



People need legal help:

The value of legal representation in the Windrush Compensation Scheme

Led by Dr. Jo Wilding

Table of Contents

Executive Summary and Recommendations	4
Glossary	8
1. Introduction	10
2. Complexity: Claim forms, Guidance and Rules	16
2.1 The Claimant Guidance	16
2.2 The Rules	16
2.3 The Caseworker Guidance.....	17
2.4 Lawyers' use of the Guidance and Rules...	17
3. Eligibility: immigration law issues	20
3.1 Determining eligibility	21
3.2 Lapsing leave and returning residents	21
4. 'Don't worry, we will try to help you get evidence'	24
4.1 Challenging wrong and irrational conclusions from WCS enquiries	24
4.2 Challenging WCS caseworkers' failure to request or refer to relevant material	26
4.3 Calculation of Loss	27
4.4 Conclusion	27
5. Difficulties with documentary evidence	29
6. Medical Evidence	33
6.1 WCS failing to commission medical reports when it considers medical evidence necessary	33
6.2 Lawyers' strategies where medical reports are not available or affordable	35
6.3 Conclusion	36
7. Presenting best evidence: preparation of witness statements	38
7.1 The challenge for Claimants	38
7.2 How lawyers address this.....	39
8. Ability to engage effectively with the Home Office	43
8.1 Trauma	43
8.2 Lack of Trust.....	45
8.3 Ability to challenge irrational or unlawful decision making.....	46
8.4 Ability to challenge poor decisions	47
9. Particularly Vulnerable Claimants	50
9.1 Mental Health Difficulties	50
9.2 Terminal Illness	51
9.3 Age-related illness.....	52
9.4 Homelessness and personal circumstances	52
9.5 Conclusion	53
10. Conclusion: Do lawyers make a difference?	55
Acknowledgements	58
Appendices	60
Appendix 1: Methodology	60
Appendix 2: The Case Studies	64

Foreword

As Wendy Williams explained in her Windrush Lessons Learnt review: “The [Windrush] scandal has affected thousands of people, both directly and indirectly, sometimes causing irreparable harm to individuals and families in the UK and abroad, all through no fault of their own. As a result of legislative and cultural decisions, they were denied fundamental rights: the right to live and work in the UK, to receive healthcare, to access a pension, to claim state benefits, and to re-enter the UK. At its most extreme, some were deprived of their liberty and their ability to remain in the UK.”¹

The Windrush Compensation Scheme, launched in April 2019, was intended to provide redress for the losses and harm suffered by those affected. However, the application process is time consuming, complex and traumatic for many prospective applicants. Despite these challenges, the Home Office does not provide funding for legal advice for claimants to the scheme.

At the heart of the Windrush scandal was a profound lack of access to justice: the inequity, inaccessibility and unaffordability of the law caused and perpetuated the harms suffered; the denial of funded legal advice, in contrast to that provided to claimants to other compensation schemes, reinforces these issues. The right to compensation is meaningless if people aren’t able to enforce it. Although the compensation scheme was ostensibly designed to be accessible without legal representation, the experiences of claimants, as outlined in this report, challenge that assertion.

The 17 case studies featured here demonstrate that funded, independent legal advice and representation are essential for claimants to access the scheme and secure fair compensation. Legal representation can also provide psychological support, acting as a buffer between claimants and the Home Office, an institution many understandably distrust and are reluctant to engage with directly. Additionally, claims prepared by legal professionals are more likely to be complete and are processed more quickly, benefiting both claimants and the Home Office by reducing delays and resource demands.

The Government’s recent announcement of a £1.5 million Windrush Compensation Advocacy Support Fund is welcome. However, whilst advocacy organisations offer invaluable information, holistic support, and practical assistance, they cannot provide the independent legal advice necessary to navigate the WCS. This includes helping to resolve claimants’ immigration status, interpreting the scheme’s guidance, collating evidence and knowing how and when to challenge incorrect or unlawful Home Office decision making.

Far too many people have yet to receive the compensation they need and deserve. For the compensation scheme to fulfil its purpose of adequately compensating victims of the Windrush scandal, claimants must have access to independent legal advice. Such access is a critical safeguard to protect their interests, promote fairness, and ensure decisions are made with clarity and confidence.

We hope these case studies prompt reflection and that our recommendations are adopted, so those affected receive the compensation and justice they deserve.



Dr. I. Stephanie Boyce

Former President of the Law Society of England and Wales.

¹ Wendy Williams, Windrush Lessons Learnt Review, p.25. Available at https://assets.publishing.service.gov.uk/media/5e74984fd3bf7f4684279faa/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

Executive Summary and Recommendations

This research was a collaboration between JUSTICE, Dr. Jo Wilding at the University of Sussex and Dechert LLP. It was supported by a Working Group of individuals who provide vital legal advice to people applying to the Windrush Compensation Scheme ('WCS'):

- Jeremy Bloom, Consultant, Duncan Lewis Solicitors
- Tony Brown, Supervising Solicitor, United Legal Access
- Nicola Burgess, Solicitor, Greater Manchester Immigration Aid Unit (GMIAU)
- Van Ferguson, Solicitor, Southwark Law Centre
- Franck Kiangala, Director, North Kensington Law Centre
- Sibon Phiri, Founder and Managing Director, United Legal Access
- Anna Steiner, Director, Westminster University Legal Advice Clinic

The aim of the research was to identify exactly what lawyers do in WCS applications, which claimants could not do unaided and which non-lawyer support could not have done, that makes a difference to the outcome of the claims.

This is the first research of its kind, which specifically compares the same case with and without a lawyer and identifies the actions which influenced the outcome of the case.

While we cannot claim that the files reviewed are representative of all WCS claimants and decisions, the research findings strongly indicate that lawyers provide evidential, legal and strategic expertise which cannot be substituted with any other provision.

We firmly agree with the decision to fund advocacy support within the WCS, but we conclude that this cannot be considered a substitute for independent, funded, expert legal representation, which is absolutely necessary for fair decision making.



Claimant	Preliminary award	Initial Decision	Initial Decision (reviewed)	Tier 1 Review	Tier 2 Review
Cohort 1²					
Grace and Mina	Nil	Nil	£10,000 (preliminary)	Awaited	-
Sandra	£300	£20,000		£90,000	£170,000
Sonia and Andre	Nil	Nil	Nil	£40,000 (Sonia) £0 (Andre)	-
Jason	£10,000	Nil	£55,000	£85,000	£150,000
Emily	Nil	£10,000 (preliminary)	£50,000	£80,000	-
Jerome	Nil	Nil			£295,000 ³
Patricia	Nil	Nil		£40,000	-
David	Nil	Nil		£90,000	-
Marcia	Nil	Nil		£20,000	-
Michael	Nil	Nil		£20,000	£20,000
Cohort 2⁴					
Clive	£10,000	£40,000	-	£40,000	£70,000
Phoenix	Nil	£20,000	-	£95,000	-
Winston	Nil	Nil	-	£40,000	-
Chioma	Nil	Nil	Nil	£65,000	-
Ravi	Nil	£10,000 (preliminary)	Awaited	-	-
Sheldon	£10,000	£75,000	-	-	-
Marcus	Nil	Nil	-	£10,000	£20,000

Table 1: All claimants – award offered at each stage (rounded to the nearest £5,000).
Shading indicates the point at which the claimant instructed a lawyer.

² For Cohort 1 case studies, see: Grace and Mina (pp. 67-8); Sandra (pp. 81-2); Sonia and Andre (pp. 84-6); Jason (pp. 68-70); Emily (pp. 65-6); Jerome (pp. 70-1); Patricia (pp. 76-8); David (pp. 64-5); Marcia (pp. 74-76); Michael (pp. 74-76)

³ Jerome initially received a negative outcome at Tier 2 review. With help from a legal representative, he made an application to the Parliamentary & Health Service Ombudsman. Following the Ombudsman's recommendation and further enquiries from the WCS, the Home Office awarded Jerome compensation of £295,000.

⁴ For Cohort 2 case studies, see: Clive (pp. 62-4); Phoenix (pp. 78-9); Winston (pp. 86-7); Chioma (pp. 60-2); Ravi (pp. 79-81); Sheldon (pp. 81-4); Marcus (pp. 73-4).

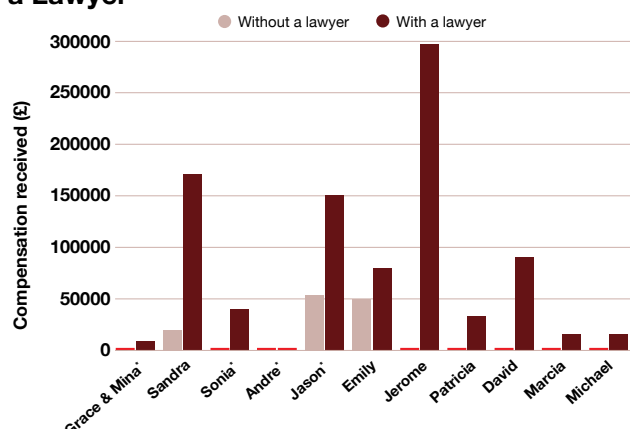
Methodology

The research team reviewed 17 case files of WCS claimants, according to a file review guide, identifying the specific actions taken by the lawyers and the effects of those actions as reflected in the decision letters. Where possible, both the claimant and the lawyer were interviewed; where the claimant could not be interviewed, the interview was with either a close friend or family member, or the lawyer alone.

Participants

Cohort 1 consisted of ten cases where the claimant applied without legal representation and received either a low offer or a nil award, or was refused a preliminary award, and was subsequently represented by a lawyer to challenge that decision.

Comparing Offers Made With and Without a Lawyer



Source: JUSTICE report, 'The value of legal representation in the Windrush Compensation Scheme'

*subject to appeal, award not finalised

Cohort 2 consisted of seven cases where the claimant was represented from the outset and could not have made any application at all without legal representation because of serious physical, mental or age-related illness, homelessness, or the extent of their trauma and distress.

Findings

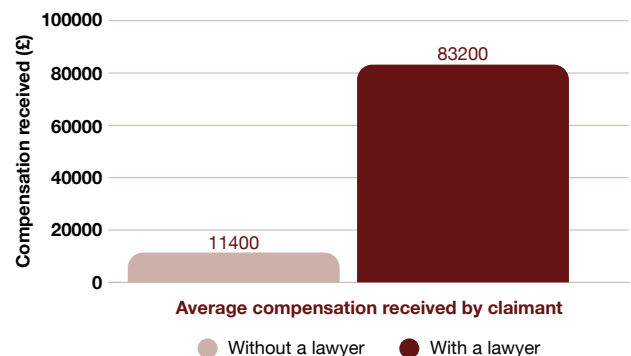
1. Lawyers are experts in dealing with issues of eligibility, particularly where this revolves around historic immigration status under statute and the Immigration Rules, or whether a procedure to vindicate an immigration right existed on specific dates in the past. These eligibility issues cannot be resolved by anyone other than an immigration lawyer.
2. Lawyers are experienced in identifying potential sources of evidence and then taking steps to obtain that evidence. They are able to assess the significance of evidence, the significance of the absence of evidence, and identify what may be missing from files received from government departments. In several cases, lawyers were able to obtain material which the WCS had failed to request and interpret the significance of items of evidence, within the context of the required standard of proof.
3. Lawyers are similarly skilled in obtaining and compiling witness statements from claimants and other witnesses, and using these to complement and contextualise the available evidence and explain the gaps. Since the WCS is evidence-based, such evidence is absolutely necessary. Lawyers are better placed than WCS caseworkers to spend the time and build the trust needed with the claimant to draw out their evidence.
4. Legal aid (or similar) funding is needed to cover the costs of obtaining necessary evidence, particularly medical evidence. Although the Rules permit the WCS to commission evidence at the Home Office's expense, it did not do so in any of the 17 cases reviewed despite this being explicitly requested by claimant lawyers or by the WCS caseworker (from the claimant) in some cases.

5. Lawyers provide a buffer between claimant and Home Office, which our case reviews and interviews suggest is necessary, given the lack of trust and the experiences which many claimants have had with the Home Office.
6. There is a cohort of potential WCS claimants who are too unwell or vulnerable to consider making a claim alone, and whose relatives or friends may not be in a position, or have the necessary skills to work out and go through the claims process for them. For those people to have any meaningful access to the WCS, fully funded independent legal advice is required.
7. Lawyers are needed to help claimants understand the complex guidance and rules around the WCS, to make representations on how the guidance and rules should be applied or where they have not been applied, and to advise on whether the Home Office has made a legally correct decision properly applying the WCS's own rules.
8. Lawyers are needed to help claimants challenge public law illegality or irrationality in decisions, as shown in several of our reviewed cases.⁵ They are also needed to advise on whether the sum of compensation offered is legally defensible and appropriate.

9. Recommendations

1. Implement funding for legal assistance for WCS claims, to cover representation and disbursements.
2. Recognise that claimants need legal representation and advice at all stages of the process including considering eligibility, collating evidence, completing the application, liaising with the WCS as required and answering further questions or requests for evidence, and considering whether to accept any offer of compensation.
3. Recognise (in the Caseworker Guidance and Rules) that a claimant's lawyer is the person best placed to decide whether medical or other expert evidence is required and delegate to them the responsibility for determining whether to commission a report or request provision of medical notes at the Home Office's expense, within set parameters.

Cohort 1 - Average Compensation Received by a Claimant With Vs Without The Help of a Lawyer



⁵ Grace and Mina (see 8.3), Chioma (see 8.4) and Jason (see 4.1).



Glossary

DWP	Department for Work and Pensions – the government department which administers social security payments.
ECS	Employer Checking Service – a Home Office contact point for employers to check prospective employees’ immigration status and right to work. ⁶
HMRC	His Majesty’s Revenue and Customs (the UK tax authority)
ILR	Indefinite Leave to Remain, also referred to as ‘settlement’; the right to live in the UK permanently.
SAR(s)	Subject Access Request(s), i.e. a request by or on behalf of a person for files containing their personal information held by a public authority or other data controller (under the meaning in the UK GDPR).
WCS	The Windrush Compensation Scheme
Cohort 1	The group of cases in this research where a claimant applied without legal assistance and later obtained legal assistance to pursue the application or review.
Cohort 2	The group of cases in this research where a claimant was unable to make a claim without legal assistance because of illness, homelessness or other vulnerability.
Rules	The Windrush Compensation Scheme: full rules (Version 12.0, updated 24 October 2023). ⁷
Claimant Guidance	Primary Claimant: Windrush compensation claim guidance (as updated 15 November 2024). ⁸
Caseworker Guidance	Windrush Compensation Scheme – Guidance for decision makers considering cases under the Windrush Compensation Scheme (Version 18.0, updated 1 November 2024). ⁹
Guidance	Refers collectively to the Claimant Guidance and Caseworker Guidance unless otherwise stated.

⁶ <https://www.gov.uk/employee-immigration-employment-status>.

⁷ <https://www.gov.uk/government/publications/windrush-compensation-scheme-full-rules>.

⁸ <https://www.gov.uk/government/publications/windrush-compensation-scheme-claim-forms-and-guidance>.

⁹ <https://www.gov.uk/government/publications/windrush-compensation-scheme-casework-guidance>. Whilst the Caseworker Guidance is publicly available, certain sections, or parts of sections, therein have been removed 'as it is restricted for internal Home Office Use'.



Introduction

Section

1

1. Introduction

“

My lawyer came on the scene because I don't know nothing, right. And if you don't know nothing, somebody says to you, right Jerome, you ain't got a leg to stand on, I'm going to believe it. You know what I mean? I'm going to believe it without no proof. And I have got legs to stand on.

Jerome, WCS claimant ”

“

We're approaching claims in the same way we might approach immigration matters, so starting by applying nationality law to see where the applicant is in terms of eligibility and then approaching it almost as a witness statement, where you're asking for information to fill in gaps. Then you can get a clear view of what the losses were, for each head of loss, and then you look at what might be available through Subject Access Requests to back that up. And if those come back at all, then you need to consider it all and make sense of it, and someone without legal training can't do that.

Lawyer acting for WCS claimants ”

On 22 June 1948, HMT Empire Windrush docked at Tilbury Docks in Essex. Of 1,027 passengers, 800 were from the Caribbean, and the majority from Jamaica.¹⁰ They came as British Subjects and 'Citizens of the United Kingdom and Colonies', with an automatic right to work and reside in the UK.¹¹ Throughout the 1950s, 60s and early 70s many more people arrived in Britain from across the Caribbean and the Commonwealth.¹² They came to be known as the 'Windrush generation'.

From the 1960s onwards, major immigration and citizenship laws were introduced with the aim of restricting immigration, particularly by non-white subjects from former colonies.¹³ Over time, and particularly from 2012 onwards, the Home Office also introduced wide-ranging administrative and legislative measures often referred to as the 'hostile environment'. This framework was

aimed at making the lives of those residing in the UK without leave to remain as challenging as possible, so that they would voluntarily leave. These changes had a devastating impact on many of the Windrush generation, who were unable to demonstrate their right to live and work in the UK. Some were detained and removed from the UK, while others were prevented from returning from visits abroad. Many lost their jobs and homes and were denied access to education and healthcare. This set of affairs became known as the 'Windrush scandal'.

In late 2017, the Windrush scandal began receiving attention from the British press.¹⁴ In April 2018, then-Home Secretary the Rt Hon Amber Rudd pledged redress for those affected by the scandal, stating: 'where people have suffered loss, they will be compensated'.¹⁵ In May 2018, the Windrush Scheme was set up,

10 Royal Museums Greenwich, 'The Story of the Windrush'. Available at: <https://www.rmg.co.uk/stories/windrush-histories/story-of-windrush-ship> (accessed on 9 April 2025).

11 British Nationality Act 1948

12 The Historical Roots of the Windrush Scandal - GOV.UK.

13 The Historical Roots of the Windrush Scandal - GOV.UK.

14 Although Windrush survivors and activists, NGOs and immigration lawyers had been trying to draw attention to the scandal for years.

15 HC Deb, 23 April 2018, col 622 [Commons Chamber]. Available at: <https://hansard.parliament.uk/commons/2018-04-23/debates/AFC7E55B-9796-4FDA-8BB6-9EBDC7CCDAE2/Windrush> (accessed on 9 April 2024).

to allow people affected by the scandal to apply for documentation to demonstrate their lawful status. In April 2019, the WCS was launched, to provide monetary redress towards losses caused by the scandal.

According to the Home Office, the WCS was 'designed so that people should not need to seek help from the legal profession'.¹⁶ It appears that the need to establish the WCS quickly also played a significant role in the decision against providing for funded legal assistance through the WCS. Although Martin Forde KC, the Independent Adviser to the WCS during its design, asked for legal aid to be granted to prospective claimants, he was told there was insufficient time to pass the necessary legislation.¹⁷

However, the WCS is anything but simple, as we explain further in Chapter 2 below. The primary claimant application form runs to 44 pages, the latest version of the Rules is 52 pages, whilst the Caseworker Guidance currently stands at 105 pages.¹⁸ It is difficult to keep track of both the Rules and Guidance, which have undergone multiple changes.

In addition, the personal circumstances of the claimants make it particularly difficult for them to engage with the Home Office and navigate the application process alone. They are an aging cohort and many possess poor literacy skills, are digitally excluded or face mental health challenges due to the trauma of being unable to prove their lawful status.¹⁹ Gathering and collating supporting evidence also poses numerous challenges. Many documents are no longer available due to the passage of time, or precisely because the claimants have been unable to prove their status.²⁰ Where

documentation does exist, it is often held by third parties, and can only be obtained through SARs, or through the commissioning of expert reports. Caseworkers themselves have even acknowledged the need for a lawyer. Phoenix, one of the claimants who we interviewed, recalled being advised to seek legal advice: 'you need to get legal advice. You need to get a solicitor. That was what they kept saying to me.'

The WCS has additionally proven time-consuming for caseworkers, claimants, and their representatives to navigate. According to the National Audit Office, 'up to 31 March 2021, cases that resulted in a compensation payment involved 154 hours of staff time'.²¹ In December 2020, a public law firm with experience representing WCS claimants confirmed they were spending on average up to 45 hours per application.²²

These challenges have limited the ability of claimants to apply for the WCS and receive appropriate compensation. This is evident from the low numbers of successful claimants, and the amount of compensation that has been paid out. The Home Office's original planning assumption was that it would receive 15,000 eligible claims, with an estimated Scheme cost of £120m-£310m.²³ In 2020, this estimate was revised down to 11,500 eligible claims, with an estimated cost of £60 to £260 million.²⁴ However, this revision was made prior to changes to the WCS made in 2020, which substantially increased the value of awards under the impact on life category, with the highest award available increasing from £10,000 to £100,000.²⁵

16 Written evidence submitted by the Home Office (WCS0018) (December 2020), paragraph 9. Available at: <https://committees.parliament.uk/writtenevidence/19184/pdf/> (accessed 9 April 2025).

17 House of Commons Home Affairs Committee, Oral evidence, Q43.

18 Windrush Compensation Scheme: caseworker guidance - GOV.UK and Windrush Compensation Scheme: full rules - GOV.UK.

19 Not being able to prove their status meant that they were not able to apply for work, benefits, housing, health care, banking, driving licence etc. Many of the Cohort were made homeless as result of not being able to work, having an extreme impact on their life for many years, having a detriment to their mental health.

20 For example, not being able to access the NHS so having no record of health impacts.

21 National Audit Office Report, 'Investigation into the Windrush Compensation Scheme' (14 May 2021), p. 17, paragraph 4.4. Available at: <https://www.nao.org.uk/wp-content/uploads/2021/05/Investigation-into-the-Windrush-compensation-scheme-.pdf#:~:text=It%20is%20considering%20increasing%20caseworker%20numbers%20by,approval%2C%20considerably%20longer%20than%20the%20Department%20estimated> (accessed on 9 April 2025).

22 JUSTICE, 'Reforming the Windrush Compensation Scheme: A Report by JUSTICE' (2021), (p. 42, paragraph 4.72) (the 'JUSTICE Report'). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864203/2019-04-01_Windrush_Compensation_Impact_Assessment_.pdf (accessed on 9 April 2025).

23 Windrush Compensation Policy Impact Assessment (HO 0329) (9 January 2019). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864203/2019-04-01_Windrush_Compensation_Impact_Assessment_.pdf (accessed on 9 April 2025).

24 Letter from the Home Secretary on the Windrush Compensation Scheme (20 July 2021). Available at: <https://committees.parliament.uk/publications/6875/documents/72516/default/> (accessed on 9 April 2025).

25 Home Office, 'Windrush Schemes Factsheet - March 2024' (30 April 2024). Available at: <https://homeofficemedia.blog.gov.uk/2024/04/30/windrush-schemes-factsheet-march-2024/> (accessed on 9 April 2025).

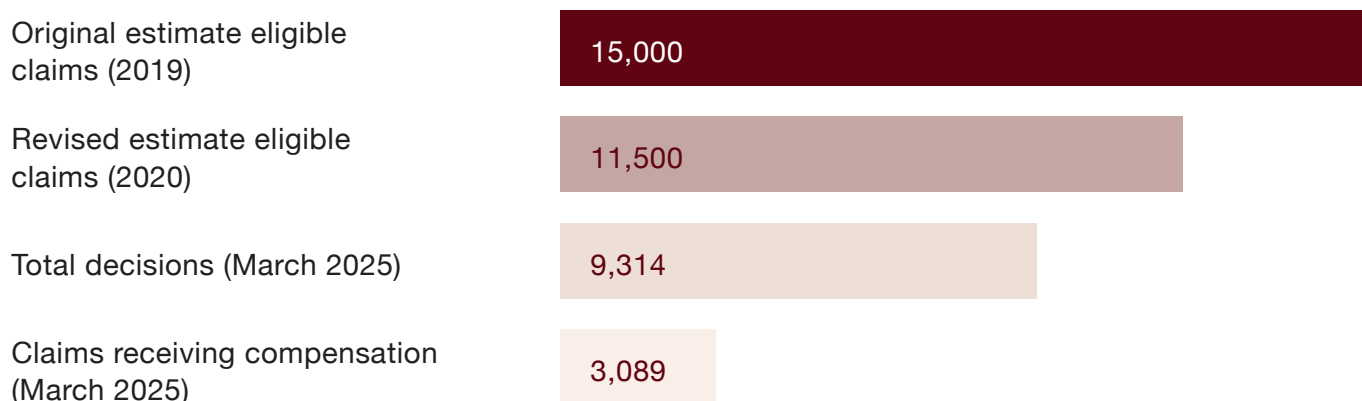


Figure 1: WCS data on decisions and compensation awards to March 2025. Source: Home Office

As at March 2025, the WCS had made 9,314 decisions but less than a third had received value offers.²⁶ Whilst just over £109.6m has been paid out in compensation, the number is at the lower end of the latest estimate of £60m to £260m and only 35% of the upper end of the original estimate (£120m-£310m) which was calculated before the significant uplift to the value of impact on life awards.²⁷

Instead of funding legal advice, the Home Office funds 'We Are Group' (formerly We Are Digital) to provide assistance to claimants. We Are Group offers three-hour appointments for support with filling in the application form – a far cry from the 45 hours or more that lawyers spend on assisting claimants with their applications. While We Are Group delivers its services through a network of partner organisations around the UK, these are inconsistently geographically spread. As noted in the previous JUSTICE report, 'Crucially, the We Are Digital services exclude advice on the merits and substance of an application' and 'We Are Digital do not signpost Claimants to legal support.'²⁸ They do not write anything on a claimant's behalf, and do not assist with drafting. They do not provide support to claimants who may struggle with expressing themselves in written English, nor assist claimants to obtain the necessary evidence to support their claim. These services are not a substitute for legal advice and assistance.

