specific groups or categories of vulnerable or disadvantaged Claimants are prevented from accessing, understanding or even being aware of the Scheme, for example Claimants based overseas who were forcibly removed from the UK. The Windrush Oversight Board should include at least one community representative with lived experience of the Scheme or experience of dealing with Claimants. Ideally the community representative

would be legally trained or have experience in social or community case work.

Quality of initial decision-making

- 4.18 Whilst the Working Group found a number of areas for improvement on the part of caseworkers and the handling of applications (discussed in the **Communications** chapter), it also appreciates the challenges facing caseworkers and the difficulty of the task expected of them. These challenges are made more severe by the lack of legal representation for many Claimants (discussed further below). Applications from unrepresented Claimants are likely to be less structured and require much greater analysis on the part of the caseworker, with an accordingly increased risk of misunderstanding or error. Such applications are less likely to clearly link relevant evidence to the appropriate question or category under the Scheme, or explain why the evidence presented is sufficient to establish the facts. The task of the caseworker therefore involves in many cases seeking to identify the relevant facts within a complex and potentially confusing or incomplete narrative, and then assess whether in all the circumstances the evidence threshold is met. Such an exercise has similarities with the assessment of evidence conducted by, for example, a District Judge.
- 4.19 The Home Office have stated – “*We want each person to get the maximum compensation to which they are entitled and will work with individuals to support them in this.*”²² This misunderstands the dynamic of the relationship between Claimants and the Home Office, and over-estimates the qualifications and training of caseworkers. The Working Group felt that caseworkers were equipped with neither the skillset, nor a sufficiently deep understanding of the issues, for the task of effectively eliciting further relevant information from Claimants in writing or in telephone conversations, or explaining what further evidence or information might assist in formulating or evidencing a successful claim. In this respect, the fact that the Scheme is administered by the Home Office, and the case workers are Home Office employees, means that any conversation with a Claimant is liable to start from a position of mistrust, fear and hostility.
- 4.20 Claimants of this Scheme will frequently suffer from mental health problems or may be otherwise ill-equipped to engage with officials. Claimants are

²² Windrush Compensation Scheme Caseworker Guidance, see above n 7, p 36.

unlikely to feel comfortable talking about traumatic personal experiences involving homelessness, destitution, unemployment, bereavement, loss of their human dignity and impact on mental health, with a stranger whom they understandably perceive as hostile to them. Building trust in such an environment is enormously difficult. The consequence is that Claimants are unable to best present their circumstances and are accordingly unlikely to receive the full compensation to which they are entitled. This is the opposite outcome to that which the Home Office explicitly desires.

Recommendation 4:

4.21 Recognising that cases are more complex and time consuming than the Home Office had anticipated²³ and that more training for caseworkers and quality assurance is required, the Working Group makes the following recommendations regarding caseworkers:

- a) Further training to be provided to caseworkers on the appropriate exercise of discretion in decision-making, reinforcing the overarching goal of the Scheme to provide full compensation to eligible Claimants;
- b) Caseworkers should be given clearer guidance on appropriate awards/methods for moderating awards to ensure consistency;
- c) Decision-making to be concentrated in fewer more qualified staff, with junior caseworkers providing support, collating evidence and preparing files for decision;
- d) Applications to be triaged to ensure that the more complex cases, or those involving more vulnerable Claimants, be allocated to more qualified caseworkers with additional training.

4.22 The Working Group also felt that, where Claimants wished (i.e. only at their own election) face-to-face meetings should be available, to be conducted only by appropriately qualified and trained caseworkers. However, given the history of Home Office treatment of the Windrush Generation, many Claimants will not wish to have a face-to-face meeting with Home Office staff. This must be accepted and respected. For similar reasons, interviews should not be conducted on Home Office premises. The purpose of such meetings would be to enable a Claimant to explain their experience and advance their Claim in the

²³ The Home Office originally estimated that each case would take on average 30 staff hours but up to 31 March 2021 the average time per case where compensation was paid was 154 hours. National Audit Office Report, see above n 17, para 4.4.

way they feel most helpful to them, assist in identifying areas where further evidence would be helpful, or where additional material (such as an independent psychiatric report) would assist in evaluating Impact on Life. The meeting should not be used to interrogate or challenge a Claimant's account and a full written record of the interview should be given to the Claimant.

Recommendation 5:

- 4.23** We recommend that face-to-face meetings be made available to all Claimants who request it. It is important that such interviews be carried out by skilled staff or independent assessors who show respect, empathy and have experience of working with vulnerable people. Face-to-face interviews will help to ensure Claimants have the correct evidence at the beginning of a claim and will draw out any additional evidence needed for the psychiatric reports such as an independent psychiatric report. As with claims more generally, conduct of these interviews should be triaged, based on their complexity, to different levels of caseworker.
- 4.24** We think that there would be value in providing online information in different formats for Claimants such as videos explaining the Scheme and what to include in the application form. This would help to make the Scheme more accessible.

Recommendation 6:

- 4.25** We recommend that information for Claimants is made available in the form of video guides on the Scheme and the application process.

Lack of Empathy, Care and Understanding

- 4.26** What may, taken individually, be seen as relatively minor claim-handling inefficiency or errors by the Home Office, may be perceived by a wronged Claimant as further examples of a Home Office which does not care for them or respect them and does not genuinely want to right the wrongs of the past – in short, a continuation of the “*culture of disbelief and carelessness*” identified by the Williams Review.²⁴ Such errors are unnecessary and avoidable and contribute to the lack of trust in the Scheme. The Working Group identified the following examples:

²⁴ Windrush Lessons Learned Review, see above n 3, p 7.

- Multiple caseworkers handling individual claims;
- Transfer of cases between caseworkers without informing the Claimant of the change or the reason for it;
- Failure to provide updates on progress when requested or promised;
- Failure to return calls when promised;
- Asking Claimants to nominate their preferred mode of communication, and then failing to follow that preference;
- Continuing to contact Claimants directly, even if they are legally represented;
- Withholding the full name and direct contact details of caseworkers;
- Repeated requests for information which has already been provided or is otherwise easily available to the Home Office;
- Inability of Helpline Team to provide information on progress of claims;
- Failing to link claims of family members with the primary Claimant's claim and ensure that the same case handler deals with connected claims.

“[T]hey had lost two of my compensation forms already, which they accept. . . I tried to apply for the vulnerable persons’ fund or the emergency fund and they just kept denying me basically. And that was it. . . . They said the forms must have got lost in the system. I tried to explain it’s getting cold out here, I’m running out of money and resources. . .

They said until they received a completed compensation form from me, they can’t help me. . . . I tried to explain – because of you, I’m living on the street and I’m finding it difficult to complete a compensation form where I’m living on the street. And my life is not structured due to the situation you’ve put me in. They didn’t seem to understand that. They just said, ‘well there’s nothing more we can do’. That was it”.²⁵

4.27 Several of these issues do not require further elaboration or are addressed in more detail in the **Communications** section of this report. Here, we focus on two particularly important points: delays and the provision of updates about a claim, and repeated requests for information which is already available.

²⁵ Carl Nwazota, see above n 16, p 3.

Delays and updates

- 4.28 Claimants should have the right to be kept informed of the status of their claim, the progress made, the reasons for delays encountered, and a realistic expected timescale for the resolution of their claim; not least because it is necessary to the restorative justice that the Scheme seeks to achieve.
- 4.29 Delays in dealing with claims in particular was an ongoing concern of both the Working Group and the stakeholders we interviewed. Leigh Day, a law firm which as of December 2020 has been instructed by 30 individuals for advice and assistance in obtaining compensation for losses suffered as a direct consequence of Windrush, reported:²⁶

“The length of time from the date that the application was submitted to the first request for further information ranges from 50 days to 410 days, with an average of 219 days. Following the submission of further evidence by applicants, there has then been a delay of between 37 and 259 days before a second request was made for evidence. In all cases there has then followed further delays before any offers have been made. The average length of time taken from the submission of an application to the receipt of an offer of compensation / rejection of the claim for Leigh Day clients is 425 days. Of our clients who are still waiting for an offer of compensation, the average waiting period as of today is 383 days, with clients waiting 576 days, 533 days, 495 days, 490 days and 470 days.”

- 4.30 The Home Office recognises the need for claimants to be informed of the status of their claim and has committed to providing a monthly update to each Claimant. However, the Working Group found that in many cases, regular updates are not provided in practice, and updates which are provided are frequently uninformative, relying on general assertions about heavy workload, delays in receiving evidence, or the complexity of the claim to explain delays. Accounts received by the Working Group reveal a perception of caseworkers hiding behind “complexity” as an excuse for delay.
- 4.31 A failure to provide updates where these have been promised, contributes to a lack of trust in the Scheme. Further, where there have been delays in processing

²⁶ Leigh Day, WCS0013 – The Windrush Compensation Scheme (written evidence to Parliament, Home Affairs Committee, December 2020), para 13, [available here](#) (accessed 05 November 2021). Leigh Day is a law firm having represented Windrush Claimants since May 2018.

claims, Claimants should be able to understand why these have occurred. A failure to provide full explanations has the effect of disenfranchising the Claimant and inevitably reduces their level of engagement – a Claimant cannot effectively engage if deprived of the facts necessary to engage. We discuss this further in the **Communications** section.

Requests for information

- 4.32 It is disappointing that on occasion relevant facts or evidence provided by a Claimant might be overlooked by a caseworker, and a request for further information made as a result. The Working Group was, however, surprised at the frequency with which this issue was raised by those engaging with the Scheme. As was explained by one firm working on applications:²⁷

“Clients are frequently being asked to provide evidence that they had already provided, causing them to feel like their applications are not being read or treated seriously. The repeated requests for evidence is a systemic problem in the Home Office, many clients having already gone through this experience before when trying to evidence their lawful status.”

- 4.33 Unfortunately, repeated requests for information or narrative that Claimants have already provided have a significant and disproportionate effect on the Claimant. They undermine trust in the Scheme, and importantly are reminders of the failings which led to the Windrush Scandal in the first place. Claimants feel that the Home Office is not listening to them, is ignoring or rejecting the evidence they provide, adopting a sceptical and suspicious approach, and seeking to delay the resolution of their Claim. This has the effect of re-traumatising Claimants who have already suffered significant harm.

Recommendation 7:

- 4.34 We recommend the introduction of a quality check before further requests of a Claimant are made. We also recommend greater emphasis in training on the importance of accuracy of work in this area, and the effect of repeated requests on individual Claimants and the credibility of the Scheme as a whole.

²⁷ Leigh Day, see above n 26, para 30.

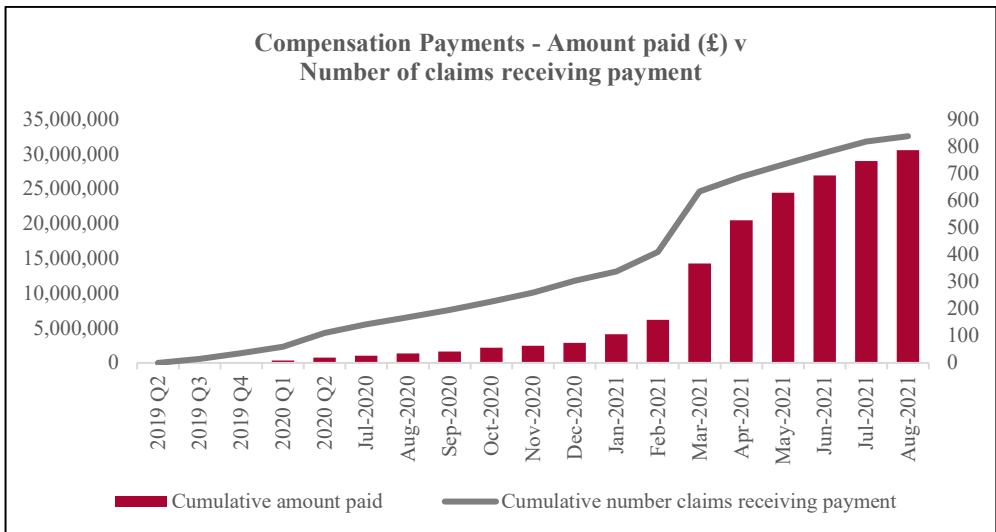
Preliminary payments

- 4.35 The Working Group welcomes the introduction in December 2020 of preliminary payments of £10,000. It reflected an acknowledgement that claims were taking too long, and that Claimants continued to suffer in the meantime. A preliminary payment is triggered at the point the Home Office accepts that the Claimant has suffered some qualifying impact on life. The lowest tier of payment (£10,000) is therefore made available to a qualifying Claimant, ahead of a full assessment of the extent of that impact on life, which may subsequently lead to a larger award under levels 2-5, together with payments due under other categories of the Scheme, but which will take longer to assess and determine.
- 4.36 The threshold of a level 1 award for impact on life is relatively low: *“Marked detriment such as inconvenience, annoyance, frustration and worry, where the effect on the Claimant was fairly short-lived (lasting up to a few weeks). Family events may have been missed.”*²⁸ Against this background, it is surprising that decision-making as to whether a preliminary payment is triggered appears to have been inconsistent. Those engaging with the Scheme on behalf of Claimants have noted that whilst preliminary payments have been made in straightforward, less serious cases, they have been declined in cases where there has been a greater impact on life, but the circumstances are more complex and difficult to assess quickly.
- 4.37 Furthermore, evidence from Working Group members indicates that rejections for a preliminary payment (which do not preclude the making of an award after full assessment) have been inadequately communicated, with the reasons for a preliminary payment being declined not being explained in the refusal letter. Further, there is no ability to seek review of the decision. Claimants are then left confused and disappointed, with reduced faith in the fairness of the Scheme, but without a proper understanding of why their claim has been rejected. In such circumstances they understandably doubt that their full claim will be fairly assessed. Claimants further reported confusion over whether a declined preliminary payment, equated to a rejection of their claim.

²⁸ Windrush Compensation Scheme Rules, August 2021, p 44, [available here](#) (accessed 04 November 2021).

Recommendation 8:

- 4.38** We recommend that where a preliminary payment is not awarded to Claimants, a reasoned explanation should be provided. For those who are still eligible for compensation, the letter should clearly state that the Claimant's claim will still be processed, providing an estimated timescale for a determination to be made. There should be greater consistency in decisions on preliminary payments and a mechanism to appeal negative decisions.