The Home Office's lack of provision for funded legal support has left claimants to depend on an inadequate patchwork of organisations, university legal advice clinics, law centres and law firms providing pro bono legal support. This network depends in large part on individuals and organisations doing this work unpaid in their spare time, and out of good will. This support is not available to all claimants due to a lack of sufficient capacity. Claimants are therefore faced with a lottery as to whether they are able to access legal assistance.

In the absence of legal funding, some law firms offer services to WCS claimants under 'Damages Based Agreements'. These usually require Claimants to pay a percentage, often 20-30%, of their compensation to their legal representatives if their claim is successful. A lawyer with experience advising WCS claimants has reported knowledge of such an agreement where 67% of the award was to be paid to legal representatives.²⁹ It is unjust that claimants should be forced to give up significant proportions of compensation to fund legal costs. However, these agreements have only arisen due to the WCS's failure to provide for legal assistance that is clearly needed.

The lack of legal assistance for WCS claimants stands in stark contrast to a number of other compensation schemes that cover the costs of legal advice for claimants, including the

²⁶ 3,089 claims have received value offers. Applicants that have not received payment were either deemed ineligible or received a nil award. Windrush Compensation Scheme data: March 2025. Available at: <https://www.gov.uk/government/statistics/windrush-compensation-scheme-data-march-2025> (accessed 21 May 2025).

²⁷ Windrush Compensation Scheme data: March 2025.

²⁸ JUSTICE Report, paragraphs 4.69 - 4.70.

²⁹ JUSTICE Report, paragraph 4.75.

Lambeth Children's Home Redress Scheme³⁰ and all of the Post Office compensation schemes.³¹

A wide spectrum of individuals and organisations have repeatedly called for funded legal advice to enable people to effectively apply for compensation. These include:

- Law firms acting for claimants;³²
- JUSTICE;³³
- The House of Commons Home Affairs Select Committee, chaired at the time by now Home Secretary, Yvette Cooper;³⁴
- Many of those who gave evidence to the Home Affairs Select Committee inquiry, including trade unions - UNISON, the Trades Union Congress, organisations such as Windrush Lives and Windrush Action representing people affected by the Windrush scandal, people affected by the Windrush scandal³⁵ and a former employee of the Home Office's Windrush Policy Team;³⁶

- Human Rights Watch;³⁷
- Action for Race Equality³⁸
- Justice4Windrush;³⁹ and
- The Windrush Justice Clinic – a collaborative partnership made up of community organisations, law centres and university legal advice clinics.⁴⁰

This research builds on this body of existing work, and particularly, the Windrush Justice Clinic's March 2022 report: 'The Windrush Compensation Scheme: Unmet Need For Legal Advice.' Due to the length of time that it takes for offers to be made and reviews to be completed, when this report was published, many of the claims the Windrush Justice Clinic was assisting, or had assisted, were ongoing. As more claims have gone through the WCS, JUSTICE and its Working Group members have become increasingly aware of cases where initially unrepresented claimants have received a nil or low award, and have reapplied, or pursued a review, after obtaining legal advice. Consequently, many of these claimants have received significantly

30 Lambeth Council agreed to pay 'any reasonable legal costs and other expenses'. Lambeth Council, 'Lambeth Children's Redress Scheme' (v2, October 2019), p. 16, paragraph 23.2. Available at: <https://www.lambeth.gov.uk/sites/default/files/2021-08/lambeth-childrens-homes-redress-scheme-28-october-2019.pdf> (accessed on 9 April 2025).

31 The Horizon Shortfall Scheme covers legal advice for claimants if an offer is made (Post Office, 'Historical Shortfall Scheme: Questions and answers for new applications from October 2022' (2022). Available at: https://www.onepostoffice.co.uk/media/111958/hss_questionsandanswers_newapplications_march2023.pdf (accessed on 9 April 2025)), as well as to those who wish to dispute an offer (<https://corporate.postoffice.co.uk/horizon-scandal-pages/horizon-shortfall-scheme-information-and-data>); the Group Litigation Order Scheme covers 'reasonable costs of obtaining legal advice at each stage of the process' ('The GLO Compensation Scheme: questions and answers' (updated 10 January 2025). Available at: <https://www.gov.uk/government/publications/compensation-scheme-for-group-litigation-order-case-postmasters/the-glo-compensation-scheme-questions-and-answers> (accessed on 9 April 2025)); and the Horizon Convictions Redress Scheme when launched will cover reasonable legal costs which are paid according to a published legal framework (<https://www.gov.uk/government/publications/horizon-convictions-redress-scheme-hcrs-legal-cost-framework/horizon-convictions-redress-scheme-hcrs-legal-cost-framework#costs-framework>); and <https://corporate.postoffice.co.uk/horizon-scandal-pages/overtured-convictions-and-financial-redress-information-on-progress> (accessed on 9 April 2025)); and the Horizon Convictions Redress Scheme when launched will cover reasonable legal costs which are paid according to a published legal framework ('Horizon Convictions Redress Scheme (HCRS): legal costs framework' (updated 20 March 2025). Available at: <https://www.gov.uk/government/publications/horizon-convictions-redress-scheme-hcrs-legal-cost-framework/horizon-convictions-redress-scheme-hcrs-legal-cost-framework#costs-framework> (accessed on 9 April 2025)).

32 Amelia Gentleman, 'Windrush payout scheme not fit for purpose, say lawyers', The Guardian (27 August 2020). Available at: <https://www.theguardian.com/uk-news/2020/aug/27/windrush-payout-scheme-not-fit-for-purpose-say-lawyers> (accessed on 9 April 2025).

33 JUSTICE Report.

34 House of Commons Home Affairs Committee, 'The Windrush Compensation Scheme: Fifth Report of Session 2020-22' (16 November 2021). Available at: <https://committees.parliament.uk/publications/7936/documents/82209/default/> (accessed on 9 April 2025).

35 Written evidence submitted by Dominic Akers-Paul, Glenda Caesar, Christian Hayibor, Gertrude Ngozi Chinegwundoh, Carl Nwazota, Grace Nwobodo, Holly Stow, Anthony Williams (WCS0025) (December 2020). Available at: <https://committees.parliament.uk/writtenevidence/22573/pdf/> (accessed on 9 April 2025).

36 Written evidence submitted by Alexandra Ankrah (WCS0027) (December 2020). Available at: <https://committees.parliament.uk/writtenevidence/23067/pdf/> (accessed on 9 April 2025).

37 Human Rights Watch, 'UK: "Hostile" Compensation Scheme Fails "Windrush" Victims' (17 April 2023). Available at: <https://www.hrw.org/news/2023/04/17/uk-hostile-compensation-scheme-fails-windrush-victims> (accessed on 9 April 2025).

38 Action for Race Equality, 'The Home Office Scandal - A Manifesto for Windrush Justice'. Available at: <https://actionforraceequality.org.uk/wp-content/uploads/2024/06/The-Home-Office-Scandal-A-Manifesto-for-Windrush-Justice-Digital.pdf> (accessed on 9 April 2025).

39 <https://justice4windrush.org/join-the-movement/>.

40 In response to the Home Affairs Select Committee inquiry; L. Lewis, H. Smith and A. Steiner, 'The Windrush Compensation Scheme: Unmet Need for Legal Advice', The Windrush Justice Clinic (25 March 2022). Available at: <https://westminsterresearch.westminster.ac.uk/download/1d27f37a1717f92cc0a2f15215d2a978068f562fdefd5a657465cf0a418e77a7/707735/The%20Windrush%20Compensation%20Scheme%20-%20Unmet%20Need%20for%20Legal%20Advice.pdf>; (accessed on 9 April 2025); S. Hunt and C. Evans, 'Time for Justice, Windrush Justice Clinic' (7 November 2024). Available at: https://researchportal.lsbu.ac.uk/ws/portalsfiles/portals/8394557/Time_For_Justice_WJC_7.11.2024.pdf (accessed on 9 April 2024).

higher compensation awards. This research focuses on these cases. Through a detailed examination of their case files, and interviews with claimants and their legal representatives, this report examines exactly what difference legal assistance makes to the claimant, the presentation of the claim, and the outcome.

This report demonstrates the necessity of funding for legal assistance for claimants; we hope that the Government will listen. While the Home Office states that the aim of the WCS is to ensure that ‘people receive the maximum compensation they deserve’,⁴¹ it is clear from this research that without legal assistance, claimants receive far less than the

compensation they are entitled to. In the worst cases, they might receive nothing at all. While providing legal assistance would be of clear financial benefit to claimants, as JUSTICE explained in its 2021 report, it ‘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’.⁴² The evidence we have gathered for this report strongly supports these findings.

The provision of funded legal assistance would not only be beneficial to claimants, but also to the Home Office. As Martin Forde KC told the Home Affairs Select Committee:

“**[...] if the claims had been compiled by compensation lawyers through legal aid the Home Office task of dealing with them and having the documentation, not having to ask the supplementary questions and possibly not retraumatising victims, would be much quicker. If they had a good firm of solicitors saying, ‘That is the file. Everything is paginated. You have the NI records, the tax records, the employment records, it is all there for you and this is our claim’, I think things would speed up dramatically. I see real advantages now in legal support.**”⁴³

We recognise and welcome the Government’s announcement of £1.5 million in grant funding for advocacy organisations.⁴⁴ Advocacy organisations play a vital role in outreach: informing impacted communities about the WCS, and providing emotional and practical support, including assisting claimants with applications and evidence gathering. As is evidenced throughout this report, these services alone are often not enough – claimants need advice on complex legal questions pertaining to their immigration status, as well as assistance in conducting a number of tasks that lawyers are trained to do.

These include analysing complex guidance, making representations as to how this guidance applies to the circumstances of each case, gathering evidence that is difficult to find and/or explaining its non-availability, and identifying the pertinent facts and issues for inclusion in witness statements. In addition, lawyers are needed to help claimants challenge public law illegality or irrationality in decisions, advise on whether the sum of compensation offered is legally defensible and appropriate, and to submit calculations of loss. Calculations of employment related losses, in particular, can be complex and draw on the same materials as civil damages claims.

⁴¹ Home Office, ‘Windrush Schemes Factsheet - March 2024’.

⁴² JUSTICE Report, paragraph 4.76.

⁴³ Home Affairs Select Committee, ‘Oral evidence: The Windrush Compensation Scheme’, HC 1013 (9 December 2020), Q62. Available at: <https://committees.parliament.uk/oralevidence/1372/pdf/> (accessed on 9 April 2025).

⁴⁴ ‘Home Secretary launches new support for Windrush victims’, 24 October 2024. Available at: <https://www.gov.uk/government/news/home-secretary-launches-new-support-for-windrush-victims> (accessed on 9 April 2025).



Complexity: Claim forms, Guidance and Rules

Section

2

2. Complexity: Claim forms, Guidance and Rules

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‘If you cannot utilise the availability of the information on the website, get legal advice. You need to get legal advice. You need to get a solicitor.’ That was what they [WCS caseworker] kept saying to me.

Phoenix, WCS claimant.”

Contesting the WCS decision on the basis that it did not comply with the Rules and Guidance was a key role of lawyers and a key reason for claimants receiving higher awards on Tier 1 and 2 reviews when represented. Despite the WCS being designed with the intention of being simple enough that applicants would not need legal assistance,⁴⁵ this is clearly not the position in practice.

The first obstacle for would-be claimants is the complexity of the forms, rules and guidance. As we have noted, the claim form for Primary Claimants is 44 pages long, while the Close Family Member form runs to 24 pages. Claimants reported finding the application form to be complex, and a barrier to making a claim. Even applicants with a tertiary education, like Mina – who was assisting her mother to make a claim – found the form both ‘*confusing*’ and ‘*overwhelming*’.

In addition to the claim forms, there are the Rules and two key guidance documents, which we refer to collectively as ‘the Guidance’ unless otherwise specified:

- (i) The Claimant Guidance;
- (ii) The Caseworker Guidance.

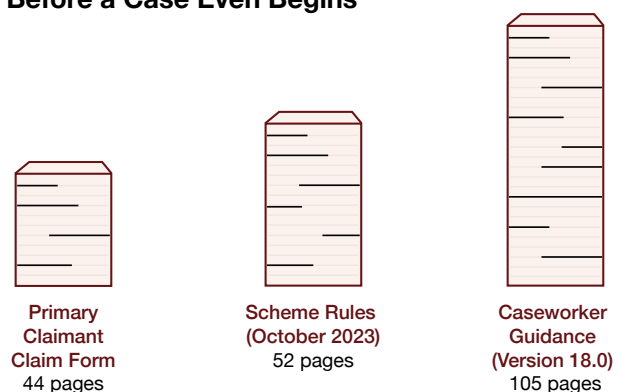
These are respectively intended to assist claimants with applying to the WCS and caseworkers with assessing applications. However, they are long, in places complex, have undergone numerous iterations and have some discrepancies which are difficult for even the most capable claimants to navigate. When Mina consulted the online guidance aimed at

assisting claimants to complete the application, she described feeling even more overwhelmed.

2.1 The Claimant Guidance

The Claimant Guidance is aimed at individuals who are making a claim for compensation under the WCS. The focus of the Claimant Guidance is practical. It explains, in simple terms, who is entitled to claim under the WCS, how to fill in the claim form, and where to send the form. It also provides contact details of the ‘Help team’ who can provide assistance with filling in the form, and who can refer the claimant to ‘We Are Group’ (formerly ‘We Are Digital’) which can provide further assistance (though notably not with advice on evidence, eligibility, or what to write on the form).

Over 200 Pages of Paperwork - Before a Case Even Begins



The Claimant Guidance runs to 30 printed pages and was last updated on 15 November 2024. Notably, the Claimant Guidance does not explain the criteria caseworkers apply to determine

⁴⁵ Written evidence submitted by the Home Office (WCS0018), (December 2020, paragraph 9).

whether or not to award any compensation under the various heads of loss for which the claimant can claim. Nor does it reference the Rules or the Caseworker Guidance as sources of additional information. This leaves claimants unaware of what they need to demonstrate and the redress they can expect to receive.

2.2 The Rules

The Rules set out the WCS framework and detail what the claimant must prove to be entitled to compensation. The current (twelfth version) Rules are 50 pages long, and were last updated in October 2023. The Rules are much more comprehensive and detailed than the Claimant Guidance. They include, for example, the calculations which caseworkers apply to determine what, if any, compensation should be awarded in respect of, *inter alia*, detention, deportation or loss of access to employment.

The Rules also set out the types of redress which claimants can expect to receive. In addition to compensation, successful claimants are entitled to an apology from the Home Office that acknowledges any role the Home Office may have played in the harm or loss they have suffered. The Rules explain that 'In determining claims under the WCS, due regard will be had to the Caseworker Guidance as amended from time to time.'⁴⁶

2.3 The Caseworker Guidance

At 105 pages, the Caseworker Guidance is the most comprehensive and extensive of the WCS's guidance documents. This is the 18th version of the guidance, which was last updated on 1 November 2024. As it is intended to aid caseworkers, the Caseworker Guidance sets out in detail the issues caseworkers should consider when reviewing an application and how compensation awards should be calculated.

A recurring feature of the Caseworker Guidance is the standard of proof to be applied – namely, the caseworker needs to be satisfied on a balance of probabilities (that it is to say, that the caseworker is 'more than 50% sure'⁴⁷) that what is being claimed for occurred. As a result, the Caseworker Guidance reiterates throughout that

detailed documentary evidence is not necessary for every aspect of the claim.

Many claimants are unaware that there is extra guidance that they can refer to. While the claim form points claimants in the direction of the Caseworker Guidance, this can be misleading, as it is not labelled as being for claimants' own benefit. It is not always clear to claimants what guidance they should be referring to. Further, the Caseworker Guidance itself is not entirely clear. At several points, for example, under the headings 'loss of access to benefits' or 'housing: denial of access,' the Caseworker Guidance emphasises that the WCS operates on 'the balance of probabilities,' and that caseworkers should not expect to be provided 'detailed documentary evidence to support every aspect of [a] claim.' Whereas in relation to the heading 'loss of access to employment,' the Caseworker Guidance states that if a claimant is 'unable to supply sufficient evidence, [the caseworker] should refuse the claim for compensation'.

Home Office Staff Time On Cases Resulting In Compensation:



Source: National Audit Office Report, 'Investigation into the Windrush Compensation Scheme'

2.4 Lawyers' use of the Guidance and Rules

Given the differing purposes of the Guidance, the level of detail contained within the different documents naturally varies. However, many of the cases we reviewed reveal discrepancies between what the Rules and Guidance require the claimant to prove, and what the caseworker states in the decision letter.

⁴⁶ Rules, 3.14, *Windrush Compensation Scheme: full rules (accessible version)* - GOV.UK.

⁴⁷ Under 'Standard of Proof' in the 'Approaching a Claim' section of the Caseworker Guidance.

For example, the Claimant Guidance explains that information and evidence will assist the Home Office to decide their claim for compensation, but the claimant is ‘*not [to] worry*’ if they are unable to find evidence for a particular category, as the Home Office will try to obtain that evidence for them.⁴⁸ The Rules explain that the Home Office may obtain further information or evidence from government departments, public authorities or others, and that the claimant should cooperate with the Home Office to enable it to obtain those documents ‘*as far as is reasonably practicable*’.⁴⁹ The Rules also provide that the Home Office may request further information or evidence from the claimant, but the Caseworker Guidance emphasises that, before contacting a claimant for further evidence, the caseworker should consider whether they could obtain that evidence more easily and quickly themselves, with the claimant’s consent. They should also be satisfied that the evidence is definitely needed, or whether they are able to determine the claim on the balance of probabilities without further evidence.⁵⁰

There were frequent examples in the reviewed cases where the decision or the claimants’ experiences did not correspond with specific parts of the Caseworker Guidance. Some of these are discussed in more detail in sections 4 and 6, on the inadequacy of WCS attempts to obtain evidence and on medical evidence, respectively. In several cases (Clive, Patricia, Phoenix and Ravi’s applications for example) the Tier 1 review revolved more around lawyers’ submissions on WCS failures to follow their own rules and guidance than around any new evidence. This is a key reason why claimants require independent lawyers.

Meanwhile, as an overarching guideline, the Caseworker Guidance states that the Home Office wants the claimants to receive the maximum compensation to which they are entitled, and that it can be challenging for claimants to provide supporting documentary evidence for every aspect

of their claim. Most of the claimants in this research reported feeling that the Home Office was attempting to find ways to refuse their claim, despite the Caseworker Guidance stating that they should award the claimant the maximum amount to which they are entitled.

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‘It was just [a] stumbling block, and requiring me to do somersaults, backflips, and all the rest of it’.

Michael, Windrush claimant

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“

‘I look at it like their job is to disqualify’.

David, Windrush claimant

”

The evaluation of whether the decision complied with the Rules and Guidance was one of the key roles of lawyers in the reviewed cases. It was a task that claimants were entirely unequipped to do for themselves, alongside drafting legal arguments for Tier 1 or 2 reviews which pointed out how the decision diverged from the published Rules and Guidance.

It was also abundantly clear from the reviewed cases that, contrary to the Claimant Guidance, claimants *did* need to ‘worry’. The WCS is incapable of obtaining much of the evidence needed, as we set out in section 4, and then refuses applications for lack of evidence. Quite simply, claimants without lawyers are not able to obtain and produce all the evidence needed to secure full compensation.

⁴⁸ Claimant Guidance, ‘Introduction to the primary claim form guidance’, Primary claimant: Windrush compensation claim guidance - GOV.UK.

⁴⁹ Rules, 6.5(b), Windrush Compensation Scheme: full rules (accessible version) - GOV.UK.

⁵⁰ Caseworker Guidance, ‘Information and evidence gathering’, p. 39.



Eligibility: immigration law issues

Section

3

3. Eligibility: immigration law issues

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‘So many of the claims are dependent on first establishing what was the period of time in which the individual was not able to establish their lawful status. Everything else flows from that – and you need a lawyer to advise you on that. You can advance a case by yourself but it’s inevitably refused if they don’t accept you were unable to prove immigration status during the period of your losses.’

Lawyer acting for WCS claimants”

The Caseworker Guidance states that a claim must be refused if ‘the claimant is not eligible and does not have lawful status’.⁵¹ There are several heads of eligibility, which are accompanied by explanations detailing how a claimant might fall within each category, though the claim form does not contain this same level of guidance; applicants can simply tick which eligibility categories they believe apply to them. However, claimants are not always aware of the technical basis of their eligibility.

Claimants may struggle to establish the precise immigration or citizenship status they held at a particular time, in the context of legal changes. This is a particularly acute issue for returning

residents, or cases that concern lapsing leave and citizenship. Addressing these issues requires immigration and nationality law expertise, which the WCS caseworkers and leadership team do not have. Without the claimants having access to legal advice, they cannot identify and challenge errors by caseworkers making flawed decisions on eligibility, or on losses arising from a claimant’s inability to demonstrate lawful status. Even for immigration lawyers and judges, this is a complex area of the law, as shown in a recent High Court decision, *R (Lee) v Secretary of State for the Home Department* [2025] EWHC 519 (Admin), where the court summarised the successful argument as follows:

“

‘Ground 2(a) is that the Defendant [the Home Office] wrongly thought that the Claimant retained ILR for two years after leaving the UK, and that was wrong in law because prior to July 2000 there was no such thing as non-lapsing leave... Ground 2(b) is that the Defendant “failed to recognise that under the Immigration Rules then in force, the Claimant had a right to seek readmission to the UK as a returning resident (whether or not he had been outside the UK for more than two years)”. It therefore by implication invokes paragraphs 18 and 19 of the then Rules.’ [Paragraph 62]”

The fact that this issue of eligibility for the WCS proceeded all the way to a full High Court hearing illustrates its complexity, even before one tries to apply these points from legislation

and the Immigration Rules to an individual case and determine what a person’s status was or should have been on any given date in the past.

⁵¹ Caseworker Guidance, ‘Eligibility: criteria’, p. 14.



We argue that this is one of the key issues that makes independent legal advice absolutely essential within the WCS.

3.1 Determining eligibility

The first and foremost question in determining eligibility is what immigration or nationality status someone held, or was entitled to, when the losses occurred. This leads to claimants being wrongly refused on eligibility grounds.

Cases we reviewed in this research illustrate this. Chioma should have been given settled status when she arrived in the UK at the age of three, due to her mother's status. Instead, she lived in desperate circumstances, experiencing homelessness and domestic violence, until she was granted ILR in 2007. Her inability to prove her lawful status prevented her from obtaining safe housing for herself and her child. But Chioma was refused compensation under the WCS for the period before 2007, as the caseworkers did not accept that she had lawful status at this time, even though she was entitled to it. Though her case is still in progress, with the intervention of a lawyer, Chioma – who was initially given a nil award – has been offered £65,000.

Patricia's initial application to the WCS was rejected on eligibility grounds, because the Home Office concluded that she was not lawfully resident in the UK in 2007-2009 when she suffered the detriment. Patricia has dual US/ British nationality and a UK National Insurance number, and lived in the UK from before the age

of 10 until she emigrated to the US in adulthood. After reviewing the Rules, her legal team realised that the Home Office had made an error in its reasoning. The relevant test for assessing lawful residence in the UK was whether Patricia had a right of abode in the UK (which she did), rather than whether she was physically present in the UK when the loss occurred. As her lawyers put it, 'the language of being resident was misleading', when considering eligibility for the WCS.

Lawyers undertake this kind of close textual analysis of legislation and documents on a daily basis, and are trained to closely scrutinise wording. But most claimants, and support organisations that do not have legal expertise, would find it challenging to apply this level of scrutiny.

3.2 Lapsing leave and returning residents

The provisions for 'lapsing leave' cause similar difficulties to those around lawful residence, as illustrated in the excerpt from the recent High Court case of *Lee*, above. Until 30 July 2000, leave to remain lapsed automatically if the holder left the Common Travel Area (s3(4) of the Immigration Act 1971), but could be readmitted for settlement as a returning resident on arrival in the UK if they were a Commonwealth citizen who had been settled in the UK at any point in the previous two years. Even if they had been away longer than two years, they could be re-admitted for settlement (rather than as a visitor) 'if, for example, he has lived here for most of his life.'⁵²

⁵² *R (Lee) v Secretary of State for the Home Department* [2025] EWHC 519 (Admin) (quoting paragraph 57 of the Immigration Rules in effect from 1 January 1983. HC 169), at paragraph 48.

The precise wording and numbering of these elements of the rules changed over time (as per *Lee* paragraphs 48-51). After July 2000, leave did not lapse until the person had been outside the UK for two years (five for those with EU settled status).

The difficulties around this were twofold: first, many did not realise they were not British or that they held a form of leave to remain which could lapse if they were outside the UK beyond a certain period. That in turn meant they might unwittingly stay outside the UK for longer than the permitted period, although it should still have been possible for them to be re-admitted based on their ties to the UK. Secondly, to be admitted as a returning resident, a person needed to show that they had held ILR in the UK when they last left the country, but the Windrush cohort were never given proof of their ILR. Consequently, if a person arrived at the UK border or port and was denied entry as a returning resident, but given a visitor stamp, there was no record of their having asked to be admitted as a returning resident. If they then left, to comply with the terms of their six-month visitor visa, then on return they were no longer in the position of having held ILR when they last departed the UK.