Unfairness in assessment of the heads of loss allowable under the Scheme

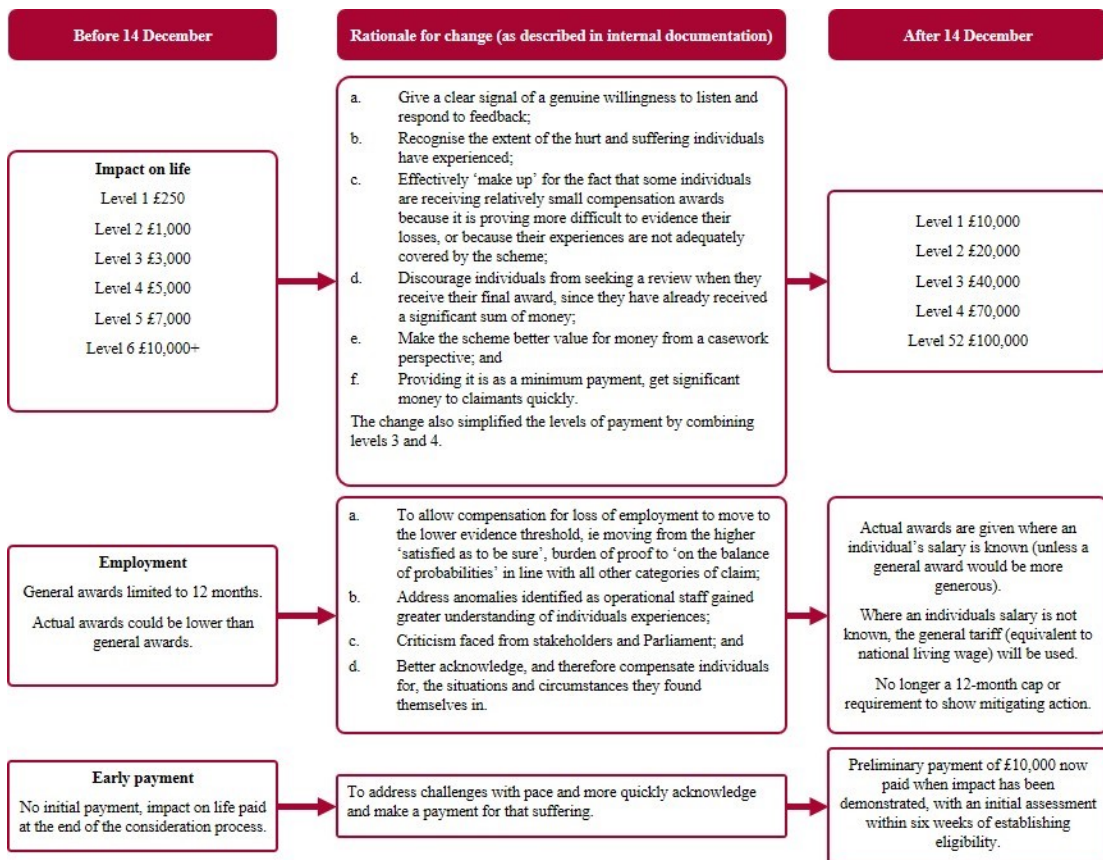
- 4.39** We have highlighted below a number of concerns about the way in which losses are calculated under the Scheme. The purpose of the Scheme should be to ensure that the compensation received by Claimants reflects all the losses they have suffered due to their inability to prove their legal status. This should be a guiding principle for all claims handlers when approaching the assessment of compensation and we recommend that the rules are amended to reflect this.

Recommendation 9:

- 4.40 The rules should be amended to clarify that the purpose of the Scheme is to ensure that the compensation received by Claimants reflects all the losses that they have suffered due to their inability to prove their legal status. A new paragraph 1.2 should be added to the Scheme rules: “The Scheme’s aim is to ensure that the compensation paid to each Claimant reflects all the losses suffered as a result of their inability to prove their lawful status. Every application for compensation shall be assessed with the intention of giving effect to this aim.”
- 4.41 **Impact on Life** – In December 2020, the tariffs available to compensate Claimants in respect of the Impact on Life were increased markedly, from a range between £250 and £10,000 to a range between £10,000 and £100,000 (which may be exceeded in some cases). The Working Group welcomes these increases in tariffs. However, the legacy of the original tariffs lives on in the memory of potential Claimants. They led many to conclude that the Scheme was not a genuine attempt to pay proper compensation. They were a significant contributor to the lower than anticipated number of applications to the Scheme and therefore more needs to be done to publicise the increased tariffs to restore trust in the Scheme.

Changes to the Windrush Compensation Scheme announced in December 2020

In December 2020, the Home Office (the Department) announced changes to the payments available for the impact on life and employment categories and introduced a preliminary payment



Notes

1. In December 2020, the Department announced policy changes to the scheme, citing Parliamentary and media criticism and stakeholder feedback as its reason.
2. The Department has the discretion to make higher awards where it feels is appropriate. At 31 March 2021, the Department had made no higher payments.

Source: National Audit Office analysis of submission letters to the Home Secretary, November 2020 and December 2020

- 4.42 The December 2020 changes also reduced the number of levels in the Impact on Life matrix, from 6 to 5. A consequence of this is that there are very significant disparities between the tariffs at each level, with each level dealing with a considerable range of Claimants and circumstances. A Claimant assessed at the top of level 3 will receive a tariff of £40,000. A Claimant assessed at the bottom of level 4 will receive a tariff of £70,000.

Recommendation 10:

- 4.43 The Working Group recommend that consideration be given to the creation of a further level (between level 3 and level 4) so as to ensure that tariffs are able to reflect the full range of Claimants and their circumstances.
- 4.44 In respect of evidential requirements, we recommend that a Claimant's account should be taken at face value, unless there is good reason not to believe it. This approach would be consistent with rebuttable presumptions in discrimination claims. It would also be consistent with the aim of the Scheme to award the maximum compensation to which a Claimant is entitled and is especially appropriate where there is an asymmetry of information about a person's treatment.
- 4.45 The Working Group identified concerns as to the difficulties of providing evidence to establish a claim at the higher levels (4 and 5). The criteria at level 4 and 5 might frequently be fulfilled by severe impact on the mental health of the Claimant. This would often require psychiatric or psychological assessment to fully diagnose and assess. There is provision under the Scheme for such assessment to be funded but there appeared to be a lack of awareness of this provision on the part of users of the Scheme (it is not mentioned on the claim form) and Home Office staff. The Home Office has allocated a budget of £200,000 to pay for Claimant's medical referrals, none of which had been spent as of 31 March 2021.²⁹ The following summary from a law firm is emblematic of this issue:³⁰

²⁹ National Audit Office Report, see above n 17, fig 12.

³⁰ Wilson Solicitors, *WCS0015 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), para 2, [available here](#) (accessed 05 November 2021). Wilson Solicitors are a law firm which has worked on Windrush Compensation Scheme applications since November 2019.

Our Claimants have not been given an opportunity to obtain a psychiatric assessment under the Scheme even where expressly requested and where evidence has been provided to show that the Claimant has suffered a psychiatric injury that is likely to require investigation by an expert psychiatrist. We understand this to be a widespread issue.

4.46 This is reflected in the lived experience of applicants:³¹

[M]entally, it's destroying me... I had no access to the NHS. So, when they ask for evidence to prove that I'm having mental health issues, where am I supposed to get this evidence from, considering I have no access to help? [Claimant A]

During that time, I have suffered from suicidal tendencies, I have had anxiety. I take tablets for anxiety. [Claimant B]

Recommendation 11:

4.47 We recommend that independent psychiatric assessments should be made available, for all those who request it, for assessment of Impact on Life Awards at Level 4 and above to provide an expert assessment of how a Claimant has been impacted. The opportunity to have such an assessment should be made available to each such Claimant at their own election and psychiatric reports should be paid for by the Home Office at the prevailing legal aid rates, with Claimants free to choose their own expert psychiatrist. The Home Office should also provide a list of approved independent psychiatrists able to produce reports at relative speed.

Loss of Earnings

4.48 The approach to calculating loss of earnings under the Scheme involves identifying a figure to reflect monthly earnings and multiplying by the number of months the Claimant was out of work as a consequence of not being able to establish their right to work. This approach provides a simple methodology for the straightforward case but leaves many Claimants under-compensated. It fails to take into account the fact that Claimants have more than the value of their earnings, they have lost their job, and potentially a career. They may never

³¹ Christian Hayibor et al., See above n 16, pp 9, 19 and 25.

be able to find alternative employment, or an equivalent position offering the same opportunities as the one they lost.

- 4.49** The Working Group recognises that calculating the true losses suffered by those who were unable to establish a right to work is complex. However, much more accurate calculations take place in the context of employment and personal injury claims. Here losses of bonuses and overtime that would likely have been received, loss of promotion/career progression, loss of statutory rights (a claimant who has to start a new role will have to work for two years before they are able to make a claim for unfair dismissal) and wage inflation are all recoverable. There is precedent for compensation schemes adopting a similar approach - under the Vibration White Finger Compensation Scheme loss of earnings were assessed on a common law basis.³²

Long-stop date for Claimants near retirement age

- 4.50** Currently, there is a long-stop date on the calculation of loss of earnings of three months after granting of documents. This is likely to have a particularly severe effect for those approaching retirement age by the time their documents were provided. At this point, they are likely to have been out of work for some time, and of an age where it is difficult to find a role in any event. Such a Claimant will inevitably struggle to find a new job, but had they been able to work, would have continued to work happily in their existing job until they retired (which may well have been considerably beyond state pension age). Where the age of the Claimant and their circumstances (including the length of time out of work) renders the Claimant unlikely to successfully obtain employment, even once evidence of their right to work is provided by the Home Office, the claimant should be compensated for loss of earnings up to retirement age.
- 4.51** Consideration should be given to compensating for loss of earnings up until retirement age.

Recommendation 12:

- 4.52** The Home Office should update the way in which it calculates loss of earnings to better reflect the true losses suffered by Claimants. They should consider the most appropriate way to do this drawing on experience from personal injury

³² Vibration White Finger Litigation Solicitors Group, Compensation Scheme, 22 January 1999, p 637, [available here](#) (accessed 05 November 2021).

and employment claims and other compensation schemes. The three month long stop date should be removed for those claimants who are near retirement and have been out of work for a significant period of time prior to the granting of documents evidencing their right to work.

- 4.53 Pensions** – The Scheme does not provide compensation for pension losses. Whilst there is some complexity in calculating such losses, this is not an insurmountable issue and is frequently done in the context of employment and personal injury claims where there are well established principles.³³ As was put by one non-profit organisation in its evidence to the Home Affairs Select Committee.³⁴

The Scheme does not recognise losses of pensions and savings. This is a significant failing. These are direct losses arising from the Home Office's conduct. Viewed through the lens of tort law, these are losses that would not have occurred "but for" the actions of the Home Office. Whenever this is challenged, Home Office staff are unable to provide any justification beyond stating that it is a feature of the Scheme Rules. That is a misleading defence as this is an ex-gratia scheme, and the Home Secretary retains full discretion as to modifying the Scheme Rules.

- 4.54** Many Claimants were forced to cash in pensions early when they were unable to work or claim benefits because of the actions of the Home Office. They also suffered a loss of private pension and National Insurance contributions by their employers while they were out of work. Calculating these losses is complex and requires actuarial evidence. The onus was on the Claimant to resolve their National Insurance record and reinstate their entitlement to state pension and other benefits. Claimants have found this process difficult and time consuming to navigate. We understand that the Home Office is working with the DWP to ensure that Claimant's National Insurance records are adjusted to give credit for lost years of employment to ensure that their entitlement to pension and other benefits is not adversely affected, which we welcome.

³³ See for example, Employment Tribunal, Principles for Compensating Pension Loss, 2021, [available here](#) (accessed 05 November 2021).

³⁴ Windrush Lives, *WCS0023 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, February 2021), para 13.9, [available here](#) (accessed 05 November 2021).

Recommendation 13:

- 4.55** Pension losses should be included in the loss of earnings category. Calculation of this loss will normally require actuarial input and should therefore either be done by the Government Actuary's Department, or the costs of instructing a pensions expert should be recoverable under the Scheme. Claimants should receive written confirmation that their National Insurance record will be rectified to reflect lost National Insurance contributions and given a date by which this will be done.
- 4.56** **Housing and homelessness** – the approach to the loss of housing is also overly simplistic. The Scheme provides for a payment of £250 per month for homelessness up to a maximum of £25,000. However, in a comparable civil claim, on the basis of case law such a loss would attract some £130-£150 per day in damages for suffering and loss of amenity.³⁵
- 4.57** We have heard examples of Claimants losing secure council tenancies as a result of inability to demonstrate lawful status, and once their status has been resolved, only being offered advice on private assured shorthold tenancies from the local council. The loss of a secure, affordable-rent home is a significant loss which should be properly compensated. In such circumstances the Home Office should work with the relevant Local Authority to find a mechanism to put the Claimant at the top of the housing allocation list for accommodation of a similar type and in a similar area to the accommodation that has been lost.

Recommendation 14:

- 4.58** The compensation provided to Claimants for homelessness should be reviewed and increased to a level that more properly reflects the suffering and distress caused. The Home Office should take positive steps to work with Local Authorities to find a mechanism to put any Claimant who has lost a secure Local Authority tenancy due to their inability to demonstrate their lawful status in the UK at the top of the housing allocation list for accommodation of a similar type and in a similar area to the accommodation which they lost.
- 4.59** We have described above a selection of concerns raised about the different heads of financial loss. It is worth noting that some people see the Scheme as

³⁵ See Duncan Lewis, *WCS0020 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, January 2020), para 26, [available here](#) (accessed 05 November 2021).

a missed opportunity to provide other support such as free counselling for those affected (a feature of other compensation schemes such as the Lambeth Children’s Home Redress Scheme) or to consider reconciliation initiatives and wider reparations. We have not addressed these issues in this report.

- 4.60 Criminality Bar** – The Scheme entitles the Home Office to reduce, or decline to make, an award where (i) an applicant has been convicted of a criminal offence and sentenced to more than four years imprisonment, and (ii) their offending was of such a nature that it makes it inappropriate to make an award in whole or part.³⁶ The latest caseworker guidelines³⁷ further specify that in these instances only awards for Impact on Life will be affected. Caseworkers are generally given discretion to reduce the compensation by 50% instead of declining it. Caseworkers shall consider circumstances since the release of a Claimant from prison (e.g. an applicant “having dedicated its life to working with the community and the police to prevent others committing similar crimes, or charity work”).
- 4.61** The Working Group could not find examples of other similar schemes where Claimants who have been harmed and are entitled to compensation, are nevertheless excluded on such a basis. Nor would the English courts treat a victim of a tort or of discrimination any differently as a result of any criminal convictions that an individual may have.³⁸ The approach risks creating the impression that Claimants under this Scheme are being treated differently, or being made subject to additional conditions or barriers, which are not applied to other groups. This not only undermines trust in the Scheme but, in the context of a group of largely black Claimants, appears discriminatory.

³⁶ Home Office, Windrush Compensation Scheme Rules, August 2021, rule 4.5, [available here](#) (accessed 05 November 2021)

³⁷ Home Office, Windrush Compensation Scheme – Guidance for decision makers considering cases under the Windrush Compensation, Version 7.0, 21 July 2021, p 24 et seq, [available here](#) (accessed 05 November 2021).

³⁸ See also Ravi Nayer, *WCS0016 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), para 5.16, [available here](#) (accessed 05 November 2021); Windrush Lives, *WCS0023 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, January 2021), para 13.11.1, [available here](#) (accessed 05 November 2021).

Lack of funded legal support to Claimants

- 4.62 The Home Office intended to design a Scheme which was clear and simple and have stated that the Scheme is “designed so that people should not need to seek help from the legal profession.”³⁹ However, a Scheme such as this is inevitably complex – a fact variously reflected in the number of changes made to the Scheme by the Home Office since its inception, and the extent of the guidance now provided to caseworkers (running to 97 pages). The distinction between the intention and the reality is also demonstrated by the time spent by caseworkers on each claim, as calculated by the NAO – “*The Department originally estimated it would take on average 30 staff hours to do everything required on a case, end to end. Up to 31 March 2021, cases that have resulted in a compensation payment being approved have involved 154 hours of staff time.*”⁴⁰ The reality is that the Scheme must take account of a wide range of Claimants, each with their varied and individual circumstances, and therefore will always have a degree of complexity which would prove challenging to a significant proportion of the population.
- 4.63 If a Claimant is not able to understand how their claim is to be assessed and adjudicated, they will inevitably struggle to formulate their claim effectively, identifying all relevant facts and applying them to the criteria of the Scheme. They will also struggle to understand the basis of the decision made, and accordingly assess whether it is a fair determination or open to challenge or review. Case studies are provided in Schedule 2 to illustrate the difficulties that Claimants face in making a claim without legal assistance.
- 4.64 The Home Office have made available a Claimant Assistance Service to support Claimants in completing compensation claims. This was initially provided by Citizens Advice, and since March 2021 has been provided by We Are Digital. At the outset referrals to these services could only be made by the Home Office’s Help Team (a telephone help line set up to provide information to claimants to assist with their claim). It is now possible for Claimants to access support from We Are Digital directly, without a referral from the Home Office which is a welcome development. We Are Digital provides support to

³⁹ Home Office, *WCS0018 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), para 9, [available here](#) (accessed 05 November 2021).

⁴⁰ National Audit Office Report, see above n 17, para 4.4.

eligible Claimants to complete the application form and supply relevant evidence for their claim. The service is offered face to face (over the telephone during the pandemic). Following an initial phone call, eligible Claimants will be booked an appointment with a local centre to make sure the form is filled in correctly and that relevant documents are included. We Are Digital work with partner community organisations around the country to provide Claimants with this service. We were informed by We Are Digital that between 1 March 2021 and 31 July 2021, 638 people were referred to We Are Digital for support. Of this number, 192 refused the offer of help and 405 bookings were made. A total of 155 people supported by We Are Digital went on to submit a claim.

- 4.65 The Working Group concluded, however, that the nature and extent of support under the Claimant Assistance Service is inadequate, and of limited value in either supporting vulnerable Claimants or maximising the efficiency and effectiveness of the Scheme. The time allocated to any individual Claimant under the Claimant Assistance Service is generally limited to a maximum of three hours (with some provision to request approval from the Home Office to allocate more time). Whilst this might be of some assistance to Claimants in filling in the right boxes on the claim form, it is insufficient to consider all the relevant facts, draw out additional information, identify potential sources of supporting evidence and coherently present a claim and supporting evidence.
- 4.66 The Working Group was told that all writing must be done by the Claimant personally. However, as described above, many Claimants require considerable assistance in communicating what has happened to them and presenting evidence to support their case. Further, communicating with the Home Office directly and alone can cause additional trauma.
- 4.67 Geographically, the availability of support provided by partner organisations is inconsistent, with no locations in Scotland, in England north of Leeds, or in the East of England north of Ipswich. Major cities with likely high numbers of potential Claimants, including Nottingham, Bristol, Liverpool and Wolverhampton do not have any physical venue offering We Are Digital support.⁴¹
- 4.68 The support also generally ceases following submission of the claim. A Claimant therefore does not have access to support when considering whether

⁴¹ See Schedule 4, [available here](#). This list was provided in response to a Freedom of Information Act request to the Home Office dated 7 September 2021.

any offer they might receive is fair and properly assessed under the Scheme (and therefore whether there is merit in pursuing further review).

- 4.69 From our discussion with We Are Digital, we understand that individuals providing the support are trained in dealing with vulnerable people and we acknowledge that they may have the best of intentions and provide some comfort. However, they do not provide any real measure of independence. There is no professional duty owed to the Claimant, the service standards are set and approved by the Home Office, and we understand that all training on the Scheme itself is provided by the Home Office. When questions arise on which We Are Digital staff cannot assist, the Claimant is signposted back to the Home Office. We Are Digital do not signpost Claimants to legal support. We conclude that this provision has limited value to individual Claimants or to the credibility of the Scheme as a whole.

Legal Assistance

- 4.70 Crucially, the We Are Digital services exclude advice on the merits and substance of an application. The nature of the services it provides is fundamentally different from, and falls short of, obtaining legal advice. However, the complexity of the application process and required evidence means that applicants often need to rely on legal assistance in preparing their forms and collating supporting materials, especially where expert medical or psychiatric reports are required, or where subject access requests need to be made to various organisations. We note that recoverability of legal fees is a common element in most comparable compensation schemes,⁴² despite the fact that many of these schemes are more straightforward for claimants to navigate.

- 4.71 As put by one Windrush Claimant:⁴³

When I read the compensation form, I knew straightaway it needed legal help. It was so obvious you had to get legal help but the way they worded it for

⁴² Such as the Lambeth Children's Home Redress Scheme, [available here](#) (accessed 05 November 2021); the Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020, [available here](#) (accessed 05 November 2021); the Manchester City Football Club Survivors' Scheme, [available here](#) (accessed 05 November 2021); the NHS Resolution Scheme, [available here](#) (accessed 05 November 2021); or the Diffuse Mesothelioma Scheme, [available here](#) (accessed 05 November 2021). See above further Nayer, n 38.

⁴³ Christian Hayibor et al., see above n 16, p 17.

anybody to read, it would seem like you were about to write out a children's book. The problem was they worded it simply, but they didn't tell you the in-depths of what you would be required to give. So, people were writing out the compensation claims, like myself, very sparingly.

- 4.72 The point that the application form and process are deceptively simple but in reality extremely complex is also evidenced elsewhere.⁴⁴ Experienced firms working in the public-law sphere have reported average preparation times of up to 45 hours per application.⁴⁵ Indeed, as mentioned above, the National Audit Office reports that Home Office case workers spent an average of 154 hours per claim,⁴⁶ further supporting the view that the Scheme is far from straightforward.
- 4.73 Further, the supposed simplicity of the Scheme is in some cases preventing Claimants accessing the legal assistance they required. We have had sight of an application for legal aid under the Exceptional Case Funding scheme which was rejected on the basis of the Home Office's assertion that the Scheme is not complex and has been designed to be directly accessible without the assistance of a lawyer. There are also reports of Home Office staff discouraging applicants from seeking legal advice.⁴⁷ A public acknowledgement by the Home Office that in fact legal representation is in principle justified could ameliorate that specific problem but would be unlikely to effectively resolve the funding challenges overall.
- 4.74 We note a general reluctance of firms to take on such cases on the basis that they are covered by legal aid funding (through the Exceptional Case Funding route), the availability of which may not be confirmed until work has been

⁴⁴ See e.g. Windrush Action, *WCS0009 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), para 19, [available here](#) (accessed 28 September 2021).

⁴⁵ Leigh Day, see above n 26, para 24.

⁴⁶ National Audit Office Report, see above n 17, para 4.4.

⁴⁷ North Kensington Law Centre, *WCS0014 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), p 5, [available here](#) (accessed 05 November 2021). North Kensington Law Centre is a non-profit organization which has been working on Windrush Compensation Scheme applications on a pro bono basis since July 2019.

concluded, and is thus conducted at the firm's risk. Taking on work, without any certainty of funding being available, even if successful, is not sustainable on any scale, particularly taking into account the general precariousness of firms conducting legal aid work.

- 4.75 The current position is creating delay and causing further harm. Claimants are reliant on a patchwork of organisations and firms providing legal support on a pro bono basis, but this is not available to all because of capacity, and is reliant on the good will and charity of professionals. The lack of alternative legal funding has led to firms offering their services on Damages Based Agreements typically requiring payment of 20-30% of the award received to legal representatives, and an instance of an agreement for 67% of the award to be paid to the legal representatives.⁴⁸ It is regrettable that Claimants should sacrifice a significant proportion of their award to legal costs, but such a situation arises as a direct consequence of the failure of the Scheme to make any provision for necessary legal costs. We believe the costs of legal advice can and should be modest and will be at least partially offset by savings generated elsewhere in the Scheme by improvement in the quality of applications and a narrower focus on the relevant issues.
- 4.76 We note that the Home Office has spent £773,000 on engagement activity and marketing and a further £500,000 on the Windrush Community Fund (plus almost £145,000 to Voices4Change to administer the fund).⁴⁹ Such provision would also generate non-financial benefits including an increase in the level of trust and confidence in the Scheme and a reduction in anxiety for vulnerable Claimants. To the extent that it might be argued that the wider involvement of legal representatives may maximise the value of claims, we note that such a result would be entirely consistent with the Home Office's stated aims for the Scheme, i.e., for each Claimant to receive the maximum compensation to which they are entitled.⁵⁰

⁴⁸ Jacqueline McKenzie, *WCS0033 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, July 2021), para 3.5 [available here](#) (accessed 05 November 2021).

⁴⁹ National Audit Office Report, see above n 17, pp 7 and 34.

⁵⁰ See e.g. Home Office, *Windrush Compensation Scheme Claim Form Guidance – Primary Claimant*, July 2021, p 2, [available here](#) (accessed 05 November 2021).

4.77 The Working Group concluded that the availability of funding for legal assistance is essential to delivering the aims of the Scheme and is furthermore an essential component of assuring the independence of the Scheme. The provision of legal assistance would benefit not only Claimants, but also the Home Office in several respects. Many of the problems the Working Group identify in this report could be resolved or at least ameliorated by the provision of funding for legal representation for Claimants:

- **Increase of Trust** – In our view, both Claimants and the Home Office will benefit from having an independent and trusted representative ensuring that a claim is comprehensive and effectively presented, and the decision on any claim is explained to and understood by the Claimant. A Claimant can make informed decisions based on the guidance of an independent legal representative who has professional obligations to them, and whom they have selected. Making funding available would also assist in the delivery of the Home Office’s stated aim of paying the maximum compensation a Claimant is entitled to.
- **Reduction of Trauma** – For reasons already set out, many Claimants and potential Claimants to this Scheme have been caused serious long-term harm by the failings of the Home Office. They have little appetite to engage with the Home Office, and find doing so frightening, stressful and traumatic. We have received multiple accounts of Claimants in clear physical distress at the prospect of a call with a Home Office representative, even in the presence of a legal advisor. The ability to engage with the Scheme via a legal representative could therefore greatly reduce the risk of exacerbating mental health problems and encourage claims from the most vulnerable people (often those most harmed, and most deserving of compensation).⁵¹
- **Discouragement of Unmeritorious Claims** – In our view, funding should only be available in respect of eligible claims. Our research suggests that legal services providers (currently acting largely on a pro bono basis) are frequently advising potential Claimants that they do not have a valid claim. We detected no appetite to pursue or encourage unmeritorious claims, but a desire to support Claimants in receiving the compensation to which they are entitled, and which the Home Office has

⁵¹ See case studies provided in Schedule 2 to this report, [available here](#).

repeatedly affirmed its policy is to provide. Increased availability of legal advice is likely to reduce the incidence of unfounded claims.

- **Reduction of Error** – An application prepared by a qualified legal professional who has spent time with, and been able to take instructions as required from, the Claimant, is far more likely to be comprehensive and focussed on the relevant issues. The claim and the basis for it are also likely to be clear and less open to misunderstanding. The NAO found rates of error that we find alarming, including that between 50-80% of files subject to quality assurance checks required further work by caseworkers.⁵² Direct engagement between the caseworker and the legal representative can easily and quickly clear up outstanding questions. This maximises the chances of the determination being right first time. This would reduce the incidence of error, and the consequential stress to the Claimant, loss of trust in the Scheme, delay and re-review.
- **Home Office cost savings** – As already mentioned, caseworkers spend an average of 154 hours per claim.⁵³ We also note the significant backlog, and delay in dealing with requested reviews at Tier 1 and Tier 2. The length of time necessary for a caseworker to review a claim could be reduced substantially in cases where the Claimant is aided by a legal representative, in turn reducing the costs of initial determinations, Tier 1 and Tier 2 reviews. The cost of provision of legal assistance would likely be substantially recuperated by savings made elsewhere in the Scheme.

Recommendation 15:

- 4.78 Funding should be made available for legal representation for all successful Claimants via (a) Legal Aid and/or (b) funding provided under the Scheme. Fees should be fixed on an incremental scale based on the monetary value of the award so that the claims based on the largest impact encourage proportionate legal work.
- 4.79 The Working Group acknowledge that bringing the Scheme within the scope of Legal Aid provision may require consultation with other government departments. This solution would however provide a long-term sustainable

⁵² National Audit Office Report, see above n 17, para 4.15.

⁵³ National Audit Office Report, see above n 17, para 4.4.

provision for the Scheme which, importantly, has no end date and therefore requires a lasting solution.

4.80 As an alternative, the Home Office could implement a solution to enable appropriate provision is made available to Claimants by:

- (1) Encouraging the Lord Chancellor to remove the existing barrier to Exceptional Case Funding (see above), so that the most complex cases are covered;
- (2) Introducing a simple and straightforward costs contribution scale within the Scheme itself. For example:
 - (1) Successful claim - £1,000
 - (2) Claim assessed at level 3 Impact on Life - £2,000
 - (3) Claim assessed at level 4 or above Impact on Life, or loss of earnings over £30,000 - £5,000
 - (4) Successful review at Tier 1 – additional £1,000
 - (5) Successful review at Tier 2 – additional £1,000
 - (6) Advice on an offer received where the legal representative has not previously acted on the claim - £350

4.81 We have provided indicative figures⁵⁴ so as to best illustrate the practicalities of such an approach, although a short consultation exercise may be desirable to confirm appropriate fee levels. The Working Group consider such a structure incorporating a simple bolt-on payment in respect of legal costs, without requiring any detailed assessment of costs, would be relatively straightforward, and provide excellent value for money.