Sonia and Andre's case most clearly illustrates this scenario. They lived with their children in the UK in a house that they owned. When Andre was due to renew his British passport, he was (wrongly) told that he was no longer entitled to one, as his country of birth had become independent. He lost his job and could not get another due to his lack of proof of status. Eventually, the family felt there was no choice but to sell the house and move away from the UK. When they wanted to return, and their children were in university, they were only given six-month stamps as visitors. They were not told they were entitled to apply as returning residents.

Their right of abode was automatically converted into ILR, without their knowledge, upon the independence of their birth country. Unlike the right of abode, ILR could lapse. Not only was Sonia unaware that her status had changed, but she also had no way of proving that she had ever held ILR. Without proof of her ILR, she could not apply

to be treated as a returning resident other than by verbally requesting this at the point of entry.

To avoid breaching her visit visa, Sonia had to move between the Caribbean and the UK every six months, at enormous cost, while her children were in the UK. As she had no proof of holding ILR, she could not apply on paper for entry clearance as a returning resident. An application can also be made verbally, on arrival, but although she requested readmission as a resident more than 20 times on arrival, there was no record of these verbal requests. All she could do was enquire on entry as to why she was being given a visitor stamp. As the lawyer in that case commented, 'These are the traps'. It was only possible to evidence what had happened because Sonia had kept all of her expired passports. The lawyer described having to make an 80-page submission in response to the initial decision letter, setting out the legal basis for Sonia and Andre's leave to remain in the UK at all points. These were similar arguments to those recently litigated in the *Lee* case, which have affected an as-yet unknown number of other cases.

Working Group members unanimously agreed that they had never seen this issue properly addressed in a decision letter. The WCS requires such claimants to prove that they were wrongly refused re-admission at a point in the past, and that this was the reason for their potentially being outside the UK for a long period of time. One of the Working Group lawyers described this as the Home Office 'relying on an irrational action in the past to defend their current actions.' Another described contacting the WCS senior leadership to escalate an issue about lapsing leave provisions, and receiving a response that referred to the wrong piece of legislation, because the leadership lacked the technical expertise in immigration and nationality law. Another pointed out that, if the leaders of the WCS do not understand these points, caseworkers are even less likely to do so.

To quote a member of the Working Group, 'If we're talking about why immigration solicitors specifically are needed, this is it...that's why you need to have immigration lawyers that understand this.'



**‘Don’t worry, we will try to help
you get evidence’**

Section

4

4. ‘Don’t worry, we will try to help you get evidence’

The WCS is an evidence-based compensation scheme so the absence of documents often greatly impacts a claimant’s chances of a successful claim. As part of its rationale for consistently refusing to make fully-funded legal advice available to claimants, the Home Office insists that there is no need for lawyers, because WCS caseworkers will look for evidence on claimants’ behalf. Our research demonstrates that this did not happen adequately on the files we reviewed. Where the WCS did seek evidence, their efforts fell far short of what was needed and what experienced legal representatives were able to do. This is because, unlike lawyers, WCS caseworkers are not experts in identifying, collating and interpreting evidence.

The Rules provide that ‘the Home Office will require supporting evidence to enable it to determine a claimant’s entitlement to compensation under the scheme’.⁵³ Initially, the primary claimant form stated that claimants ‘will need to be able to prove that any impact or loss [they] suffered was a direct result of being unable to demonstrate [their] lawful right to stay in the United Kingdom’.⁵⁴ On 21 July 2021, in response to concerns around its complexity, the Home Office issued a revised claim form.

The revised form replaced previous references to claimants’ need for proof with variations of the following statement - in bold and against every head of loss - that ‘[i]f you do not have any evidence for this category, don’t worry as we will try to help you get this evidence’. These statements remain in the primary claimant form’s current version,⁵⁵ and are further repeated in the online guidance available to claimants. Claimants are told that the Home Office will check their records to confirm the information, indicating that the burden of sourcing this evidence is on the Home Office.

Claimants are therefore unclear as to what evidence is required with respect to their application. Some are given the impression that they are able to submit their applications with only the claim form as supporting evidence, and that this is a sufficient starting point for the Home Office to investigate, verify and assess their claims.

Marcia was among the claimants who submitted ‘brief’ applications, thinking that the application would be ‘straightforward’ and that telling her story would be sufficient. Patricia’s case illustrates the point that there is no ‘obvious signpost’ in the Claimant Guidance to help claimants understand what is needed, but Mina, who did read the Rules prior to applying, was then overwhelmed by the expectations of the evidence required.

Caseworkers are encouraged to make enquiries of relevant local authorities, universities or other third parties for evidence relating to some heads of loss, and the onus is placed on each caseworker to do so. There is guidance on how caseworkers should make the relevant enquiries but there were several instances in the reviewed files where the WCS failed to make any effort to obtain this evidence on behalf of claimants.

4.1 Challenging wrong and irrational conclusions from WCS enquiries

The cases we reviewed also illustrated multiple instances where the Home Office had drawn the wrong conclusions from their enquiries, or had inadequately conducted their enquiries. Having legal representation meant that claimants could challenge these assessments. In many cases, lawyers’ experience in fact-finding and evidence-gathering made it clear that the Home Office had drawn faulty or unsupported conclusions from their enquiries, and had consequently offered unfair awards to claimants.

Jason’s case clearly illustrates the superficiality of the WCS’s enquiries, and its drawing of wrong conclusions. Jason had provided large quantities of evidence in his initial application to highlight how he had not been able to access employment due to being unable to prove his status. In reviewing his claim, the Home Office contacted the ECS to ‘determine if any right to work checks had been conducted’. The ECS indicated to the WCS that it had confirmed Jason’s right to work in the UK on two occasions when employers had checked.

⁵³ Rules, 6.3, *Windrush Compensation Scheme: full rules (accessible version)* - GOV.UK.

⁵⁴ Home Office, ‘Windrush Compensation Scheme Primary Claimant Claim Form’ (December 2020), p. 5. No longer available online. Cited from Home Affairs Committee, ‘The Windrush Compensation Scheme: Fifth Report of Session 2021-22’, HC 204, paragraph 112.

⁵⁵ Home Office, ‘Windrush Compensation Scheme Primary Claimant Claim Form’, (15 November 2024), pp. 2, 11, 17, 25, 27, 29, 32, 36 and 39.

The WCS then used this information, alongside the Home Office Right to Work guidance which since 2018 had instructed employers to use the ECS where individuals did not have the necessary documents, to conclude that Jason's failure to secure employment could not have been the result of an inability to prove his status any time after 2018.

Jason's lawyer challenged this reasoning, pointing out that, as the ECS takes five working days to provide results to employers, Jason had still lost job opportunities because employers would be more likely to hire applicants whose status did not need to be verified by the ECS, especially 'in a competitive job market where employers need staff quickly'. The lawyer also noted that the ECS had been available for employers to use long before 2018. The reference to the ECS in the Right to Work guidance from 2018 could never logically prove that all prospective employers used it, or that claimants could not be disadvantaged where they lacked documents. The inclusion of the ECS in the 2018 guidance to employers could not justify a rejection of post-2018 claims solely on the basis that the ECS could be checked. This approach was not envisaged or sanctioned in the Caseworker Guidance. Evidence from the ECS may of course be relevant but must be considered in the round along with all of the other evidence.

Jason's lawyer was able to speak to others working on WCS claims and identify this as a trend in decision making, and then to quickly escalate the issue to WCS senior leaders which stopped the practice. This was something a claimant alone could obviously not have done.

In other cases, WCS enquiries with other departments and public authorities yielded incomplete responses and led to conclusions that were either unsubstantiated or incorrect. One lawyer reported that, when he challenged the Home Office about its reliance on responses from the DWP, a Home Office representative confirmed that caseworkers do not actually review the files received from other departments. Rather, according to a memorandum of understanding, the WCS will email the relevant department to check whether they hold any evidence that the claimant was refused benefits or access to

services due to their inability to prove their status. In response, the relevant department, including the DWP, confirms whether or not they have said evidence, without sharing the relevant file. This practice between government departments can result in incomplete conclusions and unfair award decisions.

This is apparent in David's case, which included a claim for loss of access to various social security benefits. His claim was initially refused, on the basis that the DWP confirmed that he was not eligible for payment under that department's own rules. When David obtained legal representation for a Tier 1 review, his lawyers set out the instances where he had been denied benefits on grounds of immigration status, with reference to supporting documentation. Even at Tier 1, the Home Office refused David compensation. Aware of the WCS's 'ask no questions' approach towards evidence from other departments, David's lawyers requested the DWP's full file and reviewed it themselves, finding clear evidence that David was indeed denied benefits as a result of his inability to prove his status, which the WCS would not have identified.

Winston's case further exemplifies the WCS's flawed approach to evidence from other departments. Winston claimed that he was denied attendance allowance benefits due to his inability to prove his eligibility. Again, the WCS made enquiries of the DWP, who denied that Winston's inability to prove his status was the reason his application for attendance allowance was dismissed, so Winston's claim for compensation was declined. However, the WCS itself had clearly not reviewed the DWP's file. When prompted to look into this further by Winston's legal team, the Home Office accepted that Winston had not responded to the DWP's requests for evidence of his right to reside in the UK (because he was unable to do so). The Home Office then reversed its position at Tier 1 and offered Winston an award for impact on life.

One lawyer we interviewed told us that, in three cases he worked on, the DWP advised the WCS that all benefits due had been paid but when he obtained the DWP records he found clear evidence that this was not the case and that

benefits had been refused due to an inability to prove legal status. This seems to arise because the DWP still does not view those benefits as having been 'due', because its files continue to suggest that the person was not entitled to them. It is not being asked to review past decisions on the basis that the claimant did in fact have legal status. Essentially, the WCS is asking the wrong question of the DWP, but it accepts the response as if it related to the correct question.

The case files reviewed in this research show that the Home Office too readily concludes that there is insufficient evidence, without examining all the possible reasons why evidence may not exist. On this basis, claimants were given nil awards without considering other potential sources of evidence. Andre and Sonia's case exemplifies this in relation to public authority data retention policies. Their lawyer's Tier 1 submissions pointed out that the WCS was relying on superficial enquiries and then claiming that there was claim a lack of evidence. The lawyer also submitted SARs for Home Office files. The disclosure bundles provided were clearly incomplete, something which a non-expert could not be expected to identify and which the Home Office confessed was the result of its own data retention policies. The lawyer pointed out that this did not entitle the Home Office to draw adverse inferences - to conclude there was no evidence, when in fact any evidence would have been destroyed - and that it had a responsibility to review all evidence on the balance of probabilities.

Chioma's case similarly illustrates the Home Office's practice of drawing unsubstantiated conclusions from incomplete files, which only her lawyer was able to challenge. The Home Office initially refused Chioma an award for homelessness, on the basis that the WCS had not been able to obtain evidence from her local authority that she had applied for support for homelessness. The lawyer obtained confirmation from the local authority that it retained documents for 12 years, meaning that any evidence from the relevant period would have been destroyed. Chioma's lawyer then argued on public law grounds that the lack of evidence from the local authority did not entitle the Home Office to draw 'negative inferences', especially when there could be other sources of evidence, which the WCS had a responsibility to look for before making decisions. Chioma's lawyer

eventually secured evidence from a copy of her local authority file held by her previous housing solicitors; an approach the WCS had never considered.

All of these claimants needed the help of a lawyer to articulate and challenge the WCS's failure to obtain and properly interpret evidence.

4.2 Challenging WCS caseworkers' failure to request or refer to relevant material

In several of the cases we reviewed, the WCS had neglected to request or secure evidence that would likely have made a material difference in the determination of claims. This was particularly true where medical evidence was required. Due to issues of funding (see section 5) the majority of claimants were not able to secure this evidence themselves. In such cases, the WCS did not obtain medical evidence on behalf of the claimants, despite this being within its remit per the Rules (see further section 6 below).

In other cases, the WCS failed to consider evidence submitted by claimants, even when the caseworker had specifically asked the claimant to provide it. Mina had been awarded a preliminary award as a close relative of Grace, and subsequently submitted an application on behalf of Grace. One day before the Home Office's internal deadline for completing the preliminary assessment on Grace's case, a caseworker called Mina to request further evidence. Mina submitted some of the requested evidence, and told the caseworker that she would look for further documents to address the outstanding requests. Just one day after Mina's call with the caseworker, Grace was refused a preliminary award; timing which meant that the Home Office did meet its internal deadline for completing the preliminary assessment, but did so without all of the evidence that Mina had said she would provide. The decision was likely made without having reviewed any of the additional evidence that Mina provided after the call, given that just one day elapsed between the phone call and the negative preliminary assessment. Mina recalls their Windrush Vulnerable Persons Team liaison telling her that it would be 'very difficult to overturn this decision' and it was only when Mina instructed lawyers that they were able to challenge that refusal.

4.3 Calculation of Loss

Annex C of the Claimant Guidance indicates that the amount of compensation awarded will ‘depend on the circumstances of [their] claim’, and that the Home Office ‘may use a combination of actual losses and tariff amounts’ in assessing the amount of compensation.⁵⁶ The Caseworker Guidance makes further reference to the calculation of awards but claimants are not always aware that they should also refer to this guidance. For some heads of loss, Annex F of the Rules provides that there is a one-off fixed sum award; for example, ‘housing: denial of access’ or ‘denial of access to free NHS care’ are compensated at £1000 and £500 respectively.⁵⁷

However, for ‘loss of access to employment’ in the Caseworker Guidance, the award depends on the caseworker’s interpretation of the evidence provided. The calculation itself is straightforward: net monthly wage (or standard tariff in the absence of evidence of monthly earnings) multiplied by the number of months out of work. The caseworker must first determine the period of loss, based on their interpretation of when the claimant first had their employment terminated, or a job offer rescinded or refused because of their inability to demonstrate lawful status.⁵⁸

In Jason’s case, his lawyer submitted a 30-page bundle of alternative calculations of loss from his various periods of unemployment. These addressed all possible combinations of what the WCS might accept were denials of employment that were caused by an inability to prove immigration status. Like many people seeking employment, Jason had applied for multiple jobs at once. The periods of loss to be compensated were thus contingent on the WCS accepting that any given job rejection was caused by Windrush factors (as opposed to merely not being the preferred candidate). These were complex arguments based first on causation, and then on calculation of loss, which Jason, despite his competence in assembling the evidence, had not been able to do. Following the instruction of the lawyer, Jason’s compensation offer was increased first from £55,000 to £85,000, and then to £150,000.

Under the ‘impact on life category’ section of the Rules, a tariff table outlines the remedies available for different levels of detriment suffered by each claimant. The tariff table provides descriptors for each level and provides some examples of what might qualify a claimant to fall within a particular level. Once again, this is decided by each individual caseworker on a balance of probabilities.⁵⁹ Marcia’s lawyers highlighted that ‘there seemed to be a lack of consistent application’ of the guidance, which increases the uncertainty for each claimant in respect of what they might receive.

In other areas of law, the calculation of loss is a complex matter of reference to detailed tables, industry expertise in relation to expected future earnings, and the application of interest rates. While we support the premise of making an application to the WCS simple and quick, claimants are unable to understand whether or not their offer is fair within the WCS’s own Rules without legal advice.

4.4 Conclusion

As the cases in this section illustrate, lawyers have frequently proved essential to ensuring that claimants can secure as much relevant evidence as possible. Serious flaws arise in the WCS’s approach to evidence gathering, which are aggravated by the representations to claimants that WCS will obtain evidence, discouraging claimants from seeking evidence for themselves or reassuring them that there is no need to do so. In the cases we reviewed, the WCS has failed to secure relevant evidence, made superficial enquiries (especially in relation to other government departments), failed to properly assess how much weight should be placed on responses to its enquiries, and drew unreasonable conclusions from responses to their enquiries. These issues have often been material to the determination of claimants’ claims and have tended to result in nil award or low offers. In such cases, lawyers have been able to challenge the WCS’s decision making based on its evidence gathering – highlighting, for example, misapplications of the Caseworker Guidance, or the evidential standard to be applied in the determination of claims. These points of challenge are more familiar to lawyers, than to non-lawyers.

⁵⁶ Claimant Guidance, Annex C, Primary claimant: Windrush compensation claim guidance - GOV.UK.

⁵⁷ Rules, Annex F, Windrush Compensation Scheme: full rules (accessible version) - GOV.UK.

⁵⁸ Caseworker Guidance, ‘loss of access to employment’, pp. 52-63.

⁵⁹ Rules, Annex H, Windrush Compensation Scheme: full rules (accessible version) - GOV.UK.



Difficulties with documentary evidence

Section

5

5. Difficulties with documentary evidence



Where was the last place he worked? If he has been refused help, and we, we got to prove it, and there is no way we could prove it. He was homeless, one of the times, sleeping at Broadmarsh station, that's the issue, we don't have proof of that. Then he went to a place where you sleep at night. They wanted proof of that also. We couldn't get proof of that, because what [the homelessness charity] said, those times they just take them in, so they don't have records of them. So, it was hard.

Elena, close friend of Marcus, WCS claimant.



As demonstrated above, WCS caseworkers are often not seeking documentary evidence on claimants' behalf, and when they do, they are getting inaccurate or partial responses. This leaves claimants needing to provide evidence themselves, which is particularly challenging for a cohort who may lack any obvious documentary evidence precisely because of the harm perpetrated by the Home Office. Claimants often do not know what evidence might conceivably exist or how to go about retrieving it; but our research demonstrates that lawyers do and that they make the necessary enquiries and requests to obtain it. Frequently, claimants did not have the means or funding to provide the evidence themselves even where it does exist.

Where documentary evidence does not exist, lawyers also play a crucial role in providing explanations for the lack of available evidence and reasons why the claimant's account should be accepted on the balance of probabilities. The following cases illustrate lawyers' value in obtaining documentary evidence, or addressing its absence:

- Emily's lawyer submitted third-party evidence in support of her claim, including i) a letter from the passport office refusing her a British passport; ii) a letter from her MP about the passport issue; iii) a letter from the senior billing officer of the local authority, confirming she was refused benefits because of her citizenship.

The latter was the basis for Emily's award for loss of tax credits, which had been refused initially, but was granted after the lawyer's intervention. Emily's lawyer also wrote to her former employer regarding her earning history, and to the police and social services regarding records of domestic abuse she had experienced. While Emily had not thought of using the letters between her and her MP, her lawyer used these to argue that Emily met the criteria for a higher-level impact on life award, meaning she received £70,000 instead of £40,000 in that category. Emily's lawyer's expertise in gathering evidence, together with their knowledge of the WCS thresholds, thus significantly impacted the outcome of her claim.

- David's lawyer obtained evidence from the DWP, letters concerning his lost passport, and witness statements from his friends. The lawyer supported this evidence with a clear timeline and written representations which tied this information together with the descriptive account David had already provided and explained its significance. They also explained that records in relation to his housing benefit claim had been destroyed due to the passage of time, and emphasised the appropriate standard of proof. This resulted in a change from an initial nil award to a final offer of £90,000.



- Phoenix's legal team compiled a bundle of evidence and formal submissions totalling more than 130 pages and 21 exhibits. These included the extensive records Phoenix had compiled herself, and the results of a SAR that the legal team had sent to the Job Centre. The SAR covered a significant part of Phoenix's working life, and that she was unable to find employment over a period of time because she could not prove her immigration status. Despite her own efforts to collect as much information as possible, Phoenix felt that she could not have provided such 'granular detail' without legal support. In her interview, she explained that she had never heard of SARs and would not have known there was such a thing: they were 'foreign to me'. Despite this, she was initially offered only £20,000 and required a Tier 1 review to point out the errors in the WCS's handling of the evidence. When the WCS accepted that she had been denied access to employment, her impact on life award was increased to £70,000. She received a total of almost £95,000 compensation.
- Sonia and Andre's case revolved substantially around proof of their immigration status, and their entitlement to come back to the UK as returning residents. Compensation was refused because the Home Office did not accept that Sonia had been entitled to work or access NHS care, on the grounds that she only held a visitor visa. During Tier 1 review, lawyers made several SARs: first for the Home Office file, and then for the complete file, rather than the electronic-only version that was initially sent. Lawyers then sent another three follow-up emails and letters for the complete file, as there were still documents missing (five requests in all). This was followed by four letters or emails to the Home Office to request Andre's complete file. This process – from making SARs to public bodies, to identifying that the file provided is incomplete, to persisting with requests for the complete version – clearly requires legal assistance. The lawyers also sent requests to the bank where the couple had their mortgage, to HM Land Registry, and for a birth and baptism certificate which evidenced Andre's entitlement to British citizenship. All of these were accompanied by detailed representations making reference not only to the Rules and Guidance, but also multiple iterations of the Immigration Rules and related guidance. The sheer volume of evidence, let alone the legal submissions, would have been difficult to prepare for someone (even in an advocacy organisation) without legal experience.

Obtaining evidence held by third parties was especially difficult in Cohort 2 cases, where most of the claimants were elderly. In Marcus's case, for example, most third-party evidence was unavailable due to the passage of time. Marcus's application thus lacked substantial supporting documents, such as employment records or medical evidence – both because

he had been street homeless, and because historical records had been destroyed. Marcus's housing application had been rejected, but the local council did not keep records from that time. Marcus stayed at the Salvation Army whilst homeless, but they did not keep records of who they assisted at that time. By the time of his initial claim, Marcus had been retired for over 20 years, so paperwork concerning his employment was difficult to find. His initial application was refused due to this lack of documentary evidence. Marcus's lawyer supplemented the Tier 1 and Tier 2 reviews with witness statements and a letter that explained the impracticality of Marcus obtaining documentary evidence after so many years, and pointed out the proper standard of proof. At Tier 1 review, Marcus was awarded £10,000, which was raised to £20,000 following the Tier 2 review.

Sheldon's and Ravi's cases were slightly more straightforward in that both men were still unable to prove their status when they were hospitalised, so they were referred while in hospital to a lawyer who helped resolved their status and then made their compensation claim. There was recent correspondence between the hospital and their local authorities about their status, though Ravi's housing file consisted of numerous loose documents, not in chronological order, including National Insurance and Universal Credit records, which required a significant degree of knowledge to decipher. Ravi's lawyer obtained additional evidence from HMRC, as well as letters relating to his attempts to find a job. For Sheldon, there was a local authority care assessment, and correspondence directly between the local authority and the Home Office about his status for the purpose of a homelessness application. For both men, there were almost certainly earlier impacts that were never evidenced. Even in these relatively clear-cut cases, a lawyer's intervention was needed because the claimants were too unwell to pursue applications for themselves and the WCS consistently misapplied the standard of proof.

Winston had been unable to respond to DWP requests for further information because of his dementia. The lawyer used letters from Citizens Advice about benefit entitlements to

demonstrate that the DWP had been asking for proof of status to determine his eligibility for benefits. The correspondence was sufficient to demonstrate that Winston's lack of proof of his immigration status had prevented him from responding effectively, which led to the refusal of benefits.

By contrast with the cases above, Jason was very unusual in that he made two SARs himself to support his initial application. The results evidenced that he was denied employment due to being unable to prove his immigration status. Even so, Jason was unable to make the necessary legal argument. When he received legal assistance for his Tier 1 review, his lawyer focused on interpreting that evidence in the context of the Rules and Guidance and demonstrated alternative calculations of loss. His case illustrates the support that even an extremely capable claimant needs, that an advocacy organisation would likely not be able to provide.

A challenge for claimants in our study – apart from knowing where to look for third party evidence, or even that they needed to do so – was that WCS caseworkers were assessing evidence as if in a vacuum, and as if there was no background information about the likelihood of something having happened. This approach was contrary to the Caseworker Guidance, which required the Home Office to take a holistic view of all evidence presented to it when considering the standard of proof. To address this issue, lawyers' strategies included pointing out the balance of probability that something had happened (or not happened) because of the wider context, e.g. the person's date of arrival in the UK being consistent within the cohort of people similarly affected; or that the lack of proof of status was likely to be the reason they couldn't get a job, where they were otherwise well-qualified and there no apparent alternative reason. However, even where WCS caseworkers properly applied the standard of proof, claimants needed lawyers to support them to access the evidence and interpret and explain its significance. This detailed understanding of the standard of proof and the nature of evidence is a specialist skill which requires an expert lawyer.



Medical Evidence

Section

6

6. Medical Evidence

Issues relating to medical evidence were particularly prevalent in our research. Medical evidence was relevant (whether available or not) in at least ten of the 17 cases reviewed. Medical evidence should not be routinely required. The 'Impact on life' section of the Caseworker Guidance states that caseworkers 'should take a holistic view of the claim and use all the information and evidence you have available' when deciding if the standard of proof has been met.⁶⁰ It adds that caseworkers 'should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category'.⁶¹ In taking a holistic approach, the Guidance states that caseworkers should draw on direct documentary evidence, circumstantial information, and their own understanding of the case, and should not place particular weight on any one of these things.

Despite this holistic approach, persistent references to medical evidence in decision letters indicate that the WCS considers medical documents such as doctors' notes and GP records to be essential corroborating information. These are often the deciding factor in making or increasing an award. Sandra's Tier 1 review made clear that her medical evidence had a significant influence on the final award decision, noting that 'your doctor has corroborated that your loss of employment was a contributing factor' in her deteriorating mental health, which had 'a lasting impact over a prolonged period of time'. The Tier 1 review referred specifically to a psychological assessment (for depression and anxiety) that Sandra provided: 'The assessment of your mental health shows that the impact on your life has been significant and you have been unable to live a normal life.'

6.1 WCS failing to commission medical reports when it considers medical evidence necessary

The Claimant Guidance provides no advice to applicants on obtaining and submitting medical evidence to support their claims. The Rules, however, explain that if the WCS considers that medical or other expert evidence is required (including taking into consideration any request from a claimant to obtain medical or expert evidence), the WCS may commission a report from a suitably qualified practitioner with the claimant's consent and at the Home Office's expense.⁶² The Caseworker Guidance expands on this, requiring caseworkers to consult with their team leader when a claimant or their representative requests that they commission medical evidence, or in cases where 'you think a medical report could result in an increased offer of compensation (for example where significant or irreversible mental or physical health impacts are claimed but are not apparent from the information provided)...'.⁶³ The caseworker must obtain the claimant's consent, and the WCS will then meet reasonable travel costs in addition to commissioning the report.

Despite these provisions, the WCS had not commissioned medical evidence in any of the cases we reviewed. This was the case even where the caseworker or the decision letter specifically said that medical evidence would be relevant. In one such case, Marcus was referred to a number of private providers who could produce a psychological report, all of whom were unaffordable to him.

Other cases suffered from a lack of medical evidence which claimants were unable to obtain. Although he was represented from the outset, Marcus applied without a report from his GP. He was told it would cost £250, and neither he nor his pro bono legal service had that money.

⁶⁰ Caseworker Guidance, p. 83.

⁶¹ Caseworker Guidance, p. 85.

⁶² Rules, 6.9, *Windrush Compensation Scheme: full rules (accessible version)* - GOV.UK.

⁶³ Caseworker Guidance, p. 89.

A note on Marcus's case file documented that the WCS caseworker had called Marcus's lawyer and 'emphasised that medical evidence was 'key' [and] invited the obtaining of further evidence'. But the WCS did not commission any evidence. In a letter, Marcus's lawyers noted that they had contacted the WCS 'to request help with the cost of obtaining medical evidence,' which was refused. Marcus's lawyers reminded the WCS that 'in the Claim Form, claimants are repeatedly told: 'If you do not have evidence for this category, don't worry as we will try to get you this evidence.' They argued that 'in the circumstances your caseworker imposed an unreasonable burden on Marcus...'

The WCS also declined to commission medical evidence in cases where no documentary evidence had been provided. For example, when Emily's lawyer asked the WCS to obtain a psychological report, she was told that a report was not needed, 'but you can call the Samaritans.' Although the WCS increased the award on Tier 1 review without a medical report, since neither Emily nor her lawyer had the resources to obtain a report themselves, it is not clear whether medical evidence might have increased the compensation offer further. This would be the case for all claims where medical evidence was not commissioned.

The only case reviewed that relied on a psychiatric report was Jason's. He had paid for this report himself out of his interim award payment, to demonstrate the severity of his depression and anxiety. His file also included a letter from his GP, and a prescription to treat a condition brought on by his mental state. Only with this self-funded report did the Home Office accept that Jason had experienced significant cumulative impacts to his ability to live a normal life over a prolonged period of time. The impact on life award was raised to Level 4, with an increase from £40,000 to £70,000 – though Jason was not reimbursed for the costs of obtaining the psychiatric report.

Working Group lawyers were not aware of a single case where the WCS had commissioned medical evidence. One said, 'I have asked for this in some applications, but the Home Office has never granted it, or even responded to the

request. They have just made a decision on the basis of the evidence available.' One lawyer had recently received a Tier 2 review response, which recommended that the claimant commission a medical report. Another lawyer had asked the WCS to cover the cost of a medical report, and was told there was no need to obtain medical evidence because it would retraumatise the client. This would be an acceptable response if the WCS caseworkers were then willing to give claimants the benefit of the doubt when deciding their claims, but this was not the approach taken in the specific case or, in lawyers' experiences, in the WCS generally.

As another Working Group member pointed out, lawyers who have built a relationship of trust and confidence with claimants by spending many hours taking instructions are likely to be better placed than WCS caseworkers to determine whether expert evidence is required. Such an approach is the norm in other legal areas, such as asylum appeals, where expert reports are funded as a disbursement (outlay in Scotland) when the lawyer thinks they are necessary. Where expert evidence is provided under the WCS – even where that evidence provides the basis for the amount of compensation awarded and is relied upon in the decision – the Home Office refuses to refund the costs of this evidence.

Realistically, lawyers say that only people with legal representatives have any prospect of obtaining medical evidence. Yet most of the services operating in this space are working pro bono. One organisation had started out with a small pot of funding for its Windrush service, but had carried on working pro bono, with no money available for expert evidence. Another works alongside private law firms, which fund medical reports as a donation, via a psychologist who agreed to compile reports at legal aid rate (costing around £1,000 per report). While they originally anticipated needing reports in only a few cases, they have needed them in almost every case, and have found that in most instances, the final decisions indicate that the report made a substantive difference. At present though, this access to vital evidence is a matter of charity.

6.2 Lawyers' strategies where medical reports are not available or affordable

As a result of the importance of medical records, claimants have faced significant pressure to secure GP records or other relevant medical evidence to support their claim. As many claimants were initially unaware that they could use SARs to obtain their medical information, they struggled to satisfy caseworkers' interpretation of the evidential threshold before obtaining legal representation. Where funding for a report was unavailable, lawyers often substituted GP records. One Working Group lawyer described how they 'pick things off the medical records and try to build up the client's statement from that, but it's not the same as getting a medical report.'

In Marcia's case, she told a WCS caseworker about her mental health difficulties but did not provide any documentary evidence at initial application stage. She was unaware that her medical notes could be used in evidence, or that she could make a request for them. The WCS caseworker did not commission any evidence or suggest contacting her GP. The initial decision letter stated that no documentary evidence had been provided to support Marcia's statement, and it was not accepted that she suffered detriment as a direct consequence of her inability to prove her lawful status in the UK.

Once she was represented, Marcia's lawyers made a SAR to her GP, enabling them to obtain records which confirmed Marcia's diagnosis of clinical depression, that it was caused by her immigration status difficulties, and that she was prescribed anti-depressants and counselling. Marcia's mental health further deteriorated when she was unable to get married because she didn't have a British passport (as required by the marriage registrar), leading to the break-up of the relationship. The GP records became the foundation of the Tier 1 review: the Home Office accepted the depression was a direct result of the immigration problems and increased the compensation from zero to £20,000.

Two other applicants in this research relied on GP records at Tier 1 review stage, with their lawyers making representations based on that evidence, which appeared to substantively influence the compensation offer. As above, Sandra had GP and hospital evidence of severe depression, anxiety and suicidal ideation. For David, the Tier 1 review decision letter stated that medical records were considered in reaching the decision to increase the impact on life award from zero to £70,000. David's GP records also provided evidence that he was seeking employment, but was unable to progress job applications.

Some claimants have no medical records because they could not access NHS healthcare whilst they were unable to prove their status, and not all claimants sought medical treatment even where their uncertain immigration status harmed their mental health. Michael and Marcus, for example, expressed reluctance to seek help for emotional difficulties. As Marcus's close friend explained, 'Marcus was one of those people who would not go to the doctor if he was upset or anxious or depressed...He would just soldier on. He was old school.'

In cases where no medical evidence exists, evidence of health impacts has to be drawn from entirely different sources, something that lawyers are able to assist with. For example, Emily's own account described severe anxiety and distress, and entering into an abusive relationship as a result of this distress. No medical evidence was available, but after she obtained legal assistance for a Tier 1 review, the lawyer relied upon a letter from Emily's MP about her immigration status problems. The MP had recommended that Emily speak to Mind, her GP and the local authority's adult social care team, providing contemporaneous support for Emily's description of her symptoms. The combined effect of the representations on all points was to increase the compensation from an initial £10,000 (which was subsequently increased to £50,000 because of changes to the WCS's tariffs) to an eventual £80,000.

In other cases, lawyers relied on witness statements to mitigate the lack of medical evidence.⁶⁴ For David, at Tier 1 stage his lawyer obtained three witness statements from people who knew him, which described his multiple bouts of depression. These witness statements were referenced in the Tier 1 review decision letter, which increased the offer from a nil award to £90,000. Similarly, Clive's lawyer, who represented him from the outset, obtained witness statements from his daughter, sister and a close friend, in addition to Clive's own, which all detailed his depression. The Home Office accepted in its initial decision that Clive's health and well-being were affected, and he was offered £40,000 for impact on life, with financial and housing issues also taken into account. It appears likely that the additional witness statements influenced the compensation offer, since it was higher than others where there is no evidence besides the claimant's own. The offer was increased to £70,000 after the Tier 2 review, in the impact on life category, because the Home Office accepted that the effects of the immigration status problem had exacerbated an existing health issue; there was no new evidence at that stage, but only legal argument on how the existing evidence showed that Clive met the threshold for a higher award tariff.

In Marcus's case, the Home Office accepted at Tier 1 review that he had experienced a deterioration in his mental health, on the basis of witness statements from family members and a close friend, but refused a higher award because Marcus had not sought medical intervention. The Adjudicator confirmed that decision at Tier 2 review, on the basis that seeking medical intervention was a feature of a level 4 award, as suggested by Annex H of the Rules.⁶⁵ But the Adjudicator accepted the lawyer's argument that the Home Office had not sufficiently considered the exacerbation of Marcus's pre-existing medical condition. Consequently, upon reconsideration of the documented changes in Marcus's physical health records, the award was increased by £10,000 under the impact on life category.

Where claimants are no longer in the UK, different data protection laws may apply, making it difficult to obtain medical records. Patricia sought to provide medical advice of severe migraines and headaches, which were triggered by the stress of her brother's lack of legal status, but most medical records for 2007-2009 were lost under data protection law in her home country. Others were not transferred when her doctor retired, and she changed healthcare provider. She could therefore only provide limited evidence, including an excerpt from a consultation with a neurologist, which she found in a stack of papers she had kept. Without her 'good record keeping', her claim would have remained uncorroborated in the view of the Home Office.

This evidence was introduced at Tier 1 review, and an accompanying legal submission explained in detail the reason for the lack of evidence. The Tier 1 decision letter referred directly to the medical evidence in relation to the burden of proof: 'It is accepted, on the basis of evidence and on the balance of probability, you experienced cumulative impacts over a period of years which led to headaches requiring medical treatment'. The Tier 1 decision converted a nil award to an offer of £40,000.

6.3 Conclusion

Our file reviews demonstrate that medical evidence is often crucial to case outcomes. However, WCS caseworkers do not use their discretion to commission evidence either when they themselves identify that it is needed, or when a representative or claimant requests it. Where such evidence is not readily available, and in the absence of any funding for lawyers to commission such reports themselves, lawyers deploy a range of alternative (though often labour-intensive) strategies, which are familiar to lawyers, but generally not to non-lawyers. These include making SARs and carefully reviewing the documents received, compiling witness statements, and drafting representations to set out the significance of the evidence collected in relation to the relevant Rules, Guidance and standard of proof.

⁶⁴ In relation to lawyers' role in preparation of witness statements, see section 7 below.

⁶⁵ Rules, Annex H, *Windrush Compensation Scheme: full rules (accessible version)* - GOV.UK.



Presenting best evidence – preparation of witness statements

Section

7

7. Presenting best evidence: preparation of witness statements

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I don't think there was any real prospect of Phoenix being able to sit down and document that stuff for herself. Just because of the layer of trauma that she experienced, she would not have gone back to it without gentle coaxing and persuasion to do so. So, she needed somebody to interview her, to draw that material out. [A] lot of what we did was about trying to get her to explain the impact on her. It was only really through that process that we discovered... she'd had physical medical problems as a result of it that had not come up at all in the early stages.

Lawyer representing WCS claimants”

The research suggests that witness statements are a crucial part of the evidence in successful compensation claims, both from the claimant and from others with direct knowledge of the events concerned.

7.1 The challenge for Claimants

Those claimants who began their applications alone generally struggled to understand the type and quality of evidence which they themselves could give. The statements they provided, either on the claim form or in a separate document, tended to omit key information and often failed to draw an explicit link between the claimant's experience and their inability to prove their lawful status.

Out of 11 Cohort 1 cases, six claimants included statements in some form, whether or not they labelled them as such, as part of their application prior to having legal representation. Those who did not include a statement of any sort instead set out their experiences on the application form, without using any separate sheets of paper to describe their experiences. As a result, the testimonial evidence provided by claimants prior to having legal representation tended to be brief. For those claimants that

did provide witness statements, these were on average approximately one and a half pages. In Home Office decision letters, references to claimant-prepared witness statements tended to be correspondingly brief with little weight placed upon them. Most claimants who provided their own witness statements prior to having legal representation were not offered an award.

Witness statements provided by Cohort 1 claimants prior to having legal representation were often very emotive in their re-telling of claimants' experiences. Given the hardships and trauma faced by claimants, this is understandable but was often at the expense of factual detail about how their experiences were linked to their inability to prove their lawful status. As the Home Office has set criteria for awarding compensation, witness statements that did not provide this factual detail were not taken into consideration. Several claimants described in interview how their proximity to their past experiences meant they found it difficult to present their cases in an evidence-based way that the Home Office could review against its criteria. David acknowledged that his application prior to having legal advice was simply narrating his story, without demonstrating the link between his hardships and his inability to prove his status.

A similar issue for claimants was not knowing what information and which experiences to include in their witness statements. Without a clear understanding of the criteria used by caseworkers in the decision-making process, it can be difficult for claimants to select the relevant information from the perspective of satisfying the criteria for an award. This can be compounded by the fact that, for claimants, everything that they have experienced holds relevance.

Michael originally submitted a statement which implored the reader to try to imagine the hardship and humiliation he had experienced in trying to prove his status. He described how he had always considered himself British, and his inability to visit the Caribbean. However, there were gaps in the detail included in his witness statement – notably, how the experiences that he had gone through were caused by his inability to prove his status. The Home Office decision refused Michael an award on the basis that there was insufficient evidence to support his claim.

Marcia's witness statement, submitted without legal assistance, did go into some detail about her upbringing and the difficulties that she and her family endured in trying to obtain a British passport. Much of her initial statement focused on the guilt she had felt regarding the 'substantial difficulties' her children faced regarding citizenship, and the damage this had on her mental health. Yet although her statement explained these difficulties in relative detail, Marcia did not draw an explicit link between these facts and the depression and anxiety that had impacted her daily life. Consequently, she was not offered an award because the WCS did not consider there to be sufficient evidence that the negative impacts referred to in her statement were caused by her inability to prove her status. Although the WCS acknowledged the experiences she had described, it considered that her witness statement did not take the additional step of fully linking these experiences to the criteria for compensation to be awarded. As a lawyer might say, she had not established a chain of causation.

7.2 How lawyers address this

By comparison with the claimant-prepared statements in Cohort 1 cases, lawyer-prepared witness statements for those same claimants tended to be longer and more detailed. They tended to be more rooted in factual events, and explained how these events resulted in the types of loss for which the claimant was claiming. As a result, Home Office decision letters tended to engage more explicitly with the information included in these lawyer-prepared witness statements. Claimants generally saw a marked uplift in awards offered where lawyers prepared witness statements in support of Tier 1 or Tier 2 requests, particularly in relation to impact on life.

Lawyers fleshed out statements that claimants had previously submitted, adding greater detail about claimants' immigration history, and more explicitly linking their experiences to the uncertainty around their immigration status. In several cases, witness statements went into considerable detail concerning claimants' immigration status. Given the complexities of the WCS, and the changes to immigration law within the UK over the period in which claimants have lived in the UK, experienced immigration lawyers are much better placed to include important details about claimants' immigration history.

Michael's lawyer retained much of the emotive language that was in Michael's original witness statement, but supplemented it with greater detail about the adverse effects on Michael and his family that were caused by the uncertainties around his status. It focused, in particular, on the harm that he feared would be caused to his family if he were deported, and set out in depth how it would affect different people close to him. In Marcia's case, the lawyer prepared a statement focused on similar issues to her own witness statement, but with greater focus on Marcia's immigration status, and the reasons for the lack of evidence to prove her status. In both cases, the content of these witness statements was addressed specifically in Home Office decision letters, with both claimants being offered awards where they had not previously



(though in both cases, additional documentary evidence was also submitted).

Although Patricia provided a statement as part of her initial application, she focused on the impact on her brother's life, rather than her own. She did not mention the severe migraines she had suffered as a result of her worries about her brother's inability to prove his lawful status. As such, the Home Office found that her testimony failed to demonstrate that she had suffered detrimental impacts as a direct consequence of her brother's inability to demonstrate his lawful status, as required under Annex H of the Rules.⁶⁶ It was only through interviews with her legal team that this detail was revealed and subsequently included in a witness statement submitted as part of her Tier 1 application, alongside corroborating medical evidence. As one of her lawyers explained, 'Patricia simply hadn't understood that the nature of the Scheme requires a claim to be supported by evidence'. In the lawyer's view, the need to draw various pieces of evidence together as part of a claim gives the WCS a litigation-like character, which applicants lacking legal education may fail to recognise or navigate.

Once Grace and Mina had legal representation, their lawyer took a detailed statement on behalf of both claimants. Grace's ill health meant that this would have been difficult for her, but the lawyer went through a list of questions from the WCS with Grace and Mina. By guiding them through the process, the lawyer was able to prepare a witness statement with great detail about Grace's immigration history and the detrimental experiences that she had suffered as a result of being unable to prove her status. Without the lawyer's help, Grace and Mina might have found the list of questions directly from the Home Office to be intrusive and overwhelming. Rather, the lawyer was able to understand the relevance of the questions being asked by the Home Office and ensure that the relevant details about Grace's experiences could be documented in a witness statement, without causing either Grace or Mina too much distress.

Chioma's and Emily's cases, meanwhile, required their lawyers to build a relationship of trust before they could share their experiences of trauma caused by being unable to prove their lawful status. Both women had negative experiences in their prior communications with the Home Office and We Are Digital. Chioma felt

⁶⁶ Rules, Annex H, Windrush Compensation Scheme: full rules (accessible version) - GOV.UK.

distressed about working with We Are Digital, as she linked it to the trauma she had previously suffered. In Emily's case, frequent phone conversations with the Home Office about her claim left her feeling that it did not care about her experiences. Chioma's and Emily's lawyers both reported that it took multiple meetings with their clients before they felt sufficiently comfortable to share their experiences to be documented in witness statements.

Witness statements can be used to frame the available evidence and explain the gaps. Our review found they were particularly useful in cases with little or no medical evidence. Patricia's application for Tier 1 review included witness statements from her and her half-sister, and a note from her doctor to corroborate her claims of stress-related migraines. She was then awarded £40,000 under the impact on life category, with the decision letter making specific reference to the witness statements and doctor's note.

A theme that arose in multiple cases was that lawyers are better equipped than the WCS to obtain testimonial evidence in relation to trauma suffered by claimants during, and as a result of, their periods of loss. In such cases, some claimants reported feeling triggered or anxious about being asked about those periods of their lives by the Home Office, the organisation directly responsible for their feelings of trauma. Having their own lawyer allowed many applicants to feel more comfortable sharing their experiences for inclusion in witness statements, thereby enabling applicants to better explain the detriments they have faced as a consequence of the Windrush scandal. This suggests that the nature of a lawyer-client relationship is particularly important for cases involving trauma.

The process of obtaining sufficiently detailed witness statements is intensive and often depends on specific legal training and skills. Several lawyers explained that gaining the claimant's trust, and obtaining the detail required for a robust statement, could be a slow process. One of Patricia's lawyers noted that it would not have been possible to obtain

a witness statement of sufficient quality without the involvement of 'a couple of skilled and empathetic lawyers' who could 'tease this evidence out of her'. In her case, the legal team conducted a number of videoconference interviews over several months. These sessions were part of the 255 hours of work that they spent on her Tier 1 review application.

This research strongly suggests that lawyers are generally better placed than the Home Office to develop a relationship of trust with applicants in which they feel able to share their stories, particularly where they have suffered trauma. Legal skills are needed to identify relevant information and demonstrate that the claimant meets the WCS criteria. Although advocacy-focused organisations may be excellent for building trust, it is the combination of a trusting relationship and these legal skills that is crucial.

Lawyers also added value to claims by preparing witness statements from people other than the applicant. Most claimants in the files we reviewed did not realise the potential impact of including witness statements from other people. Jason was the only Cohort 1 claimant to submit multiple statements before having legal representation. Tier 1 or Tier 2 review applications by applicants supported by lawyers frequently featured additional statements.

In Andre's and Sonia's cases, their three children provided witness statements which corroborated much of the information in their applications. Likewise, David's lawyer took statements from people that knew him from the local community, including business owners who had wanted to give him a job, which detailed how his inability to prove his status had held him back in life in a number of ways. The Home Office decision letter referenced these testimonials as clear evidence of the significant impacts on David's life. While claimants might not necessarily think to include additional witness statements from people in their lives, lawyers were aware of the potential value in doing so, as well as who to ask and how to compile the statements to maximise their evidential value.



Ability to engage effectively with the Home Office

Section

8

8. Ability to engage effectively with the Home Office

“

All I can say, and say very strongly, is that people need help. They need legal help. This is not an exercise that an ordinary man on the street, after being traumatised and having to go through what they've gone through in their personal lives can get their head around, filling in forms, and then the bureaucracy that is now ongoing with the nil awards and the fact for me, the fact that they don't talk to you.

Sonia, WCS claimant

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Building trust and being sensitive to trauma are relevant not only to the taking of witness statements, but also to the wider ability of WCS claimants to engage effectively with the Home Office, or with public authorities more generally.

We concluded that some claimants cannot be expected to engage effectively with the WCS caseworkers due to their previous experiences at the hands of the Home Office, and the continuing conduct of WCS caseworkers. We also concluded that no claimant can reasonably be expected to know whether their compensation offer is appropriate without legal advice, or to have the skills and knowledge needed to challenge an unfair decision on eligibility, or level of compensation.

8.1 Trauma

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I broke down in tears on the phone [to the helpline], telling them my story. It was real trauma. It's much easier to write a fundraising form for a ... project than it is to write about my feelings.

David, WCS claimant

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As one claimant described it, claimants experienced ‘cumulative emotional trauma’ from the first time they experienced difficulties related to their immigration status, through to the final stage of their WCS application. For many claimants, struggling to show their lawful status and subsequently having a compensation application refused, came as a shock and conflicted with their sense of British identity.

For most claimants, applying to the WCS was retraumatising as it required them to recount past events and face further rejection of their British identity. Claimants expressed the significant emotional repercussions they felt when applying to the WCS, reliving fear of deportation for themselves and their children, suicidal ideation, a sense of dislocation from community and civic society, extreme stress and overwhelm, a sense of hopelessness, anger and frustration, and a loss of dignity. This frustration was shared by lawyers representing claimants in the files reviewed. One commented on the ‘tortuous’ application process, that heaped ‘misery on top of misery and frustration’. Others went further, citing ‘malicious maladministration’, a ‘lack of integrity’ and a pervasive ‘culture of disbelief’ that caused protracted delays and the unreasonable refusal of claims.

Claimants’ feelings of distress were compounded by significant delays in the decision-making process. Some found that the delays left them feeling ‘hopeless’, whilst others

felt anger at being 'ignored'. As discussed in section 7, such inadequacies in the application process undermined trust in the WCS and made claimants less comfortable interacting with the WCS over time. In some cases, WCS officials' poor communication with claimants during periods of delay led to a perception of unfairness and racism in the application process, which further undermined claimants' trust in the WCS. Sheldon's brother Steven, who managed Sheldon's application, felt that the complexities and frustrations of the WCS process were intended to discourage applicants from proceeding with their claims: 'there is tacit racism in here. You can't see it... Nobody says anything about it but it's in there'. Strong suspicions such as these constituted an additional emotional burden on claimants.

Whilst claimants experienced prolonged periods of silence from the WCS, at times they would receive requests for further information which could be overwhelming. One claimant recalled asking for her colleagues' support to manage the volume of calls she was receiving at work. Sonia expressed her upset at We Are Digital calling her twice while she was preparing for her mother's funeral. This was the case even where claimants asked for communication to be directed to their legal representative. As one of the Working Group lawyers argued, 'if you've already accepted that my client is traumatised, stop contacting them directly. I had it yesterday – they called my client saying we know you've instructed a law centre but are you ok to take this call?'

From the perspective of the lawyers, such calls were particularly inappropriate as claimants were unable to seek legal advice before answering WCS queries. The practice of calling claimants without their legal representative(s) placed them in positions of vulnerability. As Michael's lawyer observed, the WCS tended to attach significant weight ('the least friendly interpretation') to slight discrepancies between comments (apparently) made during these calls, and written submissions. As claimants rarely produced a contemporaneous note of these calls, the only records of these conversations were kept

internally in caseworker files and not checked for accuracy with claimants. As we discuss in more detail below, this lack of transparency made it difficult to challenge Home Office decisions. For example, in Michael's case, elements of his evidence were dismissed in the initial, Tier 1 and Tier 2 decisions on the basis of a phone conversation of which neither he or his legal team were ever shown a record.