⁵⁴ Based on a subjective assessment taking into account feedback from practitioners representing claimants on a paid or pro bono basis, as to estimated costs, time commitment, rates for comparable work on privately funded cases and under legal aid, and likely fees under damages based agreements.

V. COMMUNICATIONS – SUB-GROUP 2

5.1 The second sub-group examined the effectiveness of communication between the Home Office and Claimants, and engagement with the wider community affected by the Windrush scandal. Effective interaction is essential to delivering on the principles of the Scheme. The group focused on the following:

- (1) Access to caseworkers and the quality of dialogue between caseworkers and Claimants.
- (2) Communication between the Home Office and Claimants, including delays, requests for additional information, periodic progress updates, and the overall time span of claim assessment from initial application to final offer.
- (3) Whether opportunities for face-to-face interviews conducted by appropriately skilled caseworkers could improve communication and evaluation of Impact on Life claims.
- (4) Whether those with ‘lived experience’ were appropriately represented on advisory groups, particularly the now-disbanded Windrush Stakeholders’ Advisory Group. The effectiveness of this and other groups was explored, including the ability of such groups to influence Home Office policy, improve service delivery and facilitate effective communication with Claimants, including those based outside the UK.
- (5) The importance of cultural understanding and the impact of the scandal, including in the context of mistrust of the Home Office, and the desirability of the Home Office administering and adjudicating on compensation claims arising from its own failings and unjust treatment.
- (6) The quality of community engagement, which is crucial to the aim of ensuring that all those impacted are aware of and encouraged to apply under the Scheme. We assessed the effectiveness of Home Office-led engagement in comparison to engagement by grassroots organisations. We explored what more could be done to ensure a greater and more enthusiastic uptake of the Scheme, including in the Caribbean and other Commonwealth countries where a diaspora of victims remain – including those who suffered forced deportation or removal.

Interaction with Home Office Representatives

- 5.2** The group found that there was a severe lack of effective communication between Claimants and Home Office representatives. A constant theme in the evidence we considered was that many Claimants had no working knowledge of what was happening with their claims.
- 5.3** UNISON's evidence to the Home Affairs Select Committee described Home Office culture as one "*of disbelief and carelessness*",⁵⁵ and stated that victims are placed under scrutiny and claims treated with scepticism.⁵⁶ Windrush victims have stated that caseworkers demonstrate apathy,⁵⁷ a "*lack of empathy*",⁵⁸ and that "*there was never any sympathy.*"⁵⁹ Alexandra Ankrah, former Head of Windrush Compensation Policy described "*clear evidence of racism within the Civil Service staff and a toxic working environment that demonstrated an absence of genuine empathy and a lack of focus on righting wrongs.*"⁶⁰ Numerous case studies provided to the Select Committee reveal

⁵⁵ UNISON, *WCS0005 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), paras 14–17, [available here](#) (accessed 05 November 2021). Unison is a public service union and the UK's largest trade union with 1.3 million members; Leigh Day, see above n 26, para 31.

⁵⁶ UNISON, see above n 57, para 14.

⁵⁷ Anthony Williams, *WCS0021 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, November 2020), p 9, [available here](#) (accessed 05 November 2021), which, records his statements in an interview on behalf of the Home Affairs Select Committee held on 25 November 2020.

⁵⁸ Leigh Day, see above n 26, para 31: "*lack of empathy*"; Grace Nwobodo, in *WCS0025 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, January 2021), p 12, [available here](#) (accessed 05 November 2021), which records the personal experiences of Windrush victims when dealing with the Home Office as shared in a group discussion with the Home Affairs Select Committee on Tuesday 1 December 2020. Ms Nwobodo stated: "*We need to look very, very critically at the way the issues are handled by the so-called caseworkers. Because they do not empathise, they do not know sufficient information about individual cases or the cases they are supposed to be handling to be able to give informed information to the Claimants whenever a call is put into them.*"

⁵⁹ Glenda Caesar, see above n 16, p 8.

⁶⁰ Alexandra Ankrah, *WCS0027 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), paragraph 4, [available here](#) (accessed 05 November 2021).

that caseworkers lack understanding of the existential impact and destructive effects Home Office policies have had on Claimants, and fail to take account of this history when seeking to impose requirements on Claimants which, as a result of those policies, they are not in a position to fulfil.⁶¹

Recommendation 16:

- 5.4 We recommend that the Home Office ensures that all Claimants are treated with humanity, care, dignity and respect in all interactions. A sample of correspondence to Claimants and recordings of phone calls with the Help Team/caseworkers should be monitored by the Independent Person to the Scheme, to ensure the fair treatment of Claimants, and that information is provided in a clear, sensitive, and respectful manner.

Windrush Help Team

- 5.5 The Windrush Help Team was set up by the Home Office to provide information to people on how to apply for compensation and to resolve their status. They can also refer eligible claimants to We Are Digital for additional support. The group discussed the effectiveness of their role in helping people with enquiries on their compensation claims.
- 5.6 The Working Group heard evidence that verbal communication (with both the Help Team and caseworkers) failed to demonstrate cultural understanding – the manner in which members of minority communities articulate themselves is often misunderstood by Home Office representatives who misconstrue what is being communicated. Further, we heard complaints that Help Team workers were at times disrespectful,⁶² unhelpful or simply lacked knowledge of the

⁶¹ For example, Leigh Day, see above n 26, para 31: “One client’s employment of 20+ years was terminated as a consequence of not being able to prove his right to work in the UK. He was asked to explain why he had not applied for other jobs. Obviously he had not applied for other jobs as he had been dismissed on the basis that his employer could no longer lawfully employ him without further evidence of his right to work in the UK.” Carl Nwazota, see above n 16, p 4, who describes his experience as a Windrush victim when dealing with the Home Office: “They said until they received a completed compensation form from me, they can’t help me. That’s what they said. I tried to explain – because of you, I’m living on the street and I’m finding it difficult to complete a compensation form where I’m living on the street. And my life is not structured due to the situation you’ve put me in. They didn’t seem to understand that. They just said, ‘well there’s nothing more we can do’. That was it.”

⁶² Windrush Lives, see above n 34, para 13.6: “Employees [...] have at times been rude and dismissive.”

Scheme⁶³ or the status of an individual claim, despite having access to a central system recording the actions on a claim. We conducted a survey of organisations who assisted Claimants with their applications.⁶⁴ 89% of participants did not find the Help Team to be helpful in answering their or their clients' queries.⁶⁵

*"I called the helpline to see if they knew anything or could explain a bit more, but they just said you've got to wait until March. They didn't have any further information. They've come along and raised people's anxiety again, calling it 'fast-track' and making us think it would come tomorrow or in two days' time. We've been waiting long enough – almost three years now. We shouldn't have had to fight to get this changed."*⁶⁶

5.7 Moreover, when the Help Team are unable to assist a Claimant (or their representative) and the query is forwarded onto the caseworker, Claimants were left waiting long periods for a response.⁶⁷

⁶³ Windrush Lives, see above n 34, para 13.6.1, gives the following examples: *"Following the announcement of fast-tracked £10,000 payments to all primary and estate Claimants with an Impact on Life award assessed at least at level 1 – which the Home Secretary told Commons would begin the same week – several Claimants called the helpline, between 15 and 22 December, to ask when they would receive the payment. In all cases, helpline employees were unable to give an answer. In at least one case, the employee was not aware of the policy at all. In most cases, employees told Claimants that no information could be offered, and they should wait to be contacted by email at some point in January – which has not yet happened. In at least two cases, employees were described by Claimants as rude and seemingly unwilling to deal with questions."*

⁶⁴ Online survey conducted by Dechert (Dechert WCS Survey), see Schedule 1 for full survey, [available here](#). Organisations were also invited to upload evidence from the Home Office on different aspects of the scheme such as heads of loss and impact on life. The survey received eight responses.

⁶⁵ Dechert WCS Survey, answers to Question 14 ('Have the Help Team been helpful in answering your/your clients queries?'), July–September 2021.

⁶⁶ Glenda Caesar, *The Independent*, 'Some of us are dying': Windrush victims still have not received compensation Dozens of sufferers accuse ministers of 'publicity stunt', 03 January 2021, [available here](#) (accessed 05 November 2021) – see also Glenda Caesar, see above n 16, p 8.

⁶⁷ Anthony Williams, see above n 59, states on his experience with the Help Line: *"Five years living in isolation, with no work, hardly no money coming in, nothing. And these people are still not contacting me... I did try on a couple of occasions to phone the helpline. Which I didn't find helpful at all. Because you have to go through a process where you phone them at the helpline, then they put a note on your case, for someone in Sheffield or Leeds to pick up on, then to contact me. Why am I doing all this running around? I've got to contact them, for them to go there, for them contact me. They weren't interested, no*

- 5.8 A 64-year-old Claimant, who was refused entry into the UK, 40 years after being granted indefinite leave to remain and building a career as an engineer and financial consultant, supporting a wife and five children, explained:

*“I phone them regularly for an update and they tell me [the compensation claim] is processing. We have been through enough already, why are we being made to suffer a second time? They can't even give a rough estimate of when my claim will be looked at and that is not good enough.”*⁶⁸

- 5.9 Further, 44% of respondents reported that they or their clients found it difficult to get through to the Help Team.⁶⁹ Claimants or legal representatives rather needed to chase the Home Office for a response. It was also noted that legal representatives were getting a quicker response than those without legal representation leading to an apparent disparity in treatment between those with, and those without, legal representation. Similarly, it was found that “high profile” cases received their payments faster with 15% receiving payment within 12 months compared to 10% of ordinary claims.⁷⁰

Recommendation 17:

- 5.10 All Help Team staff should be provided with training in communicating with vulnerable people. When Claimants contact the Help Team requesting information on their claim, the enquiry should be forwarded onto caseworkers with a clear timescale of ten working days to respond to Claimants. A clear escalation route should be provided when Claimants have not received a response within the required timescale.

interest at all.”; Olivia Duffield, Dechert WCS Survey, answer to Question 13 (‘Have your/your clients found it difficult to get through to the Help Team?’), 2 September 2021; Una Morris, Dechert WCS Survey, answer to Question 13, 5 August 2021.

⁶⁸ Leeford Hammond, as quoted in *The Independent*, “Priti Patel wants you to think the Windrush compensation scheme works – this victim’s heartbreaking struggle shows the opposite Promises were made of a quick service to ‘right the wrongs’ of the government, but more and more people are dying before they receive a penny, let alone an apology,” 20 March 2020, [available here](#) (accessed 05 November 2021).

⁶⁹ Dechert WCS Survey, answers to Question 13 (‘Have your/your clients found it difficult to get through to the Help Team?’), July–September 2021.

⁷⁰ National Audit Office Report, see above n 17, p 28.

Caseworkers

5.11 The sub-group explored the communication between caseworkers and Claimants and/or their representatives. Three issues were identified – a) delay and lack of transparency; b) complex language in correspondence; and c) lack of skills, experience and training to engage effectively with traumatised, vulnerable people.

- (1) **Delays and lack of transparency:** In April 2021, the Home Office acknowledged that 21 people had died after submitting a claim but before receiving compensation.⁷¹ The effect of the delay itself is exacerbated by the lack of transparency on the progress of a claim.⁷² As mentioned above, the Home Office informed us that Claimants are meant to be sent monthly progress reports of their claim, but we found that this is not happening in practice. Whilst there are instances of individual caseworkers showing great dedication to keep applicants informed and make a positive difference,⁷³ more generally, there appeared to be a disconnect between policy and operations. The lack of monthly reports is one example of this. Legal advisors also question the substance of the

⁷¹ Written answer from the Home Secretary, 29 April 2021.

⁷² Carl Nwazota, see above n 16, p 3: who describes his experience as a Windrush victim when dealing with the Home Office as follows: *“I first applied in 2016. To date, I’ve done two application forms and none of them have been processed. I’m no further than that to be honest with you. [...] The contact from the Windrush team has been sporadic. That’s the best way I can describe it to you.”*; Anthony Williams, see above n 16, p 9, stated in connection with the first award that took the Home Office 15 months: *“Between those 15 months, I only received two phone calls from the help team or the caseworkers.[...] The second phone call was the same thing. Again, asking me for something, which I’d already told them about,”* Dominic Akers-Paul, see above n 16, p 19, who helped his mother with her application: *“They don’t really get back to you. I’m someone that has to pester them. They don’t show any sort of initiative to help you out. The way you get bounced around is also annoying. The number you get is to a standard hotline, you call that... the person on the hotline tells you, ‘oh well, I don’t know anything, I’ll put you through to your caseworker’. Nine times out of ten they are telling you your caseworker is unavailable, for whatever reason, at that time. So, it’s just pillar to post, easy to get frustrated.”*

⁷³ United Legal Access, WCS0007 – *The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), para 11, [available here](#) (accessed 05 November 2021). United Legal Access provides free initial legal advice and low-cost legal assistance. In August 2019, they started holding Windrush Support Surgeries in Nottingham.

current progress reports – “*robotic, scripted generic letters which do not tell us about the progress of our clients claim.*”⁷⁴

- 5.12 As mentioned above, the group felt that periodic updates would reassure Claimants that their claims were progressing and were being taken seriously, thus building trust in the process. The group therefore suggested reports every six weeks, which would be a more realistic and achievable timescale than monthly updates. Frequent communication would not only reduce traffic to the Help Team but also reduce the anxiety of Claimants and increase trust by providing transparency. In effect, the Home Office would be exercising good customer service skills and help to alleviate the concerns of their ‘customers’. A chronology of the work undertaken, with the date, action taken, and next steps would provide helpful information to Claimants and would also help reduce the length of final decision letters. In order to reduce the administrative burden but maximise the prospect of an update being truly informative and communicating genuine progress with the claim, the Working Group makes the following recommendation:

Recommendation 18:

- 5.13 Six weekly updates to be given to Claimants, providing a chronology of the action taken on the claim. This will reduce anxiety to Claimants whilst waiting for the decision of their claim and reduce telephone traffic to the Help Team.
- (1) **Complex language:** Correspondence to Claimants was a focus of the group, who noted that language was often hard to understand; letters were too lengthy; and the structure of letters did not make clear what the Claimant was required to do. This was particularly true of decision letters which provide a lengthy breakdown of each claim area and reasons why the Claimant has/has not met the criteria. Whilst letters are thorough, they are not succinct enough and there were reports that Claimants did not read past the first couple of paragraphs, therefore missing the key information. The key message/action was often towards the end of the letter and Claimants were unclear what action to take or the final amount awarded to them. A table with a breakdown of the costs awarded to Claimants was suggested by the group and should appear in the first couple of paragraphs.