Claimants suggested that lawyers provided an emotional buffer between the claimant and the WCS. A common sentiment expressed by claimants who obtained legal representation after their initial application was that a 'burden' had been lifted, or that they could 'breathe again' once their case was referred to a lawyer. Claimants typically responded more positively to enquiries from their legal team than from the WCS, as they felt they were able to build a relationship of trust and confidence. For Michael, 'it wasn't an issue going through it again with [the lawyer] because I knew she was...an advocate for me.' Mina explained that having professional assistance had a healing effect as she no longer felt unwelcome by society's institutions. Sandra said that 'having the law centre behind me, I was able to relax because I knew they had my case in hand'.

It was not only this emotional buffer which made a difference: Ravi's lawyer described how the bureaucratic inefficiencies result in 'case fatigue' which often results in claimants dropping their case out of frustration; Jerome was prepared to give up altogether until his lawyer convinced him to pursue a review. Others recall feeling hopeful once they had a 'strong legal advocate' on their side who could demonstrate both professionalism and empathy, and appreciated their lawyers' ability to manage their expectations throughout the application process. These accounts indicate that legal representation was essential in mitigating the re-traumatising effects of the WCS and supporting claimants to continue despite setbacks.

8.2 Lack of Trust

Even before engaging with the WCS's application process, claimants reported feeling reluctant to apply due to anecdotal accounts about its complicated and arduous nature. Several claimants began their applications with a pre-existing wariness of the Government or public institutions. This wariness derived from past experiences: racial profiling by police, medical neglect in the NHS, a widespread general awareness of other public scandals (principally, the infected blood and Post Office scandals), difficulties finding affordable legal representation, experiences supporting friends and colleagues with various immigration issues, issues finding housing via the local authority, and previous applications to the Home Office to obtain ILR and citizenship.

The Caseworker Guidance states that the Home Office wants 'claimants to receive the maximum compensation to which they are entitled under the scheme', but many claimants felt that the Home Office was doing everything it could to make the application process as difficult as possible to avoid paying compensation. Marcus's friend Elena commented that, 'The impression that I get is they would rather give you nothing than give you something.' Sonia felt that, 'The Home Office knows exactly what they're looking for and set you up to fail.'

Claimants frequently commented that they felt their applications were given less weight while they were unrepresented than once they were represented by lawyers. Jason felt the Home Office perceived him as 'nobody in their eyes to have any kind of weight or power to make a difference'. Emily described feeling like her application had not been given proper consideration until she instructed lawyers. After Emily initially contacted the Windrush hotline in 2018, her application proceeded through phone calls. She did not complete an application form or submit any evidence. After receiving a low offer, she sought legal assistance. Emily explained feeling like 'they underestimated me because I went through channels myself'. These experiences highlight the importance

of legal assistance in ensuring claimants have confidence that the WCS is properly and fairly considering their claims for compensation.

Importantly, several claimants found that the tone of their conversations with caseworkers changed once the WCS became aware of their legal representation. Phoenix recalls a 'massive difference in how [caseworkers] engaged' once her lawyer had been in contact.

“
They were, they were less what I call—they were less fobbing-off. They were a bit like when this scandal broke, and we all went in to have our status restored. They treated us like celebrities, you know, we had when we went to the Home Office to have our status restored. So, it was a kind of on a smaller scale, a kind of similar engagement with me, once they knew that I had legal access.”

She felt that caseworkers became less dismissive and more empathetic. Lawyers in the Working Group also remarked on this, explaining that a lawyer was often required to build a 'proper relationship' between claimant and caseworker. This change in attitude appeared to confirm the widespread suspicion that the WCS operates in a way that deliberately disadvantages laypeople.

Communication difficulties were most acute for members of Cohort 1 who began the application process without legal representation. These claimants felt reliant on the WCS caseworkers to understand the WCS's evidential requirements. Several expressed their disappointment at not receiving specific or clear guidance from caseworkers, particularly in cases where they had collected significant documentary evidence to support their initial claim. For example, before

he was referred to a lawyer, Michael and his wife telephoned the WCS helpline and We Are Digital on multiple occasions to determine exactly which documents would be useful to his case. They recall being told ‘we can’t tell you what to put’ and ‘anything you can find’.

Claimants also described receiving calls from the Home Office at any time of day, and being expected to relive previous traumatic experiences, without forewarning. As a result, claimants often delayed applying for compensation, or considered accepting nil awards, or offers far lower than they were entitled to. The Claimant Guidance and application forms have been updated to allow claimants to indicate a preferred time of day for contact and the Caseworker Guidance now directs caseworkers to contact claimants using their preferred contact method, and at their preferred day/time. The fact remains that unrepresented claimants will still have to deal directly with the WCS caseworkers, without legal advice on their position.

Claimants in both cohorts found the caseworkers’ tone in their conversations was often obstructive. Jason recalls a caseworker becoming ‘annoyed’ by the number of documents he submitted – totalling approximately 170 pages of information. He was told that more ‘direct documentary evidence’⁶⁷ was needed, and the email evidence was dismissed as ‘hearsay’ without further explanation. Jason felt that he lacked the legal expertise to understand what was needed of him. He noted it is ‘very complicated for someone with no knowledge to answer it in a way that would be acceptable to them and the casework guidance.’ At times, the attitude of caseworkers was unprofessional and dismissive. Jason recalls a caseworker ‘speaking down’ to him and sniggering when discussing his evidence on the phone. Similarly, Michael’s wife recalls the caseworker they spoke to ‘did not want to hear it’ and ‘pushed Michael’s buttons so much’, precluding any constructive conversation about his claim. In these scenarios, it is clear that claimants need another person ‘between’ them and the Home Office, both to

protect them from re-traumatisation and to advise them on the law and Rules, the evidence and the correctness of decisions.

Overall, these experiences led to a lack of trust – among both claimants and their representatives – in the WCS’s ability to evaluate claims fairly, and a suspicion that the inadequate application process was designed to discourage applicants. One of claimants’ most common concerns was that the WCS was not being run independently from the Home Office. As explained above, claimants felt that the Home Office was more inclined to refuse applications for compensation than make an award. This impression was compounded by the feeling that the Home Office, as the body considering the applications, was, in essence, marking their own homework. One claimant’s wife asked, ‘how can somebody who works for the government then be impartial when it comes to something like this?’. In addition to providing legal assistance and advice, a lawyer provides the claimants with assurance that the Home Office is being held to account and that claims are being properly and thoroughly considered.

8.3 Ability to challenge irrational or unlawful decision making

It is clear from our research that the Home Office’s decision making is, at times, irrational in the public law sense (i.e. the law around conduct and fair decision making in public bodies like the Home Office).⁶⁸ This is illustrated in the case of Grace and her daughter, Mina. Mina initially applied to the WCS, mistakenly submitting the close family member form in the belief this was the route to clarify Grace’s legal status. The WCS told Mina that she had qualified for a preliminary award of £10,000 as a close family member affected by the detrimental impact of the Windrush scandal on her mother Grace. On this basis, it was inevitable that Grace also qualified for compensation as she had suffered directly. But when Grace applied as a primary claimant, she was refused a preliminary award.

In response to the refusal, Grace’s legal team wrote to the WCS, arguing that it was irrational

⁶⁷ This phrase appears in the Caseworker Guidance but not that for applicants.

⁶⁸ Defined as a decision so outrageous in its defiance of logic that no reasonable public body could have come to it.

in public law terms to refuse Grace a preliminary award, when her daughter had received a preliminary award as a close relative of someone (Grace) who had indeed suffered detrimental impacts after being unable to prove lawful status. After this letter was escalated to the head of the WCS, Grace was offered a preliminary award. There is no right of appeal for a negative preliminary award decision, and Grace and Mina could not have successfully escalated this obvious error and injustice to WCS leadership without legal support.

The involvement of a lawyer able to emphasise the correct process, and confront illogical or irrational decisions, reduces (but does not eliminate) the incidence of poor decision making and increases standards overall.

8.4 Ability to challenge poor decisions

“

We've got all this evidence, and it wasn't accepted at first, you know. So, these are, these are some of the things that the normal person would have just said, 'oh well' and just leave it. And that's why I'm saying, the layers of prohibitive either processes or practices that is embedded in this so-called Windrush application.... that we're not going to get through. Not many people going to get through unless we have a legal representative to do it with.

Steven, WCS claimant and brother of Sheldon, WCS claimant.”

Claimants' difficulties with challenging Home Office decisions fall into three categories. Firstly, claimants found the Rules and Guidance inaccessible, and were not equipped to challenge Home Office decisions that failed to

give effect to them. Second, claimants did not have the specialist knowledge necessary to challenge errors in applying immigration law to determine their status at a given time, public law errors by the Home Office, or errors in the calculation of loss. Thirdly, claimants did not know whether the levels of award received were fair. Case fatigue was also relevant: several claimants simply had no more energy to deal with the WCS, and said they would have given up but for the intervention of a lawyer. This was the case even for claimants who had experience working in administrative roles and with navigating bureaucracy.

Legal representatives were able to recognise where the WCS had misinterpreted its own Rules and Guidance, where claimants could not. This was evident in cases where claimants received significantly higher awards after their legal representatives identified errors in the WCS decision-making process. As we have outlined above, in Patricia's case, the Home Office initially decided that there was no valid claim as she had not been living in the UK when she suffered the loss or detriment. Her lawyer identified that the WCS had misinterpreted the Rules and there was no requirement to be living in the UK when the harm occurred. Patricia was in fact eligible for a Level 3 compensation award, £40,000, as a close family member.

Unusually, this was equivalent to the amount that the primary claimant, Patricia's brother, had been awarded when he applied. Normally the primary claimant would be expected to receive a higher award, but he had applied without legal representation, which suggests that the lawyers' arguments for Patricia led to a fairer award than her unrepresented brother received. Reflecting on the WCS's rejection of the initial claim, one lawyer noted that the wording of the nil-award letter had been 'superficially persuasive' at first glance, and that neither an unrepresented claimant nor a non-lawyer would likely have identified the error and been able to challenge this decision.

Working Group members further explained that they regularly share such information among themselves, which helps to identify trends in WCS decision making.

For example, several nil-award decisions made reference to employers' use or non-use of the ECS as a reason to refuse compensation (as detailed in Jason's case). This does not appear in the Guidance as a factor for considering claims, but collaboration and discussion between lawyers identified a series of cases where it was used to justify refusal. Lawyers raised this issue with the WCS senior management, after which the practice appeared to stop. As one lawyer put it, 'That's also a reason we need lawyers here: decision makers going rogue and bringing in things that are not in the Guidance'.

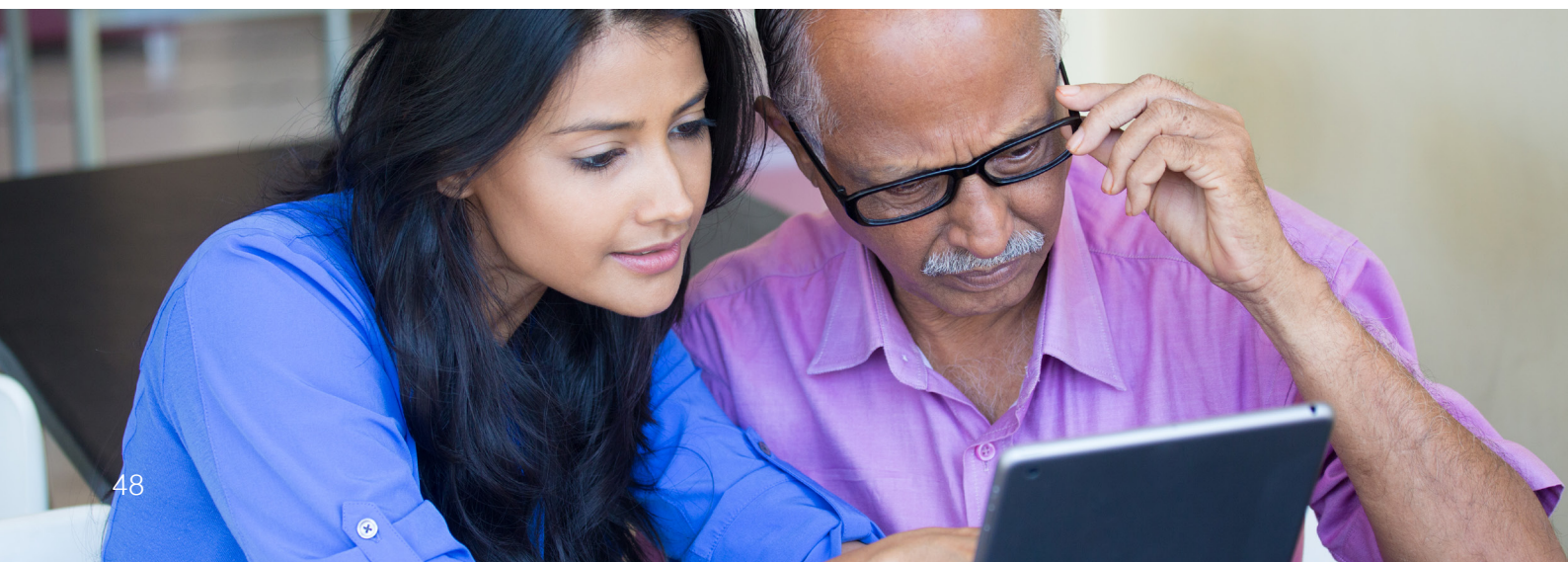
In some cases, lawyers used technical arguments based on specific areas of law, like public law. As outlined in section 7 of this report, much of Chioma's statement relating to homelessness and its impact on her life was unsubstantiated as the relevant local authority had destroyed their historic records. The lawyer tracked down Chioma's historic file with previous solicitors to prove on the balance of probabilities that she had experienced housing issues connected to Windrush. The subsequent Tier 1 application relied on a legal argument that a lack of evidence from the relevant local authority should not result in a negative inference, and to come to a decision on such inferences would be 'irrational'. Whilst no compensation was awarded on the basis of denial of access to housing specifically, Chioma was awarded compensation for impact on life for the first time following the Tier 1 review, in recognition that the inability to prove her status had caused detriment.

We found examples of technical legal arguments succeeding in overturning previous decisions,

even where no further evidence was presented. In Marcus's case, no further evidence was submitted to the WCS to support the Tier 1 application. Instead, the lawyer wrote to the WCS submitting that an unfair evidential burden had been placed on the claimant, and that the testimonial evidence given as part of the initial application had satisfied the balance of probabilities. As a result, the Tier 1 review succeeded in getting Marcus an award and, following Tier 2 review, that award was doubled.

Finally, lawyers were often crucial in influencing claimants' decisions to apply for review of poor decisions, and to request procedural accommodations. Whilst some claimants were spurred to appeal poor decisions out of frustration or 'disgust' at the Home Office's response, others required reassurance from their legal representatives that they had, in Jerome's words, 'legs to stand on'. Jerome's lawyer described how 'his whole persona changed in relation to his confidence levels' as the pair discussed the possibility of continuing to pursue his case after a substantial delay and an ombudsman decision. Ultimately this converted a nil award into compensation of nearly £300,000.

Advocacy and support organisations can and should be funded to offer trauma-informed support, and to act as emotional 'buffers' between claimants and the WCS. But they are not well placed to deal with the legal and evidential issues which arise under the WCS, and cannot be expected to advise on whether to accept an offer or challenge a decision, particularly where that decision may involve technical arguments.





Particularly Vulnerable Claimants

Section

9

9. Particularly Vulnerable Claimants

Although not part of the original case sample who had applied to the WCS without legal assistance, the research team identified a subset of claimants who could never have made an application to the WCS without legal representation – exemplifying precisely why funded legal advice should be made available. These included people with dementia and other age-related illnesses, people with significant mental health difficulties, terminally ill people, and those who were street homeless. Often two or more of these categories overlap. To illustrate the particular obstacles facing this group, we reviewed seven cases which we defined as Cohort 2. In these cases, we interviewed either the lawyer alone, or the lawyer with a family member or friend who was involved with the compensation claim.

Even in these circumstances, where a claimant could not possibly apply without a lawyer, funded legal advice is unavailable. Instead, would-be claimants or their families have to rely on finding the few services which offer free legal representation – either pro bono, or with grant funding. The assistance available from We Are Digital/We Are Group to complete the claim form was wholly inadequate to meet the needs of people in this cohort.

9.1 Mental Health Difficulties

Some applicants could not make the compensation claim themselves because of mental health problems. These were often traceable to the difficulties they experienced because of the Windrush scandal. In 2017, Clive, who had been in the UK since the late 1960s, was denied access to rental accommodation, housing benefit and Job Seekers Allowance, an account at a bank where he had previously banked, and a driving licence. Relevant documentary evidence (i.e. his birth certificate, provisional driving licence and documents relating to his travel from the Caribbean) had been thrown away by the local authority when they cleared his mother's home following her death. Clive fell into rent arrears and had to

depend on family and friends for financial and other support, all of which damaged both his physical and mental health.

Clive's lawyers compiled detailed witness statements from him, his family members and close friends. In addition, they obtained letters from the DWP, his driving licence application, and a hospital in-patient summary. Clive received an award of £40,000, related solely to the 'Impact on Life' category. The caseworker accepted that he had experienced financial and housing issues due to the inability to prove his status, and that these affected his health and well-being. The award was not increased at Tier 1 review, despite the lawyer's extensive reference to the Rules. Following a Tier 2 review, however, the award was increased to £70,000 – again in the impact on life category, and based on the lawyer's detailed arguments that the previous level offered was not consistent with the Guidance, given that a pre-existing health condition had been exacerbated by the consequences of the Windrush scandal.

Clive could not have made any claim at all without the help of a lawyer. He was so unwell that he qualified for sheltered accommodation. He was unable to complete the application, or to provide any evidence by himself, or even with the support of his brother. Apart from the practical complexity of sourcing historical documents, he would have needed to make his own detailed witness statement and obtain supporting statements from others. The assistance needed to be someone with the specific expertise to make representations with reference to the Caseworker Guidance. Funded legal advice might also have made it possible to obtain a medical report (depending on the terms of the WCS), which both the WCS caseworker at initial stage and the adjudicator at Tier 2 review considered essential, but which was never made available to Clive.



9.2 Terminal Illness

We are aware of a number of cases where claimants have been terminally ill in hospital. In these circumstances claimants acting alone cannot possibly be expected to successfully apply for compensation. In one of these, a dying claimant was refused a preliminary award. That refusal was overturned after a lawyer sent a Pre-Action Letter to the Home Office, meaning he received a preliminary award and could leave hospital. Working Group lawyers pointed out that an applicant acting alone could not possibly be expected to write and send a Pre-Action letter for delay, let alone from hospital.

Members of the Working Group also emphasised the importance of legal assistance for claimants’

related needs. For those who know they are close to dying, this could include making a simple will, so a family member can continue their claim. One of the lawyers referred to several cases they had assisted with ‘where clients have died and their affairs are in a mess because they didn’t have a will.’ This would not necessarily be publicly funded but may be enabled by having access to a lawyer. It is especially important in cases where a claimant is estranged from relatives and wants a non-default arrangement of their affairs so that someone they nominate can pursue their compensation claim. The table below indicates the number and proportion of claims which are from the estate of someone who has died.

Time Period	Total Claims	Total Estate Claims	%
2020	654	44	6.73
2021	1,617	181	11.19
2022	1,704	265	15.55
2023	2,604	481	18.47
2024	1,888	307	16.26
January to March 2025	448	67	14.96

Table 2: Estate claims as a proportion of total claims. Source: Windrush Compensation data: March 2025.⁶⁹

⁶⁹ Windrush Compensation data: March 2025.

9.3 Age-related illness

Two of the Cohort 2 cases involved claimants who had dementia, along with a range of physical health problems. Winston suffered PTSD and depression after a violent attack in 2008 which left him with serious injuries. The trauma and injuries he suffered were exacerbated by factors related to the Windrush scandal. These included being denied Attendance Allowance and Pension Credit as a result of doubts over his immigration status, despite his being in the UK since the early 1960s, and working since the mid-1960s. Citizens Advice advised Winston to change bank accounts to receive Pension Credit, but he was unable to do this because he could not prove his status. He was also unable to move out of a flat which was unfit for habitation because he could not prove his status to any potential new landlord. This unfitness for habitation was evidenced by a court decision in which he had successfully resisted eviction for rent arrears with a counterclaim for disrepair.

Initially, Winston was refused compensation altogether on the basis that the evidence provided did not prove that the hardships he suffered were a result of his inability to prove his status. The lawyers challenged this decision with further evidence from Citizens Advice about his entitlement to benefits, DWP records showing that they had made requests for further information about his immigration status, and a job application Winston had made, with follow-up requests for evidence of his right to work. This additional evidence seems to have been crucial. At Tier 1 review, the initial nil award was replaced with one of £40,000. Given his dementia, and mental and physical health problems, there was no possibility that Winston or his wife could have made the application, let alone pursued the review, without the lawyer's assistance.

Marcus had dementia and physical health problems. After his partner died, he became street homeless for a time because he could not prove his right to work or housing. He was able to get help from the Salvation Army and eventually, via Adult Social Care, he was

housed in a wardened residential complex. He was unable to visit family in his country of origin, which caused him to feel distressed, alone and, at times, suicidal. But he was also afraid of contacting the Home Office, because of the experiences he had heard about from other people.

Marcus was referred to a pro bono legal support organisation which made his WCS application for him. On initial application, the Home Office refused compensation on the basis that Marcus could not prove that the impact on his life and his difficulties accessing housing and employment were caused by his inability to demonstrate lawful status. On Tier 1 review, Marcus's lawyer argued that the Home Office had placed an unreasonable evidential burden on him, that the claim form specifically states 'if you do not have evidence for this category, don't worry as we will try to get you this evidence', and that on the balance of probabilities his account of detriment was consistent with lack of recognition of immigration status. The Home Office then agreed to award him £10,000 for impact on life, with eight of the 25 paragraphs in the decision letter making reference to the lawyer's representations. At Tier 2, the adjudicator agreed with the overall reasoning but was not satisfied that the caseworker had considered the duration of the impact on Marcus's life. The award was then doubled to £20,000. Had funded legal advice been available for disbursements, Marcus could also have obtained his GP records, which would have cost £250, and may have increased his compensation substantially.

9.4 Homelessness and personal circumstances

Several claimants whose cases we reviewed had experienced homelessness. In some of these, immigration status was yet to be resolved and the lawyer also assisted with establishing their citizenship or right to remain in the UK.⁷⁰ For Sheldon, it was his homelessness application, made from hospital, which first brought to light that he had a problem with proving his lawful immigration status – despite having an old passport with an ILR stamp. The Home Office

⁷⁰ In our research, all of the claimants whose status was unresolved when they first came into contact with a lawyer were either homeless or insecurely housed.

said that an expired passport with an ILR stamp was no longer enough to prove status, since the rules had changed during Theresa May's time as Home Secretary.⁷¹ For this reason, the local authority and Sheldon's family specifically needed an immigration lawyer (rather than a housing or community care lawyer) to assist.

Sheldon's lawyer compiled a detailed witness statement from his brother that described their life history – addresses, school, work, and so on, as well as the impact on Sheldon's life. The school they attended as children no longer existed, so it was all the more difficult to obtain documentary evidence of their earlier lives in the UK. After his discharge from hospital, Sheldon was placed in an asylum hotel – described as cockroach-infested – because the local authority could not get proof of his immigration status from the Home Office. He needed personal care, but could not access that for the same reason. The statement drew out Steven's account of the extremely difficult experience of having to give personal care to his brother, who is physically bigger than him, and having to travel from his home to the hotel.

The lawyer also obtained a copy of the local authority's Care Act assessment and further correspondence. These added value beyond the email that Steven already had from the local authority's housing provider, which specifically confirmed that the Home Office could not confirm Sheldon's lawful status. That evidence meant Sheldon was able to prove the link between homelessness, and his lack of proof of status. He received an award of over £70,000. Sheldon could not have made his claim alone, as he was unable to care for himself at all.

His brother Steven was acting as his carer, despite being unwell himself, but could not have assembled a compensation claim on his brother's behalf at the same time.

Like Sheldon, Ravi came to attention when he was hospitalised after a severe Covid-19 infection. Ravi had first lost his employment and then his secure tenancy in a council house. He had been sofa surfing or sleeping rough until he was hospitalised. The hospital could not discharge Ravi due to his lack of accommodation, his unclear status and his significant rehabilitation needs. They referred him to a lawyer who resolved his status and made the compensation claim on his behalf. As a result of his inability to prove his status, Ravi did not even have a bank account, and his lawyer had to help him open one to receive the interim compensation payment. As he had neither a computer nor a smartphone, he needed help with every aspect of the process of clarifying his immigration status and then making his compensation claim.

9.5 Conclusion

The group of particularly vulnerable claimants demonstrates a very clear reason why lawyers, and funded legal advice, are required as part of the WCS. People with terminal illness, dementia, other severe physical and mental health conditions, and people who have been street homeless or long-term sofa surfing cannot be expected to make evidence-based claims (or indeed any claims) to the WCS without the benefit of both legal advice and funding to support access to medical and other evidence.

⁷¹ The period 12 May 2010 – 13 July 2016.





**Conclusion: Do lawyers make
a difference?**

Section

10

10. Conclusion: Do lawyers make a difference?

“

[T]hat housing file, you get hundreds of disclosures. And when you're looking at housing files from 2003, 2002, they have very sort of basic IT systems. So there's a lot of inference, and you're just looking for keywords. But I found that having sort of a good understanding of housing or homelessness law because of the Law Centre, and that's our bread and butter, we knew what we were looking for in terms of specific language. So, anything to do with 'Part 7', we know that's a homelessness application. So, the initialisms or acronyms they were using, we know what they mean in a lot of these spots where they just come across as Gobbledygook.

Lawyer working on WCS claims ”

The previous government stated that they 'designed the Compensation Scheme to be as clear and simple as possible, so people do not need legal assistance to make a claim'.⁷² Examination of real examples of claimants who first submitted an application without legal assistance and subsequently instructed lawyers, demonstrates that legal assistance is needed to effectively put forward their claims in a way that the Home Office will accept.

As we have highlighted, Jason was a particularly capable claimant. He spent significant time reviewing the Guidance and collating his evidence, for example, making SARs to obtain additional documentary evidence to support his claim, including compensation for loss of access to employment. His application, together with the supporting evidence, ran to approximately 170 pages. Nevertheless, he was initially refused a preliminary award. Jason challenged this refusal by writing to prominent MPs and copying in the Home Office. Three days later, the Home Office overturned the refusal and made a preliminary award. But, despite all the evidence Jason submitted, the final award was not commensurate to the loss he suffered.

At that point, Jason found a lawyer to assist him with submitting a request for a review. While the lawyer was aided by the evidence Jason had already

collated, he spent 'easily 100 hours' preparing submissions detailing the complicated calculations relating to the losses Jason suffered due to his inability to prove his lawful status. Upon receiving the Tier 1 decision (which resulted in a 54.5% uplift), Jason's lawyer identified that the WCS had incorrectly relied on evidence from the ECS. Jason's lawyer alerted the WCS to this error, which led to the re-opening of his Tier 1 review and a further increased offer 167% higher than what was offered initially.

Jason's lawyer's view is that this case is a 'firm rebuttal' of the Home Office narrative that the process is simple, and that legal representation is unnecessary. Jason also stated that he felt that the fact he had collated and submitted all the evidence did not 'mean anything unless you have legal representation'. Jason's case is not an anomaly; the importance of lawyers is also evident from other claimants' experiences. It was only upon obtaining legal assistance that Mina became aware of issues and facts which were relevant to her mother's claim. David had previous experience filling out government forms, but he still found legal assistance to be essential in submitting his application in an evidence-based manner, so that the Home Office would award him compensation. The evidence from this research suggests that providing claimants with funded legal advice to enable them to instruct legal representatives will likely result in:

⁷² UK Parliament, Windrush Compensation Scheme Question for Home Office, UIN HL7192, tabled on 18 April 2023 (3 May 2023). Available at: <https://questions-statements.parliament.uk/written-questions/detail/2023-04-18/hl7192> (accessed on 21 February 2025).

- (1) More detailed and complete applications from the outset, reducing the amount of work the WCS caseworkers need to do when considering each application;
- (2) Fewer genuinely ineligible claimants applying, because they would have received legal advice on their ineligibility; and
- (3) A greater proportion of decisions being right first time, reducing the need for reviews of flawed decisions.

The detailed file reviews undertaken for this research, alongside interviews and data on increases in awards where lawyers are involved, strongly support the argument that funded independent legal representation is necessary for WCS claimants. This need is not mitigated by the availability of advocacy support (though we welcome the funding of such advocacy support).

In particular, the file reviews in this research indicate the following conclusions:

- (1) Lawyers are experts in dealing with issues of eligibility, particularly where this revolves around historic immigration status under statute and the Immigration Rules, or the existence/non-existence of a procedure to vindicate an immigration right on dates in the past. These eligibility issues cannot be resolved by anyone other than an immigration lawyer. [Sonia and Andre, Patricia, Chioma]
- (2) Lawyers are experienced in obtaining evidence, identifying potential sources of evidence, identifying the significance of evidence, and identifying what may be missing from files received from Government departments. In several cases, lawyers were able to obtain material which the WCS had failed to request. They were also able to interpret the significance of evidence within the context of the required standard of proof. This compilation and interpretation of evidence is a skill which lawyers are specialised in, and any other organisation contracted to fulfil this role would likely need training and supervision from experienced lawyers to be able to undertake it adequately. [Michael, Emily, Marcia, Jason, Sonia and Andre]
- (3) Lawyers are similarly skilled in obtaining and compiling witness statements and using these to contextualise the available evidence and explain the gaps. Since the WCS is evidence-based, such evidence is absolutely necessary. Lawyers are better placed than WCS caseworkers to spend the time and build the trust needed with the claimant to draw out their evidence. Again, this is a skill which lawyers are trained for and undertake in their day-to-day professional life. [Patricia, Marcia, Phoenix, Emily, Chioma, Sonia and Andre, Marcus, Grace and Mina, Sheldon]
- (4) Funding is needed to cover the costs of obtaining necessary evidence. Although the Rules permit the WCS to commission evidence, it did not do so in any of the 17 cases we reviewed. In three cases, this was explicitly requested by claimants' lawyers. In one case, it was requested by the WCS caseworker (where they nevertheless declined to fund this). In another case, it was funded by the claimant from his interim award, which the Home Office relied on in making the final award decision but nevertheless declined to reimburse the costs. A fully-funded scheme, where the claimant's representative has the autonomy to decide what evidence is required, is essential. [Marcus, Jason, Marcia, Sandra, Patricia]
- (5) Lawyers provide a buffer between claimants and the Home Office. This is required, given the lack of trust and the past experiences many claimants have had with the Home Office and the real risk of re-traumatisation which some of our claimant interviewees experienced. [Michael, Phoenix, Patricia, Sandra, Emily]
- (6) There is a group of people who are too unwell or vulnerable to make a claim for themselves, and whose relatives or friends cannot reasonably be expected to go through the claims process for them. For those people to have any meaningful access

to the WCS, fully funded independent legal advice is required. [Marcus, Ravi, Sheldon, Chioma, Winston, Clive, Phoenix]

- (7) Lawyers are needed to help claimants understand the complex Rules and Guidance around the WCS, to make representations on how these should be applied or where they have not been applied, and to advise on whether the Home Office has made a legally correct decision. [Jason, Marcus, Patricia]
- (8) Lawyers are needed to identify and challenge poor quality decision making, including errors of law, departures from the Rules and Guidance, and decisions that

are illegal or irrational from a public law perspective. They are also needed to advise on whether the sum of compensation offered is legally defensible and appropriate, and to submit calculations of loss. [Grace and Mina, Chioma, Jason]

We therefore urge the government to make funded legal representation, including the costs of obtaining necessary evidence, available for the WCS as soon as possible.



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Appendices

Appendices

Appendix 1: Methodology

Overview

The aim of the research was to carry out a detailed examination of a small number of WCS applications to understand the value of legal advice in these claims. The rationale for this was that JUSTICE and the Working Group members were aware of a large number of cases where an initially unrepresented applicant received legal advice for their review application, and then received a significantly higher compensation award.

The data collection consisted of i) a detailed review of 17 files, including the WCS application, decision, review submissions and review decisions, followed by ii) an in-depth semi-structured interview with the applicant and the lawyer who represented them to explore the claimant's experience with the WCS and identify how the lawyer had contributed to advancing the claim. This enabled a robust evaluation of what the lawyer had done in respect of evidence gathering, reference to Guidance and argument, and informed conclusions about the value of legal advice in WCS claims.

The Working Group consisted of representatives of JUSTICE and Dechert LLP, Jo Wilding of Sussex University, and seven lawyers with experience of the WCS. The group met monthly throughout 2024, first to devise the methodology and then to manage the project. This meant that the data collection was informed by broad and detailed expertise in working with the WCS, and in-depth knowledge and understanding of (all iterations of) the Guidance.

Sampling strategy and adaptation

The Working Group members identified cases where 1) the applicant initially applied to the WCS on their own; 2) received a refusal on eligibility grounds, a nil award or a low offer and 3) was later represented by a lawyer for Tier 1 or subsequent review and received a higher offer.

The target was to carry out in-depth reviews of ten cases, which would demonstrate a range of decisions and strategies without producing an unmanageable amount of data.

Initially the intention was to include only those cases which fit the inclusion criteria and where the applicant had accepted a final offer. However, it proved difficult to obtain consent from the applicants for file review, since most of them had lost contact with their legal advisers after their cases were closed. Frequently, phone numbers and email addresses were no longer in use. The Working Group then began including cases which were not yet final, expecting that final decisions would be received while the research was ongoing. This proved incorrect, because of the delays in Home Office decision making.

The Working Group took a pragmatic decision to expand the criteria to include cases which met the three criteria set out above, but which were still in the process of either Tier 2 review, or of referral to the Ombudsman. This meant that clients were able to reflect on the difference that a lawyer had made to their own experience of the WCS, although in most cases it was possible that the compensation award would still increase further.

In the course of the research, it became clear that there was another group of people who, for various reasons, could not have made their own compensation claims. These included people with dementia and other age-related conditions, terminal illness, significant mental health problems, or people who were homeless. These did not fit the initial inclusion criteria for the research since they had representatives from the outset. But the Working Group made a decision to treat these as a separate cohort of cases, to determine what the lawyer brought to this group of cases which the applicant could not have done alone.

In all, we reviewed ten cases in Cohort 1 and seven in Cohort 2.

A Participant Information Sheet gave detailed information about the nature and purpose of the research, what participants would be asked to do, data security and protection, their rights to withdraw, and so on. Participants were asked to sign a consent form. However, this proved difficult for some individuals, particularly around the printing, scanning and returning of the form, but also for those who were distrustful of written forms. We found that individuals were not returning the signed forms despite expressing enthusiasm for the research verbally. We made the decision to allow verbal consent where the lawyer who had represented the person explained the details of the Information Sheet to them, was satisfied that they were giving informed consent, and wrote an attendance note detailing the conversation and their client's agreement.

All participants were offered a £30 gift card as thanks for sharing their experience in interview, which we consider to be best practice when asking people with specific lived experience to participate in research.

Case file reviews

Following participants' consent, files were uploaded to a secure Box folder. Teams of lawyers from Dechert LLP undertook the file reviews according to a review template agreed by the Working Group (available on request), having received training on their use. No cases on which any Dechert LLP lawyers had provided pro bono representation were included within the sample. The Dechert LLP team had experience of providing pro bono support on WCS cases, so they were objective in respect of the specific file, but had the necessary expertise to understand and review the files. The anonymised review notes were uploaded to the secure Box folder.

Interviews

Semi-structured interviews were conducted by the Dechert LLP team, according to a topic guide agreed by the Working Group (available on request), and on which they received a training session. These were recorded and transcribed by the Dechert LLP team.

Ethical issues and review

The research received ethical approval from the University of Sussex. The personal and sensitive nature of the information to be reviewed in case files and discussed in interview meant that it was necessary to go through the high-risk review procedure. All participant information sheets, consent forms, topic guides, review templates and data security and storage protocols were submitted for review.

There was a risk that participants would become distressed by discussing their experiences, both as a result of the original events and the WCS. We aimed to mitigate this by having the legal representative present during the interview, both so that they could support the applicant and so that we could build a full understanding of the events from both perspectives. The interviews aimed to give the participants an opportunity to talk through what had happened, and we had close relationships with several Windrush justice organisations which were able to provide ongoing support to any interviewee who expressed a wish for it, or who appeared to need it. However, in one case, we made the decision not to interview an individual who had agreed to file review, but felt she might be re-traumatised by being asked questions about the experience. Instead, this claimant's lawyer was interviewed alone.

The other significant risk was data security. The reviewers and interviewers were trained lawyers and acutely aware of their data protection obligations. The shared Box folder was owned by Dechert LLP and complied with its data security requirements. A data sharing Memorandum of Understanding was in place, and all individuals who had access to the folder were lawyers and/or employees of JUSTICE. Each member of the Working Group had access only to their own uploaded files, with the exception of the Chair, the Dechert LLP team and the JUSTICE lead.

Data Analysis

The data collection allowed for triangulation of the information given by the WCS applicant



and the lawyer with the case file, and with the Guidance and Rules, to give a clear and detailed evaluation in each of the 17 cases of the value added by the lawyer. From these individual cases, we were able to draw out common themes in a) evidential and other requirements which individual applicants found difficult to meet; b) value added by lawyers, and c) flawed decision making by WCS caseworkers which failed to comply with the Guidance and Rules, and which required a lawyer to identify and correct.

Limitations and validity

It is acknowledged that the sample size of cases reviewed for this report is not sufficient to produce reliable statistical data in respect of the impact of legal assistance on WCS outcomes as a whole. However, it does provide for the first time a cohort of cases which demonstrates specific legal actions and outcomes. The observations below suggest that the observations from this sample are valid within the overall context of the WCS.

Of our Cohort 1 cases, 70% resulted in an initial nil award, compared to 57% of

our Cohort 2 cases. According to the Windrush Compensation Scheme data to March 2025, out of a total 7,744 cases that have been closed up to March 2025, 5,103 (65.9%) received a negative outcome. Excluding 780 cases rejected on eligibility grounds, 4,323 out of 7,744 (55.9%) cases were fully closed with a nil entitlement outcome. These statistics are inclusive of Tier 1 and/or Tier 2 review.⁷³ The pattern in our cases was broadly similar, therefore, to the overall proportions.

In our cases, the mean GBP *increase* in award value for claimants who appealed an initial nil award was £79,394. The range was £10,000 to just under £300,000. The mean *percentage* increase in award value for claimants who appealed a non-nil award was 300%. The range was 55% to 645%.

Official statistics disclose only the volume of Tier 1 and Tier 2 review requests and decisions, with no distinction by whether a review had a positive or negative outcome. It is therefore not possible to comment on the potential quantitative impact of legal support on positive Tier 1 and/or Tier 2 reviews.

⁷³ Windrush Compensation Scheme data tables: March 2025, WCS_01.

Claimant	Preliminary award	Initial Decision	Initial Decision (reviewed)	Tier 1 Review	Tier 2 Review
Cohort 1⁷⁴					
Grace and Mina	Nil	Nil	£10,000 (preliminary)	Awaited	-
Sandra	£300	£20,000		£90,000	£170,000
Sonia and Andre	Nil	Nil	Nil	£40,000 (Sonia) £0 (Andre)	-
Jason	£10,000 ⁷⁵	Nil	£55,000	£85,000	£150,000
Emily	Nil	£10,000	£50,000	£80,000	-
Jerome	Nil	Nil		£295,000	-
Patricia	Nil	Nil		£40,000	-
David	Nil	Nil		£90,000	-
Marcia	Nil	Nil		£20,000	-
Michael	Nil	Nil		£20,000	£20,000
Cohort 2⁷⁶					
Clive	£10,000	£40,000		£40,000	£70,000
Phoenix	Nil	£20,000		£95,000	-
Winston	Nil	Nil		£40,000	-
Chioma	Nil	Nil	Nil	£65,000	-
Ravi	Nil	£10,000		-	-
Sheldon	£10,000	£75,000		-	-
Marcus	Nil	Nil		£10,000	£20,000

Table 3: All cases in the research project; total award value (rounded to the nearest £5,000). Shading indicates the point at which the claimant instructed a lawyer.

⁷⁴ For Cohort 1 case studies, see: Grace and Mina (pp. 67-8); Sandra (pp. 81-2); Sonia and Andre (pp. 84-6); Jason (pp. 68-70); Emily (pp. 65-6); Jerome (pp. 70-1); Patricia (pp. 76-8); David (pp. 64-5); Marcia (pp. 74-76); Michael (pp. 74-76).

⁷⁵ The preliminary award was initially refused. This decision was overturned after Jason began copying several high-profile MPs into his emails to the WCS.

⁷⁶ For Cohort 2 case studies, see: Clive (pp. 62-4); Phoenix (pp. 78-9); Winston (pp. 86-7); Chioma (pp. 60-2); Ravi (pp. 79-81); Sheldon (pp. 81-4); Marcus (pp. 73-4).

Appendix 2: The Case Studies



All over money, all over money, and because of the colour of our damn skin.

Steven, brother of Sheldon



Chioma (Cohort 2)

Background

Chioma was born in West Africa in the mid-1980s and moved to the UK when just a few years old to live with her mother, who had been in the UK since the mid-1960s. Her mother gained ILR in the late 1980s and became a British citizen in the late 1990s. Before she turned 18, Chioma became pregnant and was kicked out of the family home. Unable to provide evidence of her lawful status, she was denied employment, a provisional driving license, and housing by the local authority, despite being homeless. She had to return to live with her family, causing her to endure a toxic environment and domestic abuse.

Chioma applied for ILR in the early 2000s but had to resubmit her application a year later due to missing documentation. Despite her efforts and multiple correspondences with the Home Office, including letters to then-Prime Minister Tony Blair, she did not receive ILR until four years after her application was submitted. Throughout that time she was denied jobs and housing because she could not prove her status. Even after receiving ILR, employers rejected her due to her inability to prove her right to work without a biometric residence permit (BRP), which she received only in the late 2010s. Eventually, Chioma attained British citizenship in 2020 and was issued a British passport in 2021.

Application to the WCS

Chioma initially tried to use the We Are Digital service provided for assistance to applicants, but found the experience to be ‘traumatising’, noting it was ‘totally ill-equipped’ to handle

claimants. Chioma was ‘given a piece of paper and asked to write down her story’, without any further support.

Unlike most of the cases reviewed, Chioma had legal representation for her initial application to the WCS. Chioma sought assistance from a legal clinic in early 2022, as she was unsure of her eligibility for the WCS and the application process. Her lawyer, who has significant experience in immigration law, helped her draft a witness statement, gather evidence, and prepare supporting submissions. The extensive evidence bundle included the results of a SAR, documenting her attempts to secure ILR, employment, and housing, as well as the impacts of her precarious status. It provided evidence of her being refused banking services and housing. It contained emails in respect of job interviews, where she was asked for proof of right to work. It also included evidence that she was successful in a particular job application, but her employee card was subsequently blocked as she was unable to provide a copy of her passport.

Her initial application, submitted in late 2022, was refused in the spring of 2023 on the basis that Chioma did not have lawful status before she was granted ILR, that the evidence only established that she was invited to interviews and not that she had lost employment due to her inability to demonstrate lawful status, and that her access to higher education had only been put on hold pending proof of benefits and access had not therefore been denied. The WCS concluded that her various difficulties she suffered were not due to an inability to prove lawful status. Multiple requests for further

evidence followed, and although additional documents were submitted in 2023, the denial of the application was ultimately confirmed later that year.

With the support of her lawyer, Chioma pursued a Tier 1 review. No additional evidence was submitted, but the submission highlighted errors in the WCS's initial decision and analysis of the Rules. The Tier 1 review was successful in 2024 and resulted in an award of £65,000, including £25,000 for loss of access to employment and £40,000 for the impact on Chioma's life after receiving ILR status.

Legal Assistance and its Impact

Her lawyer played a significant role in Chioma's application, particularly in evidence gathering and pointing out legal errors by the WCS. Due to his experience with immigration law and benefits issues, the lawyer understood the 'initialisms or acronyms' that the Home Office was using, where they normally come across as 'gobbledygook' to a layperson. Following the initial refusal, her lawyer engaged with the Home Office, arguing that Chioma should have been granted settled status upon her arrival, emphasising that the failure to grant settled status was a failure on the Home Office's part and that Chioma should not be punished for this. Although these arguments were not accepted, the Tier 1 review also involved challenge to the analysis of Chioma's experience after she was granted ILR and the denial of access to employment, and was successful.

Thoughts on the WCS Process

Both Chioma and her lawyer expressed strong criticisms of the WCS process. Her lawyer highlighted systemic issues with the WCS, such as its evolving yet flawed Guidance and a troubling shift towards placing culpability on claimants for not being able to regularise their status sooner. The lawyer emphasised that the extensive work involved in WCS applications meant that there was 'very little distinction' from complex litigation cases, underlining the inadequacy of assistance mechanisms like We Are Digital.

Her lawyer remarked that the WCS seemed to lack a consistent pattern of improvement and that it often imposed unrealistic evidentiary expectations on claimants. The process necessitated detailed, labour-intensive preparation, far beyond a simple form-filling exercise. This rigorous approach underscores the importance of legal representation in successfully navigating the WCS, something many claimants, left to their own devices, would struggle to achieve. Her lawyer's detailed approach, applying the Guidance to legal errors in the initial refusal letter, was pivotal in achieving a significant award for Chioma in the Tier 1 review.

Clive (Cohort 2)

Background

Clive was born in the Caribbean in the 1950s, moved to the UK in the 1960s and has lived in the UK continuously since. After his mother passed away in the 1990s, her flat was emptied by the local authority leading to the loss of Clive's birth certificate, provisional driving license and documents relating to his travel to the UK. This loss of vital documents created numerous hardships. In 2015, Clive applied for a British passport but was rejected and advised to apply for a passport for his country of birth. By 2017, Clive's lack of official documentation resulted in him being denied jobseeker's allowance and housing benefits, leading to substantial financial and housing instability. Unable to prove his lawful status in the UK, he was also unable to reopen a closed bank account or obtain a driving licence, exacerbating his financial difficulties and limiting his mobility, which was already limited by physical ailments. He was unable to obtain benefits. Consequently, Clive was evicted from his flat and resorted to sofa surfing, relying on friends and his daughter for financial support, food and a place to stay. He suffered a severe deterioration of his mental health, becoming withdrawn and very depressed. His physical health also suffered. Clive sought legal advice and was eventually able to obtain a naturalisation certificate and a British passport at the end of 2017.

Application to the WCS

Clive made his first application to the WCS in 2019. Due to his poor mental and physical health, he was able to obtain assistance from a law centre. Clive submitted evidence in support of his application, including a witness statement detailing his continuous residency since the 1960s and the adverse effects of his undocumented status, letters from DWP, a driving licence application, and supporting statements from friends and family corroborating his narrative.

The initial offer from the Home Office in 2022 was £40,000 in compensation, an amount Clive found puzzling given the severity of the impact on him. The offer was awarded solely in relation to impact on life and compensation was refused in respect of other claimed categories (e.g., legal fees, housing, banking, and homelessness).

Legal Assistance and its Impact

Clive's pro bono lawyer continued to support him through both a Tier 1 review and a Tier 2 review. The lawyer's work included re-framing the existing evidence to align specifically with the WCS guidelines, and highlighting misinterpretations and oversights in the initial Home Office decision. The lawyer contested the Home Office's handling of Clive's inability to access housing benefits and banking services and argued for a higher award for impact on life.

Despite the thorough submissions, the Tier 1 review was unsuccessful. Repeatedly the Home Office requested information that had already been provided. It wasn't until the Tier 2 review, that Clive's compensation was increased to £70,000 and recognised the exacerbation of his health conditions. Despite the Adjudicator recommending an award for homelessness, the Home Office maintained the refusal of compensation.



Thoughts on the WCS Process

Clive's pro bono lawyer noted that Clive had felt disheartened and deflated by the WCS process, questioning the worth attributed to his life by the Home Office.

The lawyer likened the process to a war of attrition and noted the systemic issues in the handling of cases. He specifically criticised the Home Office for not acknowledging sofa surfing as a form of homelessness, the lack of consideration given to applicants' lived experiences, and the Home Office's lack of empathy and understanding of the severe impacts undocumented status had on claimants' lives - 'This is a 60 to 80-year-old person who comes from a background where you don't show weakness.'

Overall, the lawyer emphasised the need for more supportive mechanisms, including mental health support for claimants, and a more straightforward acceptance of the historical context and systemic failures that led to situations like Clive's.

David (Cohort 1)

Background

David was born in the Caribbean in the 1960s and moved to the UK before 1973. Throughout his life, he faced a series of substantial issues due to his inability to prove his legal status in the UK. Despite being lawfully present, he was rejected for employment, denied the opportunity to undergo job training, and was periodically deprived of benefits. He had been living in council accommodation with appropriate access for his son, who uses a wheelchair. When questions were raised over David's status, this accommodation was withdrawn. For 22 years David, who remained the primary carer for his son, remained in temporary accommodation with no disabled access until a successful judicial review. His inability to provide for his family by work, or by accessing benefits appropriate to the family's needs, led to bouts of depression. His status had a profound impact on his life, making him feel like a 'second-class citizen'.

Application to the WCS

David became aware of the WCS through media coverage of the scandal. An activist by nature, he applied to the WCS in February 2020 without legal assistance, using only the Home Office hotline for support. He sought compensation for loss of access to employment and benefits, denial of housing and education, and impact on life. His application lacked substantial supporting documentation or witness statements. The Home Office requested additional evidence in August 2020, November 2020, and June 2021, primarily focusing on his struggles in obtaining employment. David found it difficult to satisfy the demands for documents, such as formal job rejection letters, and this significantly impacted his case. He struggled with having to relive his experiences when interacting with the Home Office and the trauma and emotional distress that caused. His application was declined in February 2021, prompting him to seek legal assistance.

Legal Assistance and its Impact

David met representatives from a law centre who introduced him to a pro bono solicitor. The lawyer's intervention was pivotal, focusing on gathering documentary evidence and preparing detailed witness statements from friends and associates, which corroborated the mental stress and depression David experienced due to his unclear legal status. In addition to gathering essential documentary evidence such as GP records and JSA claim documents, the lawyer prepared properly structured submissions for David's Tier 1 review application. The legal team's involvement significantly strengthened David's application, resulting in a Tier 1 review award of £90,000, comprising £20,000 for loss of access to employment and £70,000 for impact on life. The Tier 1 decision letter specifically cited the bundle of supporting documents and particularly the three witness statements obtained by the lawyer as key to the decision to make an award.