⁷⁴ United Legal Access, see above n 73.

- (2) The Home Office recognises the value of clear plain English communications, as evidenced by the recent changes it made to the claim form and guidance which has been crystal marked by the Plain English Campaign. We recommend that the Home Office also use the Plain English Campaign to assist it to revise its letters so that they are easier for Claimants to understand. Simpler sentences, with fewer paragraphs, would improve Claimants' understanding of the progress/decision on their claim. We suggest letters should also be restructured so that the action required, or decision communicated, is summarised in the first paragraph of the letter.

Recommendation 19:

5.14 Decision letters to Claimants should be clear and written in plain English. The Home Office should buy-in expertise to help them to revamp their letters using an organisation such as the Plain English Campaign. Letters to be structured so that the decision of their claim is in the first paragraph of the letter indicating how much money the recipient had been awarded and/or the action required. This should then be followed by a more detailed breakdown of the decision.

- (1) **Skills, experience and training:** As the Windrush scandal has left victims traumatised, a great deal of sensitivity, empathy, and experience of dealing with vulnerable people is required to draw out the relevant information that is required to assess the Impact on Life category. The group identified that it is essential to develop greater cultural understanding particularly when dealing with members of minority communities. Claimants may face numerous barriers to communication including language, anxiety, trust, confidence, and a lack of understanding of the system by which victims have been disadvantaged. It is essential that caseworkers understand the impact that the Home Office policies have had on the mental health of many affected, and the degree of frustration that the scandal has caused to individuals. Greater tolerance, understanding and knowledge of de-escalation techniques should be employed by skilled caseworkers when dealing with Claimants.
- (2) Training is essential to ensure that caseworkers are able to interact with Claimants in a sympathetic and patient manner. The group felt that overall, caseworkers lacked sufficient experience to draw out personal and sensitive information from victims, and that the Home Office should

consider the level of experience appropriate for this challenging role. The group also agreed that, at the very least, caseworkers should receive training, including mental health training, to equip them with the relevant skills to de-escalate a situation when a Claimant becomes frustrated and to help draw out relevant information that would assist them with a claim. Legal representatives reported that in conversations with their clients, it could take over an hour to finally draw out the relevant piece of information which was the most relevant to their claim. Expertise and patience are required to obtain this sensitive information without re-traumatising Claimants who are reliving their experience.

- (3) The Working Group notes that Wendy Williams’ report contained a recommendation that the Home Office should devise, implement and review a comprehensive learning and development programme which makes sure all its existing and new staff learn about the history of the UK and its relationship with the rest of the world, including Britain’s colonial history, the history of inward and outward migration and the history of black Britons. In *The Response to the Windrush Lessons Learned Review: A Comprehensive Improvement Plan* published in September 2020 the Government confirmed its aim to introduce a history training programme by June 2021.

Recommendation 20:

- 5.15** Training should be provided to caseworkers in mental health, communicating with vulnerable people and cultural understanding of people from impacted communities. Guidance should also be produced on communicating with people from these communities.⁷⁵ This should be developed in consultation with community groups.

Outreach and Communications

- 5.16** The group looked at how effective the Home Office had been in raising awareness of the scheme. Up until the end of March 2021, the Department had spent £773,000 on engagement, outreach and communication activities.

⁷⁵ Windrush Compensation Scheme Caseworker Guidance, see above n 7, p 36. The limited guidance contained in the Casework Guidance states: “Remember that many of those affected have been in the UK for a long time and have suffered losses due to difficulties in demonstrating their lawful status. It is therefore important you treat these cases in a careful and sensitive manner and also You should contact claimants using their preferred contact method, as well as the preferred day/time that they would like to be contacted.”

Unsurprisingly, the Department's research during summer 2020 found that the main barriers to people applying to the scheme were: a) awareness, including continued lack of awareness of available help and low awareness of relevance and eligibility; and b) trust, including a fear that engagement with the Department may lead to Immigration Enforcement action and a perception that the benefits of applying do not outweigh the effort and likelihood of success.⁷⁶ The Home Office responded by launching an advertising campaign to help raise awareness of the Windrush Scheme, and a subsequent survey showed that pre- and post-campaign awareness of the Scheme in affected communities increased from 67% to 81% and that approximately 17,000 new users visited the campaign pages in the first few weeks of the media campaign.⁷⁷ Whilst the advertising campaign increased the number of visits to the campaign pages, these numbers did not translate into the number of people applying for the Scheme.

- 5.17 As at the end of August 2021, 2,761 claims had been submitted, as against the original estimate of some 15,000 Claimants. Whilst the Home Office has successively revised downwards the estimated number of Claimants to the Scheme, we saw little basis to conclude that the low number of Claimants was due to there being a lower than anticipated number of eligible individuals, as opposed to a lack of awareness and/or a reluctance to apply, due to the issues we describe within this report.
- 5.18 Trust was considered by the group as the fundamental factor in people not coming forward. For many, the perceived threat of deportation or removal by a department who wrongly deported British nationals during the scandal, is too much of a risk to even consider applying for the Scheme. The NAO concurred with this view in their report and found that *"Respondents who reported they would not apply for the scheme said this was because they: did not trust the Department or felt they would not be helped; were confused over eligibility; and had concerns that people were rarely compensated and that the schemes were a way to 'round [people] up.'"*⁷⁸

⁷⁶ National Audit Office Report, see above n 17.

⁷⁷ National Audit Office Report, see above n 17.

⁷⁸ National Audit Office Report, see above n 17.

- 5.19 As part of its campaign, the Home Office approached specialist community media partnerships; ‘in-kind partnerships’ with organisations such as housing associations; and the recruitment of 40 ‘community ambassadors’ from around the country (primarily in and around London), to help increase awareness of the Scheme and encourage eligible people to apply. However, it was unclear to the group what the 40 community ambassadors had achieved so far.
- 5.20 The Working Group considers that communication with the community should be handled at grassroots level through the commissioning of community organisations as opposed to being channelled through the Home Office. Organisations such as the Windrush National Organisation, have a wide reach across the country, have the knowledge of how to reach more isolated groups in the community and run regular outreach events to encourage people to apply for the Scheme.

Community Fund

- 5.21 The Home Office launched the Windrush Community Fund⁷⁹ in December 2020. It provides funding to charity, community or grassroots organisations for projects which promote and raise awareness of the Scheme. It has allocated £500,000 for the fund which will be allocated in two phases. It has contracted out the administration of the Fund to Voice4Change (V4CE), a national advocate for the Black and Minority Ethnic voluntary and community sector. The Department will pay V4CE nearly £145,000 between the December 2020 and September 2022. The role of V4CE is to promote the Windrush Community Fund, assess funding applications and make recommendations for funding to a sub-group of the Windrush Cross-Government Working Group, who make initial decisions on funding for the Department to approve. V4CE will also monitor and evaluate all successful projects.⁸⁰
- 5.22 Whilst the purpose of the community fund is to raise awareness of the Scheme, one issue identified by the Working Group is the misconception that only nationals from the Caribbean Commonwealth are eligible for the Scheme. The Public Accounts Committee recommended in March 2019 that the Home Office extend its historical reviews “beyond Caribbean Commonwealth nationals to include other Commonwealth nationals who may have been

⁷⁹ Home Office Windrush Community Fund, [available here](#) (accessed 05 November 2021).

⁸⁰ National Audit Office Report, see above, n 17.

wrongfully detained, removed or sanctioned under the compliant environment.” But, in June 2019, the Home Office rejected this recommendation and pointed to having already ‘conducted extensive outreach’ to raise awareness.

- 5.23** The National Audit Office reported in May 2021 that, in a survey by the Home Office, more than half of respondents thought the Scheme was relevant only to those from the Caribbean. The Home Office did not start its community fund to support outreach work until December 2020. In evidence to the Committee, the Home Office recognised that, in hindsight, it ‘could have been quicker off the mark’ with its efforts to engage with other affected communities and assured the Committee it was actively looking to ensure it promoted the Scheme across a broader range of communities, such as those from South Asia and West Africa, through its outreach events and community fund. The Home Office explained that further work is being carried out to raise awareness about the eligibility of potential claimants from other Commonwealth Countries.

Recommendation 21:

- 5.24** The Home Office should develop a targeted publicity campaign in consultation with community groups to reach out to affected communities, utilising existing events, black media channels, local authorities, church and community groups, such as the Windrush National Organisation; with a focus on reaching potential Claimants. In addition, the Home Office should commission grass roots organisations such as the Windrush National Organisation to raise awareness of the Scheme and to build trust in Claimants by encouraging them to apply and reassuring them that their application would not create a risk of deportation by the Home Office.

Windrush Advisory Groups

- 5.25** In September 2019, the Home Secretary launched a quarterly Windrush Stakeholder Advisory Group with a mix of church leaders, lawyers, community action groups and others from a range of geographical locations, to come together and advise and consult on communications and engagement strategy. The group, which has since been disbanded, provided the Home Office with insight into concerns from those on the ground.⁸¹ Members of this

⁸¹ Home Office Factsheet May 2020, [available here](#) (access 05 November 2021).

Working Group sat on the Windrush Advisory Group and its effectiveness was discussed in the sub-group meeting.

5.26 In June 2020, the Home Secretary launched the Windrush Cross-Government Working Group. The group, co-chaired by the Home Secretary and Bishop Derek Webley, brings together stakeholders and community leaders with senior representatives from relevant government departments to address the challenges faced by the Windrush generation and their descendants.

5.27 The purpose of the group is to:

- (1) provide strategic input into the Home Office's response to the Wendy Williams Lessons Learned Review
- (2) support the design and delivery of practical solutions to address the wider challenges that disproportionately affect people from Black and wider Black, Asian and Minority Ethnic backgrounds - this will include programmes on education, work and health
- (3) advise on the design and delivery of the Windrush Schemes Community Fund⁸²

5.28 The Windrush Cross-Government Working Group feeds into the Windrush Lessons Learnt Programme Steering Group, which includes senior staff from across the department and meets monthly to look at all Windrush matters including monitoring progress against the lessons learned recommendations.

5.29 The Working Group found that whilst the Home Office has shown a willingness to work through these advisory groups (Windrush Advisory Group and the Windrush Cross- Government Working Group) and listen to suggestions, the Advisory Group was not provided with feedback from the Home Office on how their suggestions were to be implemented. We were told by consultees that when the Advisory Group was in existence there was insufficient communication between them and the Cross-Government Working Group.

5.30 It was further highlighted that a more joined-up approach to communications, including three-way communications between Claimants' representatives, communication specialists employed by Home Office and the wider

⁸² Windrush Cross-Government Working Group, [available here](#) (accessed 05 November 2021).

department would assist in building bridges for more effective dialogue, with more tangible outcomes.

- 5.31** It was noted that there are currently no victim representatives on the Windrush Cross-Government Working Group.

Recommendation 22:

- 5.32** The Windrush Cross-Government Working Group should include people who are more representative of the community and those with ‘lived experience’. The former Windrush Stakeholder Advisory Group should be reinstated, or a similar group set up, to advise on the operation of the compensation scheme; and a Secretariat be made available to assist the group. The group should have regular contact with the Cross-Government Working Group and report into the Windrush Lessons Learned Programme Steering Group. It should also be provided with feedback on how its suggestions have been taken on board.

VI. APPEALS – SUB-GROUP 3

- 6.1** This part of the report examines how members of the Windrush Generation can challenge compensation scheme decisions and complain about the service they have received from the Home Office when it has been handling their application.
- 6.2** It is a fundamental principle of administrative justice that government bodies must have fair, accessible, and effective redress mechanisms. The Parliamentary and Health Service Ombudsman (PHSO) published its Principles for Remedy in 2009.⁸³ These principles provide guidance on how public bodies should provide remedies and how public bodies should put things right. We have been guided by these principles.

Parliamentary and Health Service Ombudsman, *Principles for Remedy (2009)*

1) Getting it right

- Quickly acknowledging and putting right cases of maladministration or poor service that have led to injustice or hardship.
- Considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service.

2) Being customer focused

- Apologising for and explaining the maladministration or poor service.
- Understanding and managing people's expectations and needs.
- Dealing with people professionally and sensitively.
- Providing remedies that take account of people's individual circumstances.

⁸³ Parliamentary and Health Service Ombudsman, Principles for Remedy, 2009, [available here](#) (accessed 05 November 2021).

3) Being open and accountable

- Being open and clear about how public bodies decide remedies.
- Operating a proper system of accountability and delegation in providing remedies.
- Keeping a clear record of what public bodies have decided on remedies and why.

4) Acting fairly and proportionately

- Offering remedies that are fair and proportionate to the complainant's injustice or hardship.
- Providing remedies to others who have suffered injustice or hardship as a result of the same maladministration or poor service, where appropriate.
- Treating people without bias, unlawful discrimination or prejudice.

5) Putting things right

- If possible, returning the complainant and, where appropriate, others who have suffered similar injustice or hardship, to the position they would have been in if the maladministration or poor service had not occurred.
- If that is not possible, compensating the complainant and such others appropriately.
- Considering fully and seriously all forms of remedy (such as an apology, an explanation, remedial action, or financial compensation).
- Providing the appropriate remedy in each case.

6 Seeking continuous improvement

- Using the lessons learned from complaints to ensure that maladministration or poor service is not repeated.
- Recording and using information on the outcome of complaints to improve services.

The Redress Process

- 6.3** The process by which individuals can seek redress as regards the Scheme is made up of three stages or tiers. The first stage, Tier 1, involves an internal review by a Home Office senior reviewer who was not involved in taking the initial compensation decision. At this stage, a person can ask for a review of a Home Office decision concerning their entitlement to compensation under the Scheme. A person can also complain to the Home Office about how it has handled their application. The second stage, Tier 2, currently involves a review by an independent person, the Independent Adjudicator (who is also the tax adjudicator). The Adjudicator can look at reviews and complaints and make appropriate recommendations. Beyond this, a complaint can be made to the Parliamentary and Health Service Ombudsman. Complaints cannot be made directly but must be referred through an individual's Member of Parliament. The Ombudsman can investigate complaints of maladministration and make recommendations.