Thoughts on the WCS Process

David and his lawyer were critical of the WCS process. David felt the Home Office looked to

refuse applications - 'I look at it like their job is to disqualify.' He found navigating the complex application system difficult without legal help, and found the guidance notes were misleadingly complicated.

His lawyer highlighted the necessity of legal assistance, explaining that applicants need structured, evidence-based applications in order to succeed, and emphasised the complexity of the process.

David felt disillusioned by the WCS, believing it was discriminatory that those without legal support faced higher rejection rates despite the legitimacy of their claims. He stressed that legal representation was essential, calling for government-funded legal aid to ensure fair access to compensation.

Emily (Cohort 1)

Background

Emily was born in Australia in the late 1970s while her parents, both British citizens, were visiting family. Her heavily pregnant mother was unable to travel back to the UK and returned when Emily was a few months old, assuming Emily would have dual nationality. Emily was unaware of any issues with her immigration status until she was taken aside and questioned by border security before being allowed to enter during a trip as a teenager. In 2016, Emily encountered severe issues when she left her 11-year job at a supermarket for a job at her daughter's school. The school requested proof of her right to work, and her Australian birth certificate did not suffice. Her subsequent application for a British passport was denied, as she could not prove her citizenship status. Consequently, Emily fell into a prolonged period of unemployment, lost access to benefits including working tax credits and food bank vouchers, and faced significant financial hardship. This period exacerbated her mental health issues, leading to severe stress, anxiety, and the breakdown of her long-term relationship, pushing her into an abusive and violent relationship.

Application to the WCS

Initially, Emily contacted the Windrush hotline in 2018, explaining her inability to prove lawful status. Without providing documentary evidence or completing application forms, her application proceeded through phone calls. In November 2020, Emily received an offer of £10,000, which included £5,000 for impact on life. Emily rejected this offer. Following the tariff changes in the WCS in January 2021, Emily received a revised offer of £50,000, including £40,000 for impact on life.

Legal Assistance and its Impact

Towards the end of 2020, Emily read about the Windrush Justice Clinic in an article and sought help from the Clinic, after which she was contacted by a lawyer. Her lawyer's assistance with pursuing a Tier 1 review significantly bolstered Emily's application, gathering and submitting critical evidence, including letters from the Applicant's MP and the Passport Office, as well as witness statements from Emily and her mother. Much of this evidence was referred to in the WCS's Tier 1 decision letter. The lawyer requested that the WCS commission a medical report to demonstrate the psychological impact on Emily, and the WCS responded by suggesting that Emily 'call the Samaritans.'

The lawyer's representations married specific guidelines with the documented evidence the lawyer gathered and set out key sections of Guidance and procedure that applied, demonstrating that Emily met appropriate thresholds for specific awards.

Notably, the lawyer's comprehensive approach resulted in an award of £80,000 in September 2021, including significant uplifts: £70,000 for impact on life and £1,000 for loss of access to working tax credit, based on correspondence the lawyer had recovered from Emily's local council. The detailed submissions and supporting evidence from the lawyer highlighted Emily's lived experiences and the cumulative trauma inflicted, ensuring the WCS reviewed Emily's application thoroughly.



Thoughts on the WCS Process

Both Emily and her lawyer expressed profound dissatisfaction with the WCS's processing of Emily's claim. Emily felt in the early stages of her claim she was 'passed from pillar to post' and felt the initial offer of £10,000 was 'disgusting' and indicative of systemic disregard for her suffering. Emily criticised the WCS as having systemic flaws, emphasising the disorganised communication and lack of compassion: 'I was speaking to a brick wall for years' and 'they just don't give a crap.' Emily felt her efforts to provide further evidence were hindered by 'all the red tape' and minimal guidance from WCS representatives. Emily noted that the substantial uplift once legal support was involved highlighted fundamental inadequacies in how initial claims were handled, saying, 'they underestimated me because I went through channels myself'. The support provided by Emily's lawyer was pivotal, transforming a fragmented claim into a compelling, evidence-backed application, which the decision letter referred to extensively.

Grace and Mina (Cohort 1)

Background

Grace arrived in the UK from Ghana in the late 1970s and was granted indefinite leave to enter. This was endorsed in her Ghanaian passport. Unfortunately, the passport and therefore her documentation confirming her lawful status were subsequently lost. Her daughter, Mina, was born in the UK in the 1980s and is British. Grace faced difficulties as a result of being unable to prove her lawful status. Her housing benefit was stopped which caused her to fall into rent arrears and she was subsequently evicted from her home. Grace became financially dependent on Mina, and suffered significant stress and mental health issues, including psychosis. These events prompted Mina to seek official resolution of Grace's legal status to resolve these issues. Mina applied to the WCS on her mother's behalf to 'to prove [her] identity, that she had the right to remain'.

Application to the WCS

Mina, a university graduate, began the application process to the WCS using the 'Close family member' application form, initially under the mistaken impression that this was the route to obtaining documentation of Grace's legal status, rather than financial compensation. Mina found the form 'confusing' and 'overwhelming'. Mina was informed that she qualified for a preliminary award of £10,000, but it was for her and not for Grace. Mina then had to fill out the primary claimant application form for Grace, encountering similar feelings of confusion and stress. In filling in the application form, Mina referred to guidance notes for claimants online, but found that these made her feel even more overwhelmed, as she worried about not having sufficient information for Grace. Mina submitted a SAR to the DWP in an effort to secure supporting evidence, including a copy of Grace's passport (the original of which had been lost as a result of the accommodation difficulties) but didn't get a response. The WCS made unexpected and unscheduled calls to Mina 'at random times' to gather further supplementary evidence for Grace's application. Following the intervention of Grace's MP, the case was assigned to the Windrush Vulnerable Persons Team ('VPT'). In January 2024, one day after Mina spoke to the VPT to provide further evidence, Grace's application was rejected for a preliminary award. Mina later found out from the VPT that this was due to the need to meet a WCS internal deadline, meaning that the additional information she provided had been ignored. Mina was told by her VPT liaison that it would be 'very difficult to overturn this decision'. This caused a feeling of failure and emotional distress for Mina and Grace.

Legal Assistance and its Impact

Following Grace's rejection for a preliminary award, Mina contacted a not-for-profit agency with experience dealing with WCS cases, which took on Grace and Mina's case pro bono. The lawyer drafted a detailed legal letter highlighting the irrationality of the decision that Grace did not qualify for a preliminary award even though Mina did qualify as her daughter. This letter

included reference to the Guidance on handling linked applications and was escalated directly to the head of the WCS. The intervention resulted in a swift reversal of the initial decision, shortly after the letter was sent to the WCS, meaning Grace received the preliminary £10,000 award. A full decision on the application was received recently, over a year after the offer of a preliminary award.

The lawyer made a significant difference to the approach to the application, not only securing a preliminary award for Grace when Mina had been unable to do so, but also:

- (1) asking Grace and Mina targeted questions which Mina, even after having read the form and applicable guidance, had not realised were important for the outcome of the applications;
- (2) obtaining and funding a psychological report in support of Grace's application, which Mina and Grace had not realised could be submitted as evidence in the application. This was also beneficial in securing additional NHS help for Grace's complex needs. The report was funded by the pro bono legal service and the WCS failed to reimburse the costs;
- (3) assisting in gathering comprehensive evidence on Grace's immigration history and following up on SAR which had remained unanswered; and
- (4) preparing detailed witness statements.

Reflections on the WCS Process

Mina felt that the caseworkers showed compassion and empathy but that the WCS overall appeared 'a bit disorganised'. She found the process overwhelming, even as a literate and digitally capable person and she felt that the system was designed to 'stress out' claimants and induce them to give up. The lawyer's assistance was crucial, as Mina would not have identified or known how to obtain necessary evidence, such as the psychological report identifying Grace's trauma and mental health impacts, which Mina described as a

'game changer'. Without legal support, Mina believed that navigating the WCS process and achieving a positive outcome would have been nearly impossible. The immediate reversal of the preliminary award refusal decision after legal intervention underscored for Mina that the WCS was 'not accessible for people like us', highlighting the systemic challenges faced by individuals attempting to claim compensation independently.

Mina felt that as well as the legal help received from the lawyer, having this professional assistance had a healing effect because she no longer felt unwelcomed by societal institutions which had previously appeared to be hostile.

Jason (Cohort 1)

Background

Jason was born in the USA in the late 1970s and moved to the UK in the mid-1980s, where he received an ILR stamp in his US passport. From 2014 he faced significant difficulties proving his right to work in the UK as employers would not accept the ILR stamp in his now-expired passport. This inability to prove his status derailed a successful and promising career in graphic design leading to prolonged unemployment and severe personal and mental health issues. He received confirmation of his ILR status in 2020, after enduring six years of employment struggles.

Application to the WCS

Jason first applied for compensation under the WCS in 2020, after being informed by the Home Office about his eligibility. His application included detailed submissions under loss of access to employment and impact on life categories, supported by approximately 170 pages of documents. These included email communications with employers, responses showing job rejections due to his inability to prove his right to work and documents obtained by SARs. Despite his thorough efforts, his initial application was refused, and he appealed to prominent MPs. This resulted in the rapid acceptance of his entitlement and a preliminary award of £10,000 in 2021. Jason



used his preliminary award to commission a psychological report, having read that this was necessary for his case to be fully considered. The WCS subsequently offered him a final award of £55,000.

Legal Assistance and its Impact

Dissatisfied with the final award, Jason sought legal help and was referred to a lawyer with immigration law expertise. The legal support involved reorganising and articulating the evidence Jason had accumulated and addressing the complexities within the WCS Guidelines. Because Jason had persevered in pursuing multiple employment opportunities, this included approximately 30 pages of submissions on the alternative approaches to calculating the losses from his various periods of unemployment, depending on which denials the WCS accepted as being linked to immigration status. With his lawyer's assistance, he applied for a Tier 1 review in 2022, which increased his award to £85,000 in 2023. Subsequent legal arguments were addressed directly to the head of the WCS challenging the caseworker's use of the Employer Checking Service, a point Jason would not have known about without his lawyer's immigration law expertise. That led to a reopening of the Tier 1 review and an increase in the award to £150,000 with the uplift awarded in the Loss of Access to Employment category. The considerable uplift in compensation demonstrates the significant impact of legal representation on Jason's case. Jason has submitted a Tier 2 review request to challenge the conclusion that the extended period of loss of access to employment now accepted did not have a corresponding increase in the period for which Jason suffered impact on life. The outcome of the Tier 2 review request is outstanding.

Thoughts on the WCS Process

Jason found the WCS process to be extremely arduous and felt that the Home Office's approach was to make the process discouragingly complex and not to listen to unrepresented claimants. He had collated 'all the evidence [he] found to prove his case', but

felt that it did not 'mean anything unless you have legal representation'. Jason felt that he was perceived by the WCS as 'nobody in their eyes to have any kind of weight or power to make a difference'. He observed that without legal representation, it was nearly impossible to navigate the intricate requirements and continuously shifting criteria. Jason emphasised that while he had gathered extensive evidence to prove his claims, it was his lawyer's legal expertise that made his voice heard. He expressed frustration over the protracted nature of the process and the dismissive attitude he sometimes encountered from caseworkers.

Jason's lawyer, who spent 'easily 100 hours' on Jason's case, highlighted Jason's case as illustrative of the systemic issues within the WCS, arguing that the WCS's complexity and the Home Office's obfuscating tactics are significant barriers to justice for many applicants. According to his lawyer, Jason's experience is a 'very firm rebuttal' of the Home Office's narrative that legal representation is unnecessary and that the process is 'simple'.

In summary, Jason's struggle to obtain fair compensation under the WCS underscores the critical importance of legal advice, even for an extremely competent and determined claimant, in navigating the system's complexities and achieving justice.

Jerome (Cohort 1)

Background

Jerome was born in the late 1950s in the Caribbean and moved to the UK where he attended school. He lost his passport in the 1970s and did not replace it as he had no plans to travel. After leaving school, Jerome worked in the building and steel industries until the early 2000s when he took a short break from working. He then found himself unable to re-enter the workforce because he did not have sufficient photo identification to prove his identity. He could not prove his right to live and work in the UK for 17 years and could not access meaningful employment. He was finally granted British citizenship in mid-2019.



Application to the WCS

Jerome initially applied to the WCS in early 2019 and received some support from the Citizens Advice Bureau. He was asked a series of questions but was not encouraged or assisted to collect or submit supporting documents. The application addressed his lack of identification during a 17-year period, and the impacts on his employment. However, Jerome's application was rejected in December 2020 because of the lack of supporting documentation, particularly regarding his unsuccessful efforts to secure employment. The refusal letter noted the absence of documentary evidence proving that employment had been terminated or job offers rescinded due to his inability to demonstrate lawful status in the UK.

Legal Assistance and its Impact

After his application was refused, Jerome sought help from a legal charity in 2021. The first pro bono lawyer helped him secure letters from previous potential employers who did not offer him jobs due to his lack of identification documents. However, despite this evidence the Tier 1 review was still rejected in May 2021 and a Tier 2 review rejected in November 2021 on the basis that his difficulties were attributable to a lack of photographic identification rather than an inability to prove his lawful status. Subsequently, Jerome received pro bono legal assistance from a second lawyer starting in January 2022, who helped him to pursue an application to the Parliamentary & Health Service Ombudsman. After lengthy delays, and the intervention of a third lawyer from January 2024, the Ombudsman made a recommendation to the WCS and after some further inquiries WCS made a final decision in February 2024. This accepted that the letters from employers did, together with Jerome's confirmation that he had presented his National Insurance card in an effort to obtain employment, establish that he had been unable to access employment. The final award amounted to £295,000, comprising £225,000 for denial of access to employment between 2002 and 2019 and £70,000 for impact on life.

Thoughts on the WCS Process

Jerome was critical of the WCS process, emphasising its complexity and the hurdles faced in the absence of expert legal representation. Jerome felt the process was obstructive and biased against certain ethnic groups, and he highlighted the crucial role of legal assistance in navigating and challenging the system. His third lawyer echoed these sentiments, underscoring the lack of empathy and the bureaucratic resistance faced in progressing Jerome's claim. She noted that many applicants, lacking legal guidance, give up due to the protracted and convoluted appeals process – the lawyer's persistent legal advocacy and relentless following up was instrumental in eventually achieving a favourable result for Jerome – 'So many people just walk away... there's no legal representation to stop them from leaving.' She also highlighted the effect of the length of the process and having to repeatedly challenge poor decision making and delays – 'The trauma of the whole process is revisited... it's about having to go back over the same decision that caused your trauma and pain.' Jerome credits the eventual successful outcome entirely to the legal assistance received.

Marcia (Cohort 1)

Background

Marcia was born in the Caribbean in the early 1960s, and moved to the UK prior to 1973 to join her parents. She was granted ILR upon entry to the UK, evidenced by a stamp in her passport, but she lost her passport and thus the proof of her status during a house move. In 1987/88, Marcia made her first application for British citizenship, but was unsuccessful because the Home Office could not find her entry records and there was a mismatch in her surnames. Her brother, who used their mother's maiden name, successfully obtained citizenship. Overwhelmed by single parenthood, domestic abuse over several years, being the primary carer for her father who suffered from dementia and other ailments and the fear of deportation, Marcia delayed further citizenship applications until 2004 when she managed to naturalise as a British citizen. However, the period without

proper documentation severely impacted Marcia and her children's educational and professional opportunities, causing them significant financial and emotional distress. It prevented Marcia from travelling to important family occasions abroad and from taking foreign holidays with her children. Marcia's children also suffered as they could not obtain British passports due to them not being recognised as British citizens, further diminishing their prospects.

Application to the WCS

Marcia first learned about the WCS in 2020 at a surgery held at the Black Cultural Archives in Brixton and subsequently applied for compensation. Her application included a personal narrative detailing the impact of her unresolved immigration status on her life and her children's lives, as well as numerous pieces of correspondence between her and various entities like the UK Border Agency and her MP. However, it lacked substantial supporting evidence. Marcia struggled to navigate the application process. She was not informed by Home Office caseworkers that she could use her medical records to substantiate her claim, despite disclosing that her mental health issues related to her immigration status. The Home Office rejected her initial application in November 2022, citing a lack of documentary evidence and concluded that her experiences did not directly relate to her inability to prove lawful status.

Legal Assistance and its Impact

Marcia was referred to pro bono lawyers by her daughter in early 2022 and they began helping her before the Home Office made the initial decision. Her lawyers, with additional pro bono assistance from a City law firm, helped Marcia collect and submit additional documentation, including making Freedom of Information (FOI) requests for, among other things, Marcia's GP medical records that corroborated that her mental health issues were due to immigration anxieties. They drafted a Tier 1 review application focusing on the causal link between her experiences and her inability to prove legal status. The legal team gathered evidence and drafted detailed and well-supported statements. The application also made specific references to relevant guidelines to establish the

connection between Marcia's inability to prove her status and the impact on her life. The Tier 1 review application, submitted in February 2023, succeeded in securing a £20,000 compensation award for impact on life category.

Thoughts on the WCS Process

Marcia initially expected a straightforward process but found it taxing and distressing, particularly receiving repeated requests from the Home Office for corroborative evidence which had already been provided. The lawyer highlighted that the application's initial failure was due to the Home Office making a decision before all required evidence had been gathered and submitted.

Marcia felt an immense sense of relief and partial vindication upon receiving the compensation - 'I feel vindicated for my treatment over this time. I'm happy to accept this offer'. Her legal representatives believed that had there been more time given initially to gather all evidence, Marcia might not have required a Tier 1 review. This case underscores the significant emotional toll on applicants and the need for knowledgeable legal support to navigate the complex WCS process. The case required an understanding of the evidence gathering process and an awareness of how best to substantiate claims. Most significantly, without legal representation, Marcia likely would not have submitted a SAR for her medical records and subsequently would not have obtained a key piece of evidence citing immigration issues as the direct cause of her depression.

Marcus (Cohort 2)

Background

Marcus was born in the Caribbean in the early 1930s and came to the UK in the 1950s. Following the death of his partner approximately 30 years ago, he lost the accommodation he previously shared with her and became homeless. He stayed with friends and spent periods sleeping rough. Although he eventually found shelter with the Salvation Army and lived in a wardened residential complex for 18 years, his situation was precarious. He also struggled to find stable employment due to his inability

to provide documents. Marcus was hesitant to resolve his immigration status due to the negative experiences and stories he had heard about the Home Office. As a result, he could not visit his homeland in the Caribbean or maintain contact with family there, leading to feelings of isolation and depression. In his final years, by which time he was suffering from dementia and COPD, Marcus relied heavily on his friend, Elena. He has since passed away.

Application to the WCS

Marcus applied for compensation with Elena's help in September 2020, seeking recompense primarily for impact on life. His application included statements from himself and Elena detailing his hardships and the profound impact of his uncertain immigration status on his life. He described undergoing a strenuous process to obtain his residence permit, biometric card, and eventually his citizenship. The application lacked substantial supporting documents, such as employment records or medical evidence, because of Marcus's unstable living environment and the passage of time and destruction of historic records. Due to his advanced age and dementia, Marcus also struggled to remember certain details from his past and formulate full answers to the questions. In January 2022 Marcus's application was denied because of a lack of evidence to link his various hardships with an inability to prove his status.

Legal Assistance and its Impact

Marcus received support from a law centre. Elena worked closely with the lawyer to fill out the necessary forms. Legal assistance was pivotal as Elena lacked the expertise to navigate the complexities of the application process. The lawyer prepared a Tier 1 review request in May 2022, supplemented by a letter detailing the impracticality of the evidential demands placed upon Marcus and emphasising the connection between Marcus's suffering and his uncertain immigration status. This effort resulted in the reversal of the initial decision, and Marcus was awarded £10,000. The lawyer filed a Tier 2 review, which resulted in an increased award of £20,000 in July 2023.

The lawyer invested approximately 25 hours in the case.

Thoughts on the WCS Process

Both Elena and the lawyer had mixed feelings about the WCS process. Elena expressed frustration over the evidential demands, finding them unrealistic given Marcus's life circumstances and advancing age. She noted, 'he was homeless, sleeping at Broadmarsh station, that's the issue, we don't have proof of that'.

Elena felt the Home Office was more inclined to deny claims than to assist claimants in securing deserved compensation: 'the impression that I get is they would rather give you nothing than give you something.' The lawyer echoed this sentiment, describing a 'culture of disbelief' within the Home Office: 'How could the scheme be improved? Well, I think, have a tribunal system like there is with benefits... the same could be here'.

The lawyer believed a higher award was warranted and potentially achievable with medical evidence. The WCS caseworker considering Marcus's application agreed that 'medical evidence was key' and encouraged the lawyer to obtain it, but the cost of obtaining a report unaffordable for Marcus and the lawyer's request for the WCS to cover the cost of the medical report was denied (despite provision for this in the Rules). Marcus was therefore unable to obtain a medical report to support his claim.

Michael (Cohort 1)

Background

Michael was born in the early 1960s in the Caribbean and moved to join his parents in the UK in around the late 1960s, aged six or seven. His mother died in the late 1970s as the result of medical negligence leaving him without a mother at the age of 14 years old. He first became aware that he might have an issue with proving his legal status in the UK in 2009 after watching the TV show 'UK Border Force'. This realisation prompted his wife to do research, leading to Michael submitting a No Time Limit (NTL) application. Over the years, Michael provided various documents such as tax records, exam results, and letters from friends, all of which the Home Office deemed insufficient. This period was marked by immense frustration, as the

Home Office repeatedly rejected his evidence, urging him to convert his application to a Long Residency ILR application, which involved higher fees. Throughout the process, Michael and his family feared that he would not be able to return if he travelled abroad and that the status of his children, who are British but whose mother is a French national, might be at risk.

Michael recalls being told that he would be deported if he failed to provide evidence of continuous residence to the Home Office. The couple's anxiety was heightened with the Brexit vote in 2016, fearing the repercussions for their children if Michael were deported. Michael's concerns about travelling abroad also resulted in him missing out on visiting his family in the Caribbean and hearing stories about his mother. By the time he had obtained proof of his lawful status and was able to travel, his mother's siblings had either died or were suffering from age-related neurological conditions.

Michael also faced difficulties with adding his name to his wife's local authority housing application, partly because he was unable to provide sufficient documentation to prove his lawful status. This complicated concerns over whether the family's accommodation was appropriate, including for a disabled wife and child.

Application to the WCS

In 2020, Michael learned about the WCS through a friend and decided to apply, feeling aggrieved by his previous treatment by the Home Office. Michael initially found the WCS application process daunting due to its complexity and lack of clear guidance. He approached We Are Digital for help but was told 'you must decide what to put in the form'. Michael submitted various pieces of evidence, including letters from family, former teachers, and friends, which documented his presence in the UK since the late 1960s. He also included a statement detailing the distress caused by his inability to prove his lawful status, highlighting an article about his mother's death due to medical negligence. Despite this, Michael's initial WCS application, submitted in November 2022, was rejected on the grounds of insufficient evidence. The WCS decision noted

a lack of proof of Michael's arrival in the UK before 1973, and no compensation was offered for his claimed hardships regarding housing, immigration fees, or legal fees.

Legal Assistance and its Impact

Following the rejection of his initial application, Michael was referred to a legal support charity by his local MP, who then directed him to a City firm which works on WCS cases pro bono. With their help, Michael submitted a Tier 1 review application in 2024, including an extensive dossier of approximately 80 documents cataloguing his presence in the UK going back to the mid-1960s, along with records of correspondence relating to his accommodation and immigration applications, some obtained by SARs. The submission took over 235 hours of legal work. The Tier 1 review resulted in Michael being awarded £20,000 for a 'moderately severe impact' on his life, focused on an 11-month period of significant distress. Despite the lawyer's efforts, the Home Office did not compensate for housing and legal fees relating to his immigration status. The WCS maintained that there was only evidence of presence in the UK since the late 1970s, despite the evidence submitted and a prior finding by the Home Office that Michael was deemed settled in the UK since 1973. The WCS concluded that there were no detrimental impacts of being unable to prove lawful status between the late 1970s and the late 2000s.

A Tier 2 review was also submitted, but no further compensation was awarded even though the Adjudicator recommended that the Home Office reconsider compensation for the period going back to 1973.

Thoughts on the WCS Process

Michael and his lawyer found the WCS process deeply flawed and biased. His lawyer remarked on the inconsistencies in the Home Office's arguments and the unfairness of the burden of proof, noting, 'I just thought it was...really unfair and that the odds were stacked against them'. Michael felt the Home Office was unhelpful and obstructive, stating, 'It was just [a] stumbling block, and requiring me to do somersaults, backflips, and all the rest of it'. Both Michael

and his wife highlighted the emotional toll and frustration of dealing with repeated requests for additional evidence. They also emphasised the necessity of legal aid in navigating such a complex process, with Michael underscoring, 'without legal aid or some legal assistance, you get nowhere'. The couple critiqued the systemic bias, asserting, 'The appeal should definitely have been out of house... How can somebody who works for the government then be impartial when it comes to something like this?' The overall sentiment was one of disappointment with the WCS, which they felt failed to provide adequate and fair compensation.

Patricia (Cohort 1)

Background

Patricia was born in the Caribbean in the early 1950s and moved to the UK with her siblings in the early 1960s to join her parents who were British citizens. Patricia lived in the UK into adulthood before emigrating to the United States in the 1980s. Throughout her life, Patricia maintained a close relationship with her siblings, especially her brother, Andrew, who suffers from paranoid schizophrenia. Patricia provided emotional and financial support to Andrew and fostered one of his children when he couldn't care for them, as he was a single father.

In 2007, Patricia learned that Andrew was unable to replace his British passport which meant that he could not demonstrate his lawful status in the UK, preventing him from finding employment and accessing services available to others living in the UK, such as healthcare. It also prevented him from attending family events abroad and put him at risk of deportation. Patricia helped Andrew in his efforts to gather documentation to prove his legal residency, a process that was stressful and persisted until 2009 when he had his lawful status confirmed by the Home Office. During this period, Andrew's mental health deteriorated, resulting in a breakdown, admission to psychiatric hospital and further separation from his family. This exacerbated Patricia's distress and induced severe stress-related migraines.

Application to the WCS

Patricia submitted her initial application to the WCS in 2021, claiming compensation as a close family member in the 'Impact on life' and 'Discretionary' categories. Her submission included a statement focusing largely on her brother's struggles with obtaining legal status and to a lesser extent on the emotional and financial impact that her brother's struggles had on her.

The WCS refused Patricia's initial claim in late 2022, stating that her hardship was not admissible because, according to their interpretation, she was not lawfully in the UK during the claimed period as despite being a British citizen, she was resident in the United States. Additionally, they dismissed her claims for compensation on the basis of her financial support to Andrew due to a lack of receipts and financial records.

Legal Assistance and its Impact

Following the rejection, Patricia was referred to a public interest legal clinic and subsequently a law firm agreed to take on her case pro bono. In 2023, with the lawyers' assistance, Patricia submitted a Tier 1 review application. Most importantly, the submission made legal arguments demonstrating that Patricia did fulfil the eligibility test under the Rules, and that the WCS had misinterpreted the meaning of 'lawfully in the UK', which included those with British citizenship even if they lived abroad. They also addressed the appropriate level of award and the standard of proof, by reference to the Caseworker Guidance.

The legal team helped her create a detailed and well-structured witness statement focussed on the impact of her brother's struggles on her life and helped to secure medical evidence to support her claim. They prepared witness statements from both Patricia and her sister highlighting her prolonged distress and the significant impact it had on her life. The lawyers invested over 255 hours in refining the application, ensuring it was comprehensive and supported by a solid legal foundation. This submission addressed and corrected mistakes

in the initial application, thoroughly referenced Caseworker Guidance and the Rules, and demonstrated Patricia's own lawful status in the UK at the relevant times.

Following Tier 1 review, Patricia was awarded £40,000 under the impact on life category.

Thoughts on the WCS Process

Patricia's legal representatives noted that without their assistance, Patricia would likely not have had the same success due to the legally complex and adversarial nature of the process. One lawyer underscored the necessity of legal expertise in navigating the intricacies of the WCS rules - 'I do not think a non-lawyer would have had a chance of picking up that point [Patricia's eligibility to apply to the WCS]...You're not going to interrogate it when somebody says you're not eligible.'

The team felt the award provided validation and recognition of Patricia's legitimate distress. Patricia expressed profound gratitude for the legal support she received, acknowledging she could not have achieved such an outcome without the legal team's help and stressing the positive impact that legal representation can have on a claimant's emotional wellbeing. According to her legal team, the award helped her feel that her trauma was formally recognised and that the emotional effort she invested was acknowledged fairly.

Unusually, the amount of Patricia's award was approximately equivalent to that of her brother, the primary claimant. Andrew did not have the benefit of legal representation when he made his primary claim. The equivalence of these awards indicates that legal representation had a significant impact on securing an appropriate award for Patricia.

Phoenix (Cohort 2)

Background

Phoenix was born in the Caribbean in the mid-1950s and moved to the UK in the late 1970s, where she worked as a nurse, obtaining ILR in the 1980s. In 2000, Phoenix lost her passport containing her ILR status

endorsement. When she submitted her new passport to the Home Office in 2007 for ILR endorsement, the Home Office lost it. This left her unable to prove her immigration status and subsequently led to difficulties maintaining and obtaining employment. In 2008/2009, she had to leave her job as she was unable to prove her ILR status and was unable to secure equivalent employment thereafter. Phoenix's status remained unresolved until 2018, despite attempts to resolve it through solicitors and correspondence with the Home Office and MPs. During this period, Phoenix experienced periods of unemployment and Job Centre staff told her that she could not apply for positions until she could prove her right to live and work in the UK. She experienced significant financial hardship, fell into rent arrears and became financially reliant on her student daughter. At times, she resorted to scavenging for food. She suffered a deterioration in her physical health, insomnia and extreme paranoia. She was unable to travel abroad to visit her terminally ill mother or attend her funeral, or to undertake spiritual pilgrimages. Her daughter, who was born in the UK, was also threatened with deportation because of her mother's uncertain status.

Application to the WCS

Phoenix was unable to manage her application herself, and received pro bono legal support from a public interest legal clinic and a law firm, including for her initial application, which ran to over 130 pages and contained over 20 exhibits detailing the period she could not prove her lawful status, the damage she suffered, and the consequences on her employment, health, and housing. The application included evidence such as correspondence with the Home Office, letters from MPs, employment records, a police report for lost property, statements regarding her financial and emotional distress, and personal testimonies from family and spiritual community members. The initial Home Office assessment nevertheless found that there was insufficient evidence to conclude at that stage that Phoenix had suffered detrimental impacts because of her inability to prove her status and declined to make a preliminary award.

Legal Assistance and its Impact

Phoenix's lawyer at the legal clinic wrote to the Home Office to challenge the refusal of the preliminary award, pointing out the relevant guidance and seeking to escalate the issue. The Home Office subsequently accepted that a preliminary award of £10,000 should be made and then offered a final award of approximately £20,000.

Phoenix received further pro bono legal support in preparing a Tier 1 review application. This made specific reference to the relevant guidance on the impact on life tariffs, demonstrated the significant impact on her personal life, and calculated the financial impact of her loss of access to employment. The lawyers also pursued a SAR in an effort to secure further evidence from public records.

The Tier 1 review resulted in a significant uplift in compensation to approximately £95,000. This increase included approximately £25,000 for loss of access to employment and an increased level 4 award for impact on life.

Thoughts on the WCS Process

The legal assistance was central to the preparation and structuring of her application, helping to curate extensive documentation and build a compelling narrative of her hardship and loss.

Phoenix and her lawyers expressed significant dissatisfaction with the WCS process. Phoenix highlighted the emotional, financial, and psychological strain she experienced during this prolonged period of uncertainty. She emphasised how the compensation process compounded her trauma, especially the inadequacy of the initial offer – 'the audacity of even having the temerity to offer me that after everything I've been through...'. She felt the Home Office provided limited support and guidance, and repeatedly suggested she seek legal assistance despite the clear guidance that legal help should not be necessary. Her lawyer underscored the systemic issues within the WCS, identifying a 'culture of disbelief' where the Home Office seemed inclined to attribute

claimants' challenges to reasons other than their unresolved immigration status. Phoenix and her legal team acknowledged that without legal assistance, she would likely not have achieved a positive outcome or appropriate level of compensation.

Ravi (Cohort 2)

Background

Ravi was born in South-East Asia, and moved to the UK in the mid 1960s before the age of five to join his father, who had been working there since the early 1960s. Despite living in the UK for decades and making significant contributions to the community and labour market, Ravi faced severe challenges beginning in 2013 due to his inability to prove his immigration status. This issue arose when he attempted to apply for work and was consistently hindered by the lack of documentation proving his right to work. At this point, legal aid for immigration (non-asylum) cases had been removed and Ravi did not know why he was unable to get work. Consequently, he experienced financial difficulties, leading to the loss of his council housing due to rent arrears and forcing him to move in with a friend. The situation worsened in 2017 when his friend passed away, resulting in Ravi having to sofa surf and eventually sleeping rough from 2021 after failing to secure a stable place to stay. During this period, Ravi contracted severe Covid-19 and developed Guillain-Barre syndrome, leaving him hospitalised in an induced coma. Afterwards, he could not be discharged onto the streets due to his health condition. The local authority was unable to provide him with housing due to his lack of documentation. It was in this context that Ravi's case was referred to a solicitor through a hospital project aimed at assisting patients like him with unresolved immigration statuses. His local authority did then accommodate him under provisions for people with no recourse to public funds.

Application to the WCS

Ravi had to apply to the Windrush task force to establish his status, as well as making his application to the WCS. He had legal support from the outset and the application

was supported by substantial documentation, including his National Insurance and tax contributions from 1975/1976 to 2020/2021, obtained through a SAR, medical reports from his hospitalisation, including the development of Guillain-Barre syndrome and his severe COVID-19 infection, and correspondence from Southwark Council's complex discharge team. Additional evidence included letters from potential employers who had been unable to employ him because of his inability to prove lawful status, that substantiated his attempts to seek employment post-2013. Initially, Ravi's application was rejected, on the basis that evidence was missing, which had in fact already been submitted. Following intervention from his solicitor, the decision was reversed, and he was awarded the interim minimum compensation of £10,000 under the impact on life category. The final decision on the full award was still outstanding at the time of the research.

Legal Assistance and its Impact

The lawyer's involvement was crucial to Ravi's case. Before a lawyer's involvement, Ravi was unaware of both the option to regularise his legal status and to apply to the WCS for compensation, and he was incapable of navigating the legal complexities due to his lack of resources, including not having a smartphone or bank account. The lawyer gathered and interpreted the necessary documentation, arranged it chronologically, and submitted a detailed evidence bundle to support Ravi's claim. He persisted through bureaucratic delays and redundant evidence requests from the Home Office, ensuring that even once the claim was initially rejected, it was swiftly reassessed and reversed upon his escalation. The solicitor's legal intervention transformed an initial rejection into a preliminary award, but the full decision was still outstanding more than nine months after the application. Ravi had no bank account when the preliminary award was made, so needed his lawyer's support to open one and verify his identity.

Thoughts on the WCS Process

His solicitor expressed significant frustration with the WCS process and criticised the Home Office

for continually asking for already-submitted evidence, using it as a stalling tactic rather than a thorough assessment. He noted that such bureaucratic inefficiency makes the process unnecessarily complicated, causing 'case fatigue' among claimants who often drop their cases out of frustration. The lawyer articulated that the Home Office's approach 'reflects a cultural problem' where redundant requests undermine claimants' faith in the system. He emphasised the importance of persistent legal representation to challenge these delays. Ravi's case demonstrates both the impossibility of some eligible claimants making any application at all without a lawyer's support, and the pattern of WCS caseworkers requiring evidence of 'mitigation' by people who had no way of understanding or resolving their immigration status.

Sandra (Cohort 1)

Background

Sandra was born in the Caribbean and arrived in the UK before the age of 1. She had been a British Subject: Citizen of the United Kingdom and Colonies, however, when the nation of her birth gained independence in the late 1970s she lost that status (without her knowledge) and struggled subsequently to prove her right to remain in the UK.

Sandra lost her longstanding employment in the NHS and was rejected for subsequent jobs. She was repeatedly denied benefits because she could not prove her status. This caused her to fall into rent arrears and she was threatened with eviction. She became reliant on her children for financial support. She was unable to travel to her mother's funeral. She suffered from depression and contemplated suicide. At one point she was detained and threatened with deportation. The situation brought stress to the entire family and Sandra felt she was blamed for her situation, even though it was beyond her control.

She had sought help from the Home Office and made requests of the National Archives in efforts to establish her rights in the UK. She had engaged solicitors, applied for alternative routes to status and had completed Life in the UK tests



in an effort to have her status confirmed but only succeeded in doing so after the Windrush scandal emerged.

Application to the WCS

Sandra submitted her initial application to the WCS in April 2019. She included a comprehensive array of documents: acknowledgment letters from the UK Border Agency, reasons for refusal of her right of abode application, receipts for immigration and legal fees, payslips, and a statement detailing her denied access to benefits and the consequential impact on her life. The initial outcome of her application, received in September 2019, was an interim award of around £300 for immigration and legal fees, followed by a final award of around £20,000 in December 2019, covering her unlawful detention and loss of access to employment (compensation for which was restricted to 12 months under the Rules at the time), and impact on life. However, key areas like loss of access to benefits and housing were rejected due to a lack of sufficient evidence.

Legal Assistance and its Impact

Feeling undervalued and dissatisfied, Sandra sought assistance from a law centre. Her lawyer

at the law centre restructured the presentation of her claims with reference to immigration law and case law on damages; gathered a large amount of supplementary evidence including documents from the National Archives, the Benefits Delivery Centre and the DWP; and engaged actuaries to prepare a robust financial breakdown for her lost earnings. Sandra applied for a Tier 1 review which led to an increase in compensation to approximately £90,000, largely as result of a longer period of lost employment being accepted. Still unhappy with the compensation offered, Sandra and her lawyer requested a Tier 2 review in July 2020. The additional submissions facilitated by the lawyers increased her compensation significantly to approximately £170,000, through a further re-assessment of the lost employment, and the changes in the tariffs applicable for impact on life.

Thoughts on the WCS Process

Sandra and her lawyer criticised the WCS process. They emphasised the profound emotional strain and systemic obstacles that the applicant has to overcome. Sandra remarked on the difference legal representation made for her - 'Having the law centre behind me, I was able to relax because I knew they had my case in hand'.

The lawyer highlighted that claimants are often 'wary and in some cases quite afraid of the Home Office, so having someone on your side who is also like a middleman prevents any further feelings of worry or concern of having to approach the Home Office yourself'.

Both underscored the necessity of independent legal support right from the start. They stressed the intrinsic bias and inefficiency in the Home Office being in charge of a compensatory scheme that demands impartiality and sensitivity. Sandra specifically noted, 'the Home Office don't [sic] understand the trauma or the financial loss to us'. Sandra's lawyer further commented that 'if you really mean that scheme to heal the suffering and pain that was caused, then you give the claimant the best possible chance to have the best compensation they can get, as quickly as it can be offered, and that means clear meritorious claims properly articulated'.

Sheldon (Cohort 2)

Background

Sheldon first became aware of issues regarding his immigration status when he sought homelessness support from his local council in early 2021. Following his hospitalisation with severe Covid-19 symptoms his prior accommodation was no longer available. He was placed in unsuitable emergency accommodation due to the council's inability to verify his immigration status. Despite having an ILR stamp in his expired passport, the Home Office could not verify his lawful status, attributing the issue to legislative changes – Sheldon's passport was expired and as such, the ILR stamp was no longer valid. This impasse resulted in Sheldon receiving inadequate care and facing significant health and housing challenges – because the council was unable to verify his status, they were unable to process his housing application, leaving him stuck in unsuitable emergency accommodation for a significant period of time. During this time, he was also unable to receive any social care support despite being assessed by the local authority as in need. His brother, Steven, stepped in as his informal carer.

The ordeal led to a referral to a law centre, primarily to resolve Sheldon's homelessness, which was a direct result of his undetermined immigration status, and subsequently, to make a WCS application.

Application to the WCS

Sheldon's WCS application, submitted in early 2023, included several crucial documents to support his claim. These comprised a statement from Steven detailing the impact on Sheldon's life, a copy of Sheldon's expired passport, the local authority's care assessment of Sheldon, and correspondence highlighting the issues faced by Sheldon in securing adequate housing due to his unverified status. The initial decision in 2023 resulted in a preliminary award of £10,000, a final award of approximately £70,000 was made in early 2024. This award was predominantly for the impact on life and a further amount for homelessness.

Legal Assistance and its Impact

Sheldon received support from the outset from a law centre lawyer with particular expertise in immigration and housing law, and experience of the WCS. The lawyer was able to provide guidance that resolved his immigration status and, as a result, his homelessness and lack of access to social care.

Sheldon's lawyer coordinated with various local authorities to obtain evidence of his life history and incorporated essential evidence such as the local authority's care assessment plan. The lawyer's involvement significantly impacted the outcome of the application, ensuring that the claim was robustly substantiated from the start. For example, the lawyer knew what information the Home Office would look for from an applicant like Sheldon, because of his extensive experience working on similar applications. The lawyer noted that the care assessment plan 'was very telling in terms of the extent of disabilities, or challenges, in everyday living.' This was critical for the claim, because it demonstrated the impact of the temporary accommodation and the denial of suitable care, which would not have occurred if Sheldon had been able to prove his status.

Thoughts on the WCS Process

Steven highlighted the systemic barriers and lack of transparency, describing the experience as navigating 'layers of landmines and barbed wire'. He underlined the necessity of legal representation to successfully make claims, criticising the WCS for its complexity and restrictive nature.

Sheldon's lawyer feels as though the compensation scheme 'doesn't seem to transmit the spirit of actually trying to repair', noting 'there doesn't seem to be an understanding of the sense of betrayal'. He described the WCS as nothing more than 'an exercise of trying to tick a box' – even the application form itself is full of legalistic jargon that is difficult for a layperson to understand.

Steven articulated a deep mistrust in the system, illustrating the broader sense of betrayal felt by the affected community: 'You cannot tell my mother that Britain has done this to us. She would not believe it. She would not accept. These are people who still defend the motherland until the day they go into their grave.' This critique reflects the systemic issues and the perceived lack of genuine commitment to redress historical injustices – Steven thinks 'there is tacit racism in here. You can't see it. You can't feel it. Nobody says anything about it, but it's in there'.

Sonia and Andre (Cohort 1)

Background

Sonia and Andre were born in the Caribbean in the 1950s. Andre is of Scottish descent. His parents came to the UK in the 1950s and he joined them in the 1960s. Sonia travelled to the UK to join her mother and her stepfather in the 1960s.

Sonia and Andre met, married and had three children in the 1970s. Sonia joined the British Army around the time she met Andre and she stayed in the Army until she became pregnant with their first child. They bought a house in East London. Andre was issued with a British passport in the 1970s. He subsequently applied

to renew his passport in the 1980s but was refused on the basis that he was no longer entitled to a British passport, because of the independence of his country of origin. As a result, he did not have any other paperwork to prove his status and lost his job.

Since Andre could not secure any other long-term employment, he was unable to support his family in the UK. Andre and Sonia ultimately sold their house in the 1980s and Andre obtained a passport for his country of origin, and the family moved there. The children were educated there but later wished to return to the UK to attend university.

Andre first returned to the UK in the early 1990s to organise living arrangements for their sons. He presented a passport with a stamp stating that he previously held a UK passport and was given a 6-month leave stamp. He was not told to apply as a returning resident.

Sonia and Andre's children subsequently moved back to the UK with Sonia and lived with Sonia's mother while Andre remained to work. On re-entry to the UK Sonia was only granted a six-month visitor visa on her passport, despite being entitled to enter and work as a returning resident. Sonia did not contest the decision as she did not want to provide a reason for the Home Office to obstruct her return. Since Sonia was unable to work in the UK, all their children had to work part-time jobs alongside their studies to support the family. Sonia left the UK after 6 months in accordance with the restrictions placed on her passport. She moved back and forth between the Caribbean and the UK repeatedly every 6 months, at considerable expense which placed a financial strain on the family.

Andre returned to the UK in the late 1990s and was again given a six month stay restriction. He found full-time employment in the UK in the 2000s using his national insurance card. He applied for a UK passport around that time and was issued a temporary British passport on the condition that he provide evidence of his Scottish heritage. However, he was unable to trace the necessary records. Upon the expiry of

his temporary passport, he had to leave the UK and return to work in the Caribbean.

After the Windrush scandal broke in 2018, Sonia was issued with a biometric residence permit with no time limit on her stay and applied for citizenship. Her application for citizenship was approved and she was granted a British passport. Andre was granted ILR and naturalisation.

Application to the WCS

Sonia and Andre became aware of the WCS in May 2020 after being granted citizenship. They were told they were eligible and urged to apply. They were initially reluctant because they expected any compensation to be inadequate relative to their suffering. However, after both Sonia and Andre fell severely ill with Covid-19, they reflected on their mortality and decided to proceed with the application for the benefit of their children and future generations.

Sonia's application included documents such as scans of her passports from her country of birth, including her Returning Resident status, a scan of her CUKC passport, letters from the DWP, a letter from a doctor, a dentist receipt, and documents concerning her lawful status. The application claimed compensation related to removal from the UK, loss of access to employment, denial of access to services, and impact on life.

Andre's application included a mix of documents related to his past attempts to document his residence and evidence of damage and consequences resulting from his uncertain immigration status. Key documents included letters from the Passport Office, expired UK and Caribbean passports, and medical records. Andre submitted personal medical payment receipts and reports demonstrating medical costs which would have been covered by the NHS for UK residents. Andre claimed damages across several categories, including loss of employment, denial of services, immigration fees, and impact on life.

Despite their expectations for a swift and favourable resolution following the granting of

citizenship, both Sonia and Andre had their applications for compensation refused in February 2023. The caseworkers concluded that because Sonia and Andre had left the UK 'voluntarily' (because of Andre's denial of employment) for more than two years in the 1980s, their rights had lapsed. They also cited a lack of evidence of impact on life during the relevant periods.

Legal Assistance and its Impact

Sonia and Andre sought help from We Are Digital but found an inexperienced advisor who provided no substantive help. Consequently, Sonia and Andre connected with a Windrush activist, who referred them to a Law Centre, which provided a lawyer. The lawyer began gathering comprehensive evidence and pursued numerous SARs to the Home Office. This proactive evidence gathering was crucial in countering the initial dismissal of their claims.

The lawyer's work included compiling extensive documentation, gaining historical immigration records, and critically analysing changes in legislation pertinent to Sonia and Andre's proper status. This significantly bolstered their Tier 1 review application, submitted in April 2024. This included a detailed analysis of how immigration law applied to Sonia and Andre over the decades. In January 2025, the Home Office accepted that Sonia had lawful immigration status all along and she was awarded £40,000 under the impact on life category. The caseworker maintained that because Andre had not intended to settle when he initially returned to organise accommodation for his student children, he had lost his rights as a returning resident for future entries, even though when granting his application for status in the late 2010s he had been found to have rights as a returning resident. Andre's nil award was maintained and he continues to seek compensation with the help of his lawyer.

Thoughts on WCS Process

Sonia expressed deep frustration and disillusionment with the Home Office's handling of the WCS, citing a lack of direct communication and what she felt was a strategy

to nullify compensation claims. She felt that the Home Office operated with a narrative designed to deny compensation, and manipulate evidence - 'The Home Office knows exactly what they're looking for and set you up to fail'. The delay and complexity associated with proving status and experiences were overwhelming, reinforcing Sonia's belief that legal assistance was indispensable.

The lawyer spent approximately 70 to 80 hours required to advance Sonia's and Andre's applications and highlighted the necessity of pro bono work in such cases. He noted Sonia's proactive involvement and detailed understanding as significant factors which assisted in compiling a comprehensive and compelling case, but Sonia acknowledged that she could not have gathered the same level of documentation or made such a detailed submission without the lawyer's expertise: 'It's imperative that persons in my situation get the help that they require on a legal level'.

Winston (Cohort 2)

Background

Winston was born in the Caribbean in the late 1940s and moved to the UK as a child in the early 1960s. His mother, a British citizen, worked as a nurse in the UK. Winston left school at the age of 15 and worked in various jobs including as a delivery driver and window cleaner and in factories, which resulted in significant noise-induced hearing loss. He made unsuccessful applications to become a British national in the 1980s and in 2003. In 2008 he was the victim of a violent attack, leading to severe injuries. He was diagnosed with depression and post-traumatic stress disorder as a result, and subsequently developed dementia and Alzheimer's. Unable to prove his legal status, he was unable to access appropriate benefits and fell into debt. He suffered increased anxiety as he saw others in his community deported, feared being sent back to a country he left as a child, and felt abandoned by his adoptive country. His inability to prove his immigration status exacerbated the trauma from the criminal assault he suffered. He obtained British citizenship in 2020.

Application to the WCS

Winston applied to the WCS in 2021. His ill-health prevented him from advancing the application himself, but he received legal support from a public interest legal clinic and his wife Yvonne assisted in gathering relevant evidence and providing information. Despite submitting various pieces of evidence relating to the denial of benefits, Winston's initial application was rejected a year after it was submitted. The Home Office concluded that none of the evidence directly linked his financial and personal hardships to an inability to prove lawful status in the UK. Winston then pursued a Tier 1 review.

Legal Assistance and its Impact

The clinic's lawyers spent significant time communicating with the Home Office and seeking additional evidence to establish a link between the hardships Winston had suffered and his inability to prove legal status in the UK. Winston's Tier 1 review application included a letter from Citizens Advice Bureau, written in 2013, which confirmed his entitlement to benefits such as Attendance Allowance and pension credits had not been claimed due to his inability to prove lawful status. This additional evidence was pivotal in the Tier 1 review, resulting in a £40,000 award.

Thoughts on the WCS Process

Yvonne (Winston's wife) expressed mixed feelings about the WCS process (Winston was not well enough to be interviewed). They appreciated the eventual positive outcome but Yvonne described the application process as a source of immense 'anxiety and sleepless nights', exacerbated by her husband's deteriorating mental state and the challenges caused by his condition. Winston's lawyer criticised the initial rigid responses from the Home Office and highlighted the complexity of the case and the diligence required to ultimately secure the additional evidence which led to the award. Yvonne emphasised that without legal help, they felt stuck and hopeless. She conveyed deep gratitude towards the lawyers, stating, 'they did all the hard work' and that Winston 'couldn't have done it without the legal help'.



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