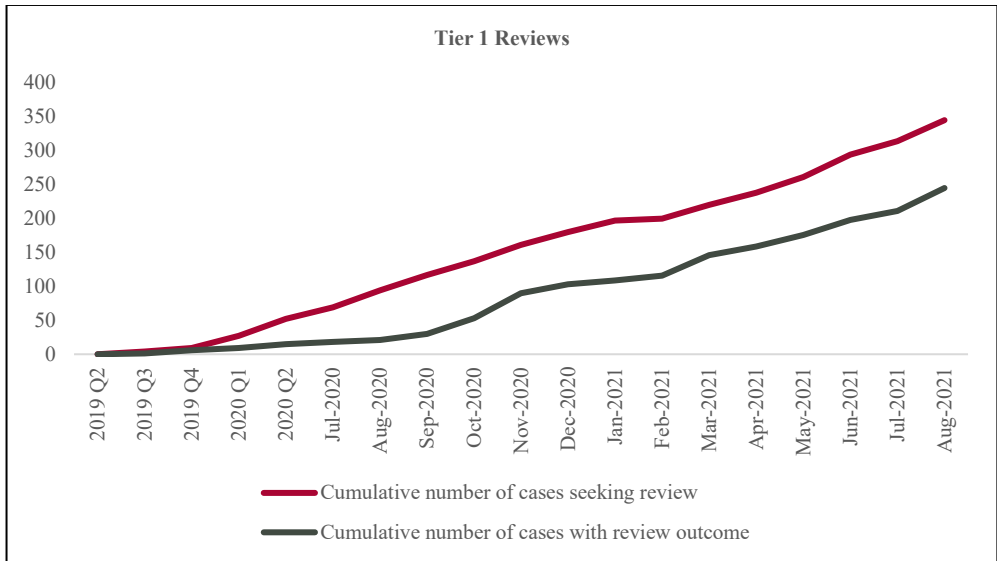
Tier 1 Reviews

- 6.4** Under the Scheme's rules, a Tier 1 review is determined by a more senior caseworker who was not involved in taking the original decision in respect of the claim. If the senior reviewer disagrees with a decision made by the original decision-maker to: (a) reject a claim (in whole or in part) on the grounds of eligibility; or (b) reduce or decline to make an award on the grounds of criminality or fraud, the senior reviewer must remit the case back to the Home Office for redetermination of the claim and will not consider any other ground of review.⁸⁴ In all other cases, the senior reviewer can make any decision that was open to the original decision-maker, including: (a) upholding a determination; (b) reinstating an initial determination that has since been revised; or (c) making a new determination.
- 6.5** According to Home Office data, as of August 2021, some 345 Tier 1 reviews had been requested of which 245 reviews have received an outcome.⁸⁵ However, this information relates to reviews requested following an offer of compensation (interim or full and final offers) or a zero award. A single claim

⁸⁴ Home Office, see above n 36, para 10.8.

⁸⁵ Home Office website, available [here](#) (accessed 05 November 2021).

could receive more than one review in different quarters/months. Reviews relating to eligibility decisions have been excluded from the statistics. Further, there is no published data on the outcome of reviews, i.e. the number of reviews that have been fully or partially upheld.



6.6 In principle, we agree that it is preferable to have Tier 1 reviews and complaints undertaken by the administrator of the Scheme (currently the Home Office). However, we are concerned about the quality of the Tier 1 reviews and complaints handling. We heard evidence from those advising Claimants that Tier 1 reviews rarely resulted in any change to the decision and the reasoning provided failed to address legitimate concerns. We also heard of instances where claims handlers discouraged Claimants from pursuing reviews.⁸⁶

“I have a case of a client who I believe received an inadequate offer. I offered to complete a Tier 1 review for her only to find that someone at the Home Office had told her that there was no point, that she would not get any further compensation and that lawyers were being misleading. In frustration she decided to accept what I believe to be an inaccurate offer”

6.7 Where awards did increase following a Tier 1 review, reasons given for the change were inadequate, which leaves Claimants unable to understand why the

⁸⁶ Jacqueline McKenzie, see above n 50, para 7.1.

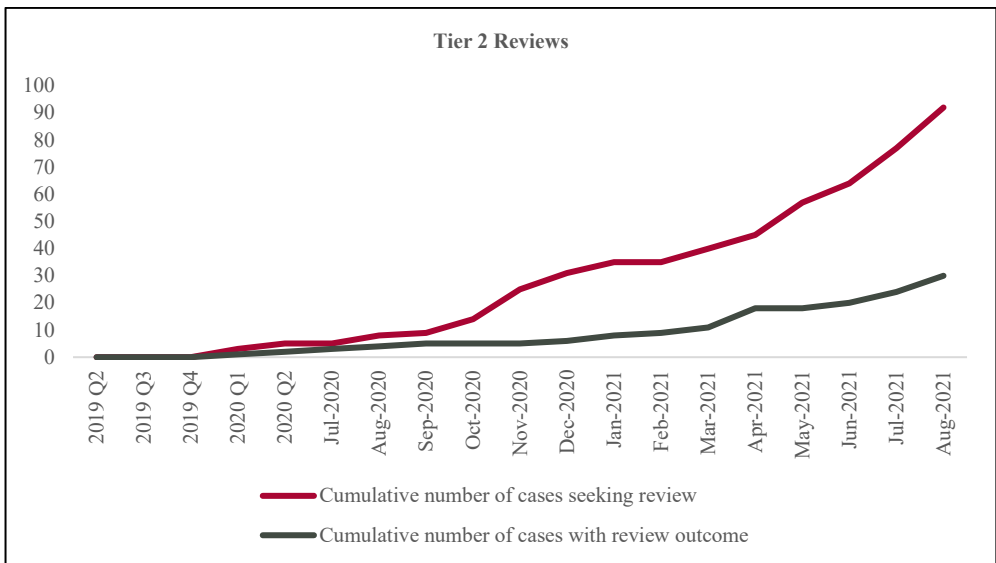
decisions were not made correctly in the first place.⁸⁷ We are also concerned about the apparent delay in dealing with Tier 1 reviews, which seems to be approximately 4 months (i.e. approximately 200 Tier 1 reviews had been requested by end February 2021; the number of outcomes only reached that level around the end of June 2021).

Tier 2 Reviews

- 6.8 Tier 2 reviews are currently undertaken by the Tax Adjudicator's Office, appointed by the Home Office to undertake the role of the Independent Adjudicator. Under the service level agreement between the Home Office and the Adjudicator's Office, the Adjudicator's remit consists of two elements. First, the Adjudicator can conduct an independent review of decisions made under the Scheme. Second, individuals can request a review of a complaint about how the Home Office has handled their claim for compensation under the Scheme. The Adjudicator is an independent body in the sense that it is separate from the Home Office.
- 6.9 The Adjudicator can examine matters such as: mistakes; unreasonable delays; poor or misleading advice; processes; whether relevant guidance has been followed; inappropriate staff behaviour; and the use of discretion. However, there are several matters that the Adjudicator cannot examine, including decisions on a person's eligibility for compensation under the Scheme. Further, the Adjudicator can only recommend that the Home Office reconsider an award. It cannot substitute its judgement for that of the Home Office. The Adjudicator can recommend that the Home Office uphold a determination, reinstate a determination that has since been withdrawn or revised, or make a new determination. The Adjudicator can also recommend any other consequential provision is required. If the Home Office does not accept and implement the Adjudicator's recommendation(s), then it should give written reasons for not doing so.

⁸⁷ Garden Court Chambers, *WCS0019 – The Windrush Compensation Scheme* (written evidence to Parliament, Home Affairs Committee, December 2020), para 20, [available here](#) (accessed 05 November 2021): “We are aware of cases where awards have been increased after the first review. What is distressing for Claimants however, in these cases, is that they struggle to understand why the correct award was not made in the first place. They feel as though they are still “fighting the system” even after the Home Secretary’s apology and acknowledgement of their experiences. In some cases, the review decision does not even identify the basis upon which the decision was altered.”

6.10 The Home Office has published information on the number of Tier 2 review applications received and those reviews in which an outcome has been reached. As of August 2021, 92 Tier 2 reviews have been received of which 30 have received an outcome. Again, we see evidence of delay and a growing backlog in Tier 2 reviews. By March 2020, 40 Tier 2 reviews had been requested, yet only a cumulative total of 11 reviews had received an outcome. The backlog had grown from 29 cases at the end of March to 62 cases by the end of August. There is no published information of the outcomes reached or what happens to such reviews when they are sent back to the Home Office. Crucially, we do not know how many recommendations from the Adjudicator’s Office have been either accepted or rejected.



An Independent Case Examiner for immigration complaints

6.11 Given the speed at which the Scheme was established, we understand why the Tax Adjudicator was given the role of being the Tier 2 reviewer. The *Windrush Lessons Learned Review* (2020) recommended that the Home Office commission an urgent review of the immigration complaints procedure and establish an Independent Case Examiner as a mechanism for immigration and nationality applicants to have their complaints reviewed independently of the

department.⁸⁸ We understand that the Home Office is in the process of appointing an Independent Case Examiner to review immigration complaints. When we started this Working Group it seemed sensible to explore expanding the remit of the Independent Adjudicator. It would now seem sensible to transfer this function to the new Independent Case Examiner for immigration complaints when it has been established.

- 6.12 At present, this role can only make recommendations, which can be rejected by the Home Office, undermining the effectiveness of the redress mechanism. We think that the power to make recommendations should therefore be replaced by the power to make binding recommendations. Further, in the interests of operating a transparent process, the Independent Case Examiner should publish a report on its casework including suitably anonymised reports of review/complaint outcomes.

Recommendation 23:

- 6.13 The Tier 2 review mechanism function should be transferred from the Tax Adjudicator to the Independent Case Examiner. The Independent Case Examiner should have the power to make binding recommendations and publish a report on its casework which includes anonymised reports of outcomes.

Reviews v Appeals

- 6.14 In examining the redress system, we have also considered its structure and operation. One particular issue is whether a person's grievances concerning their entitlement to compensation and the amount of compensation should be resolved by way of review or appeal.
- 6.15 There is an important distinction between a 'review' and an 'appeal'. A review involves a senior officer or independent person reviewing the decision of the initial caseworker. The outcome of a review is not binding on the Home Office. As we have noted above, the Adjudicator can make recommendations, which the Home Office will consider, but are not bound by.

⁸⁸ *Windrush Lessons Learned Review*, see above n 3, recommendation 20.

- 6.16 By contrast an ‘appeal’ typically involves a more formal judicial process by which an independent decision-maker, such as a tribunal, can substitute its decision for that of the original decision-maker.
- 6.17 There is an established system of tribunals. Asylum and immigration decisions taken by the Home Office can be appealed to the First-tier Tribunal (Asylum and Immigration Chamber). In other areas, such as the criminal injuries compensation and armed forces compensation schemes, applicants refused compensation can appeal to the First-tier Tribunal, an independent judicial body. The Tribunal hears the evidence and determines the matter afresh. The Tribunal’s decision on entitlement to compensation and the level of compensation to be awarded will replace that of the initial government decision-making body. The Tribunal’s decision will be legally binding. A similar avenue of redress is not available in the Scheme.
- 6.18 As a matter of principle, there are very strong arguments for having a right of appeal to the First-tier Tribunal, both against decisions concerning eligibility under the Scheme, and against decisions regarding the level of award. A right of appeal provides an independent and judicial mechanism for challenging decisions and, as we have noted, rights of appeal exist in other compensation schemes. We are aware that the Scheme was created quickly, but given the open-ended nature of the Scheme and the importance of the decisions, we think that it is appropriate and necessary to introduce a right of appeal.
- 6.19 Creating a right of appeal would require primary legislation. Nonetheless, we return to our starting point that the fundamental purpose of the Scheme is to compensate people who have suffered harm and injustice as a result of the Home Office’s failures throughout the Windrush scandal. There is a significant difference between the position of an individual overseas whose immigration application has been refused and the position of members of the Windrush Generation who suffered harm because of the way in which the Home Office applied immigration controls against people who were lawfully present in the UK and denied them access to jobs and services. Consequently, given the importance of Windrush compensation decisions to affected people, we can see no justification for denying Claimants under the Scheme the right to challenge compensation decisions before the First-tier Tribunal. We think that fairness and justice require it.

Recommendation 24:

- 6.20 There should be a right of appeal against compensation decisions to the First-tier Tribunal.
- 6.21 This would sit alongside the complaints mechanism (which, as we recommend above, should sit with the Independent Case Examiner). When challenging substantive refusal decisions or amount of compensation awarded, this would be done by way of appeal. When complaining about the way in which a claim was handled, for example a delayed decision then the complaints mechanism would be used. The experience of the Scheme suggests both appeals and complaint mechanisms are required, but that Claimants should be given clear advice about which to pursue depending on the nature of their grievance.

Complaints

- 6.22 We have considered the routes for redress and have found them to be complex and lacking in transparency. The Adjudicator's office has not received any complaints about the Scheme, only applications for reviews of compensation. Complaints are not well signposted to the Independent Adjudicator in Home Office correspondence and guidance.
- 6.23 We note that the proportion of cases progressing from a Tier 1 to a Tier 2 review is low. We heard from advisors that Claimants with good cases did not continue to Tier 2 because they did not have faith in the system following their experiences. Some reported feeling pressured to accept offers by Home Office caseworkers, who told them that they would not get a better award if they continued with the review process. Many Claimants were in precarious financial situations as a result of the Home Office policies and could not afford to wait for an appeal. Advisors described clients choosing to accept low offers in order to settle debts they had incurred as a result of Home Office policies and because they were weary of dealing with the Home Office.

The Parliamentary and Health Service Ombudsman

- 6.24 We also considered the role of the Parliamentary and Health Service Ombudsman (PHSO). The PHSO investigates complaints that have not been resolved by government and other systems. To date the PHSO has reported on two complaints by two people affected by Windrush on the handling of their

immigration status.⁸⁹ There have as yet been no reported investigations of complaints concerning the Scheme.

- 6.25 We are aware that the PHSO has been working with government to develop a Complaints Standards Framework which establishes common standards of complaint-handling.⁹⁰ We very much welcome this positive development. This framework will ensure that complaints-handlers are properly trained and can provide timely and informed advice as to customers' rights and what they could do next. We also acknowledge and commend the positive response from the Home Office to the PHSO's Complaint Standards Framework. We would like to see the Home Office go further by taking the lead among central Government departments and formally endorsing the Parliamentary Health Service Ombudsman's Complaints Handling Framework and implementing it fully in practice. In this respect, we must also note that we have encountered concerns that there is a relative lack of visibility within Home Office guidance for applicants about the role of the PHSO. We think that the Home Office could make it clearer to Claimants that they can escalate their complaint to the PHSO and that it is an independent and expert body. Guidance notes for applicants should be updated and include a flow chart showing how claims can be reviewed including through the PHSO.

Recommendation 25:

- 6.26 In addition to establishing an Independent Case Examiner, the Home Office should also use the learning from the following report produced by the PHSO, *Making Complaints Count: Supporting complaints handling in the NHS and UK Government Departments* (HC 390 2019-21). The Home Office should formally endorse the PHSO's Complaints Standards Framework and implement it fully in practice.

⁸⁹ Parliamentary and Health Service Ombudsman, Final Investigation Report – UK Visas and Immigration, 2020, [available here](#) (accessed 05 November 2021); and An investigation into UK Visas and Immigration's handling of Windrush man's status, 2021, [available here](#) (accessed 05 November 2021).

⁹⁰ Parliamentary and Health Service Ombudsman, Making complaints count: supporting complaints handling in the NHS and UK government departments. (HC 390 2019-21), [available here](#) (accessed 05 November 2021).

The PHSO and the MP Filter

- 6.27** The MP filter is the statutory requirement that anyone wishing to complain about central government to the PHSO must first make their complaint to their MP who then refers the matter to the PHSO. The MP filter is a longstanding issue. It is recognised that urgent reform of the MP filter is required.⁹¹
- 6.28** We examined the impact of the MP filter on Claimants who may wish to escalate their complaint to the PHSO. Claimants expressed concerns about having to access the PHSO via their MP. We heard that they found the requirement to be discouraging and likely to deter them from escalating their complaint. Claimants were reticent about approaching their MP owing to the sensitive subject matter of their immigration status and the politicised nature of Windrush and the Scheme. We also heard evidence that in practice some MPs did not respond promptly to requests to escalate cases to the PHSO, in some cases taking up to a year to make such referrals, which similarly discourages the exercise of this right. Consequently, we think that this reinforces long-standing concerns about the operation of the MP filter. We therefore recommend that the MP filter should be removed, and that people should be able to access the PHSO directly.

Recommendation 26:

- 6.29** The Government should act on a long-standing commitment to abolish what is widely considered to be the ‘anachronism’ of the MP filter.⁹² This prevents citizens bringing complaints directly to the PHSO and therefore obstructs access to mechanisms to enforce individuals’ rights. In the interim, the Ombudsman should explore with Members of Parliament if there are more effective ways of handling the transfer of complaints from MP to Ombudsman.

Own-initiative investigations

- 6.30** We also considered the wider role and importance of the PHSO as the ultimate expert body given responsibility by Parliament to investigate maladministration by government. We considered the real possibility that

⁹¹ House of Commons Public Administration Select Committee, *Time for a People’s Ombudsman Service* (HC 655 2013–14), [available here](#) (accessed 05 November 2021).

⁹² House of Commons Public Administration Select Committee, see above n 91.

many people will not escalate their complaint to the PHSO even though they have suffered injustice as a result of maladministration or will face the hurdle of an unresponsive constituency MP. Both the Northern Ireland Public Services Ombudsman and the Public Services Ombudsman for Wales have the power to undertake ‘own-initiative’ investigations in the public interest when they have a reasonable suspicion that there is systemic maladministration. Very few complaints about the Scheme have been submitted to the PHSO, however, if the PHSO had this power it would have enabled him to investigate issues of maladministration without receiving complaints.

- 6.31 The Working Group were struck by the first-own initiative investigation by a UK Ombudsman, the report on Personal Independence Payments by the Northern Ireland Public Services Ombudsman.⁹³ The report is a very detailed, evidence-based investigation that identifies maladministration and makes several recommendations.
- 6.32 We think there is a strong case for conferring a similar power upon the PHSO. We are fortified in this respect by the support given to such a proposal by the House of Commons Public Administration Select Committee, which acknowledged that ‘own-initiative’ powers would give the PHSO the ‘ability to respond better to early warning signals and to gain greater insight into service problems.’⁹⁴

Recommendation 27:

- 6.33 The PHSO ought to have the ability to undertake investigations of its own initiative.

⁹³ Northern Ireland Public Services Ombudsman, *PIP and the Value of Further Evidence: An investigation by the Northern Ireland Public Services Ombudsman into Personal Independence Payment* (Belfast: NIPSO, 2021), [available here](#) (accessed 05 November 2021).

⁹⁴ House of Commons Public Administration Select Committee, see above n 91.

VII. RECOMMENDATIONS

Recommendation 1:

- 7.1** We recommend that the Scheme be administered by a body or organisation independent of the Home Office and preferably independent of government entirely.

Recommendation 2:

- 7.2** The Independent Person should focus on holding the Home Office to account in respect of public statements it makes, and ensuring that the commitments made by the Home Office in relation to the Scheme are being delivered in practice, including whether:
- (1) accurate and case specific and sufficiently detailed updates are being provided;
 - (2) cases are being progressed appropriately, and requests for information from other government departments or third parties, are made promptly and appropriately followed up;
 - (3) information provided to the Help Team is accurately recorded, and effectively passed to, and acted upon, by caseworkers.
- 7.3** The findings of the Independent Person should be available to the public. The credibility of the Scheme would benefit from maximum transparency. Public transparency will assist Claimants and others to hold the Home Office to account for delivering a good standard of service to often vulnerable Claimants.

Recommendation 3:

- 7.4** There should be publicly available information on the role and findings of the Windrush Oversight Board and an agreed proportion of rejected claims should be reviewed by the Board to ensure the grounds being relied upon are fair and reasonable. Certain thresholds or triggers should also be agreed in which the Windrush Oversight Board becomes involved to review evidence, for example instances where specific groups or categories of vulnerable or disadvantaged Claimants are prevented from accessing, understanding or even being aware of the Scheme, for example Claimants based overseas who were forcibly removed from the UK. The Windrush Oversight Board should include at least one community representative with lived experience of the Scheme or

experience dealing with Claimants. Ideally the community representative would be legally trained or have experience in social or community case work.

Recommendation 4:

7.5 Recognising that cases are more complex and time consuming than the Home Office had anticipated and that more training for caseworkers and quality assurance is required, the Working Group makes the following recommendations regarding caseworkers:

- (1) Further training to be provided to caseworkers on the appropriate exercise of discretion in decision-making, reinforcing the overarching goal of the Scheme to provide full compensation to eligible Claimants;
- (2) Caseworkers should be given clearer guidance on appropriate awards/methods for moderating awards to ensure consistency;
- (3) Decision-making to be concentrated in fewer more qualified staff, with junior caseworkers providing support, collating evidence and preparing files for decision;
- (4) Applications to be triaged to ensure that the more complex cases, or those involving more vulnerable Claimants, be allocated to more qualified caseworkers with additional training.

Recommendation 5:

7.6 We recommend that face-to-face meetings be made available to all Claimants who request it. It is important that such interviews be carried out by skilled staff or independent assessors who show respect, empathy and have experience of working with vulnerable people. Face to-face interviews will help to ensure Claimants have the correct evidence at the beginning of a claim and will draw out any additional evidence needed for the psychiatric reports such as an independent psychiatric report. As with claims more generally, conduct of these interviews should be triaged, based on their complexity, to different levels of caseworker.

Recommendation 6:

7.7 We recommend that information for Claimants is made available in the form of video guides on the Scheme and the application process.

Recommendation 7:

- 7.8 We recommend the introduction of a quality check before further requests of a Claimant are made. We also recommend greater emphasis in training on the importance of accuracy of work in this area, and the effect of repeated requests on individual Claimants and the credibility of the Scheme as a whole.

Recommendation 8:

- 7.9 We recommend that where a preliminary payment is not awarded to Claimants, a reasoned explanation should be provided. For those who are still eligible for compensation, the letter should clearly state that the Claimant's claim will still be processed, providing an estimated timescale for a determination to be made. There should be greater consistency in decisions on preliminary payments and a mechanism to appeal negative decisions.

Recommendation 9:

- 7.10 The rules should be amended to clarify that the purpose of the Scheme is to ensure that the compensation received by Claimants reflects all the losses that they have suffered due to their inability to prove their legal status. A new paragraph 1.2 should be added to the Scheme rules: "The Scheme's aim is to ensure that the compensation paid to each Claimant reflects all the losses suffered as a result of their inability to prove their lawful status. Every application for compensation shall be assessed with the intention of giving effect to this aim."

Recommendation 10:

- 7.11 The Working Group recommend that consideration be given to the creation of a further level (between level 3 and level 4) so as to ensure that tariffs are able to reflect the full range of claimants and their circumstances.
- 7.12 In respect of evidential requirements, we recommend that a Claimant's account should be taken at face value, unless there is good reason not to believe it. This approach would be consistent with rebuttable presumptions in discrimination claims. It would also be consistent with the aim of the Scheme to award the maximum compensation to which a Claimant is entitled and is especially appropriate where there is an asymmetry of information about a person's treatment.

Recommendation 11:

- 7.13** We recommend that independent psychiatric assessments should be made available, for all those who request it, for assessment of Impact on Life Awards at Level 4 and above to provide an expert assessment of how a Claimant has been impacted. The opportunity to have such an assessment should be made available to each such Claimant at their own election and psychiatric reports should be paid for by the Home Office at the prevailing legal aid rates, with Claimants free to choose their own expert psychiatrist. The Home Office should also provide a list of approved independent psychiatrists able to produce reports at relative speed.

Recommendation 12:

- 7.14** The Home Office should update the way in which it calculates loss of earnings to better reflect the true losses suffered by claimants. They should consider the most appropriate way to do this drawing on experience from personal injury and employment claims and other compensation schemes. The three month long stop date should be removed for those claimants who are near retirement and have been out of work for a significant period of time prior to the granting of documents evidencing their right to work.

Recommendation 13:

- 7.15** Pension losses should be included in the loss of earnings category. Calculation of this loss will normally require actuarial input and should therefore either be done by the Government Actuary's Department, or the costs of instructing a pensions expert should be recoverable under the Scheme. Claimants should receive written confirmation that their National Insurance record will be rectified to reflect lost National Insurance contributions and given a date by which this will be done.

Recommendation 14:

- 7.16** The compensation provided to Claimants for homelessness should be reviewed and increased to a level that more properly reflects the suffering and distress caused. The Home Office should take positive steps to work with Local Authorities to find a mechanism to put any Claimant who has lost a secure Local Authority tenancy due to their inability to demonstrate their lawful status in the UK at the top of the housing allocation list for accommodation of a similar type and in a similar area to the accommodation which they lost.

Recommendation 15:

- 7.17** Funding should be made available for legal representation for all successful Claimants via (a) Legal Aid and/or (b) funding provided under the Scheme. Fees should be fixed on an incremental scale based on the monetary value of the award so that the claims based on the largest impact encourage proportionate legal work.

Recommendation 16:

- 7.18** We recommend that the Home Office ensures that all Claimants are treated with humanity, care, dignity and respect in all interactions. A sample of correspondence to Claimants and recordings of phone calls with the Help Team/caseworkers should be monitored by the Independent Person to the Scheme, to ensure the fair treatment of Claimants, and that information is provided in a clear, sensitive, and respectful manner.

Recommendation 17:

- 7.19** All Help Team staff should be provided with training in communicating with vulnerable people. When Claimants contact the Help Team requesting information on their claim, the enquiry should be forwarded onto caseworkers with a clear timescale of ten working days to respond to Claimants. A clear escalation route should be provided when Claimants have not received a response within the required timescale.

Recommendation 18:

- 7.20** Six weekly updates to be given to Claimants, providing a chronology of the action taken on the claim. This will reduce anxiety to Claimants whilst waiting for the decision of their claim and reduce telephone traffic to the Help Team.

Recommendation 19:

- 7.21** Decision letters to Claimants should be clear and written in plain English. The Home Office should buy-in expertise to help them to revamp their letters using an organisation such as the Plain English Campaign. Letters to be structured so that the decision of their claim is in the first paragraph of the letter indicating how much money the recipient had been awarded and/or the action required. This should then be followed by a more detailed breakdown of the decision.

Recommendation 20:

- 7.22** Training should be provided to caseworkers in mental health, communicating with vulnerable people and cultural understanding of people from impacted communities. Guidance should also be produced on communicating with people from these communities.⁹⁵ This should be developed in consultation with community groups.

Recommendation 21:

- 7.23** The Home Office should develop a targeted publicity campaign in consultation with community groups to reach out to affected communities, utilising existing events, black media channels, local authorities, church and community groups, such as the Windrush National Organisation; with a focus on reaching potential Claimants. In addition, the Home Office should commission grass roots organisations such as the Windrush National Organisation to raise awareness of the scheme and to build trust in Claimants by encouraging them to apply and reassuring them that their application would not create a risk of deportation by the Home Office.

Recommendation 22:

- 7.24** The Windrush Cross-Government Working Group should include people who are more representative of the community and those with ‘lived experience’. The former Windrush Stakeholder Advisory Group should be reinstated, or a similar group set up, to advise on the operation of the compensation Scheme; and a Secretariat be made available to assist the group. The group should have regular contact with the Cross-Government Working Group and report into the Windrush Lessons Learned Programme Steering Group. It should also be provided with feedback on how its suggestions have been taken on board.

Recommendation 23:

- 7.25** The Tier 2 review mechanism function should be transferred from the Tax Adjudicator to the Independent Case Examiner. The Independent Case Examiner should have the power to make binding recommendations and

⁹⁵ Windrush Compensation Scheme Caseworker Guidance, see above n 75.

publish a report on its casework which includes anonymised reports of outcomes.

Recommendation 24:

- 7.26** There should be a right of appeal against compensation decisions to the First-tier Tribunal.

Recommendation 25:

- 7.27** In addition to establishing an Independent Case Examiner, the Home Office should also use the learning from the following report produced by the PHSO, *Making Complaints Count: Supporting complaints handling in the NHS and UK Government Departments* (HC 390 2019-21). The Home Office should formally endorse the PHSO's Complaints Standards Framework and implement it fully in practice.

Recommendation 26:

- 7.28** The Government should act on a long-standing commitment to abolish what is widely considered to be the 'anachronism' of the MP filter.⁹⁶ This prevents citizens bringing complaints directly to the PHSO and therefore obstructs access to mechanisms to enforce individuals' rights. In the interim, the Ombudsman should explore with Members of Parliament if there are more effective ways of handling the transfer of complaints from MP to Ombudsman.

Recommendation 27:

- 7.29** The PHSO ought to have the ability to undertake investigations of its own initiative.

⁹⁶ House of Commons Public Administration Select Committee, see above n 92.

VIII. ACKNOWLEDGEMENTS

I would like to thank the Working Group and sub-groups for sharing their experience, knowledge and expertise on the compensation scheme. I assure you that your time was well spent as your wisdom and experience of working on the Scheme is invaluable and I hope that we do this justice in our report.

A huge thank you to Dechert, who provided pro bono support for the report through extensive research, attending meetings and drafting the final report. We are also thankful for the funding they contributed. A special thank you to pro bono counsel Marion Edge and partner Tim Bowden for their continued support throughout the project and their team who assisted in researching and compiling evidence for the report, especially Fergus Barratt.

Thanks are also due to Heidi Bancroft, the Working Group's Rapporteur for coordinating the Working Group and this report.

We are extremely appreciative to organisations that took part in our survey and shared anonymous evidence from their interactions with the Home Office. This written evidence strengthened the anecdotal evidence we heard throughout the project and adds additional value to our report.

We are particularly grateful to the following people who we met for evidence gathering purposes, and who shared their expertise in specific areas addressed in the report. Your knowledge and advice have been an essential part of our work:

Alexandra Ankrah, former Head of Windrush Policy, Home Office

Nicola Burgess, the Joint Council for the Welfare of Immigrants

Jeremy Bloom, Duncan Lewis LLP

Anthony Brown, Windrush Defenders

Glenda Caesar, Windrush Lives

Tom Grieg, Home Office

Caroline Lawless, Home Office

Martin Levermore, the Independent Person to the Scheme

Jacqueline McKenzie, Leigh Day

Chris Minnoch, Legal Aid Practitioners Group

Ravi Nayer, Quinn Emanuel Urquhart & Sullivan LLP

Sibon Phiri, United Legal Access

Peter Raynor, We Are Digital

Dave Burn, Samantha Young & Jennifer Obaseki, Windrush Legal Angels

We also met with the Clerk to the Home Affairs Select Committee to discuss our findings and are grateful to them for their time.

A handwritten signature in black ink, appearing to read 'R Thomas'.

Professor Robert Thomas

IX. SCHEDULES

Schedule 1

Online Survey Questions

- (1) Name (free text)
- (2) Email address (free text)
- (3) How would you describe your organisation?
 - (1) Law Firm
 - (2) Law Centre
 - (3) Community Organisation
 - (4) Other (free text)
- (4) Approximately how many active cases are you advising on now? (free text)
- (5) How is your work on the Windrush Compensation scheme funded?
 - (1) Pro Bono
 - (2) CFA
 - (3) Client
 - (4) Other (free text)
- (6) On average how many hours do you spend on a Windrush claim?
 - (1) 5-10
 - (2) 11-20
 - (3) 21-30
 - (4) 31-40
 - (5) 50+
- (7) If funding were to be made available for legal advice for Windrush Claimants, which of these models would you support (*select as many as apply*)?
 - (1) Legal Aid (secondary legislation required)
 - (2) Legal Aid via exceptional case funding

- (3) Payments made to legal advisors by the Home Office when a claim is successful
- (8) If the Home Office were to make funding available for successful legal claims, how should it be calculated and distributed?
 - (1) A fixed amount (payable to the legal advisor for each successful claim)
 - (2) A fixed amount that varies depending on the impact of life award category (payable to the legal advisor for each successful claim)
 - (3) Cost assessment linked to hours worked
 - (4) Other (please specify)
- (9) If the Home Office took a fixed fee approach, what would the appropriate level of fees be in your opinion and why? (free text)
- (10) If the compensation scheme provided funding for legal advice at an appropriate rate would you expand your case work provision?
 - (1) Yes
 - (2) No
- (11) Does your organisation currently have any legal aid contracts?
 - (1) Yes
 - (2) No
- (12) Do you have any other comments on funding case work? (free text)
- (13) Have you/your clients found it difficult to get through to the Help Team?
 - (1) No
 - (2) Yes (please specify) (free text)
- (14) Have the Help Team been helpful in answering your/your clients' queries?
 - (1) Yes
 - (2) No (please specify) (free text)
- (15) Do your clients receive a quick response from case workers when a call back has been requested?
 - (1) Yes
 - (2) No

- (16) Are Home Office letters to Claimants written in plain English?
- (1) Yes
 - (2) No
- (17) If “No” to Q16, please upload any examples of anonymised letters from the Home Office which are written in complex language (*please seek client consent and redact as appropriate*) (upload box)
- (18) What % of your clients are receiving monthly updates about their cases from the Home Office since the changes in December? (free text)
- (19) In your opinion has the Home Office exercised discretion appropriately when seeking evidence of Claimant’s losses?
- (1) Yes
 - (2) No
- (20) For Q19, please provide examples of good and bad decision-making. (free text)
- (21) For Q19, please upload any documents demonstrating the way in which discretion is exercised by the Home Office. Please seek client consent and redact as appropriate. (upload box)
- (22) On the impact of life category, have the levels been appropriately set?
- (1) Yes
 - (2) No
- (23) What proportion of your clients have received awards at level 4 and above?
- (1) 0-25%
 - (2) 25-50%
 - (3) 50-75%
 - (4) 75-100%
- (24) Has the Home Office commissioned an independent psychiatric report in any of the cases that you have been involved in?
- (1) Yes
 - (2) No

- (25) Would independent psychiatric evidence have been helpful in any of the cases that you have handled where this was not obtained by the Home Office
- (1) Yes
 - (2) No
- (26) Have you been involved in cases where interim payments have been made?
- (1) Yes
 - (2) No
- (27) If “Yes” for Q26, were reasons for the payment clear?
- (1) Yes
 - (2) No
- (28) If “Yes” for Q26, in your opinion is the Home Office taking a consistent approach to interim payments?
- (1) Yes (free text)
 - (2) No (free text)
- (29) In what proportion of your cases are state pension losses relevant?
- (1) 0-20%
 - (2) 21-40%
 - (3) 41-60%
 - (4) 61-80%
 - (5) 81-99%
 - (6) 100%
- (30) In what proportion of your cases are private pension losses relevant?
- (1) 0-20%
 - (2) 21-40%
 - (3) 41-60%
 - (4) 61-80%
 - (5) 81-99%
 - (6) 100%

- (31) In what proportion of your cases were you able to submit expert evidence about pension loss?
- (1) 0-20%
 - (2) 21-40%
 - (3) 41-60%
 - (4) 61-80%
 - (5) 81-99%
 - (6) 100%
- (32) Have you appealed any of your cases?
- (1) Yes
 - (2) No
- (33) If “Yes” to Q32, what level did your appeal reach?
- (1) Home Office Review
 - (2) Independent Adjudicator
- (34) Have you referred any cases to the Parliamentary & Health Ombudsman service?
- (1) Yes
 - (2) No
- (35) If “Yes” to Q34, please describe the support you received from your client’s MP? (free text)
- (36) Are there any other problems with the compensation scheme which you would like to highlight? (free text)

Schedule 2

Case studies supplied by lawyers advising Windrush Compensation Scheme Claimants

Roger

- 9.1 Roger has resided in the UK since 1971 and acquired Indefinite Leave to Remain. He lived, worked, married and raised children in the UK, without incident, until he was forced to prove his settled status for employment purposes and then for the purpose of obtaining his state pension. At retirement age, he therefore found himself in difficult financial circumstances. His documentation confirming his settled status had been lost over the intervening period and his status was only confirmed in 2019 through the Windrush taskforce. Due to his inability to prove his lawful status, Roger was forced to stop work and despite retiring in 2012, to date has been unable to access his pension.
- 9.2 This was due to the lack of documentation confirming his rights and entitlements and fear of contacting a government department. Roger made an application to the Windrush compensation scheme, without the benefit of legal advice. He lives in an area where there are few immigration advice providers. He attempted to calculate the losses endured and to gather together what supporting evidence he could. The Home Office refused to make a preliminary payment under the Scheme as they were unable to determine whether he had experienced an impact on his life as a result of his inability to prove his lawful status. Roger is now supported by a team of dedicated pro bono lawyers who are assisting in gathering considerable evidence to show the impact on his life and to support his claim under the other heads of loss. It is clear that if this evidence had been made available to the Home Office from the outset a preliminary award would have been made. Without expert legal advice, Roger was simply unaware of the relevant documentation to provide and in particular failed to provide his own testimony by way of a witness statement, clearly detailing the considerable and tangible impact on his life.

Hannah

- 9.3 Hannah first entered the United Kingdom in 1959, when she was 14 years of age. She went to school and subsequently worked for a government department. She first encountered problems in 1979 when her passport expired. After this time, she struggled to get the right legal advice and eventually felt

that she had no option but to leave the United Kingdom. She was forced to sell her home in Twickenham and to uproot her son from his education. She only obtained confirmation of her British Citizenship in 2016. Prior to this, she suffered considerable financial and emotional loss. Her claim for compensation under the scheme was submitted without legal assistance. She was subsequently refused a preliminary payment due to a lack of evidence. She has received numerous requests for further evidence in support of her claim, evidence she simply did not know where to start to gather without legal assistance. She explains that she finds the whole application process anxiety inducing and the delay of the Home Office in reaching a final decision on her claim has made her feel nervous about the whole Scheme and left her questioning whether it is worthwhile to pursue, despite her considerable financial and personal losses.

Schedule 3

Recruitment pack for the appointment of the Independent Person

Independent Person role description:

- 9.4 Background: The Government has committed to right the wrongs experienced by members of the Windrush Generation who faced difficulties establishing their lawful status in the UK. The Home Secretary has apologised on behalf of successive governments to the victims of Windrush and their families and has accepted in full the findings of the Wendy Williams' Windrush Lessons Learned Review published in March 2020. The Home Office will continue to do everything possible to ensure that it protects, supports and listens to every single part of the community it serves. The Government has put in place a series of measures to support members of the Windrush Generation. This includes the launch of the Windrush Compensation Scheme on 3 April 2019. The scheme is intended to compensate individuals for the losses and impacts they suffered because they were unable to demonstrate their lawful status. The scheme, together with this appointment, will now run until 2023.

Summary of the Role:

- 9.5 We are seeking to appoint an Independent Person to provide oversight and reassurance on the Windrush Compensation Scheme, and report to the Home Secretary on its operation, policy and effectiveness. The Independent Person will play a key role advising on the delivery of the scheme, scrutinising performance and measuring how well it is achieving its objectives. This will include reviewing risk management processes; taking reports from internal and external organisations; considering governance arrangements; and monitoring recommendations for any improved management controls. The Independent Person will also liaise with the appointed Independent Reviewer of the Windrush Compensation Scheme, a role which is undertaken by the Adjudicator (Adjudicator's Office, HMRC).
- 9.6 The Independent Person will lead and participate in a range of outreach work and engagement sessions as part of the Home Office's work with stakeholders and community groups. They will ensure that the department is proactive in seeking and encouraging individuals to apply, so we can maximise the number of people accessing the Windrush Compensation Scheme and improve the

individual's journey based on community insights. The Independent Person will play an integral role in the governance structure of the Windrush Compensation Scheme. They will contribute to the work of the Home Office's Windrush stakeholders, and will sit on the Windrush Cross-Government Working Group to provide advice to members. As a member of a quarterly Windrush Compensation Scheme Oversight Board, they will report on progress and operations to the department.

- 9.7** The Independent Person will provide reports to the Home Secretary on at least a six-monthly basis and will be supported by a secretariat function in the Home Office.

Role Description:

Job Title: Independent Person,

Windrush Compensation Scheme Commitment: 36 days per year (possibly up to 40 days) **Remuneration:** circa £12,600 per annum (based on 36 days' attendance)

Appointment: Subject to Ministerial approval until April 2023, with the possibility of extension

Location: National

Accountable to: Home Secretary

Purpose: The Independent Person will be expected to contribute to the work of the Windrush Compensation Scheme in the following areas:

Independence – provide an independent perspective and assurance, including advice to Ministers and senior officials. Provide independent support, guidance and challenge on the progress and implementation of the Scheme.

Strategy – constructively challenge and contribute to the development of strategy and business planning, including the setting and development of key objectives and targets.

Performance – scrutinise the performance of the Scheme in meeting agreed goals and objectives, and monitor the reporting of performance, including financial targets.

Governance – satisfy themselves that governance, internal control and risk management systems are effective and capable of delivering relevant, accurate and timely management and financial information to senior management.

Community Engagement – support the Home Office’s commitment to right the wrongs experienced by some members of the Windrush Generation. Contribute to rebuilding trust and confidence in the Home Office, through working across the wider community, and contributing to the work of the Windrush Cross-Government Working Group and Home Office Windrush stakeholders.

Key responsibilities of the role will include:

- Attending a quarterly Windrush Compensation Scheme Oversight Board and reviewing management information, customer satisfaction data, and dip sampling of anonymised cases to analyse performance.
- Attending, and when required leading stakeholder and advisory meetings and groups, to better harness insights in delivery, implementation and community engagement.
- Providing accountability on the Scheme’s operation to Ministers through regular reporting.
- Providing challenge on the effectiveness of the Scheme.
- Making recommendations for improvements to the operation if s/he believes that the Scheme is not serving the interest of individuals and the public.
- Providing fresh insights and steers on the Scheme’s strategic engagement and outreach plans.
- Reviewing systems, processes and providing financial oversight.

Schedule 4

We Are Digital



WCS Locations		
Centre	Location	Organisation
Benchill Community Centre	Manchester	Benchill Community Centre
Central Library Hub	Cardiff	Cardiff Council
CAS Community Solutions CIC	Swanscombe	CAS Community Solutions CIC
Citizens Advice Waltham Forest	Walthamstow	Citizens Advice Waltham Forest
Communities Connecting Communities	Bolton	Communities Connecting Communities
Educational Learning Support Hub	Barnsley	Educational Learning Support Hub
EdUKation & Immigration Solutions	Sheffield	EdUKation Solutions
Empowering Education Rochdale	Rochdale	Empowering Education
Empowering Education	Luton	Empowering Education
FEE Café	Derby	Food & Education Enterprise CIC
Golden Centre of Opportunities	Manchester	Golden Centre of Opportunities
GYROS - PrimeYarc	Great Yarmouth	GYROS
Volunteering Matters (GYROS)	Ipswich	GYROS
HCD	Hackney	Hackney Co-operative Developments
Hornsey Library	London	Haringey Council
Marcus Garvey Library	London	Haringey Council
Woodgreen Central Library	Hornsey	Haringey Council
HoPEC - Mercury Mall	Romford	House of Polish & European Community
HoPEC - Woodgreen Central Library	Hornsey	House of Polish & European Community
Leeds Refugee Forum	Leeds	Leeds Refugee Forum
New Start 4 U CIC	Coventry	New Start 4 U Community Interest Company
TU Study Centre	Woolwich	Servetrain Associates
Successmakers	Luton	Successmakers
The Dorcas Centre	Birmingham	The Dorcas Club
The Race Equality Centre	Leicester	The Race Equality Centre
Hoxton Community & Wellbeing Centre	London	The Salvation Army Trustee Company
Training Link	Somers Town	Training Link
Trainer Locations		
	Dover	WAD
	Birmingham	WAD
	Scarborough	WAD
	Welshpool	WAD



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